



# How to Repair the U.S. Immigration Detention System

BLUEPRINT FOR THE NEXT ADMINISTRATION

December 2012

**BLUEPRINT**  
FOR THE NEXT U.S.  
ADMINISTRATION

## ABOUT US

On human rights, the United States must be a beacon. Activists fighting for freedom around the globe continue to look to us for inspiration and count on us for support. Upholding human rights is not only a moral obligation; it's a vital national interest. America is strongest when our policies and actions match our values.

Human Rights First is an independent advocacy and action organization that challenges America to live up to its ideals. We believe American leadership is essential in the struggle for human rights so we press the U.S. government and private companies to respect human rights and the rule of law. When they don't, we step in to demand reform, accountability and justice. Around the world, we work where we can best harness American influence to secure core freedoms.

We know that it is not enough to expose and protest injustice, so we create the political environment and policy solutions necessary to ensure consistent respect for human rights. Whether we are protecting refugees, combating torture, or defending persecuted minorities, we focus not on making a point, but on making a difference. For over 30 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership.

Human Rights First is a nonprofit, nonpartisan international human rights organization based in New York and Washington D.C. To maintain our independence, we accept no government funding.

This report is available for free online at [www.humanrightsfirst.org](http://www.humanrightsfirst.org)

© 2012 Human Rights First. All Rights Reserved.

### Human Rights First

#### New York Office

333 Seventh Avenue  
13th Floor  
New York, NY 10001-5108

Tel.: 212.845.5200  
Fax: 212.845.5299

[humanrightsfirst.org](http://humanrightsfirst.org)

#### Washington D.C. Office

100 Maryland Avenue, NE  
Suite 500  
Washington, DC 20002-5625

Tel: 202.547.5692  
Fax: 202.543.5999

# How to Repair the U.S. Immigration Detention System

## BLUEPRINT FOR THE NEXT ADMINISTRATION

*“[We are] working every day to make sure we are enforcing flawed [immigration] laws in the most humane and best possible way.”*

President Barack Obama, July 25, 2011

*“[T]here is a big difference between managing a detention system for ICE versus running a state-prison system... This is a system that encompasses many different types of detainees, not all of whom need to be held in prison-like circumstances or jail-like circumstances, which not only may be unnecessary but more expensive than necessary.”*

Department of Homeland Security Secretary Janet Napolitano, October 6, 2009

## Introduction

As the Obama Administration embarks on its second term and recommits itself to immigration reform, it should prioritize its commitment to transform the immigration detention system. In 2009, the Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) committed to overhaul the U.S. immigration detention system and shift it away from its longtime reliance on jails and jail-like facilities.<sup>1</sup> Since that time, ICE has taken steps to address some of the

problems in the existing system. It has, for example, hired onsite detention service managers to improve oversight, implemented new parole guidance for arriving asylum seekers, and streamlined the process for detainee health care treatment authorization. It has also taken a number of steps towards a broader transformation of the system, such as opening a “model” civil detention facility in Karnes County, Texas, that offers conditions more appropriate for immigration detainees.

More needs to be done to move this transformation forward. The overwhelming majority of detained asylum seekers and other civil immigration detainees are still held in jails or jail-like facilities where they have limited or essentially no outdoor access, wear prison uniforms, and visit with family through Plexiglas barriers. The U.S. Commission on International Religious Freedom, the American Bar Association, a 2009 DHS-ICE report, and a range of international human rights authorities, have all recommended alternatives to detention and conditions more appropriate for civil immigration detainees. As documented in Human Rights First’s 2011 report, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System—A Two-Year Review*, many criminal correctional facilities actually offer less restrictive conditions than those typically found in immigration detention facilities, and corrections experts have confirmed that a “normalized environment” helps to ensure the safety and security of any detention facility.

In its second term, the Obama Administration should prioritize the transformation of detention policies and practices in its immigration reform agenda and should lead this effort from the White House. As detailed in this blueprint, components of this transformation should include: (1) individualized assessments of detention with prompt immigration court review; (2) reliance on cost-effective alternatives to detention in many cases; (3) a corresponding reduction in reliance on detention as the default tool for enforcement; (4) the phasing out of jails and jail-like facilities; and (5) the use of facilities with conditions appropriate for civil immigration detention when detention is used. This transformation should be facilitated as immigration reform moves forward, decreasing demands for detention beds.

The costs of immigration detention have risen dramatically over the past 15 years, as detention levels have more than tripled—from 108,454 detainees in 1996 to an all-time high of 429,247 in fiscal year (FY) 2011. Congress has annually appropriated the funds to sustain and expand the immigration detention system—from \$864 million seven years ago to \$2.02 billion today. These dramatic increases have continued—and been maintained—even as criminal justice systems across the country have recognized that effective alternatives to detention can create tremendous cost-savings and more humane outcomes for individuals, while also achieving governmental objectives. Alternatives to detention cost ICE on average \$8.88 per day per individual—more than \$150 a day less than detention. Meanwhile, ICE’s requested budget of almost \$2 billion for detention in FY 2013 was 18 times its requested budget of \$112 million for alternatives to detention.

Not only are U.S. immigration detention practices unnecessarily costly, they are also inconsistent with this country’s values and human rights commitments. The United States is a nation of immigrants and a global leader in the protection of refugees. The United States often calls on other countries to end detention that is inconsistent with international human rights law, and to release political dissidents, prodemocracy activists, religious minorities, journalists, and others from such detention. Around the world, other countries detain refugees and asylum seekers in ways that are inconsistent with the Refugee Convention and human rights law, including, for example, Iraqi refugees jailed in Lebanon and North Korean refugees detained in China. U.S. global leadership on refugee protection and human rights is undermined by U.S. immigration detention policies, which set a poor example for the rest of the world and undercut U.S. moral authority to criticize the detention policies and practices of other nations.

Criminal justice systems throughout the United States are striving to transform the way they approach detention to reduce costs, improve efficiency and effectiveness, avoid detaining individuals unnecessarily, and make detention itself more humane. In a series of symposiums held by Human Rights First across the country in fall 2012, former corrections officials, criminal justice experts, attorneys, and politicians from both sides of the aisle have confirmed that alternatives to detention should be used when detention is not necessary, reducing costs significantly, and that when detention is necessary, more normalized conditions can help ensure safer environments for detained individuals as well as officers working at these facilities. Human Rights First will hold a final symposium—scheduled at the Cato Institute in early 2013—to bring experts from across the country to Washington to discuss lessons learned from criminal justice reform and the steps necessary to truly transform the U.S. immigration detention system.

Many of these steps, as detailed below, can be implemented by the Obama Administration without legislation. Some should be included in immigration reform legislation. As noted throughout this blueprint, many of these reforms have been endorsed by bipartisan task forces, U.S. government entities, corrections professionals, and a range of groups from across the political spectrum.

# How to Repair the U.S. Immigration Detention System

## SUMMARY

The Obama Administration should reform U.S. immigration detention policies and practices. Key steps include:

### PRIORITIZE IMMIGRATION DETENTION REFORM.

- Provide strong White House leadership.
- Designate detention transformation a top priority for DHS and ICE.
- Work with Congress to build support.
- Overcome potential roadblocks.

### IMPLEMENT EFFECTIVE COURT REVIEW AND SUPPORT INDIVIDUALIZED ASSESSMENTS

- Revise regulations to provide immigration court custody hearings for immigration detainees.
- Provide immigration court custody hearings in cases of prolonged detention.
- Monitor implementation of asylum parole guidance.
- Support revisions to immigration law to require individualized assessment of the need to detain prior to use of detention.

### IMPLEMENT EFFECTIVE SYSTEM OF ALTERNATIVES TO DETENTION AND REDUCE UNNECESSARY COSTS

- Reduce costs by utilizing alternatives in place of unnecessary detention.
- Prevent unnecessary detention by implementing validated dynamic risk classification tool nationwide.

- Reduce costs by recognizing that restrictive measures can constitute custody.
- Support steps to reduce delays in the immigration court system.
- Use community-based models and case management in nationwide system of alternatives to detention.

### STOP USING PRISONS, JAILS, AND JAIL-LIKE FACILITIES; USE ONLY FACILITIES WITH APPROPRIATE CONDITIONS

- Phase out the use of jails and prisons.
- Use facilities with conditions appropriate for civil immigration detention.
- Develop and implement new standards on conditions for civil immigration detention.
- Reform existing immigration detention facilities to the extent possible.
- Use risk classification assessment tool to identify and properly place any detainees who present safety risks in custody.

### IMPROVE ACCESS TO LEGAL COUNSEL AND FAIR PROCEDURES

- End use of detention facilities in remote locations that limit access to legal representation, medical care, and family.
- Support funding and placement of Legal Orientation Programs (LOPs) at all facilities that detain asylum seekers or other immigration detainees.
- Support funding for legal counsel in immigration proceedings, particularly for vulnerable groups.
- Direct that all detained asylum seekers and other immigrants receive merits hearings in person, not via video.
- Ensure prompt and in-person credible fear and reasonable fear interviews.

## **TAKE OTHER STEPS TO ADDRESS DEFICIENCIES IN IMMIGRATION DETENTION CONDITIONS**

- Provide high-quality medical and mental health care.
- Promptly propose and implement Prison Rape Elimination Act (PREA) regulations based on the Department of Justice (DOJ) PREA rule.
- Limit solitary confinement or segregation to only very exceptional cases, as a last resort, and for the briefest time possible.
- Improve training and communication for ICE officers and facility staff.

# How to Repair the U.S. Immigration Detention System

## PRIORITIZE IMMIGRATION DETENTION REFORM

### BACKGROUND

ICE should continue to address deficiencies in the existing immigration detention system, as detailed in the last section of this blueprint. In order to truly transform the existing system, however, and shift it away from its reliance on jails and jail-like facilities, the administration will also need to move forward boldly on several big-picture reforms over the next four years.

The time for this kind of transformation is now. Not only is this a key moment for immigration reform in general. But across the country, criminal justice systems are striving to transform the way they approach detention to reduce costs, improve efficiency and effectiveness, avoid detaining individuals unnecessarily, and make detention itself more humane. DHS and ICE can learn much from these initiatives, many of which have been highlighted through the Dialogues on Detention symposia that Human Rights First has held across the country.<sup>2</sup>

### RECOMMENDATIONS

■ **Provide strong White House leadership.** The Obama Administration should make transformation of detention policies and practices a priority in its immigration reform agenda. As detailed in this blueprint, components of this transformation should include: (1) individualized assessments of detention with prompt immigration court review; (2) reliance on cost-effective alternatives in place of detention; (3) a corresponding reduction in reliance on detention as the default tool for enforcement; (4) the phasing out of jails and jail-like facilities; and (5) the use of facilities with conditions appropriate for civil immigration detention when, after an individualized assessment, detention is determined to be

necessary. The Obama Administration should announce a major initiative to advance immigration detention reforms, many of which can be implemented without congressional action.

- **Designate immigration detention transformation as a top priority at DHS and ICE.** The Obama Administration should designate immigration detention transformation as a top priority for the secretary of DHS and the director of ICE, and should identify specific big-picture objectives relating to key components of this transformation such as: the revision of regulations denying access to immigration court “bond” hearings; the closing of jails and jail-like facilities; a reduction in detention levels and the use of more cost-effective alternatives to detention; the development and implementation of civil detention standards. The administration, DHS, and ICE should allocate the staff necessary to achieve these objectives.
- **Work with Congress to build support.** The administration should also work closely with Congress to build further support for the use of cost-effective alternatives and the reduction of detention levels, and to revise laws to provide individualized assessments and court review of detention. The administration should not agree to additional detention, or sacrifice efforts to reduce unnecessary detention, in connection with negotiations over future immigration reform legislation.
- **Overcome potential roadblocks.** The Obama Administration should proactively address any baseless arguments that reforms turn facilities into “resorts,” create unsafe environments, or undermine security, including by pointing out that prison experts have confirmed that more normalized conditions can actually improve facility safety (as Human Rights First has documented through various reports and events<sup>3</sup>). The administration should also encourage investment in alternative economic development plans for towns where jails and jail-like facilities that house ICE detainees provide a significant number of local jobs, so that the closure of inappropriate jails does not inadvertently hurt local economies, and should work closely with members of Congress to minimize resistance to the ending of ICE contracts

with jails based on these concerns. Alongside any plan to build new more appropriate facilities for immigration detention (which should be located near legal counsel and immigration judges), the administration should commit to closing specific jails and jail-like facilities and increasing the use of alternatives, so that new facilities with more appropriate conditions do not lead to an expansion of unnecessary detention.

## IMPLEMENT EFFECTIVE COURT REVIEW AND SUPPORT INDIVIDUALIZED ASSESSMENTS

### BACKGROUND

Under current U.S. policies, many asylum seekers and immigrants do not have access to prompt court review of their immigration detention. For example, the initial decision to detain an asylum seeker or other “arriving alien” at a U.S. airport or border is “mandatory” under the expedited removal provisions of the 1996 immigration law. The decision to release an asylum seeker on parole—or to continue his or her detention for longer—is entrusted to local officials with ICE, which is the detaining authority, rather than to an independent authority or at least an immigration court. In March 2012, the U.S. Department of Justice (DOJ) denied a petition requesting reform of regulations to provide arriving asylum seekers with immigration court custody hearings. Several other categories of immigrants—including lawful permanent residents convicted of a broad range of crimes, including simple drug possession and certain misdemeanors, as well as more serious crimes, and who have already completed their sentences—are also subjected to “mandatory” detention, and deprived of access to immigration court custody hearings.<sup>4</sup>

Article 9(4) of the International Covenant on Civil and Political Rights (ICCPR), which the United States ratified in 1992, provides that “anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court . . .” The 1951 Refugee Convention and its Protocol, to which the United States has also committed, make clear that refugees should not be penalized for illegal entry, and UNHCR’s 2012 Guidelines on Detention emphasize that those detained

should “be brought promptly before a judicial or other independent authority to have the detention decision reviewed” within 24 to 48 hours. In a 2012 report, the U.N. special rapporteur on the human rights of migrants stressed that states should provide “automatic, regular and judicial review of detention in each individual case,” and the Inter-American Commission on Human Rights specifically called on the United States to ensure that immigration courts be allowed to review release decisions made by immigration officers.<sup>5</sup>

### RECOMMENDATIONS

The Obama Administration should take steps to implement immigration court review of detention and support individualized assessments, including:

- **Revise regulations to provide immigration court custody hearings for immigration detainees.** DOJ and DHS should revise regulatory language in provisions located mainly at 8 C.F.R. § 1003.19(h)(2)(i) and § 212.5, as well as § 208.30 and § 235.3, to provide arriving asylum seekers and other immigration detainees with the chance to have their custody reviewed in a “bond” hearing before an immigration court. This reform would give arriving asylum seekers the same access to immigration court custody determination hearings that is provided to many other immigrants and would help ensure that individuals are not detained unnecessarily for months without having an immigration court assess the need for continued detention.
- **Provide immigration court custody hearings in cases of prolonged detention.** DHS and DOJ should review and revise their current interpretations of the availability of bond hearings for aliens in prolonged detention who are held under 8 U.S.C. § 1231, § 1225(b), and § 1226(c), and should require bond hearings for immigrants detained six months or more.
- **Monitor implementation of asylum parole guidance.** DHS and ICE should continue to monitor implementation of the asylum parole guidance to ensure that ICE field offices are assessing each arriving asylum seeker for parole eligibility under the

specified criteria and consistently and accurately implementing the guidance. The parole guidance should be applied to all detained asylum seekers, including those picked up in the interior, and should be codified into regulations.

■ **Support revisions to immigration law to require individualized assessment of the need to detain.**

The Obama Administration should work with Congress to amend § 235 and § 236 of the Immigration and Nationality Act to allow all detention decisions to be made on an individual basis, rather than automatic or mandatory detention. Automatic detention of broad categories of noncitizens precludes individualized, case-specific assessments by immigration judges of humanitarian factors, such as family and community ties, as well as the risk of flight or danger to public safety. Automatic detention also costs taxpayer money—the government spends \$164 per night on every detained individual.<sup>6</sup>

## **IMPLEMENT EFFECTIVE SYSTEM OF ALTERNATIVES TO DETENTION AND REDUCE UNNECESSARY COSTS**

### **BACKGROUND**

Alternatives to Detention (ATD) programs generally provide for release from immigration detention with additional supervision measures intended to ensure appearance and compliance. Several successful ATD programs have been tested in the United States over the years, including programs run by the Vera Institute of Justice and by Lutheran Immigration and Refugee Service. These programs documented high appearance rates, and saved government funds by allowing for the release of individuals from more costly immigration detention.

As the Council on Foreign Relations' Independent Task Force on U.S. Immigration Policy noted in its report, alternatives to detention can “ensure that the vast majority of those facing deportation comply with the law, and at much lower costs.”<sup>7</sup> A January 2012 report on U.S. immigration and border security policies from the Heritage Foundation also recognized the importance of alternatives to detention to “bring costs down,” stating that “[f]or a fraction of the costs of holding individuals in

deportation centers, ISAP [the current ATD program] steers individuals through deportation proceedings and electronically monitors them to ensure that they leave the country when ordered.” The report recommended that more be done “to identify the proper candidates for ISAP-like programs” and that “[o]ther commonsense programs should be analyzed and, if effective, expanded.”<sup>8</sup>

ICE's Alternatives to Detention program is currently provided by BI Incorporated, a private company owned by the publicly traded prison company GEO Group. A full-service program provides “intensive case management, supervision, electronic monitoring, and individuals service plans,” and a technology-only program uses GPS tracking and phone reporting. BI says its programs help “mitigate flight risk and guide the participant through the immigration court process.”<sup>9</sup> A report issued by Lutheran Immigration and Refugee Service indicates that the programs offer “minimal assistance to ensure [participants] are adequately equipped to participate in their immigration proceedings.” Still, according to BI's annual report to the U.S. government, in 2010, 93 percent of individuals actively enrolled in ATDs attended their final court hearings, and 84 percent complied with removal orders.<sup>10</sup>

In the criminal justice system, pretrial services are used in jurisdictions across the country to save the cost of jailing individuals whose cases are pending and who pose no flight or public safety risk. The Texas Public Policy Foundation, home to the criminal justice reform coalition Right on Crime, has advocated for expanded use of alternatives like pretrial services for years, citing cost savings.<sup>11</sup> At Human Rights First's Detention Dialogue at the University of California-Irvine in September 2012, the director of the Santa Clara Office of Pretrial Services reported that independent auditors found that pretrial services saved \$26 million for Santa Clara County over the course of six months in 2011.<sup>12</sup>

Congress has consistently appropriated the funds to sustain and expand the immigration detention system—from \$864 million eight years ago to \$2 billion today, an increase of 131 percent. ICE spends an average of \$164 per day per detainee.<sup>13</sup> In an April 2010 report to Congress, ICE stated that ATDs costs ICE on average

\$8.88 per day per individual—more than \$150 a day less than detention. Meanwhile, the administration requested nearly \$2 billion for detention in FY 2013—18 times its request of \$112 million for alternatives to detention. While ICE has expanded its use of alternatives to detention, it has not used these cost-effective alternatives to reduce unnecessary detention levels and its costs—instead citing to language in DHS appropriations legislation that ICE has viewed as mandating that it maintain a specific number of detention beds (33,400 for FY 2012).<sup>14</sup> Nevertheless, the administration’s FY 2013 Budget Request for DHS included “flexibility to transfer funding between immigration detention and the ATD program.”

## RECOMMENDATIONS

To implement an effective system of alternatives to detention and reduce unnecessary costs, the Obama Administration should:

- **Reduce costs by utilizing alternatives in place of unnecessary detention.** Alternatives programs should be used *in place of* detention that is unnecessary rather than primarily as a supplement to existing levels of detention. The administration should reject the notion that ICE is mandated to detain daily the number of individuals corresponding to the number of beds Congress funds. The administration should also realize cost savings by urging Congress, in connection with DHS appropriations legislation, to (1) not include language referencing a specific number of detention beds, and (2) recognize ICE flexibility in its allocation of the enforcement and removal budget to shift funds from detention to more cost-effective alternatives to detention—flexibility that the administration included in its FY 2013 Budget Request for DHS.<sup>15</sup>
- **Prevent unnecessary detention by implementing validated dynamic risk classification tool nationwide.** ICE should assess eligibility for alternatives to detention in each individual case before resorting to detention, as well as assessing eligibility for ATDs periodically during detention. ICE should identify triggers for rerunning the assessment so that, for example, asylum seekers who have

passed their credible fear screening interviews and are no longer subject to mandatory detention will automatically be reassessed for release. ICE should also rerun the assessment on a regular basis for every detained individual. At the Detention Dialogue organized by Human Rights First at the University of California–Irvine in September 2012, the former chief probation officer of Alameda County stressed that effective use of a risk assessment tool is key to ensuring that individuals who do not need supervision are not referred unnecessarily into alternatives programs.

- **Reduce costs by recognizing that restrictive measures can constitute custody.** ICE should consider some restrictive measures that are sometimes characterized as ATD to constitute custody for the purposes of the mandatory detention laws at INA § 236(c) and § 235(b), and enroll detainees subject to mandatory detention who are otherwise eligible for release (because they pose no public safety risk) into those programs. DHS has discretion to recognize the broad meaning of “custody” to include the use of a range of tools, and, as the U.N. special rapporteur on the human rights of migrants noted in his 2012 report, “[s]ome non-custodial measures may be so restrictive, either by themselves or in combination with other measures, that they amount to alternative forms of detention, instead of alternatives to detention.” ICE should also utilize other alternate forms of detention, such as “home detention,” which would lead to substantial cost-savings.<sup>16</sup>
- **Support steps to reduce delays in the immigration court system.** The administration should prioritize, and ask Congress to prioritize, adequate funding for the immigration courts, which are currently experiencing substantial backlogs and delays. Timely hearings and case resolutions would maximize the cost-savings that can be realized through ATD programs, in addition to advancing justice and fairness.
- **Use community-based models and case management in nationwide system of alternatives to detention.** ICE’s alternatives programs should use full-service community-based

models that provide individualized case management, increase access to legal and social service providers through meaningful referrals, and provide information about immigration court and case matters. According to multiple studies, successful alternatives to detention programs in the United States and around the world typically include: individualized case assessment; individualized case management, including referrals; legal advice; access to adequate accommodations; information about rights and duties and consequences of noncompliance; and humane and respectful treatment.<sup>17</sup>

## **STOP USING PRISONS, JAILS, AND JAIL-LIKE FACILITIES; ONLY USE FACILITIES WITH APPROPRIATE CONDITIONS**

### **BACKGROUND**

Over three years ago, DHS and 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, DHS and ICE recognized that detention beds were in facilities that were “largely designed for penal, not civil, detention.” In a statement of objectives for new facilities, ICE described “less penal” conditions that would include increased outdoor access, contact visitation with families, and “non-institutional” clothing for some detainees.<sup>18</sup> ICE also opened one new “model” civil detention facility in 2012.

Despite these efforts, the overwhelming majority of detained asylum seekers and other civil immigration law detainees are still held in jails or jail-like facilities. 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 no outdoor access, and typically visit with family through Plexiglas barriers. They are often handcuffed and/or shackled by U.S. immigration authorities when they arrive at U.S. airports or border entry points and when they are transported to detention facilities, to immigration court, or to the hospital.<sup>19</sup>

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 2005, the bipartisan U.S. Commission on International Religious Freedom concluded 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 III, 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. In reports specifically focused on the United States, the Inter-American Commission on Human Rights and the U.N. special rapporteur on the human rights of migrants have both expressed concern about the punitive and prison-like conditions used by the U.S. government in its immigration detention system, with the latter noting that

“freedom of movement is restricted and detainees wear prison uniforms and are kept in a punitive setting.” The U.N. Refugee Agency (UNHCR), in its 2012 Guidelines on Detention, stressed that the “use of prison, jails, and facilities designed or operated as prison or jails, should be avoided,” and “[c]riminal standards (such as wearing prisoner uniforms or shackling) are not appropriate.” The current U.N. special rapporteur on the human rights of migrants, in his 2012 report on immigration detention, confirmed that immigration detainees “should not be subject to prison-like conditions and environments, such as prison uniforms, highly restricted movement, lack of outdoor recreation and lack of contact visitation” and that states should “allow administrative detainees to wear their own clothing” as well as the right to communicate with relatives and friends and to have access to religious advisers.<sup>20</sup>

Ironically, as Human Rights First documented in its 2011 report *Jails and Jumpsuits*, many correctional facilities actually offer less restrictive conditions than those typically found in immigration detention facilities. As corrections officials and experts have confirmed, including during discussions at Human Rights First’s Detention Dialogues symposia, more normalized environments can help to ensure the safety and security of any detention facility.

## RECOMMENDATIONS

DHS and ICE should move forward—on a priority basis—to transform the current detention system that relies on jails and jail-like facilities to one with conditions appropriate for civil immigration law detainees. Key steps include:

- **Phase out the use of jails and prisons.** As the agency moves forward in transforming the detention system, ICE should phase out its agreements and contracts with county jails and with the federal Bureau of Prisons. Jails and prisons are inappropriate for civil immigration law detainees. ICE should also end the use of jail-like immigration detention facilities.
- **Use facilities with conditions appropriate for civil immigration detention.** After an individualized assessment of whether detention is necessary, ICE

should only use facilities with 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. Contact visits with family should be permitted in any new and existing ICE facilities. Medical experts as well as corrections administrators affirm the benefits of contact visits for the well-being of individuals held in detention, and indeed the entire federal prison system permits contact visits with family. ICE should also limit the use of handcuffs and shackles to extraordinary circumstances. These more normalized conditions should exist for the vast majority of asylum seekers and other immigrants held in detention; at present, they exist only for a small minority of individuals held in ICE detention.

- There are a few immigration detention facilities with more appropriate conditions that could, with improvements, be replicated. The Berks Family Residential Center in Pennsylvania, Hutto Detention Center in Texas, Broward Transitional Center in Florida, and a new facility in Karnes County, Texas, all permit detained individuals to move freely within certain areas of the facility and offer extended outdoor access and privacy in toilets and showers. At Broward and Karnes, detainees still wear uniform clothing, though, as UNHCR, the U.N. special rapporteur on the human rights of migrants and other authorities have made clear, asylum seekers and other immigration detainees should be able to wear their own civilian clothing. At both Hutto and Berks, detainees do wear civilian clothing.
- **Develop and implement new standards on conditions for civil immigration detention.** ICE should develop, adopt, and enforce new residential detention standards that require all facilities to permit 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, among other elements. These standards should be modeled on the American Bar Association’s Civil Immigration Detention Standards, which were adopted by the ABA House of Delegates in August 2012. The ABA civil immigration detention standards confirm some key conditions that should exist for civil immigration detention—including that immigration detainees should be permitted contact visits, should be allowed to wear their own clothing (rather than uniforms) and should be provided with free access to outdoor recreation throughout the day. The bipartisan U.S. Commission on International Religious Freedom recommended that DHS establish more appropriate detention standards, and the 2009 DHS-ICE detention report concluded that the standards used by ICE “impose more restrictions and carry more costs than are necessary to effectively manage the majority of the detained population.” To promote compliance, new ICE civil immigration detention standards should be incorporated into all contracts and agreements and promulgated into regulations. As an initial step, ICE’s existing performance-based detention standards should be revised to incorporate some key elements from the ABA civil detention standards—including to require (not merely to consider “optimal”) contact visitation and access to outdoor recreation throughout the day and, rather than uniforms, to allow detainees to wear their own clothing or other nonuniform civilian clothing if a detainee lacks clean or adequate clothing.<sup>21</sup>

- **Reform existing immigration detention facilities to the extent possible.** While existing jails and jail-like facilities remain inappropriate for civil immigration law detainees, some reforms can be implemented at these facilities while the transition to more appropriate facilities moves forward. In these existing facilities, ICE should institute contact visits, true and expanded outdoor recreation, and some privacy in showers and toilets within six months, wherever the physical plant does not preclude these reforms. ICE should also permit detainees to wear their own clothing or at least noninstitutional clothing, rather than prison uniforms. ICE’s 2011 Performance-Based National Detention Standards

should provide a basis for system-wide implementation of these improvements.<sup>22</sup>

- **Use risk classification assessment tool to identify and properly place any detainees who present safety risks in custody.** ICE should complete the process of automating a risk classification assessment tool for use in all ICE-authorized facilities. An effective and standardized assessment tool can be used to 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 address safety. In taking such measures, ICE should not automatically hold in a correctional setting all detainees with criminal convictions.

## IMPROVE ACCESS TO LEGAL COUNSEL AND FAIR PROCEDURES

### BACKGROUND

The overwhelming majority of asylum seekers and immigrants who are held in immigration detention—84 percent—are not represented by legal counsel in removal proceedings, in which they defend themselves against the government’s efforts to deport them.<sup>23</sup> The U.S. government does not generally provide funding for legal representation for asylum seekers and other immigrants in their asylum and immigration proceedings. Yet the importance of counsel cannot be overstated.

For asylum seekers, several studies have documented the impact of legal representation on success rates. More broadly, the Department of Justice’s Executive Office for Immigration Review (EOIR) has expressed “great concern” about the large number of individuals appearing in immigration court without representation, and has also noted that “[n]on-represented cases are more difficult to conduct,” and that they require additional effort and time from immigration judges.<sup>24</sup> Immigration proceedings are a daunting labyrinth for any individual to navigate alone—especially as the consequence of deportation is tremendous—yet the majority of detained immigrants go through the process not only without counsel, but also without sufficient opportunity to seek counsel or access legal information.

While not a substitute for legal representation, the highly successful Legal Orientation Program (LOP)—an EOIR program managed through a contract with the Vera Institute for Justice, which subcontracts with local nonprofit legal service providers—offers basic legal information to immigration detainees so that they can understand their legal options, and helps connect them to pro bono resources. LOP has received widespread praise for promoting the efficiency and effectiveness of the removal process, and immigration judges have lauded LOP for better preparing immigrants to identify forms of relief.<sup>25</sup> The president’s FY 2013 budget request recognized the success of LOP and sought to expand its reach by increasing its budget by one-third over FY 2012 levels. At present, EOIR is funded to operate the LOP in just 25 detention facilities, reaching only approximately 15 percent of detained immigrants and 35 percent of detained immigrants in EOIR proceedings annually.

Another obstacle that exacerbates the difficulty of securing legal representation for immigration detainees is the remote location of many immigration detention facilities. In its 2005 study on asylum seekers in expedited removal, the U.S. Commission on International Religious Freedom found that many of the facilities used to detain asylum seekers were “located in rural parts of the United States, where few lawyers visit and even fewer maintain a practice.” The Commission concluded that “[t]he practical effect of detention in remote locations...is to restrict asylum seekers’ legally authorized right to counsel.”<sup>26</sup>

At many of these remote facilities, immigration officials are also—increasingly—turning to the use of videoconferencing to conduct immigration court hearings and even credible fear screening interviews, compounding the challenges that detained asylum seekers face in accessing protection.

## RECOMMENDATIONS

DOJ, DHS, and ICE 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. Key steps include:

- **End use of detention facilities in remote locations that limit access to legal representation, medical care, and family.** The 2009 DHS-ICE report recommended that “facilities should be placed nearby consulates, pro bono counsel, EOIR services, asylum offices, and 24-hour emergency medical care” and that the “system should be linked by transportation.” Yet according to Human Rights First calculations, 40 percent of all ICE bed space is located more than 60 miles from an urban center. ICE should end the use of all facilities in remote locations to help ensure that detainees can access not only attorneys, but also their families, doctors, psychiatrists and psychologists, and social services.<sup>27</sup>
- **Support funding and placement of Legal Orientation Programs (LOPs) at all facilities that detain asylum seekers or other immigration detainees.** The DOJ, the White House, and Congress should work together to ensure that LOPs are fully funded at all ICE-authorized facilities used to detain asylum seekers and other immigrants. ICE should not detain immigrants in new facilities until LOP funding to serve those facilities is in place.
- **Support funding for legal counsel in immigration proceedings, particularly for vulnerable groups.** The U.S. government does not generally provide funding for legal representation for asylum seekers and other immigrants in their asylum and immigration proceedings, despite the well-documented importance of counsel. The Obama Administration should support efforts to provide funding for legal representation for vulnerable groups such as children, individuals with mental disabilities, and individuals held in immigration detention.
- **Direct that all detained asylum seekers and other immigrants receive merits hearings in person, not via video.** The Obama Administration should work with Congress to secure adequate funding to the EOIR so that judges can conduct all merits hearings in person rather than via videoconference (VTC). The administration should also facilitate coordination between ICE and EOIR so that ICE uses detention facilities close to immigration courts,

and EOIR provides immigration judges to work at these facilities. The administration should limit the use of VTC to some “master calendar” hearings, and should generally prohibit the use of VTC in asylum and other merits hearings. EOIR should take steps to address the problems in the use of VTC including those identified in the 2012 report of the Administrative Conference of the United States. EOIR should also encourage immigration judges to afford favorable consideration to requests that hearings be conducted in person and EOIR should require coding of asylum and other hearings conducted via video to allow for data collection and analysis. EOIR and ICE should make VTC available to allow counsel to communicate with detainees.

- **Provide prompt and in-person credible fear and reasonable fear interviews.** U.S. Citizenship and Immigration Services (USCIS) should interview asylum seekers and other applicants for protection promptly, conducting credible fear interviews and reasonable fear interviews within 14 days of detention. Interviews should be conducted in person, not via phone or video.

## TAKE OTHER STEPS TO ADDRESS DEFICIENCIES IN IMMIGRATION DETENTION CONDITIONS

### BACKGROUND

Over the last three years, ICE has taken significant steps to address some of the problems in the existing jail-oriented immigration detention system. It launched an online detainee locator and a community hotline, hired and trained onsite detention service managers to improve oversight as well as an ICE public advocate at headquarters, and developed a risk classification assessment tool (see section above on alternatives to detention). ICE also improved its parole guidance for arriving asylum seekers, developed an access policy that allows nongovernmental organizations to tour facilities and speak with detainees, and revised its detention standards (though these have not yet been implemented in any facility). In addition, since 2009 ICE has streamlined the process for detainee health care

treatment authorization and modified the medical benefits package for ICE detainees.

Despite this progress, a range of serious problems remain, including those relating to medical and mental care, mechanisms for preventing sexual assault, and the use of solitary confinement.

**Medical and Mental Health Care.** In March 2011, the DHS Office of the Inspector General (OIG) released a report that identified a number of problems in the delivery of mental health services to ICE detainees, including inadequate oversight, insufficient staffing, and unclear decision-making authority over transfers of detainees with mental health care needs. Physicians for Human Rights also identified, in a 2011 report, the problem of “dual loyalties,” in which health care providers are ethically obligated to act in the best interests of their patients but in the immigration detention system are employed by, and report to, law enforcement authorities or private prison companies. The conflicting pressures that can result often lead to negative health outcomes for detainees.

**Sexual Assault.** In 2003, both chambers of Congress passed the Prison Rape Elimination Act (PREA) unanimously, and President Bush signed it into law. In its June 2009 report, the Commission created under PREA found that “[a] large and growing number of detained immigrants are at risk of sexual abuse. Their heightened vulnerability and unusual circumstances require special interventions.”<sup>28</sup> Indeed, between 2007 and mid-2011, almost 200 complaints of sexual abuse in ICE custody were made to the DHS Office of Civil Rights and Civil Liberties.<sup>29</sup> In May 2012, the DOJ finally issued strong PREA regulations, but despite Congress’s intention, those new standards do not apply to ICE facilities. At the same time, however, President Obama issued a presidential memorandum stating that PREA covers all federal confinement facilities and directing all agencies with federal confinement facilities to propose their own PREA “regulations or procedures” within 120 days, and finalize those regulations or procedures within 240 days. As of November 2012, DHS, with ICE and Customs and Border Protection facilities holding hundreds of thousands of immigrants annually, had not yet proposed PREA rules.

**Solitary Confinement.** A September 2012 report from Physicians for Human Rights and the National Immigrant Justice Center found that “solitary confinement in immigration detention facilities are often arbitrarily applied, significantly overused, harmful to detainees’ health, and inadequately monitored.” A 2011 report from the U.N. special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment observed that solitary confinement is often used to punish a detained individual who has violated a facility rule, as well as to separate vulnerable individuals, including LGBTI individuals, from the general population. The special rapporteur noted that solitary confinement can lead to anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia, and psychosis, and self-harm for any population.<sup>30</sup> Solitary confinement can negatively impact asylum seekers and survivors of torture in particular.

## RECOMMENDATIONS

Though ICE has taken some steps toward improving conditions in the existing system, serious deficiencies persist. DHS and ICE should implement a number of improvements in all facilities housing immigration detainees, including:

- **Provide high-quality medical and mental health care.** The administration should take additional steps to improve the timely provision of medical and mental health care for all ICE detainees, including: implement the remaining OIG recommendations on mental health care, require that health care professionals report to a health organization rather than to ICE, and create an independent oversight organization to monitor provision of medical and mental health care.
- **Promptly propose and implement Prison Rape Elimination Act (PREA) regulations based on the DOJ PREA rule.** DHS should propose PREA regulations immediately, and finalize them within the time frame directed by the May 2012 presidential

memorandum. These rules should be based on the DOJ PREA rule, and should incorporate the supplemental immigration detention standards developed by the PREA commission.

- **Limit solitary confinement or segregation to only very exceptional cases, as a last resort, and for the briefest time possible.**<sup>31</sup> ICE should revise its policies and practices to: end the use of solitary confinement in place of protective administrative segregation for vulnerable individuals; end the use of non-medical segregation cells for medical isolation or observation; forbid the use of solitary confinement or segregation for mentally ill detainees; forbid continuous solitary confinement or segregation for more than 15 days;<sup>32</sup> ensure that any individual placed in solitary confinement or segregation is afforded the same access to medical and mental health care, telephones, law library, legal presentations, legal visits, and outdoor recreation as the general population; and require that every detention facility submit to its field office monthly reports detailing the number of individuals in solitary confinement and other forms of segregation, the reasons for their segregation, the length of time they are held, and a demonstration that they have received daily visits from qualified mental health care providers.<sup>33</sup>
- **Improve training and communication for ICE officers and facility staff.** ICE should require that all officers and facility staff interacting with ICE detainees throughout the detention system—whether employed by ICE, local jails or prisons, or private contractors—receive in-depth training annually on the particular situation and needs of an immigrant detainee population, among other training and professional development opportunities. The DHS Office of Civil Rights and Civil Liberties should support this training

## Endnotes

<sup>1</sup> These commitments are detailed in Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System—A Two-Year Review*, (New York: Human Rights First, 2011), pp.4-6.

<sup>2</sup> More information on Human rights First's *Dialogues on Detention* available at: <http://www.humanrightsfirst.org/our-work/refugee-protection/dialogues-on-detention/>.

<sup>3</sup> See *Jails and Jumpsuits*; and <http://www.humanrightsfirst.org/our-work/refugee-protection/dialogues-on-detention/>.

<sup>4</sup> See INA § 236(c); 8 CFR § 208.30, 212.5, 235.3, and 1003.19.

<sup>5</sup> IACHR Report on U.S. Immigration Policy and Practices, ¶ 139, 418, 529, 431.

<sup>6</sup> National Immigration Forum, *The Math of Immigration: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies*, (NIF, August 2012), p.2.

<sup>7</sup> Human Rights First, U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison (New York: Human Rights First, 2009), pp. 63-67; Lutheran Immigration and Refugee Service, *Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy* (LIRS, October 2011); Jeb Bush, Thomas F. McLarty III, Edward H. Alden, Council on Foreign Relations, U.S. Immigration Policy, Independent Task Force Report No. 63 (2009), p.29 (Hereinafter "2011 Council on Foreign Relations Report").

<sup>8</sup> Heritage Web Memo 3455, Administrative Reforms Insufficient to Address Flawed White House Immigration and Border Security Policies, by Matt A. Mayer, Jan. 10, 2012, available at: <http://www.heritage.org/research/reports/2012/01/administrative-reforms-in-immigration-and-border-security-policies>.

<sup>9</sup> BI Incorporated, *Intensive Supervision Appearance Program II: An Alternatives to Detention Program for the U.S. Department of Homeland Security*, (BI Incorporated, CY 2010), pp. 4-5, 17, 21. BI and ICE have named the full-service and technology-only programs together "ISAP II"—a new version of the Intensive Supervision Appearance Program that began as a pilot in 2004.

<sup>10</sup> BI Incorporated, *Intensive Supervision*, p. 4, 5, 17, 21; Lutheran Immigration and Refugee Service, *Unlocking Liberty*, p.8.

<sup>11</sup> See: <http://www.texaspolicy.com/center/effective-justice/reports/public-safety-and-cost-control-solutions-texas-county-jails>

<sup>12</sup> See: <http://www.sccgov.org/sites/bos/Management%20Audit/Documents/PTSFinalReport.pdf>

<sup>13</sup> *Supra*, note 5.

<sup>14</sup> Department of Homeland Security, FY 2012 Congressional Budget Justification, pp. 43, 59.

<sup>15</sup> 2011 Council on Foreign Relations Report, pp.106-7.

<sup>16</sup> See AILA memo, "The Use of Electronic Monitoring and Other Alternatives to Institutional Detention on Individuals Classified under INA § 236(c)," (August 6, 2010), available at: [www.nilc.org/document.html?id=94](http://www.nilc.org/document.html?id=94). No legal authority directly addresses DHS's discretion to use alternatives to detention for mandatorily detained populations under §236(c), because neither the INA nor any regulations contemplated the use of new tools.

<sup>17</sup> Edwards, Alice, *Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons, and Other Migrants* (Geneva: UNHCR, 2011), PPLA/2011/01.Rev.1, p. 84; and International Detention Coalition, *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention* (Melbourne: International Detention Coalition, 2011), pp. 7-9.

<sup>18</sup> *Jails & Jumpsuits*, pp.4-6.

<sup>19</sup> Human Rights First has interviewed scores of detained asylum seekers who have been handcuffed and shackled. Asylum seekers may be handcuffed and shackled by Customs and Border Protection officers, if detained in a border area, by ICE officers, or by contractors hired by ICE to transport detainees to and from facilities.

<sup>20</sup> U.N. Human Rights Council, *Report of the Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante: Mission to the United States of America, A/HRC/7/12/Add.2* (March 5, 2008), ¶ 28, available at: <http://www.unhcr.org/refworld/docid/47d647462.html>

<sup>21</sup> The ABA's 2012 Civil Immigration Detention Standards are available at: <http://www.americanbar.org/content/dam/aba/administrative/immigration/abacivdetstandards.authcheckdam.pdf>.

<sup>22</sup> See Standards 4.5, 5.4, and 5.7. The 2011 PBNDs are available at: <http://www.ice.gov/detention-standards/2011/>.

<sup>23</sup> American Bar Association, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency and Professionalism in the Adjudication of Removal Cases* (Chicago: American Bar Association, 2000), p. ES-7. In its 2010 Statistical Yearbook the Executive Office for Immigration Review (EOIR) reported that in FY 2010, 43 percent of immigrants in proceedings—both detained and non-detained—were represented by counsel.

<sup>24</sup> Government Accountability Office, U.S. Asylum System: Significant Variation Existed in Asylum Outcomes Across Immigration Courts and Judges, GAO-8-940 (Washington, DC: GAO, 2008), p. 30. DOJ/EOIR, FY 2010 Statistical Year Book (Washington, DC: Office of Planning, Analysis, & Technology, 2011), p. G-1; and Charles H. Kuck, "Legal Assistance for Asylum Seekers in Expedited Removal: A Survey of Alternative Practices," in US Commission on International Religious Freedom, *Asylum Seekers in Expedited Removal, Volume I: Findings & Recommendations* (Washington, DC: USCIRF, 2005), p. 8.

<sup>25</sup> For more information about the Vera Legal Orientation Program, see Legal Orientation Program, Vera Institute of Justice, <http://www.vera.org/project/legal-orientation-program>; see Vera Institute of Justice, "Legal Orientation Program: Evaluation and Performance and Outcome Measurement Report, Phase II," (May 2008), available at: [http://www.vera.org/download?file=1778/LOP%2Bevaluation\\_updated%2B5-20-08.pdf](http://www.vera.org/download?file=1778/LOP%2Bevaluation_updated%2B5-20-08.pdf).

<sup>26</sup> USCIRF, *Asylum Seekers in Expedited Removal*, p. 240.

<sup>27</sup> Dr. Dora Schiro, *Immigration Detention Overview and Recommendations* (Washington, DC: Immigration and Customs Enforcement, 2009), p.18, available at <http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>. *Jails & Jumpsuits*, p. 31. ABA, "Criminal Justice Standards," Standards 23-8.1; 23-8.5; and 23-9.4.

<sup>28</sup> National Prison Rape Elimination Commission Report, Ch. 9

<sup>29</sup> Information about these complaints was obtained by the ACLU through a Freedom of Information Act request. <http://www.aclu.org/sexual-abuse-immigration-detention>.

---

<sup>30</sup> Interim report to the U.N. General Assembly of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, A/66/268, Aug. 5, 2011, pp. 13, 26, 27.

<sup>31</sup> The American Bar Association's Standard 23-2.6 (a) on the Treatment of Prisoners suggests that "Segregated housing should be for the briefest term and under the least restrictive conditions practicable and consistent with the rationale for placement and with the progress achieved by the prisoner," at [http://www.americanbar.org/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_treatmentprisoners.htm](http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners.htm)

<sup>32</sup> U.N. Human Rights Council, *Report of the Special Rapporteur*, p.9. The U.N. special rapporteur noted that after 15 days, according to medical literature, "some of the harmful psychological effects of isolation can become irreversible."

<sup>33</sup> ICE's 2011 Performance-Based National Detention Standards—which have not yet been implemented in any facility holding ICE detainees—require daily visits from "health care personnel." This requirement is not sufficient. The daily visits should be conducted by qualified mental health care providers and include periodic out-of-cell assessments.





American ideals. Universal values.

**New York Office**

333 Seventh Avenue  
13<sup>th</sup> Floor  
New York, NY 10001-5108

Tel.: 212.845.5200  
Fax: 212.845.5299

[humanrightsfirst.org](http://humanrightsfirst.org)

**Washington D.C. Office**

100 Maryland Avenue, NE  
Suite 500  
Washington, DC 20002-5625

Tel: 202.547.5692  
Fax: 202.543.5999