Pathways of Detained Immigrants: Why & How Human Rights Should Guide Detention Reform

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Some Basic Facts on Immigrant Detention

- In FY 2009, Immigrations and Customs Enforcement (ICE) has over 32,000 detention beds across 350 facilities. Patchwork of IGSAs, CDFs, SPCs.
- ICE Removals in FY 2008 = 356,739 (up 23%)
- Total in ICE civil/administrative custody in FY 2008 = 378,582 aliens from 221 countries.
- ICE Alternatives to Detention FY 2008 = 15,300 (On Sept 1, 2009 = 19,169)

Georgia Immigrant Detention Facilities

Stewart Detention Center (**IGSA**)

Atlanta Pretrial (City) Detention Center (IGSA)

Hall County Detention Center (opened October 2009) (IGSA)

Schriro Report: Data & Findings

- The Detention Standards, facilities and procedures are inappropriate for immigrant detainees because they are based on correctional incarceration standards and prisons to confine pre-trial and sentenced felons, not civil administrative detainees.
- Although 66% of the total detainees were subject to mandatory detention, the overwhelming majority (89%) did not commit any violent crime.
- "ICE is comprised primarily of law enforcement personnel with extensive expertise performing removal functions, but not in the design and delivery of detention facilities and community-based alternatives."
- In FY 2009, approximately 90% of detainees are from either Mexico (62%), Central American nations (25%), or the Caribbean (3%).
- During CY 2008, only 51,000 aliens were released from detention via bond (29,000), ROR (12,000), order of supervision (10,000), or parole (650).
- The Atlanta Jurisdiction ranks third nationally in the production of detention demand resulting from arrests (7% of national total), and in detention capacity (8% of the national total).

See, Dora Schriro, *Immigration Detention Overview and Recommendations*, October 6, 2009

ICE's Effort to Render Detention "Less Penal" and "More Civil"

- Commitment to rely less on a patchwork of intergovernmental and private contracts to more direct federal oversight of immigrant detention.
- Creation of several new oversight offices, including an Office of Detention Policy and Planning
- Development of new systems to identify vulnerable populations so that they may be better identified and detained together (women, ill, asylum seekers)
- Revise immigration detention standards to reflect the conditions appropriate for various immigrant detainee populations (non-criminal, family)
- Create model centers that will embrace the core principles of immigration detention reform (one will most likely be in California)
- Starting Fall 2009, submit a national plan for an Alternatives to Detention (ATD) program, which will include an assessment tool to identify aliens suitable for ATD
- New onsite oversight at the 23 largest facilities and online locator systems

DHS-ICE on the purpose and process of reform

"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…[asylum-seekers with no records should be held at facilities] commensurate with the risks that they present." - Homeland Security Secretary Janet Napolitano, NYT, October 2009.

"[O]ur present immigration detention system in my view has become too dependent on contractors. At the end of the day, government should be overseeing and actually running these facilities." Asst. Secretary John Morton, NPR Interview with Guy Raz, October 10, 2009

"[T]his reform effort is not about whether or not we detain people; it's about how we detain them. Many people who are not violent offenders or criminals are nonetheless very serious risk of flight, and it's that serious risk of flight that requires detention...Detention is not end in and of itself. It's just a means of ensuring that people leave." *Ibid*.

[Specifically on the question if the ACLU would be invited to participate in the new ICE advisory groups on detention]: "…we do intend to open these…committees to those groups and organizations who have a professional interest in the way we go about our detention system…we're a whole lot better off engaging in open and transparent conversation…than we are just sniping at one another from afar." - Asst. Secretary John Morton, Transcript from Conference Call, August 6, 2009

But what are/should be the guiding principles for this reform process?

Reflections on Immigrant Experiences with

ENTRY→DETENTION→EXIT

Entry (Pathways Into Detention)

- Warrantless Home Searches – Mary
- Detention After Passing Credible Fear Interview – Peter
- Did the crime really warrant *mandatory* detention? - Francis
- When an errand results in deportation – arbitrary law enforcement under 287(g) - Angel

Entry (Continued)

- ICE enforcement activity has dramatically increased: Criminal Alien Program, "Task Forces," Secured Communities.
- Mandatory Detention
- The Politics of INA 287(g)

"This is not expected to reduce the number of people presently detained…this is about how we detain them." – Asst. Secretary John Morton, August 6, 2009

Detention (Facility Issues)

Performance Based National Standards (PBNDS)

comprehensive, still non-binding, and now, not just for adults…

Human Dignity and Detention Conditions

Fundamental Questions for “Civil” Reform

Exit (Deportations and Release)

- Indefinite Detention I (*Zadvydas*)
- Indefinite Detention II (Other due process issues)
- But *why* can't we leave?? (Does a Stipulated Order actually accelerate release?)

Revisioning Immigrant Detention

Why:

"It's obviously encouraging that the administration seems to be taking seriously the immigration detention system and how it needs an overhaul…[b]ut it's not simply about where people are detained. It's about how they ended up in detention and why they are staying there." – Judy Rabinovitz, ACLU Immigrant Rights Project, cited in NYT, October 7, 2009

How: Human Rights as "Gap Filler"

International Convention on Civil and Political Rights (ICCPR)

- 9(1): Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
- 10(1): All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
- 17(1): No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
- 23(1): The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
- 18(1): Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

Convention to Eliminate All Forms of Discrimination (CERD)

Article 2:

- States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races…

Article 5

- In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:
- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- (d) Other civil rights

Racial Discrimination "shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." (Article I)

CERD General Comment 30 (on Non-Citizens)

9. Ensure that immigration policies do not have the effect of discriminating against persons on the basis of race, colour, descent, or national or ethnic origin
12. Take resolute action to counter any tendency to target, stigmatize, stereotype or profile, on the basis of race, colour, descent, and national or ethnic origin, members of “non-citizen” population groups, especially by politicians, officials, educators and the media, on the Internet and other electronic communications networks and in society at large
19. Ensure the security of non-citizens, in particular with regard to arbitrary detention, as well as ensure that conditions in centres for refugees and asylum-seekers meet international standards
21. Combat ill-treatment of and discrimination against non-citizens by police and other law enforcement agencies and civil servants by strictly applying relevant legislation and regulations providing for sanctions and by ensuring that all officials dealing with non-citizens receive special training, including training in human rights
25. Ensure that laws concerning deportation or other forms of removal of non-citizens from the jurisdiction of the State party do not discriminate in purpose or effect among non-citizens on the basis of race, colour or ethnic or national origin, and that non-citizens have equal access to effective remedies, including the right to challenge expulsion orders, and are allowed effectively to pursue such remedies

Other Essential Treaties and Declarations

- Convention Against Torture and Other Cruel and Unusual Punishment (CAT)
- Convention (1951) and Protocol (1967) Relating to the Status of Refugees
- Universal Declaration of Human Rights
- Vienna Convention on Consular Relations

Why Intent Matters…

- "Although the 287(g) program in general has been criticized as "profiling", that simply is not the case in Cobb County. ***Pursuant to the provisions of the Vienna Convention, all foreign nationals must be identified upon coming into custody and in many instances, their embassy notified. The use of ICE resources facilitates this identification and has the side benefit of putting ICE on notice when the individual is determined to be in the United States illegally.*** The decision as to whether the individual is ultimately deported rests solely with federal Immigration authorities." -Sheriff Neil Warren, Cobb County, Georgia, 10/13/09 Press Release

- "42-4-14.
- (a) When any person ~~charged with a felony or with driving under the influence pursuant to Code Section 40-6-391 or convicted of driving without being licensed in violation of subsection (a) of Code Section 40-5-20~~ is confined, for any period, in the jail of ~~the~~ a county~~,~~ or ~~any~~ municipality or a jail operated by a regional jail authority in compliance with Article 36 of the Vienna Convention on Consular Relations, a reasonable effort shall be made to determine the nationality of the person so confined. (b) If the prisoner is a foreign national charged with a felony, driving under the influence pursuant to Code Section 40-6-391, driving without being licensed pursuant to subsection (a) of Code Section 40-5-20, or with a misdemeanor of a high and aggravated nature, the keeper of the jail or other officer shall make a reasonable effort to verify that the prisoner has been lawfully admitted to the United States and if lawfully admitted, that such lawful status has not expired. If verification of lawful status can not be made from documents in the possession of the prisoner, verification shall be made within 48 hours through a query to the Law Enforcement Support Center (LESC) of the United States Department of Homeland Security or other office or agency designated for that purpose by the United States Department of Homeland Security. If the prisoner is determined not to be lawfully admitted to the United States, the keeper of the jail or other officer shall notify the United States Department of Homeland Security." –HB2, Georgia Legislature, effective January 2010

Additional Information/Resources

1) Conditions of immigrants in detention materials

   a) website of New York times on ICE Custody deaths
   http://topics.nytimes.com/top/reference/timestopics/subjects/i/immigration_detention_us/incustody_deaths/index.html

   b) Comprehensive ACLU report on immigrant detention in
   Massachusetts: http://www.aclum.org/ice/

   c) Comprehensive report by Human rights First on detention of Asylum seekers:
   http://www.humanrightsfirst.org/pdf/090429-RP-hrf-asylum-detention-report.pdf

2) Performance based national detention standards (for adult
   detention):http://www.ice.gov/partners/dro/PBNDS/index.htm

3) Draft of Performance based national detention standards (for family
   detention - under review by DHS-ICE):
   http://www.ice.gov/pi/familyresidential/index.htm

4) ACLU webresource on Indefinite detention:
   http://www.aclu.org/immigrants/review/39906res20090617.html

5) Schriro report : http://www.ice.gov/doclib/091005_ice_detention_report-final.pdf

Additional Resources (cont'd)

6) October 6, 2009 ICE press release on new detention reforms:
http://www.dhs.gov/ynews/releases/pr_1254839781410.shtm

7) Letter endorsed by ACLU-Georgia before the Human Rights Council to demand that human rights standards govern the process of immigrant detention:
http://idc.rfbf.com.au/wp-content/uploads/2009/09/hrcjoint-statement_final02100911doc.pdf

8) International detention coalition website (includes link to September 2009 Human Rights Council meeting on Migrants in Detention): http://idc.rfbf.com.au/

9) Article on Letter to President Obama signed by 521 organizations demanding end to 287(g) and the Congressional Hispanic Caucus' demand to terminate 287(g) programs:
http://www.nilc.org/immlawpolicy/LocalLaw/locallaw006.htm
http://www.commondreams.org/newswire/2009/10/01-10

10) ICE's 10/16/09 press release on the new 287(g) agreements: http://www.aila.org/content/default.aspx?docid=3032