

# EXECUTIVE SUMMARY & RECOMMENDATIONS

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**OUTSOURCING RESPONSIBILITY: The Human Cost of Privatized Immigration Detention**





## EXECUTIVE SUMMARY

**O**n June 23, 2008, the Otero County Processing Center (Otero) opened its doors in the rural border community of Chaparral, New Mexico. The facility has the capacity to house up to 1,086 immigrant detainees through an exclusive contract between Otero County and Immigration and Customs Enforcement (ICE). Contract obligations are fulfilled by a subcontract with a for-profit, private prison company, Management and Training Corporation (MTC), which, in turn, subcontracts with Physicians Network Association (PNA) for health services. Both MTC and PNA have been sued in New Mexico and elsewhere for alleged negligence and deliberate indifference.

In fall of 2008, the ACLU of New Mexico Regional Center for Border Rights (ACLU-NM) began to receive complaints from detained immigrants in Otero alleging due process violations and inhumane conditions of confinement. In September 2009, ACLU-NM staff formalized these encounters and conducted a series of in-depth interviews with detained immigrants to better understand the conditions in which they are held. Despite ICE's announcement in October 2009 to reform the immigration detention system, the ACLU continued its efforts to assess the daily reality of immigrants living in a privately operated facility. Though these findings focus on the Otero County Processing Center, they highlight the civil and human rights violations that often occur when the federal government cedes responsibility for civil immigration detention to private prison management companies. Transparency, oversight and accountability—and ultimately the civil and human rights of immigrants for whom the agency is responsible—are degraded in privatized detention center settings. As ICE continues to work towards reform, the increased reliance on private contractors to manage and operate ICE facilities must be re-evaluated. The voices

in this report are indicative of why immigration detention reform was and is necessary, and the continued steps that are needed to ensure humane treatment of immigrants in detention.

There were five general areas of concern addressed in this report: (1) limited access to justice, (2) inadequate conditions of confinement, (3) insufficient medical and mental health care services, (4) extended ill effects on detainee's family and community, and (5) needed improvements in accountability and oversight.

### I. ACCESS TO JUSTICE

#### *Transfer of Detained Immigrants to Rural New Mexico Inhibits Access to Justice*

Between 1999 and 2008, ICE carried out 1.4 million detainee transfers from one facility to another.<sup>1</sup> The effects of transfer on an individual's access to justice, as well as to emotional health, can be devastating. Otero receives a large number of detainees from around the United States, including large cities such as New York and Los Angeles. For many immigrants, it is financially unfeasible to hire a private attorney. Many must rely on non-profit service providers or pro-bono assistance for representation. Immigrants transferred to Otero from urban centers like Los Angeles find options for legal assistance drastically diminished. There is no low cost or free legal service agency with the capacity to provide free individual representation to detainees at Otero. Immigrants at Otero also found that transfer interrupted existing attorney-client relationships, prolonged their detention by interrupting court proceedings, and complicated access to witnesses, paperwork and other important evidence. Individuals expressed that separation from family, friends, and other support systems

was detrimental to their emotional health and affected decisions about whether or not to seek relief in immigration court. In addition, all individuals who participated in an in-depth interview with the ACLU and were on medications at the time ICE took them into custody reported interruptions in medical and mental health care treatment during transfer.

According to many legal advocates, existing case law in the Fifth Circuit Federal Court of Appeals is adverse towards non-citizens. While immigrants transferred to Otero are geographically located in the Tenth Circuit, the nearest immigration court is in El Paso, Texas, and therefore they are subject to Fifth Circuit interpretation and application of the law. For those immigrants transferred from jurisdictions with more favorable interpretations of the law, this can be devastating. The ACLU-NM spoke to several immigrants who believed their outcome was negatively affected by the change in jurisdiction. At Otero, court hearings are largely held by videoconferencing, which legal advocates feel threatens attorney-client privilege and places immigrants at a disadvantage during final hearings. Immigrants detained at the Otero also reported insufficient access to law materials to prepare their cases.

### ***Immigrants Remain in Detention for Prolonged Periods of Time***

ICE claims that, on average, a non-citizen remains in custody for 30 days. However, the average length of stay varies significantly between individuals. As of the writing of this report, the average length of stay for the 42 people that participated in a structured interview with the ACLU was 11.5 months, with many still in custody, including one individual who had been detained for more than 3 ½ years and another for more than 2 years. In 1996, Congress greatly expanded the categories for which an immigrant would be subject to mandatory detention. With few exceptions, mandatorily detained immigrants are not eligible for bond or release, or to request that ICE consider other criteria such as length of time as a legal permanent resident, family hardship, or medical conditions for custody determinations. These individuals remain in detention for long

periods due to overwhelmed courts with high caseloads and limited resources. In some cases reported to the ACLU, hearings were postponed and delayed because the court lost documents, the court recorder failed, or the government's counsel was unprepared. Other immigrants remained in detention for prolonged periods after the immigration judge ordered removal because the individual was stateless or came from a country that lacked diplomatic relations with the United States and therefore travel documents could not be procured to effectuate the removal. Since 2008, the ACLU has been working with these individuals to secure their release.

## **II. CONDITIONS OF CONFINEMENT**

### ***Detained Immigrants Report Abusive and Discriminatory Treatment by Correctional Officers***

Some immigrants noted that certain MTC officers treated them with respect, however, the overwhelming majority agreed that most officers exhibited a general lack of respect, using intimidation, humiliation and threats of segregation to maintain rule over them. For example, several detained immigrants reported an incident in which the whole dormitory was sent to an empty pod and allegedly told to strip to their underwear in the highly air-conditioned room. The reason for the guards' actions was the misconduct of one detainee. In general, immigrants felt that correctional officers provoked detainees to elicit a reaction and then punished them for that reaction. Racially and ethnically charged language appears to be common, and in more than one case, physical abuse was reported. The gay and transgender population, in particular, reported harassment, discrimination, and indifference to their safety.

Immigrants also reported arbitrary placement in the Special Housing Unit (SHU), or segregation. The ACLU interviewed detainees who were allegedly placed in the SHU for everything from talking back to a correctional officer, to having an extra bar of soap, to "stealing" an apple. In this

latter case, the detainee who was sent to the SHU had been given the apple by another immigrant. Immigrants also reported being subjected to invasive searches and unnecessary lockdowns.

### ***Detained Immigrants Report Inadequate Pod Conditions and Daily Challenges.***

Detained immigrants reported a lack of educational and recreational programming. With little to keep their minds occupied, immigrants become anxious about their legal cases and pass the time thinking about partners, children, and other family members who are suffering financially and emotionally. Those who fled persecution in their home countries and could not bring their families with them, constantly worry about the safety of their loved ones. Immigrants are allowed one hour of “yard” a day in what they described as a “concrete box.” Family visitation is restricted to one half hour visit per week. Visits take place with a plexiglass barrier separating the immigrant from family and friends. Other inadequate conditions reported included poor food quality and quantity; concerns obtaining religiously appropriate diets and medical diets; poor ventilation in the pods; lack of windows and natural light; poor hygiene in the bathrooms; inadequate library materials, and, particularly for Muslim immigrants, concerns about equal access to religious practice. Some immigrants feared for their safety in the pods. Matched with the alleged harsh treatment of correctional officers and uncertainty about the length of their detention, many of the immigrants with whom the ACLU met felt anxious, depressed, and stressed.

### **III. MEDICAL AND MENTAL HEALTH CARE TREATMENT**

Failure to provide adequate medical care to immigrants in detention has been in the limelight since the widely publicized deaths of several immigrants in ICE custody. As part of their reform efforts, ICE is currently working to overhaul the way in which medical care is provided in detention. Medical care at Otero is provided by Physicians Network Association, a private company that has been sued for alleged

negligent and inadequate medical care practices. The majority of the immigrants who participated in an in-depth interview with the ACLU reported negative changes in their health during the time they had been detained. Reported changes included the development of allergies and other upper respiratory problems, increased depression and anxiety, weight loss, weakness and physical fatigue, stomach cramps and diarrhea, skin irritations and fungal infections, and exacerbation of pre-existing health problems.

The greatest complaint reported to the ACLU with regards to medical care was not the time it takes to see medical staff, but the inadequate treatment provided. For example, an immigrant reported that he had been ill and vomiting with excruciating stomach pain for two to three days before he was seen by medical staff. He reported that medical staff did not seem to take his complaints seriously because he was given Pepcid and Ibuprofen, and then sent back to the dormitory. The next day his condition worsened. After going back to medical, he was sent to an off-site hospital where he remained for three weeks. The doctors reportedly told him that he was near death when he arrived. In another case, a physically disabled immigrant reported that he shared a wheelchair with a detainee in another pod.

Detained immigrants also reported interruptions in medical care. Even when immigrants reportedly alerted officials at intake of the exact medications they needed, several steps appeared to be necessary for approval and ordering. All of these steps create delays in distribution of medication which can have long-term and/or life-threatening effects on an individual’s health. In one instance, for example, an individual reported a three-month gap in HIV treatment. Several immigrants also reported problems with timely prescription refills.

The majority of those who participated in an in-depth interview reported symptoms of depression and anxiety. Immigrants in need of mental health services reported difficulty obtaining an initial appointment. Those who were seen by mental health staff generally reported positive interactions with the counselors,



but problems obtaining adequate treatment. ACLU-NM representatives encountered individuals who appeared depressed or expressed feelings of severe depression. As reported, some of these individuals who exhibited signs of suicidal ideation were told that medications could not be prescribed because there was no previous diagnosis of depression. Additionally, immigrants reported that they believed those with more serious mental illnesses were kept with the general population without adequate care. They reported that Otero staff used segregation as a short-term solution to control behaviors associated with mental illness.

#### **IV. EFFECTS ON FAMILY AND COMMUNITY**

The hidden costs of detention extend beyond the detained individual and reach into the families and communities from which they have been separated. ACLU interviewed several family members of immigrants detained at Otero who spoke of the financial, emotional and physical toll on them. Many of the immigrants interviewed had been transferred far from their families. Financial strain impeded their ability to visit and in some cases even to communicate via phone with family. Mothers reported negative effects on the emotional health of minor children. The loss of financial support also created a series of complications and disruptions to family life.

#### **V. OVERSIGHT, ACCOUNTABILITY, AND ICE REFORM EFFORTS**

As part of reform efforts, ICE has made some progress to address deficiencies in facility oversight. However, the use of private contractors and subcontractors to operate immigration detention facilities inherently creates barriers to oversight and accountability. At Otero, for example, the use of a private contractor appeared to confuse processes for seeking redress and submitting grievances. Many immigrants interviewed feared harassment or retaliation for submitting grievances. Those who were not afraid were frustrated with the process of being referred to ICE by MTC and to MTC by ICE and to PNA by both. Rarely did immigrants see a resolution to their complaints.

Detention standards are not legally enforceable. Without adequate oversight it is impossible to ensure compliance with detention standards. ICE facility inspections appear to consist primarily of filling out worksheets with checkboxes, reviewing paperwork, and looking for the existence of written policy to affirm compliance with the standard. ACLU interviews with detained persons at Otero reveal a stark inconsistency between policy and practice. Discrepancies in findings also existed between the different inspecting agencies.

#### **VI. CONCLUSION**

The ACLU-NM recognizes ICE for taking concrete steps towards reform of the immigration detention system. The findings in this report draw attention to the issues that continue to plague the Otero County Processing Center and other similarly situated facilities. The intent is not to condemn Otero itself but rather appeal to ICE to consider the consequences of private contracts both on the rights of detainees and the implementation of authentic system reform. Otero County Processing Center is not an exception, but rather emblematic of the problems that arise when the civil detention of immigrants is placed in the hands of private companies with a profit motive. Both the complex web of private contracts that impede transparency and the challenge of implementing reforms developed in Washington, D.C. ,in the field must be overcome by ICE leadership. in order to adequately address these issues. Several recommendations for ICE, DOJ, and members of Congress are proposed at the end of the report.

#### **(Endnotes)**

1. Human Rights Watch (2009). Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States. Available on line: <http://www.hrw.org/node/86789>

## RECOMMENDATIONS

### TO THE DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION AND CUSTOMS ENFORCEMENT, AND THE DEPARTMENT OF JUSTICE:

- **Continue work to expand and utilize the Alternatives to Detention Program.** Release individuals who pose no danger to national security or risk to community safety. Individuals should be released under the least restrictive requirements and with the appropriate case management services to ensure program success.
- **End unnecessary and unconstitutional prolonged detention of immigrants who pose no risk or danger.**
  - DHS and DOJ should ensure that detainees have the opportunity to appeal decisions regarding their custody and to have these decisions reviewed by the immigration court.
  - Individuals who have received a final order of removal, who are unlikely to be removed in the reasonably foreseeable future and who pose no threat to the community, should be released as soon as possible following their final order. If the goal of detention following a final order of removal is to effectuate removal, and removal is not possible because of lack of diplomatic relations between the United States and the country of origin, any further detention of the individual is prolonged and unnecessary.
  - Individuals who have been granted withholding of removal, who are unlikely to be accepted by an alternative country and who pose no threat to the community, should be released as soon as possible following the judge's ruling.
- DHS and DOJ should work with Congress to expand resources for immigration court proceedings to eliminate prolonged and unnecessary detention of individuals based on lack of capacity to calendar hearings in a timely manner.
- **Apply and enforce detention standards for all facilities housing immigration detainees.**
  - The dissemination of codified, legally enforceable detention standards to all facilities housing ICE detainees is a priority.
  - In the absence of standards that may be legally enforced, ICE should ensure that contractors who do not comply with detention standards are held accountable for a breach of contract by administering penalties and terminating contracts where necessary.
  - A comprehensive training protocol should be established and implemented for all personnel in facilities that hold ICE detainees. This training should be augmented by periodic updates and include, but not be limited to, guidance on detention standards, investigation of grievances, use of force, civil and human rights obligations, CPR and First Aid, working with vulnerable populations, and cultural competency. Personnel should pass certification requirements before working directly with detainees.
- **Phase out the use of private, for-profit prison contractors to manage civil immigration detention.** Centralizing contracts and maintaining control over the daily operations of immigration detention facilities will greatly improve oversight, accountability, and transparency.

- **Engage independent monitors and non-governmental organizations in the review of existing contracts.** DHS and ICE expressed intent to review contracts for all detention facilities “to identify opportunities for improvement and move forward with renegotiation and termination of contracts as warranted.”<sup>1</sup> As part of this process, ICE field offices were asked to complete a survey of facilities in their area of service. Industry also had the opportunity to address their ability and willingness to make changes. However, NGO groups offer another perspective important for contract review.
- **Streamline the facility inspection and review process to ensure appropriate follow up and remedy of deficiencies.**
  - Provide adequate resources for the Office of Detention Oversight (ODO) to properly inspect and review all facilities housing ICE detainees. Inspections and reviews cannot occur in a vacuum and should take into account previous inspections and reviews to monitor compliance and track patterns of consistent repeat offenses.
  - ODO inspection teams should consist of multi-sector partners, including the NGO community.
  - Inspections and reviews should incorporate interviews with willing detainees and advocates.
  - Processes should be put into place to ensure correction of deficiencies and to penalize those facilities that repeatedly fail to address deficiencies.
  - All inspection reports, reviews, detention service manager reports, and other documents relating to facility conditions and treatment of detainees should be publicly available.
- **Establish local ICE-NGO Working Groups in each field office area.** Local advocates should play a role in working with the local field offices to discuss implementation of reform measures, particularly those that can be implemented immediately.
  - Local working groups with representation from the NGO community, DHS, and DOJ should be formed to develop detailed plans for implementation of reform measures.
  - These groups should be required to submit recommendations and reports to ICE headquarters to ensure a uniform flow of communication from headquarters to of existing contracts. DHS and ICE expressed intent to review contracts for all detention facilities “to identify opportunities for improvement and move forward with renegotiation and termination of contracts as warranted.”<sup>1</sup> As part of this process, ICE field offices were asked to complete a survey of facilities in their area of service. Industry also had the opportunity to address their ability and willingness to make changes. However, NGO groups offer another perspective important for contract review. **Develop clear and uniform grievance procedures for detained persons with an option for third-party grievances filed by advocates on behalf of a detained individual.**
  - DHS, DOJ, and the Office of Civil Rights and Civil Liberties should establish a uniform and clear grievance procedure for detained immigrants. Currently, complex contractual structures, a lack of legally enforceable detention standards, and challenges for limited-English or illiterate detainees to file grievances, limits access to effective remedy.
  - Complaint procedures should include meaningful protections against retaliation.
  - Each grievance should be reviewed and responded to on its own merits. However, grievances should also be monitored for patterns of practice and there should be a mechanism that responds to emerging patterns.



## TO MEMBERS OF THE U.S. CONGRESS:

- **Restore Due Process and Maintain Constitutional Protections.** The Illegal Immigration Reform and Immigrant Responsibility Act as well as the Anti-Terrorism and Effective Death Penalty Act of 1996 expanded the categories of deportable crimes, decreased the discretionary powers of immigration judges, and effectively stripped immigrants of key due process rights. These rights should be restored.
  - End unnecessary and unconstitutional prolonged detention of immigrants who pose no risk or danger. DHS and DOJ should be mandated to ensure that detainees have the opportunity to appeal decisions regarding their custody and to have these decisions reviewed by the immigration court.
  - Restore judicial discretion to eliminate mandatory detention and deportation laws.
  - Limit the overly broad definition of aggravated felony to actual felonies, preserve meaningful judicial review and repeal summary procedures that deny fair hearings to immigrants.
- **Increase Oversight and Accountability of ICE Detention.** Recent exposure of ICE detention policy and practices reveals an urgent need to increase oversight and accountability of the department.
  - Pass legislation to develop strong oversight and accountability mechanisms, including codified, legally enforceable detention standards.
  - Require non-federal prisons and correctional facilities holding federal prisoners under contract with the federal government to comply with provisions under the Freedom of Information Act. This would include expanding FOIA provisions to private contractors responsible for managing the care and treatment of ICE detainees.
- Allocate increased DHS resources for the Office of the Inspector General, the Office of Civil Rights and Civil Liberties, the Office of Detention Oversight, and the Office of Professional Responsibility to support oversight and conduct regular reviews of detention facilities, personnel, and administrative functions.
- Establish local ICE-NGO Detention Advisory Groups and a federal Immigration Detention Commission to increase opportunities for advocates to contribute to the meaningful review of existing detention facilities and contracts as DHS moves forward with implementation of reform measures. Both local and federal groups with representation from the NGO community, DHS, ORR, DIHS, and DOJ should be tasked with developing detailed plans for implementation of reform measures and hold investigatory powers to ensure compliance in facilities. Local groups should submit regular reports to the Commission. The commission should submit annual reports to Congress.
- **Guarantee Humane Immigration Detention Conditions.** Increased outsourcing of immigration detention to private, for-profit prison management companies in the absence of legally enforceable detention standards creates complex structures which are costly to the government, limit transparency, and increase possibilities for human and civil rights violations.
  - End the use of private, for-profit prison contractors in civil immigration detention.
  - Implement penalties for those facilities that do not comply with detention standards.
  - Guarantee basic standards for medical and mental health care by establishing a set of legally enforceable standards specifically related to medical and mental health care for individuals in ICE custody.

- Support legislative policy changes to ensure humane treatment and due process of individuals detained by DHS.
  - Require the DHS Secretary to establish an administrative appeals process for denials of medical and mental health care requests. Ensure that detainees are provided with information regarding this process as part of the detainee orientation and handbook.
  - Establish independent on-site monitors. Monitors should be required to submit regular reports to ICE headquarters regarding the progress of detention reform measures and recommendations. ICE shall submit aggregate data in annual reports to Congress. Detention service managers are a positive step towards improving oversight but many are ICE employees who may not have an objective lens. Independent monitors provide an additional, much-needed layer of accountability.
  - Independent inspections, audits, and monitoring of facilities by the OIG or other entities must require criteria beyond review of paperwork to include interviews with legal advocates, Legal Orientation Program providers, and detainees. Expand access for community organizations and media representatives.
  - Federal agencies as well as local and state law enforcement agencies involved in immigration enforcement should be provided with training that includes: (1) immigration law (2) civil rights law (3) medical and mental health needs and treatment (4) due process protection and (5) humanitarian guidelines.
- **Support Alternatives to Detention and Release Policies.** The goal of detention is to ensure individuals appear for their civil immigration court hearings. Vulnerable populations such as women and children, transgender persons, asylum seekers, and individuals with special health care needs who do not present a flight risk or a threat to society should not be subject to detention. Alternatives to detention can vary from issuance of bond or intensive supervision to community-based case management programs that cost less than \$8 a day as compared to the \$99 to \$120 dollars a day it costs to detain individuals. Alternatives have yielded a 93 percent appearance rate.<sup>2</sup>
  - In the past, Congress earmarked funds for alternatives to detention and specifically directed that the money must be used to “promote community-based programs for supervised release from detention such as the Vera Institute of Justice’s Appearance Assistance Program or other similar programs.” Congress must ensure funds to expand alternative to detention programs.
  - **Ensure ICE compliance with the U.S. Supreme Court decision in *Zadvydas v. Davis* ruling which deemed indefinite detention unconstitutional and established a post order custody review process for immigrants in detention.**
  - **Ensure Access to Justice and Effective Remedy for Immigration Detainees**
    - Extend the right to court-appointed counsel for indigent individuals undergoing immigration proceedings and expand funding for legal services to non-profit organizations offering free or low cost immigration legal services.
    - Allocate resources for the expansion of the DOJ Executive Office for Immigration Review in areas with the highest immigration caseload to eliminate prolonged and unnecessary detention of individuals due to lack of court capacity.

## (Endnotes)

1. U.S. Department of Homeland Security. (October 6, 2009). Fact Sheet: ICE Detention Reform: Principles and Next Steps. Retrieved from: [http://www.dhs.gov/xlibrary/assets/press\\_ice\\_detention\\_reform\\_fact\\_sheet.pdf](http://www.dhs.gov/xlibrary/assets/press_ice_detention_reform_fact_sheet.pdf)
2. American Immigration Lawyers Association. Position Paper: Alternatives to Detention. Retrieved from: <http://www.aila.org/content/default.aspx?bc=6755%7C25667%7C33497%7C25874>; Detention Watch Network, About the U.S. Detention and Deportation System, Retrieved from: <http://www.detentionwatchnetwork.org/aboutdetention>