

Testimony

before

**The U.S. House of Representatives Homeland Security Committee**

Honorable Bennie Thompson, Chairman

**Subcommittee on Border, Maritime, and Global Counterterrorism**

Honorable Loretta Sanchez, Chairwoman

by

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**A Report on the Preliminary Assessment of ICE Detention Policies and Practices and**

**A Recommended Course of Action for Systems Reform**

December 10, 2009

## **Greeting and Introduction**

Good morning, Ms. Sanchez, Mr. Souder, and members of the Subcommittee. My name is Dr. Dora Schriro. I was privileged to serve as Special Advisor on ICE Detention and Removal Operations to DHS Secretary Napolitano and as the first Director of the Office of Detention Policy and Planning at ICE. I authored *A Report on the Preliminary Assessment of ICE Detention Policies and Practices and A Recommended Course of Action for Systems Reform* this past September.

## **The Challenge and the Opportunity: A System of Civil Detention**

As a matter of law, civil detention is unlike criminal incapacitation and yet, civil and criminal detainees tend to be seen by the public as comparable and typically, both confined populations are managed in similar ways by government. Each group is ordinarily detained in secure facilities with hardened perimeters often in remote locations at considerable distances from counsel and their communities. With only a few exceptions, the facilities that U.S. Immigrations and Customs Enforcement (ICE) used to detain aliens were built, and operate, as jails and prisons to confine pretrial and sentenced felons. Their design, construction, staffing plans, and population management strategies were based largely upon the principles of command and control. Additionally, ICE adopted detention standards that were based upon corrections law and promulgated by correctional organizations to guide the operation of jails. Establishing standards and expressing expectations for civil detention are our challenge and our opportunity.

## **Introductory Remarks**

The commissioning and the release of the Report, is representative of this Administration's commitment to systems reform. The directive by Secretary Janet Napolitano within a week of her confirmation was plainspoken and heartfelt: To conduct a study and prepare a report that identified and addressed the root causes of concerns impacting detention and removal operations. Likewise, access to information, detention facilities, and the detainee population, was authorized without hesitation or equivocation by Assistant Secretary John Morton. It is *their* resolve that resulted in its publication and will produce the reforms to come.

The information for this Report came from my tours of 25 detention facilities across the country; analyses of agency records, reports, and other documents; conversations with detainees and facility staff; meetings with over 100 non-governmental organizations; discussions with employees at the Departments of Homeland Security (DHS) and Justice (DOJ), members of Congress and their staff and state and local elected officials; and studies authored by government and others including the Government Accountability Office (GAO), Department of Homeland Security (DHS), the United Nations (UN), the American Bar Association, (ABA), and many non-governmental organizations. I drew as well as upon my professional work history, research, and formal education and training.

## Core Findings

The Report begins with a description of ICE detention and removal policy, procedures, and practices and continues with findings based upon analyses of its activities and outcomes. Here are several.

- ICE operated the largest detention and supervised release program in the country. A total of 378,582 aliens from 221 countries were in custody or supervised by ICE in FY 2008; activities in FY 2009 remained at a similar level. On September 1, 2009, ICE detained 31,075 aliens. It supervised an additional 19,169 aliens in the community on alternatives to detention (ATD) programs.
- On September 1, about two thirds (66 percent) of the detained population were subject to mandatory detention. Approximately one half (51 percent) were felons of which; around one tenth (11 percent) had committed violent crimes. The majority (60 percent) of aliens in ICE custody were encountered when in criminal custody; about one half (48 percent) of all admissions to ICE during the first six months of FY 2009 originated through the Criminal Alien Program, another 12 percent were identified through 287(g) partnerships. Although both of these programs focused on criminal aliens, many aliens encountered through them did not have criminal convictions.
- On average, an alien was detained 30 days however; time in detention varied appreciably between those pursuing voluntary removals and those seeking relief. As much as 25 percent of the detained population was released within a day of admission, 38 percent within a week, 71 percent in less than a month, and 95 percent within four months. Less than one percent of all admissions, about 2,100 aliens, were held for a year or more. Due to differences in docket management, the time to disposition was appreciably longer for aliens assigned to alternatives to detention programs.
- ICE lacked basic information and information systems and critical planning and management tools. It operated without benefit of cost models, site selection criteria, population forecasts and bed plans, validated custody classification and risk assessment instruments, a detainee locator system and daily count sheets, uniform medical and mental screenings and scores, electronic detention and medical record systems, capacity reports, etc. Where ICE employed other systems' strategies, impact was often limited by application.
- The acquisition and renewal of detention beds, the assignment of detainees to facilities and ATD programs, and the transportation of detainees between facilities were accomplished in the field by the 24 field offices. Decentralized acquisition, assessments and assignments impacted bed utilization, increased lengths of stay and numbers of transfers, and aggravated disparities between arrest activity and bed capacity.
- ICE was comprised primarily of law enforcement personnel with extensive expertise performing removal functions, but not in the design and delivery or in the acquisition and evaluation of detention facilities and community based alternatives. The operation of detention facilities was delegated to county sheriffs departments and the private sector. On-site monitoring and annual evaluations were performed primarily by the private sector. ICE contracted with one vendor for on-site monitoring at 53 locations, representing a majority of beds but about one sixth of the facilities it used. It contracted with another vendor to conduct an annual assessment of compliance with detention standards at all locations. ICE maintained some presence in most facilities, primarily by means of detention officers who performed case removal functions.

- Fewer than 50 of those 300 facilities averaged 100 or more detainees daily with about one half of the entire detained population secured in 21 locations. Facilities were designated by length of stay, with 93 percent of all beds approved for use for more than 72 hours. With the exception of families with minor children, special populations were dispersed.
- Conditions of detention varied by location. Where facilities were occupied by both civil and criminal detainees ICE detainees, and particularly female detainees, were disadvantaged by more restricted movement and less access to programs. These conditions were compounded at locations where civil and criminal detainees were assigned to the same housing units. In general, idleness was pronounced. Access to legal services, recreation, religious activities and visitation varied by facility location and operation. Detainees whose lengths of stay were longer were particularly impacted. The methods and means by which to address grievances were infirm. Disciplinary decisions were largely delegated to facility providers. Still, untoward incidents by detainees were few in number.
- ICE utilized a variety of strategies to provide healthcare to the detained population but these strategies did not constitute a healthcare system. Detainees were assigned to detention facilities prior to assessing their health care requirements sometimes resulting in high need detainees being placed at facilities with limited on-site health care or routine oversight. Health care records were not maintained or stored centrally. Medical summaries were not always provided when detainees were transferred. Approval of off-site health care was cumbersome and subject to delay. The assessment, treatment, and management of pandemic and contagious diseases were inconsistent. Some facilities were unable to manage large scale outbreaks without impacting other locations' operations.
- The policies that ICE adopted and the practices that it employed, imposed more restrictions and incurred more cost than were necessary to effectively manage most of the alien population.

### **Key Recommendations**

The Report was written with one purpose in mind: Not as a criticism of the current practices or as fuel for parties on either side of an issue, but as an examination and articulation of a vision for the future – a vision of how a *civil* system of detention could be structured, organized, and calibrated to match the ICE mission and to ensure its success.

To that end, the Report also outlined a framework of reforms and recommendations in seven areas necessary to the design and delivery of a system of civil detention. These seven components are Population Management, Alternatives to Detention, Detention Management, Programs Management, Health Care, Special Populations, and Accountability. Among its recommendations are these.

- Population Management is the continuum and the conditions of control exercised by ICE over aliens in its custody and under its supervision from least to most restrictive, and the strategies by which aliens are managed pending their removal or relief. Humanely detain and supervise aliens in the least restrictive settings consistent with assessed risk and provide health care and other program services commensurate with identified needs. Make the size of the system manageable; reduce the total number of facilities, using only those whose design supports the delivery of care, custody and control for civilly detained general and special populations and

otherwise meet enumerated expectations. Centralize procurement, regionalize oversight, and localize on-site supervision. Align facility locations and bed capacity with arrest activity, lengths of stay, and special populations. Locate facilities nearby consulates, pro bono counsel, EOIR services, and 24-hour emergency medical care. Develop a national system of transportation. Elevate detention duties within ICE as a distinct discipline to sustain its redesign and delivery.

- Detention Management focuses on the core operating assumptions that affect conditions of civil detention. Use validated instruments to assess propensity for violence and need for health care and other services, and to inform assignment to facilities. Do not coningle custody classifications and civil with criminal detainees. Restrict transfers between judicial circuits and when detainees are represented by counsel, within circuits. Develop specialized caseloads. Reduce idleness; expand access to dayrooms and support space in other parts of the facility consistent with custody classification and comparable to other populations detained at that location. Ensure capacity is proportionate and appropriate to the size of the population. Monitor disciplinary practices; limit utilization of punitive segregation. Maintain contact with detainees regardless of location. Improve formal and informal on-site grievance processes. Provide timely translation services.
- Alternatives to Detention (ATD) are the community-based supervision strategies that make up a significant portion of less restrictive conditions of control. Use validated instruments to assess and periodically reevaluate risk of absconding, and to inform the level and kinds of supervision to assign. Expand program capacity to serve those who are statutorily eligible and otherwise qualified. Enroll eligible aliens at the earliest opportunity; periodically reevaluate the detained population for eligibility. Utilize electronic monitoring only when risk of absconding warrants. Maintain an effective fugitive apprehensive response.
- Health Care, including medical, mental health, and dental care, is a fundamental right of all detainees in ICE custody. Establish an integrated health care system for medical, mental, and dental health, with initial assessments, comprehensive examinations, and centralized medical records to inform facility and housing assignments, and timely and necessary care regardless of the anticipated date of removal or release. Convene a panel of health care professionals to establish standards of care for detainees. Maintain an infection control program and surveillance system. Integrate wellness activities and adopt preventive health care practices. Ensure medication is dispensed timely and medical diets are provided. Ensure compliance with ADA requirements.
- Programs Management encompasses the design and delivery of law library and other activities affording aliens access to the court; indoor and outdoor recreation; family contact including visitation and communication by mail and phone; and religious activities. Allocate sufficient space and afford additional time to access programs. Provide translation services and programs in more than one language. Support family and attorney contact with improved visitation and mail service and lower phone cost. Expand the Legal Orientation Program. Comply with RLUIPA.
- Special Populations include families with minor children; females; unaccompanied minors; the ill and infirm; asylum seekers; and other vulnerable populations. Consolidate special populations to improve delivery of special services and to lower cost. Modify population, detention, ATD, and programs management to meet their unique needs. Assign female staff to supervise female

detainees or adopt knock-and-announce practices. Discontinue utilization of segregation cells for medical isolation and suicide observation. Select and assign aliens to appropriate facilities.

- Accountability concerns the operating framework process and tenets for decision-making by which ICE provides oversight, pursues improvement, and achieves transparency in the execution of each part of its plan. Develop and adopt civil detention standards and operating procedures consistent with civil detention. Expand federal oversight of key detention operations, track performance and annually evaluate outcomes. Discontinue use of detention facilities that perform poorly. Assign on-site expert federal employees of rank to oversee detention activities, to intercede whenever warranted, and to ensure the integrity of grievance and disciplinary processes. Optimize the presence of deportation officers with additional training and supervision. Create an Office within ICE to receive and to respond to complaints and concerns.

### **Next Steps**

The Report was written to be vetted within the Department and ICE, Congress, and the many stakeholders and organizations also committed to improvement. It is also important that the progress of recent months toward equipping ICE with management tools and a deeper understanding of detention policy, both critical to its mission, should continue. Some recommendations can be actualized quickly. Others may require further debate, additional analysis and consideration. A number of them are already underway. Whether realized immediately or incrementally, these changes and this improvement are within our reach nonetheless and should be pursued.

Thank you for this opportunity to appear before you. I welcome your comments and questions.