



SEATTLE  
UNIVERSITY  
SCHOOL OF LAW



# VOICES FROM DETENTION:

## **A Report on Human Rights Violations at the Northwest Detention Center**

in Tacoma, Washington

July 2008

*Seattle University School of Law International Human Rights Clinic  
in collaboration with OneAmerica (formerly Hate Free Zone)*



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## Executive Summary

The number of detained immigrants has escalated in the last decade, shining a harsh light on the immigration detention system nationwide. The New York Times, the Washington Post and CBS News have all provided alarming evidence of shoddy care, inadequate staffing, lax standards, secrecy and chronic ineptitude. This report corroborates detainee claims of human rights violations at the Northwest Detention Center on the tide flats of Tacoma, Washington.

### Background

In 1996, Congress passed legislation expanding the use of detention without bond provisions to reach large categories of immigrants. Lawful permanent residents (“green card holders”) were included with those who committed minor crimes and even with refugees escaping persecution. Those 1996 laws also established “Expedited Removal,” a practice allowing immigration officials to detain and almost always deport anyone arriving without proper documentation, including refugees. In addition, the period for detention without a hearing was extended.

Detention is a very rapidly growing form of incarceration. The numbers are escalating. In 2001, the U.S. detained approximately 95,000 people. By 2007, that number tripled to over 300,000. The average daily population of detained immigrants increased six-fold from 5,000 in 1994 to nearly 30,000 in 2007.

In 2004, Congress authorized 40,000 new detention beds by 2010, bringing up capacity to approximately 80,000. Immigration Customs and Enforcement (ICE) reported the average stay was 64 days in 2003, with 32% detained for 90 days or longer. Those seeking refugee status were in detention for an average of ten months, with the longest period being 3.5 years.

Nearly 30,000 immigrants are detained daily across the nation. Some are held in local jails, others in privately run facilities such as the Northwest Detention Center in Tacoma. ICE currently pays private prison companies and local cities and counties for each immigrant held at an average rate of \$95 per immigrant per day. With the increase in numbers of immigrants being detained, concerns have increased about such issues as overcrowding; holding immigrants for months—even years—in facilities designed for smaller populations and short-term use, and the lack of oversight of both the provision of due process rights and basic conditions at detention centers.

Voices from Detention: *A Report on Human Rights Violations at the Northwest Detention Center* is a project of The International Human Rights Clinic at Seattle University (SU) School of Law and OneAmerica (formerly Hate Free Zone), a Seattle-based immigrant, human and civil rights organization. This report is the first in-depth study of conditions at the Northwest Detention Center, and one of the first in the country to systematically apply both international human rights law as well as domestic law to the violations and conditions in the detention center. The project was funded through the U.S. Human Rights Fund, the Fund for NonViolence and individual donations.

## **Methodology**

This investigation was conducted by SU law students and faculty in the International Human Rights Clinic and staff from OneAmerica (formerly Hate Free Zone). Over the course of eight months in 2007-08, investigators conducted 46 interviews with 41 detainees, a family member and four attorneys representing detainees. Investigators also took two official tours of the facility, followed by a question and answer session with ICE and GEO officials.

Detainees interviewed were either referred or taken from a list from a posted hearing docket that was available outside the courtroom at NWDC. Interviews were voluntary and detainees were assured anonymity. Their actual names are not used in this report. Detainees were men and women from all over the world who had been held in detention for varying amounts of time.

Of the 41 detainees interviewed, 16 were refugees as defined by the Refugee Convention. Of those 16, four had been given formal refugee status while the others had pending asylum cases.

Attorneys were not interviewed specifically about conditions, but about obstacles in the representation of their clients.

During the interviews, our questions were open-ended and non-leading. There is no information in this report that could not be corroborated through other interviews or through research.

## **National Operation and Oversight of Detention Centers**

In 2002, Congress passed the Homeland Security Act eliminating the Immigration and Naturalization Service (INS) and creating the Department of Homeland Security.

The Department of Homeland Security now retains control over US Citizenship and Immigration Services (USCIS) as well as the Immigration and Customs and Enforcement (ICE). ICE is made up of four divisions. One, the Office of Department of Removals (DRO), is responsible for the detention of people during removal proceedings. ICE utilizes four different types of facilities to hold detainees. Detainees are held in Service Processing Centers (owned and operated by ICE); Contract Detention Facilities (owned and operated by private corporations); Intergovernmental Service Agreement Facilities (county and city jails); and Federal Bureau of Prisons Facilities.

In 2001, under pressure from outside organizations, ICE developed new National Detention Standards that would apply to all privately run detention centers nationwide. The standards cover issues such as access to legal services and materials, medical care, grievance procedures and detainee transfers. A Detention Standards Compliance Unit within the DRO is the oversight body of detention facilities.

However, the National Detention Standards are not legally binding, and therefore are unenforceable. Nongovernmental organizations have issued multiple reports detailing continuing abuses in U.S. immigration detention facilities. Even the Federal Government's own Accountability Office (GAO), in a 2006 to 2007 compliance review process observing 23 facilities, documented inadequate medical care, lack of access to legal materials, inadequate facility grievance procedures, overcrowding and systematic telephone problems. All reports conclude that detention standards should be made nationally binding and enforceable.

## **International Human Rights Law**

**Voices from Detention** primarily measures detention conditions against international human rights law. The United Nations established the Universal Declaration of Human Rights (UDHR), The International Covenant of Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These documents are known as the “International Bill of Rights.” Specific rights include:

- Right to Liberty: Freedom from Arbitrary Detention
- Prohibition on Torture and Cruel, Inhuman or Degrading Treatment
- Right to Legal Access and Due Process
- Right to Food and Medical Care
- Right to Family Unity
- Rights of Refugees Under International Law: Convention on Refugees Prohibits Most Detention of Refugees and Specific Guidelines
- Guide Treatment of Refugees in Detention

The United Nations High Commission for Refugees addresses detention conditions, including: screening for trauma or torture victims; the receipt of medical treatment and psychological counseling; and the opportunity to exercise religion and receive a religious diet.

## **Applicable Domestic Law**

The only binding law setting standards for treatment in non-ICE facilities is a federal regulation citing 24-hour supervision, conformance with safety and emergency codes, food service and availability of medical care.

The National Detention Standards seek to ensure “safe, secure and humane conditions for all detainees,” but they are not laws or federal regulations and therefore are not enforceable.

However, immigrant detainees are also entitled to Constitutional rights. Their rights and liberty interests are protected by the Fifth Amendment, which prohibits conditions which amount to punishment without due process of law. The U.S. Supreme Court has repeatedly held that liberty interests protected by due process include reasonably safe conditions of confinement, freedom from unreasonable bodily restraint, right to adequate food, shelter, clothing, medical care and adequate training of personnel required by these interests. The U.S. Constitution’s Due Process Clause also protects the right to family unity.

Recent Supreme Court decisions have re-emphasized that immigration laws must be in accord with due process, which includes the importance of family as the fundamental unit in society. In 2001, the U.S. Supreme Court reaffirmed that all immigrants—documented or not, which would include those subject to deportation—are entitled to the due process protections of the Fifth Amendment. In *Zadvydas v. Davis*, the Court also reaffirmed a basic principle of justice with respect to detention: that arbitrary and indefinite detention is unconstitutional.

## **The Northwest Detention Center**

The Northwest Detention Center is owned and run by The Geo Group, Inc., a publicly traded, privately-run company in the private prison business with facilities across the globe. Originally contracted to house 500 immigrants, it now has the capacity to detain 1,000. In the first four

months of its operation, the NWDC admitted over 1,800 people. Over the next 12 months, that number tripled to 6,456. In recent months, it has expanded even further to 8,849.

The current daily population is 985, about 890 men and 95 women. In February 2008, the NWDC had 997 detainees representing about 80 countries, but primarily Mexico, Guatemala, El Salvador, Honduras, China, Vietnam and India.

While the facility is designed for short-term detention, the reality is that there are a significant number of detainees held for periods of time that average 35-60 days, with some held for as long as four years.

Internal oversight of the NWDC consists of two annual internal reviews, one by GEO, the other by ICE. Although ICE gave ratings of “Good” and “Superior” to the NWDC on compliance to detention standards, ICE’s own reviews noted numerous violations of detention standards each year.

## Report Findings

Based on the 46 interviews conducted, **Voices From Detention** finds numerous violations at the NWDC. Conditions are substandard, and are not even in compliance with the National Detention Standards, much less international human rights law. These violations, unacceptable in any circumstances, are even more notable given the fact that detention—originally intended to be short-term—often lasts for months or even years.

For the purposes of this Executive Summary, we highlight seven areas of significant concern. Full descriptions of all the areas of concern are contained within the report.

1. **Legal Due Process:** There are numerous obstacles in detainee legal representation that not only interfere with detainees ability to secure representation, but impact the attorney-client relationship itself :
  - a. Insufficient number of attorney-client meeting rooms for 1,000 detainees (only four), leading to lengthy delays and waits to access legal counsel
  - b. Breaches of attorney-client privacy and confidentiality by detention center guards during interviews and through monitoring of mail and telephones
  - c. Lack of notification of attorneys and family members of detainees when transferred to other facilities
2. **Detainees Pressured to Sign Papers:** About a quarter of all detainees interviewed said they were pressured to sign papers whether they understood them or not. They said if they refused to sign, guards exerted psychological pressure with verbal threats and physical intimidation. An interviewed attorney stated that ICE improperly advises arriving detainees to take voluntary departure (deportation) without advising them that they will lose their right to an attorney and will be deported again should they ever return to the U.S. This is in direct violation of the U.S. Supreme Court’s clear direction since 1943 that immigrants be allowed to make intelligent decisions about the documents they are signing.
3. **Treatment by Guards and Federal Marshals:** Detainees reported numerous allegations of misconduct and physical and verbal abuse. Five detainees provided extremely disturbing accounts of strip searches. One estimated that he was strip searched 5-10 times over a period of 2-3 months following attorney visits. During these searches, he was stripped completely and made to stand in front of officers and turn and bend over. He was not touched but felt humiliated.

Another female detainee was strip searched multiple times after attorney visits. She described a strip search incident as follows:

“We were stripped completely naked, a female officer told me to open my legs wide and she peeped into my vagina and later, she asked me to turn by back-side and expose my anus [by separating the cheeks with her hands]. I was told to cough several times while in this position—with the officer looking at my private parts. We were forced to subject ourselves to this dehumanizing treatment. For several days afterward, I wept and have continued to have nightmares about this treatment.”

One report provided a detailed event cited by six detainees. It involved the transfer by of detainees on two flights to Alabama in the summer of 2007. The transfers were conducted to prevent overcrowding expected from an upcoming ICE workplace raid in Portland, Oregon. Abuse on the flight by U.S. Marshals include physical abuse (hitting and punching and putting a hood on a mentally ill detainee); refusing to allow detainees to use the restroom for over seven hours resulting in defecation in their seats and sitting in their own feces; and handcuffing and shackling the hands and feet of the detainees so that they could not eat.

Domestic law prohibits treatment “not reasonably related to a legitimate goal” and cites it as a violation of personal security and liberty constituting a denial of due process. Under international law principles, “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

4. **Medical Care:** Approximately 75% of detainees interviewed reported medical problems that required medical attention at the NWDC medical clinic. Eighty percent who sought care were dissatisfied with the treatment they received.

Our interviews suggest a widespread problem of inadequate access to medical care, especially emergency medical care. When a food poisoning outbreak occurred on August 11, 2007, and over 300 detainees reported severe abdominal cramps and diarrhea, guards told detainees to wait until the in-house medical clinic opened in the morning. Even during its hours of operation, detainees wait in a standing line for up to four hours. Those requiring outside care wear shackles on their hands and feet. One detainee said shackles were not removed even when the emergency room doctor requested it.

One detainee undergoing treatment for a cancerous brain tumor was arrested in his home by ICE and admitted to NWDC. Medical staff that had previously treated him contacted the NWDC and offered to send over his records but the NWDC declined, saying he would be deported soon. The man had multiple seizures in detention. Though medical experts told detention officials that if deported, he wouldn't get adequate medical treatment and his terminal condition would worsen, he was deported early this year.

The New York Times published a list of detainees who have died in immigration detention across the nation. One of those detainees, Jesus Cervantes-Corona, died at the NWDC on December 13, 2006. His cause of death is listed officially as coronary artery disease, but the full circumstances of his death have not been disclosed by ICE or GEO.

Inadequate access to medical care violates the United Nations Declaration of Human Rights and the minimum standards of the UN Principles for Detained

Persons. Failure to provide adequate medical care is a violation of the Fifth Amendment. Allowing a person to suffer from extreme pain without treatment is cruel, inhuman and degrading treatment, a violation of both international law and the Fifth Amendment.

5. **Mental Health Care:** About 20% of the detainees interviewed reported they suffered from mental health issues requiring attention. While many did not complain they suffered from depression, their speech and body language suggested otherwise. Many appeared subdued and others cried. Our interviewer's general impression was that a substantial percentage of the detainees appear depressed, nervous, scared or a combination of disorders. There also appears to be improper and excessive use of solitary confinement of those who suffer from mental health problems.

Thirty-seven percent of those we spoke with were refugees who likely suffered some form of persecution and/or traumatic event in their homeland or during their journeys to the U.S. for asylum. In the detention center, the lack of recreational activities; the grey cement and windowless surroundings; the lack of privacy; cultural isolation; and uncertainty around their detention confinement all contribute to mental health instability.

The NWDC employs only one full-time psychologist for about 1,000 detainees. While the National Detention Standards require staff at INS centers to be trained to recognize suicide, there appears to be no such training at the NWDC. One detainee described a fellow detainee whose appearance deteriorated over a short period of time until he stopped talking all together. Detainees reported this change to guards who responded that he needed to request medical help himself. While watching TV, the man slumped over and fell on the floor. Detainees again implored guards to help him with no result. Later that night, the man passed out on the floor. Only then, was given attention.

The treatment of mentally ill detainees raises legal concerns. The Northwest Immigrant Rights Project has found approximately nine detainees who turned out to be U.S. citizens. These detainees were subsequently released as U.S. citizens cannot be held in immigration detention. Attorneys at NWIRP contend that many of those U.S. citizens detained have suffered from mental illness.

Inadequate treatment of the mentally ill is a violation of international law. Denying proper treatment can constitute as cruel, inhuman and degrading treatment. Under domestic law, prisoners have the right to receive medical treatment for illness and injuries under the Eighth Amendment, which encompasses the right to psychiatric and mental health care and the right to be protected from self-inflicted injuries such as suicide.

6. **Food:** About 80% of the detainees interviewed stated they received an insufficient quantity of food and were often hungry after meals. For those remaining in detention for months or years, scarce food results in hunger, poor nutrition, and digestive problems.

One detainee weighed 190 pounds upon entering detention. Two years later he was fifty pounds lighter due to insufficient food. The clinic doctor told him to stop exercising because the food he receives doesn't provide enough nutrition for daily exercise.

In August 2007, there was an outbreak of food poisoning at the NWDC that affected about 300 detainees. The Tacoma-Pierce County Health Department found the food poisoning was from heating or cooling food too slowly allowing

large amounts of bacteria to grow, and identified several problems with food preparation procedures at the facility.

7. **Living Conditions, Visitation, and Language Barriers:** Interviewees detailed concerns about overcrowding and lack of privacy in the bathrooms and showers. In one area, there are 80 people who share six or seven toilets. Dining tables near the toilets give rise to concern about sanitation. One detainee reported seeing a dead rat in the downstairs toilet that was left for two days preventing use of that toilet.

Regarding visitation, one detainee's wife drives for three hours from Oregon to visit him once a month with their daughter who has a debilitating illness. Upon arrival they typically wait an hour for a fifteen minute, no-contact visit. A few times, she has waited two hours to see her husband. The visits have been traumatizing. Some detainees say that the short, no-contact visits cause them to feel even more depressed and hopeless.

Moreover, due to language barriers, detainees have reported being unable to communicate with their guards and unable to read signs in English. The detainee handbooks are in English with a truncated version in Spanish. Under the UN Body of Principles, Principle 14 states that "[A] person who does not adequately understand or speak the language used by the authorities responsible for the arrest, detention or imprisonment is entitled to receive promptly in a language which he understands..." the reason for his detention and his right to due process.

## **Conclusions and Recommendations**

The United States is obligated to comply with both international and domestic legal standards on detainee treatment. Detention without accountability only increases mistreatment.

The authors of this report have concluded that the violations of rights and conditions within the NWDC violate both international and domestic law. Specific issues include:

- Unnecessary detention of refugees
- Conditions violating legal due process protections, especially the forced signing of papers, language barriers, access to attorneys and failure to ensure confidential communications
- Overcrowding, lack of privacy
- Inadequate emergency medical care and pain management
- Inhuman and degrading treatment by guards and U.S. Marshals
- Failure to adequately address mental health issues and punitive segregation of those with mental health problems
- Extremely poor quality and quantity of food
- No contact visits, inadequate visitation time, long waits and inadequate access to telephones

These conditions violate the Fifth Amendment to the U.S. Constitution, the Refugee Convention, and customary international law, as well as other international treaties.

Based on these findings, the authors of this report provide the following recommendations:

### **Federal Policy Recommendations**

- Adopt a U.S. immigration policy that comports with international human rights obligations, including the use and conditions of immigration detention.
- Only subject immigrants to detention if there has been an individualized finding that he or she poses a security threat or is a flight risk. Refugees have additional rights under the Refugee Convention and should not be subject to ongoing detention.
- Use alternatives to detention such as electronic monitoring or participation in the Intensive Supervision Appearance Program for those who are potential flight risks.
- Revise parole policies, especially refugees, allowing release while awaiting hearings.
- Enact Federal regulations to make National Detention Standards binding.

### **Recommendations Regarding Northwest Detention Center:**

- Provide better access to attorneys and respect the attorney-client privilege. At a minimum, ICE and The GEO Group should remove obstacles within their control that discourage lawyers from taking cases of those in detention.
- Conduct better training for officers on issues of detention, such as mental health, attorney-client confidentiality, and grievance procedures.
- Ensure resources and printed materials, especially the Detainee Handbook, are available in all of the languages spoken by detainees, and ensure access to interpreters in all languages.
- Implement structural changes to the NWDC facility to increase the privacy of those living in detention.
- Provide food to detainees in adequate quantity and quality, and ensuring that meals comply with regular FDA and federal food safety standards.
- Ensure that detainees with mental health problems are not subjected to punitive measures such as being placed in segregation, and providing adequate onsite mental health support to assess and treat needs of detainees.
- Ensure immediate and adequate medical care for emergency medical situations, and ensuring access to treatment for severe pain.
- Respect the right to family unity by reducing the restrictions on visitations, allowing contact visits, and lengthening the visitation time.
- Improve telephone access and ensuring that telephones are in good working order.
- Provide detainees with safer and more efficient methods of having grievances addressed in detention.
- Given the reality of medium to long-term detention, improve the quality and quantity of leisure activities and enhance educational activities.

## I. Introduction

The dramatic increase of immigration detention in the United States within the last decade has garnered national and international attention. Across the country, nearly 30,000 immigrants are detained daily pending the final outcome of their immigration cases, some in local jails and others in privately run detention centers such as the Northwest Detention Center in Tacoma, Washington.<sup>1</sup> For the last few years, the federal government has gridlocked trying to reform immigration law, universally acknowledged as broken. While the political gridlock continues, the current Administration has increased enforcement of our broken immigration laws, resulting in a dramatic increase in detention and deportation.

Although the politics of immigration policy play out regularly in the media, until very recently, issues around detention of immigrants received little attention. However, recent deaths in detention have raised serious questions about oversight of detention centers, conditions within detention centers, and the overall numbers of immigrants who are caught within the web of detention and deportation. Many non-governmental and public interest organizations are working to raise awareness about the issues surrounding detention, including challenges to abuses within the detention centers. However, U.S. law does not adequately protect immigrant detainees. Consequently, some organizations are looking increasingly to international human rights law and international human rights bodies to advocate for the rights of detained immigrants.

Locally, very few residents of Western Washington are aware that immigration detention exists in our own backyard. The Northwest Detention Center (NWDC) was built amid controversy in April, 2004. It was originally contracted to house 500 immigrants.<sup>2</sup> With some structural changes inside the pods, or living centers, the NWDC now has the capacity to detain 1,000 individuals.<sup>3</sup>

Many groups in the Tacoma-Seattle area have addressed the needs of detainees in the NWDC and have worked tirelessly to raise awareness about the facility and its role in the larger immigration policy landscape. Until now, however, very little has been documented about the actual conditions inside the NWDC, the people inside, and how this facility and its problems reflect the national immigration detention policy. This report seeks to provide a more detailed study of the actual conditions and violations of rights taking place within the NWDC, and to document how these actions constitute violations of both international human rights and existing domestic laws.

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<sup>1</sup> Honorable Julie L. Myers, Asst. Secretary of Homeland Security for ICE, Remarks at the Detroit Economic Club (April 7, 2008), available at [http://www.ice.gov/doclib/pi/news/testimonies/ice\\_detroit\\_econ\\_club\\_18a.doc](http://www.ice.gov/doclib/pi/news/testimonies/ice_detroit_econ_club_18a.doc) (last accessed May 27, 2008).

<sup>2</sup> NWDC tour with Jack Bennett, Asst. Field Office Director for NWDC, in Tacoma, WA (Feb. 25, 2008).

<sup>3</sup> The GEO Group, Inc., Northwest Detention Center, available at <http://www.thegeogroupinc.com/northamerica.asp?fid=105> (last accessed May 27, 2008).

## II. Methodology

This report is based on an assessment of the conditions of detention at the Northwest Detention Center (NWDC) in Tacoma, Washington. The Seattle University School of Law's International Human Rights Clinic,<sup>4</sup> in collaboration with Hate Free Zone<sup>5</sup> conducted all research between September 2007 and April 2008.

Our researching of detention conditions consisted primarily of 41 interviews of detainees or recently released detainees and two tours of the detention facility over a period of eight months. We also interviewed four attorneys who represent detained individuals, and one family member. Each interview was conducted by two legal interns under the supervision of an attorney. Nearly all interviews ranged between one to two hours. Additionally, we engaged in informal conversations with the facility staff, other attorneys representing detainees at NWDC and family members of detained individuals.

The detainees we interviewed had either been referred to us by their attorneys, community organizations, family members, other interviewed detainees, or were taken from the posted hearing docket that was available outside the courtroom at NWDC.

Detainee interviews took place in one of four attorney interview rooms located near the entrance of the NWDC. Interviews were voluntary and we assured detainees that their actual names would not be used in this report. The interviewed detainees consisted of both men and women, and detainees who had been in long-term (several months or years) and short-term (less than three months) detention. Detainees came from 23 different countries, from five continents. Though a majority of the detainees spoke either English or Spanish, we also interviewed detainees who spoke only Russian, Haitian Creole, and Mandarin with the assistance of interpreters. There were also detainees we were unable to interview because we were unable to timely locate interpreters who spoke their language, such as Mam and Punjabi. Finally, the interviewed detainees came from different pods, or dormitories, allowing for a more thorough assessment of living conditions throughout NWDC.

During the interviews, our questions were open-ended and non-leading regarding the conditions at NWDC, taking care not to suggest specific areas of concern or problematic conditions. When the detainee described an issue, we then followed up and asked more specific questions, but then only in a non-leading manner. Toward the end of the interview, after the interviewee had discussed his or her primary concerns, we asked non-leading questions about other specific conditions in order to see if other detainees' concerns could be corroborated. We did not include information in this report that could not be corroborated through the interviews or research.

On the whole, we had reasonably regular access to detainees. However, on occasion, we encountered several obstacles while arranging and conducting the interviews which both corroborated problems described to us by attorneys representing detainees as well as prevented us from interviewing a larger sample of the detainee population. A more detailed description of those obstacles can be found in the Conditions section on attorney access.

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<sup>4</sup> This report was largely student-driven work under the tutelage of Professors Gwynne Skinner and Raven Lidman of Seattle University School of Law's International Human Rights Clinic, with the assistance of Deena Ledger, Hate Free Zone's Human Rights Associate. Spring semester students who conducted interviews and drafted this report were: Kevin Cahill, Timothy Cole, Brian Howe, Renee Lewis, Lena Madden, Riddhi Mukhopadhyay, Andre Olivie, and Alyce Perry. Students from the Fall semester who also conducted interviews and contributed research were: Forrest Carlson, Amelia Guess, Natalie Hansen, Raj Khunkhun, Grant Manclark, and Jillian Pressnall.

<sup>5</sup> Hate Free Zone advances the fundamental principles of democracy and justice at the local, state and national levels by building power within immigrant communities, in collaboration with key allies. See its website at <http://www.hatefreezone.org>.

Finally, we have chosen to measure the conditions of the NWDC primarily against what is required by international human rights law. However, we also researched and addressed domestic law requirements, including constitutional law and statutes, regulations and standards.

### III. Background of Immigrant Detention in the United States

The detention of immigrants pending the resolution of their legal status and potential deportation was not always the norm. Immigrants were not detained at all until the 1890s when the United States opened its first federal immigration detention center in Ellis Island, New York.<sup>6</sup> A shift in immigration policy occurred in 1952 when Congress passed the Immigration and Nationality Act (INA), which eliminated detention except in cases in which an individual was a flight risk or posed a serious risk to society.<sup>7</sup> Ellis Island subsequently closed.

#### A. Shift in Immigration Policy Led to Dramatic Increases in Detention

The 1980s saw the beginnings of a shift in detention policy, largely influenced by mass Cuban and Haitian immigration.<sup>8</sup> In the 1990s, however, the United States made a monumental shift in immigration policy, using detention as a primary means of enforcement, regardless of whether the individual was a flight risk or serious risk to society. In 1996, Congress passed legislation that dramatically expanded the use of detention, with the Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA) and Antiterrorism and Effective Death Penalty Act (AEDPA), collectively referred to as the 1996 laws.<sup>9</sup> These laws drastically amended the INA by expanding mandatory detention without bond provisions to include large categories of immigrants, including lawful permanent residents (LPRs) who commit sometimes minor crimes,<sup>10</sup> and those who attempt to enter the country without proper paperwork, including refugees escaping persecution.

The 1996 laws also established a new procedure called Expedited Removal that allows immigration inspectors to summarily remove all immigrants arriving without proper documentation, including refugees. This is done without a hearing, and detention is mandated for the time it takes to remove or deport that person to their country of origin. Refugees and asylum seekers who pass an initial “credible fear” hearing are held until their status is determined, which can take months and even years, unless there is a compelling humanitarian or medical need.<sup>11</sup> Originally, Expedited Removal was required only at the border, but was expanded in 2004 to include all undocumented immigrants apprehended within 14 days of entry and 100 miles of the border in some Border Patrol sectors.<sup>12</sup>

Due to these drastic changes in immigration law, the number of individuals detained has grown dramatically since the 1990’s. In 2001, the U.S. detained approximately 95,000 individuals. By 2007, the number of individuals detained annually in the U.S. had grown to over 300,000.<sup>13</sup> The average daily population of detained immigrants has grown from approximately 5,000 in 1994, to 19,000 in 2001, and to

<sup>6</sup> “Ellis Island-History,” [http://www.ellisland.org/genealogy/ellis\\_island\\_history.asp](http://www.ellisland.org/genealogy/ellis_island_history.asp), (last accessed Apr. 1, 2008).

<sup>7</sup> INA, codified at 8 U.S.C. §§ 1101 *et seq.* (1952). *See also* Human Rights Watch, *Forced Apart: Families Separated and Immigrants Harmed by United States Deportation Policy*, Vol. 19, No.3(G), (June, 2007), available at <http://hrw.org/reports/2007/us0707> (last accessed May 23, 2008).

<sup>8</sup> Human Rights Watch, “Chronic Indifference: HIV/AIDS Services for Immigrants Detained by the United States,” Vol. 19 No.5(G), (December 2007) available at <http://hrw.org/reports/2007/us1207> (last accessed May 20, 2008) (hereafter *Chronic Indifference*).

<sup>9</sup> Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (hereinafter IIRIRA), Pub. L. No. 104-208, 110 Stat. 3009-546 (1996); Anti-Terrorism and Effective Death Penalty Act of 1996 (hereinafter AEDPA), Pub. L. No. 104-132, 110 Stat. 1214 (1996).

<sup>10</sup> The types of crimes under the 1996 laws categorized as “aggravated felonies” under the INA were also broadened to include even non-violent crimes. Judicial review for many of the “criminal alien” categories was removed so that judges could not weigh factors like personal ties to the U.S., long term residence (especially begun at a young age), service in the Armed Forces, evidence of hardship if deported, history of employment, existence of property or business ties, proof of genuine rehabilitation and other factors. IIRIRA; AEDPA; Human Rights Watch, *Forced Apart: Families Separated and Immigrants Harmed by United States Deportation Policy*, Vol. 19, No. 3(G), 16-34, July 2007, available at <http://www.hrw.org/reports/2007/us0707> (last accessed May 27, 2008).

<sup>11</sup> ICE, Directive 7-1.0, “Parole of Arriving Aliens Found to Have a ‘Credible Fear’ of Persecution or Torture,” effective date November 6, 2007.

<sup>12</sup> United States Commission on International Religious Freedom, *Report on Asylum Seekers in Expedited Removal*, Feb. 8, 2005.

<sup>13</sup> Gary Mead, Deputy Director, Office of Detention and Removal Operations, *Regarding a Hearing on “Problems with ICE Interrogation, Detention and Removal Procedures,” Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law, 2-3 (Feb. 13, 2008)*, available at <http://judiciary.house.gov/media/pdfs/Mead080213.pdf> (last accessed May 27, 2008).

30,000 by the end of 2007.<sup>14</sup> In 2004, Congress authorized the creation of 40,000 new detention beds by 2010, which will bring detention capacity close to 80,000.<sup>15</sup> ICE's stated goal is to deport all removable aliens by 2012. Given the growing practice of holding those in deportation proceedings in detention, the numbers will only grow without a policy change at the federal level.<sup>16</sup>

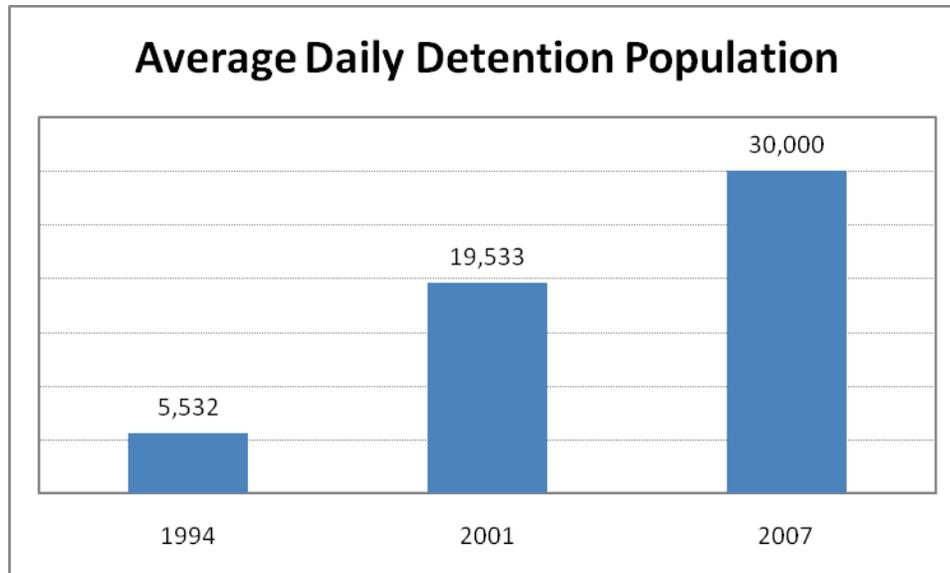


Figure 1<sup>17</sup>

ICE reported that for all immigrant detainees, the average stay in 2003 was 64 days, with 32 percent detained for 90 days or longer.<sup>18</sup> Asylum seekers granted refugee status spent, on average, 10 months in detention, with the longest period being 3.5 years.<sup>19</sup>

ICE pays an average per diem rate of \$95 for each immigrant held in detention. Private prison companies tend to negotiate higher per diem rates than local city and county jails. The highest known per diem rate ICE paid was \$225 for each detainee placed into a GEO facility in Queens, N.Y. Regardless, if DHS were to reach its stated goal of removing the estimated 12 million people without legal immigration status, detention based on current practices would cost the federal government \$94 billion.<sup>20</sup>

<sup>14</sup>General Accounting Office, Alien Detention Standards, Telephone Access Problems Were Pervasive at Detention Facilities; Other Deficiencies Did Not Show a Pattern of Noncompliance, July, 2007, (hereinafter GAO ADS Report, (2007)); Statement of Joseph Greene, Acting Deputy Executive Associate Commissioner for Field Operations, INS, 2002 Review of Justice Immigration Detention Policies, Hearing Before the Subcommittee on Immigration and Claims of Committee on the Judiciary, House of Representatives, the December 19, 2001, available at [http://commdocs.house.gov/committees/judiciary/hju76810.000/hju76810\\_of.htm](http://commdocs.house.gov/committees/judiciary/hju76810.000/hju76810_of.htm) (last accessed May 27, 2008).

<sup>15</sup> Intelligence Reform and Terrorism Prevention Act of 2004 (hereinafter IRTPA) Pub.L. 108-458, Dec. 17, 2004, 118 Stat. 3638 § 5204.

<sup>16</sup> ENDGAME, Office of Detention and Removal Strategic Plan, 2003-2012, Detention and Removal Strategy for a Secure Homeland, taken off DHS website, but now available at <http://www.aclum.org/pdf/endgame.pdf> (last accessed May 27, 2008).

<sup>17</sup> Statement of Joseph Greene, Acting Deputy Executive Associate Commissioner for Field Operations, INS, 2002 Review of Justice Immigration Detention Policies, Hearing Before the Subcommittee on Immigration and Claims of Committee on the Judiciary, House of Representatives, the December 19, 2001, available at [http://commdocs.house.gov/committees/judiciary/hju76810.000/hju76810\\_of.htm](http://commdocs.house.gov/committees/judiciary/hju76810.000/hju76810_of.htm) (last accessed May 27, 2008).

<sup>18</sup> Bill Frelick, Amnesty International, USA, "U.S. Detention of Asylum Seekers and Human Rights" (2005), available at <http://www.migrationinformation.org/USFocus/display.cfm?ID=296> (last accessed March 8, 2008).

<sup>19</sup> Physicians for Human Rights and Bellevue/NYU Program for Survivors of Torture, "From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers," July 2003, available at <http://physiciansforhumanrights.org/library/documents/reports/report-perstoprison-2003.pdf> (last accessed May 27, 2008).

<sup>20</sup> CNN, ICE: Tab to Remove Illegal Residents Would Approach \$100 Billion, <http://edition.cnn.com/2007/US/09/12/deportation.cost> (last accessed May 27, 2008).

## B. Operation of and National Standards for Detention Centers

After the 9/11 attacks, Congress passed the Homeland Security Act of 2002 (HSA), which eliminated the Immigration and Naturalization Service (“INS”) and created the Department of Homeland Security (DHS).<sup>21</sup> DHS has several agencies, including US Citizenship and Immigration Services (USCIS), Customs and Border protection (CBP), and Immigration and Customs and Enforcement (ICE).<sup>22</sup> ICE is made up of four divisions, one of which includes the Office of Department of Removals (DRO), which is responsible for the detention of the individuals during removal proceedings.<sup>23</sup>

Individuals in detention are held in four different types of facilities: Service Processing Centers (owned and operated by ICE), Contract Detention Facilities (owned and operated by private corporations), Intergovernmental Service Agreement Facilities (county and city jails), and some federal Bureau of Prisons Facilities.<sup>24</sup>

After increased pressure from outside organizations and negotiations with the American Bar Association (ABA) Commission on Immigration, the INS (now ICE) adopted national detention standards – 36 in all - that took effect in 2001.<sup>25</sup> These standards apply to all privately run detention centers and cover issues such as access to legal services and materials, medical care, grievance procedures, and detainee transfers. (More detailed descriptions of the National Detention Standards are discussed below in the sections on applicable domestic law and within the separate sections dealing with specific conditions). Although these standards are supposed to be internally applied within contract detention facilities, they are not legally binding or enforceable.

ICE, through the DRO, created the Detention Standards Compliance Unit (DSC), a unit charged with ensuring that individuals are detained “in accordance with ICE National Detention Standards” and which “provides ICE and the public the assurance that detainees in ICE custody...are detained under appropriate conditions of confinement.”<sup>26</sup> DRO is responsible for conducting annual reviews to ensure compliance with these standards.<sup>27</sup> ICE created another division to provide oversight, the ICE Office of Professional Responsibility (OPR).<sup>28</sup> This unit is responsible for providing “enhanced oversight of DRO facilities to ensure that detention standards are met.”<sup>29</sup>

With regard to public oversight of the standards, the ABA recruits attorneys from the private bar as part of its Detention Standards Implementation Initiative to tour detention facilities and report on their observations as a means of public oversight. Volunteers submit their drafts to the ABA, who review it and submit it to the ICE Detention Standards Compliance Unit; however, the reports are not publicly available.<sup>30</sup>

In April, 2008, several groups filed a lawsuit demanding that DHS issue legally enforcement regulations concerning conditions of detention.<sup>31</sup>

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<sup>21</sup> Homeland Security Act, 6 U.S.C. § 111, PL 107-296, 116 Stat. 2135 (2002).

<sup>22</sup> DHS, “Department Components,” <http://www.dhs.gov/xabout/structure> (last accessed April 19, 2008).

<sup>23</sup> ICE Fact Sheet, <http://www.ice.gov/pi/news/factsheets/040505ice.htm> (updated October 1, 2005) (last accessed April 21, 2008).

<sup>24</sup> DHS, Office of Inspector General, Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities, OIG-07-01 (hereinafter DHS OIG Report), 2 (2006), available at [http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG\\_07-01\\_Dec06.pdf](http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_07-01_Dec06.pdf) (last accessed March 31, 2008).

<sup>25</sup> DHS ICE, Detention Operations Manual (adopted 2000, updates to 2006) (hereafter DOM), <http://www.ice.gov/pi/dro/opsmanual/index.htm> (last accessed May 20, 2008). In 2006, two additional standards were added. *See* note 130, *infra*.

<sup>26</sup> ICE Fact Sheet, November 2, 2006, [www.ice.gov/pi/news/factsheets/dro110206.htm](http://www.ice.gov/pi/news/factsheets/dro110206.htm) (last accessed March 25, 2008).

<sup>27</sup> GAO ADS Report, 2 (2007).

<sup>28</sup> ICE Fact Sheet, November 2, 2006, [www.ice.gov/pi/news/factsheets/dro110206.htm](http://www.ice.gov/pi/news/factsheets/dro110206.htm) (last accessed March 25, 2008).

<sup>29</sup> *Ibid*.

<sup>30</sup> ABA Commission on Immigration, The Detention Standards Implementation Initiative, [http://www.abanet.org/publicserv/immigration/detention\\_standards.shtml](http://www.abanet.org/publicserv/immigration/detention_standards.shtml) (last accessed May 27, 2008).

<sup>31</sup> Immigrants Challenge U.S. System of Detention, Nina Bernstein, New York Times, May 1, 2008, [http://www.nytimes.com/2008/05/01/nyregion/01detain.html?\\_r=1&partner=rssnyt&emc=rss&oref=slogin](http://www.nytimes.com/2008/05/01/nyregion/01detain.html?_r=1&partner=rssnyt&emc=rss&oref=slogin) (last accessed May 13, 2008).

## C. Investigations Repeatedly Find Inhumane Conditions and Abuse in Detention Centers

Despite adoption of the National Detention Standards and ICE's oversight, multiple reports issued by the U.S., government, NGOs, and the United Nations have detailed continuing abuses within U.S. immigrant detention facilities.

### 1. ABA and UNHCR Note Major Deficiencies

The ABA and United Nations High Commissioner for Refugees (UNHCR) have both conducted investigations of detention conditions. Although the reports were not publicly released, the American Civil Liberties Union (ACLU) was able, through litigation, to obtain copies of 200 reviews The ABA and UNHCR conducted between 2002 and 2005 concerning detention conditions.<sup>32</sup> Based on these reviews, the ACLU reported to the United Nations (UN) Special Rapporteur in May 2007 that not only had the U.S. "failed to promulgate binding minimum standards for the conditions of confinement for detained immigrants,"<sup>33</sup> the U.S. "has failed to ensure that detention facilities comply with the nonbinding standards that exist."<sup>34</sup> The ACLU also stated that the management of immigration detention is "further marred by ineffective oversight, lack of accountability, and lack of transparency."<sup>35</sup>

### 2. NGO Reports Also Note Serious Problems

In May 2007, the ACLU of New Jersey released a report critical of conditions of immigration detention at local jails. In the report, the ACLU documented detainee reports of physical and verbal abuse, inadequate medical care to long-term immigration detainees, inadequate dental care, lack of phone and library access, lack of family access, and overcrowding inappropriate for prolonged detention.<sup>36</sup> It found that its detention standards "fall far short of providing even the basic necessities for detainees and are rarely in compliance with the standards."<sup>37</sup> The report also noted that "[l]ack of federal regulations and government oversight has led to inconsistent and inhumane treatment of detainees in local jails" and "long-term detention continues to be a problem in New Jersey's county jails."<sup>38</sup>

Human Rights Watch (HRW), an international human rights organization, has repeatedly focused on immigration detention in the United States as a serious human rights concern. The most recent report released in December, 2007 describes the experience of HIV positive detainees whose HIV/AIDS treatment was "denied, delayed, or interrupted, resulting in serious risk and often damage to their health." HRW notes that detention facilities failed to consistently treat and monitor HIV/AIDS patients, failed to ensure continuity of treatment during transfer, and failed to ensure confidentiality of medical care.<sup>39</sup> Its report contained several recommendations for OIG including:

- Increase the number and quality of inspections;
- Ensure transparency and accountability to the public by converting the detention standards to federal administrative regulations;
- Ensure that the current system be improved for tracking complaints from detainees so that detainees who complain are protected from retaliation;

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<sup>32</sup> ACLU, *Substandard Conditions*, 2, citing *Quantes-Hernandez v. Gonzales*, No. CV 82-1107 (C.D. Cal., 2006).

<sup>33</sup> ACLU *Substandard Conditions*, 1.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> ACLU, *Behind Bars: The Failure of the Department of Homeland Security to Endure Adequate Treatment of Immigration Detainees in New Jersey*, 1-15 (2007), available at <http://www.aclu-nj.org/downloads/051507DetentionReport.pdf> (last accessed May 28, 2008)(hereafter *Behind Bars*).

<sup>37</sup> *Behind Bars*, 4.

<sup>38</sup> *Behind Bars*, 1.

<sup>39</sup> Human Rights Watch, "Chronic Indifference: HIV/AIDS Services for Immigrants Detained by the United States," Vol. 19 No.5(G), (December 2007) available at <http://hrw.org/reports/2007/us1207> (last accessed May 20 2008) (hereafter *Chronic Indifference*).

- Guarantee that all immigrants detained by ICE receive notification of complaint procedures in their native languages; and
- Increase oversight of conditions of detention.<sup>40</sup>

The immigration detention system garnered greater public scrutiny when the Women's Commission for Refugee and Children and Lutheran Immigration and Refugee Services revealed the inner workings of the T. Don Hutto "Residential Center" where entire families are detained in prison-like settings.<sup>41</sup> With the illustration of families, including infants, wearing prison garb and living in a penal like setting, the notion that immigration detention is not punitive in nature became harder to defend. Additionally, the report revealed conditions issues not specific to family detention including inadequate medical care including lack of prenatal care.

ICE's detention facilities have also been the subject of litigation. On June 13, 2007, the ACLU filed a class action lawsuit alleging inadequate medical and mental health care at the San Diego Correctional Facility. Included in this lawsuit was Francisco Castaneda, who spent eleven months in detention and made multiple attempts to get treatment for what turned out to be penile cancer. He was denied treatment that could have saved his life.<sup>42</sup> An additional lawsuit was filed at approximately the same time against the San Pedro facility to stop drugging detainees in order to facilitate their deportation.<sup>43</sup> The San Pedro facility also failed to treat a transgendered woman, Victoria Arrellano, with HIV/AIDS who died during her detention.<sup>44</sup> In October, 2007, officials closed the San Pedro facility to "carry out preventative maintenance" transferring 400 detainees to locations around the country, including the Northwest Detention Center, without notice to attorneys or families.<sup>45</sup>

### 3. U.S. Government Identified Similar Deficiencies

Deplorable conditions of immigration detention are not only reported by various civil rights and human rights organizations, the U.S. government has reported similar deficiencies. The U.S. Government Accountability Office (GAO)<sup>46</sup> was asked to review ICE's compliance with its own standards, its compliance review process, and how detainee complaints are processed.<sup>47</sup> When it observed 23 facilities from May 2006 through May 2007, GAO documented problems involving inadequate medical care, lack of access to legal materials, inadequate facility grievance procedures, and overcrowding. It also found systemic telephone problems, singling out the Northwest Detention Center as problematic. At facilities that used this system, GAO auditors encountered "significant problems in making connections to consulates, pro bono legal providers, or the DHS Office of the Inspector General (OIG) complaint hotline."<sup>48</sup>

<sup>40</sup> Chronic Indifference, 4-5.

<sup>41</sup> Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, "Locking Up Family Values: The Detention of Immigrant Families," February 2007, available at <http://www.womenscommission.org/pdf/famdeten.pdf>, (last accessed May 20, 2008) (hereafter Locking Up Family Values).

<sup>42</sup> American Civil Liberties Union, ACLU Sues Over Lack of Medical Treatment at San Diego, press release, <http://www.aclu.org/immigrants/detention/30095res20070613.html> (last accessed May 28, 2008).

<sup>43</sup> ACLU of Southern California, ACLU/SU Investigations of Forced Drugging, <http://www.aclu-sc.org/News/OpenForum/102460/102471/> (last accessed May 28, 2008). ICE admitted to the drugging and has officially ended this policy. See U.S. Ends Forced Drugging of Immigrants After Shocking Lawsuit, [http://www.aclu-sc.org/news\\_stories/view/102757](http://www.aclu-sc.org/news_stories/view/102757) (last accessed May 28, 2008).

<sup>44</sup> Chronic Indifference, 16.

<sup>45</sup> ABA Commission on Immigration, Open Letter to ICE Assistant Secretary Julie L. Myers, Regarding San Pedro Transfers, October 24, 2007, available at [http://www.abanet.org/publicserv/immigration/san\\_pedro\\_transfers\\_ltr102407.pdf](http://www.abanet.org/publicserv/immigration/san_pedro_transfers_ltr102407.pdf) (last accessed May 28, 2008).

<sup>46</sup> The U.S. Government Accountability Office (GAO) is an independent, nonpartisan agency that works for Congress, investigating how the federal government spends taxpayer dollars. See <http://www.gao.gov/about/index.html> (last accessed April 20, 2008).

<sup>47</sup> GAO ADS Report, Highlights, (2007), available at <http://www.gao.gov/new.items/d07875.pdf> (last accessed Mar. 9, 2008).

<sup>48</sup> *Ibid.*

The Homeland Security Act also established an Office of Inspector General (OIG), which is responsible for ensuring independent and objective audits, inspections, and investigations of the operations of DHS.<sup>49</sup> In December 2006, the OIG found numerous violations and criticized the amount of oversight in ICE contract facilities and the sufficiency of the ICE compliance monitoring system. The 2006 OIG report found problems with timely initial and responsive medical care; non-compliance with disciplinary policy; inadequate process for detainees to report abuse or civil rights violations; no handbooks telling detainees of their rights, responsibilities, and rules; inadequate handbooks in other languages.<sup>50</sup> These findings are consistent with the independent reporting of outside organizations.

#### **4. Poor Detention Conditions in the International Spotlight**

From April 30 to May 18, 2007, the United Nations Special Rapporteur of the Commission on Human Rights on the Rights of Migrants, Jorge Bustamante, visited the United States. The Special Rapporteur met with NGO's and immigrants who had spent time in detention, and toured one detention facility.<sup>51</sup> On March 5, 2008, he issued a scathing report against the United States and the immigration detention system.<sup>52</sup> In particular, the Special Rapporteur noted that the U.S. detention policy impaired an individual's right to obtain counsel and present their case; that detainees were often transferred thousands of miles from their homes without notice to their family or counsel; that individuals were often detained in remote locations that discourage private attorneys from taking cases; that access to mail and property is often limited and creates a significant obstacle. Notably, the Special Rapporteur attributed the use of mandatory and prolonged detention as a coercive mechanism, pressuring those with potential claims for relief to abandon their claims and self deport.<sup>53</sup>

Additionally, on October 12, 2007, attorneys with Rights Working Group and the Women's Commission for Refugee Women and Children testified before the Inter-American Commission on Human Rights regarding the detention of juveniles and the conditions of detention generally.<sup>54</sup> The testimony of Kerri Sherlock of the Rights Working Group focused primarily on multiple conditions issues and noted that the national detention guidelines are regularly violated. She highlighted widespread reports of lack of medical care for chronic conditions; shackling; use of solitary confinement for disciplinary purposes; inability to visit with family members; and difficulty accessing legal counsel. The group requested the Commission to issue an advisory opinion on the prolonged detention of children, families, and asylum seekers, and to visit select detention centers in the U.S. or alternatively, to appoint a Special Rapporteur to investigate and report on the detention of refugees and migrant children.<sup>55</sup> The Human Rights Commission's response is currently pending.

#### **5. All Reports Consistently Recommend Binding National Detention Standards**

All of the preceding reports have recommended, in addition to specific recommendations regarding conditions and care, that DHS codify the detention standards, making them

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<sup>49</sup> 6 U.S.C. § 113(b).

<sup>50</sup> DHS OIG Report, 1 (2006), available at [http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG\\_07-01\\_Dec06.pdf](http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_07-01_Dec06.pdf) (last accessed March 31, 2008).

<sup>51</sup> Jorge Bustamante, "Report of the Special Rapporteur on the human rights of migrants," Addendum, Mission to the United States of America, March 5, 2008, available at <http://daccessdds.un.org/doc/UNDOC/GEN/G08/112/81/PDF/G0811281.pdf?OpenElement> (accessed on May 20 2008) (hereafter Special Rapporteur Report).

<sup>52</sup> Special Rapporteur Report.

<sup>53</sup> *Ibid.*, 16-17.

<sup>54</sup> "Rights Working Group and Women's Commission for Refugee Women and Children Testify Before the Inter-American Commission on Human Rights, Speakers call for better treatment of vulnerable populations in detention,"

[http://www.womenscommission.org/projects/detention/iac\\_detention.php](http://www.womenscommission.org/projects/detention/iac_detention.php) (last accessed May 28, 2008).

<sup>55</sup> Testimony of Kerri Sherlock Talbot before the Inter-American Commission on Human Rights, available at [http://www.womenscommission.org/pdf/OAS\\_Testimony\\_KSherlock.pdf](http://www.womenscommission.org/pdf/OAS_Testimony_KSherlock.pdf) (last accessed May 28, 2008).

legally enforceable, as one important step toward proper oversight of detention conditions. In a 2007 GAO report, ICE officials said that they were currently in the process of revising the National Detention Standards based on *American Correctional Association Fourth Edition, Performance-Based Standards for Adult Local Detention Facilities*.<sup>56</sup> ICE Assistant Secretary Myers agreed to meet with some NGOs to discuss the revision of the detention standards; however the process is still not open and transparent to the public.<sup>57</sup>

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<sup>56</sup> GAO ADS Report, 8 (2007).

<sup>57</sup> *Chronic Indifference*, 15, n. 39.

## IV. International Human Rights Law

As mentioned above, this report measures conditions of immigrant detention primarily against international human rights law. International human rights are rights that individuals possess solely by virtue of being human. In a world of diverse languages, different cultures and competing religions, common ground can often be difficult to find. However, there are certain core values which are accepted by all civilized nations and which are incorporated into a large body of universal rights and freedoms to which all people are entitled. These rights and freedoms are found in human rights law.

Modern international human rights law emerged after WWII, when the abomination of the Nazi regime finally pushed the international community to organize and develop a framework for protecting the basic rights of every individual. In 1945, the United Nations (UN) was formed through the Charter of the United Nations, a legally binding treaty.<sup>58</sup> Under the U.N. Charter, the United States and other member nations agreed that one of the purposes of the U.N. was “promoting and encouraging respect for human rights and for fundamental freedoms for all...”<sup>59</sup> The U.N. established what it believed ought to be the basic human rights of every individual through the Universal Declaration of Human Rights (UDHR).<sup>60</sup> Shortly thereafter, the U.N. developed the International Covenant of Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>61</sup> These two covenants, along with the UDHR are known today as the “International Bill of Rights.”<sup>62</sup>

### A. Treaties

Treaties are international contracts or agreements made between two or more nations that become binding when signed and ratified. Under the United States Constitution, “all treaties shall be the supreme Law of the Land.”<sup>63</sup> Human rights treaties have been drafted by the U.N. and made available for signature and ratification to all 192 U.N. member states. However, signing a treaty does not always automatically mean that a nation is legally bound by that treaty. Depending on a country’s domestic policy, further action may need to be taken by that country for a treaty to become binding. In the United States, the President may sign a treaty, but the nation is not legally bound to the obligations of that treaty until the Senate ratifies it and enacts implementing domestic legislation.<sup>64</sup> However, even if implementing legislation is not enacted, once a treaty is signed, the signatory is obligated to refrain from taking any action which defeats the object and purpose of the treaty.<sup>65</sup>

Reservations and Understandings to treaties must also be taken into account when assessing the legal obligations set forth in a treaty. A country’s reservation may set out exceptions or special

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<sup>58</sup> U.N. Charter June 26, 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, *entered into force* Oct. 24, 1945, art.1, para. 1-4. (hereafter UN Charter).

<sup>59</sup> U.N. Charter art. 1, para. 3.

<sup>60</sup> Barbra Macgrady, “Resort to International Human Rights Law in Challenging Conditions in U.S. Immigration Detention Centers,” 23 *Brook. J. Int’l* 271 (1997).

<sup>61</sup> See Universal Declaration of Human Rights General Assembly resolution 217 A (III) f 10 December 1948 (hereinafter UDHR); International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, ratified by U.S. September 8, 1992 (hereinafter ICCPR); International Covenant on the Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976, (signed by U.S. 5 Oct 1977). 3 (hereafter ICESCR).

<sup>62</sup> See U.N. Factsheet No. 2 (Rev 1), The International Bill of Human Rights, available at <http://www.unhchr.ch/html/menu6/2/fs2.htm> (last accessed May 28, 2008).

<sup>63</sup> U.S. Const. art. VI, cl. 2.

<sup>64</sup> *Medellin v. Texas*, \_\_\_ U.S. \_\_\_, 128 S.Ct. 1346, 1356 (2008) (“while treaties ‘may comprise international commitments...they are not domestic law unless Congress has either enacted implementing statutes, or the treaty itself conveys an intention that it be ‘self-executing’ and is ratified on these terms.”).

<sup>65</sup> Vienna Convention on the Law of Treaties, art. 18 (a), May 23, 1969, 1155 U.N.T.S. 331, (hereafter Vienna Convention).

terms to the treaty agreement.<sup>66</sup> Under international law, a country has the right to make reservations to any section of a treaty as long as the reservation does not defeat the object and purpose of that treaty.<sup>67</sup> The United States often makes reservations to human rights treaties. Such reservations include stating that the treaty's obligations will in no way infringe on the Constitution of the United States.

## **B. Customary International Law**

Another source of international law is customary international law (CIL). CIL is the set of norms established through a general consensus of the international community and is evidenced by the general and consistent practice of States out of a sense of legal obligation.<sup>68</sup> A principle that becomes CIL is binding on all nations, even on new states and those states that have remained silent regarding such customs.<sup>69</sup> If a state is found to have been a persistent objector, however, it is not bound to the custom to which it has objected.<sup>70</sup> However, there are certain violations of international norms such as genocide, torture and extrajudicial killings which are believed to be so appalling that under international law, no state is allowed to contract out of or persistently object to such international norms.<sup>71</sup> These norms are known as jus cogens.

It is important to note that since the founding of our nation, customary international law has been part of United States law.<sup>72</sup> Treaties and other customary international law have been directly and indirectly applied by federal courts for more than 200 years.<sup>73</sup> Importantly, human rights have consistently been treated as fundamentally important to our nation's sense of justice<sup>74</sup> and treaties and customary international law protecting human rights should be strongly enforced in our domestic courts as well.<sup>75</sup>

## **C. Specific Rights under International Human Rights Law**

### **1. Right to Liberty: Freedom from Arbitrary Detention**

The right to liberty and freedom from arbitrary prolonged detention is a fundamental right, and applies to all persons regardless of nationality, citizenship, or immigration status.<sup>76</sup> A state may be found in violation of international law if, "as a matter of state policy, it practices, encourages, or condones... prolonged arbitrary detention."<sup>77</sup> Detention without due process is clearly considered arbitrary; however, detention may also be found to be arbitrary if "it is incompatible with the principles of justice or with the dignity of the human person."<sup>78</sup>

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<sup>66</sup> Vienna Convention, art. 41.

<sup>67</sup> Vienna Convention, art. 18, Sec. 2. A reservation is defined as "a unilateral statement...made by a State, when signing, ratifying, accepting, approving, or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State." Vienna Convention, art. 2.1(d) Sec. 1.

<sup>68</sup> Restatement (Third) of Foreign Relations Law §102.2 (1990) (hereinafter Foreign Relations Restatement).

<sup>69</sup> Foreign Relations Restatement §102, cmt. b.

<sup>70</sup> Foreign Relations Restatement §102, cmt. d.

<sup>71</sup> Foreign Relations Restatement §102, cmt. k.

<sup>72</sup> See Jordan J. Paust, "Customary International Law and Human Rights Treaties Are Law of the United States," 20 *Mich. J. Int'l L.* 301 (1999); see also Louis Henkin, *Foreign Affairs and the United States Constitution* 234, 510 n.20 (2 ed. 1996).

<sup>73</sup> See *U.S. v. The Paquete Habana*, 189 U.S. 453 (1903); see also *Filariga v. Pena-Irala*, 630 F.2d 876, 880-887 (2d Cir., 1980).

<sup>74</sup> See, e.g., *United States v. Haun*, 26 F. Cas. 227, 230-32 (C.C.S.D. Ala., 1860) (No. 15, 329) (stating that Jefferson was concerned about "violations of human rights" by the citizens of the United States).

<sup>75</sup> For instance, the U.S. Supreme Court, in deciding whether the juvenile death penalty is unconstitutional, found relevant the fact that the International Convention on the Rights of the Child prohibits the death penalty for juveniles and has been ratified by every country except the United States and Somalia. *Roper v. Simmons*, 543 U.S. 551, 576 (2005).

<sup>76</sup> This fundamental human right has been codified in all major human rights treaties and can be found in most developed legal systems throughout the world. Foreign Relations Restatement §102, cmt. k. This fundamental right applies to all persons regardless of nationality, citizenship, or immigration status. Foreign Relations Restatement §102, cmt. j. Article 9 (1) of the ICCPR states "[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention."

<sup>77</sup> Foreign Relations Restatement §702, cmt. e.

<sup>78</sup> *Ibid.*

The Human Rights Committee (HRC), the authoritative body which reviews complaints of violations of the ICCPR, has held that the use of detention should be reviewed periodically to justify ongoing detention.<sup>79</sup> When a State cannot provide adequate justification for prolonged detention, detainees should be released.<sup>80</sup> The HRC also reemphasized that arbitrariness “must not be equated with ‘against the law’ but be interpreted more broadly to include such elements as inappropriateness and injustice.”<sup>81</sup>

## 2. Prohibition on Torture and Cruel, Inhuman or Degrading Treatment

The prohibition against torture and cruel, inhuman or degrading treatment (CIDT) is a fundamental human right that has been recognized as a principle of customary international law.<sup>82</sup> It has been codified in all major human rights treaties, including the ICCPR and the Convention against Torture (CAT), both of which have been ratified by the U.S.<sup>83</sup> Under Article 7 of the ICCPR, the U.S. is prohibited from subjecting anyone to torture or to cruel, inhuman or degrading treatment or punishment.<sup>84</sup> The underlying goal of Article 7 is to protect the physical and mental integrity and the dignity of every individual.<sup>85</sup> In addition to preventing and protecting against CIDT, the U.S. is also obligated to adhere to Article 10(1) of the ICCPR, which requires that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”<sup>86</sup> The prohibition against CIDT includes physical pain as well as mental suffering.<sup>87</sup>

Under both the ICCPR and the CAT, the United States is not only prohibited from inflicting CIDT, but is also obligated to make sure all people within its jurisdiction—regardless of whether or not they are lawfully within its jurisdiction—are protected against CIDT.<sup>88</sup> Under the CAT, the United States is also obligated to ensure that all government officials are complying with the Convention’s obligations concerning detained or imprisoned persons.<sup>89</sup>

It is important to note that the United States has attached several reservations, understandings and declarations to the prohibition of CIDT under both the ICCPR and CAT. In each reservation, the United States has stated that it is bound to prevent CIDT only to the extent such conduct violates the Fifth, Eighth and/or Fourteenth Amendments

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<sup>79</sup> ICCPR art. 3; *A v. Australia*, Communication No. 560/1993, Human Rights Committee, 59th session, 24 March -- 11 April 1997.

<sup>80</sup> *Ibid.* Reasons that could justify a prolonged detention could include the lack of cooperation with an investigation or the likelihood of absconding. Detention should be reviewed regularly and a decision to continue detention must be made on an individual basis.

<sup>81</sup> *Ibid.*

<sup>82</sup> Foreign Relations Restatement, Reporter’s Notes 11.

<sup>83</sup> ICCPR art. 10; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art.16, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987 (signed by U.S. April 18, 1988, ratified by U.S. October 21, 1994), (hereinafter CAT).

<sup>84</sup> ICCPR art. 7.

<sup>85</sup> Human Rights Committee, cmnt. 20, art. 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30, note 2 (1994).

<sup>86</sup> ICCPR art. 10.

<sup>87</sup> Human Rights Committee, cmnt. 20, art. 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994). Equally important, under the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Article 7(1) states that cruel, inhuman or degrading treatment or punishment should be interpreted broadly to protect against abuse whether it be physical or mental. This can include the holding of a detained or imprisoned person in conditions which deprive him of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time. G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988), Article 7(1).

<sup>88</sup> CAT art. 16.

<sup>89</sup> CAT art. 10, 11. Article 10 provides that “[e]ach State Party shall ensure that education and information regarding the prohibition against torture are full included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.” Article 11 declares, “Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.”

to the U.S. Constitution.<sup>90</sup> According to U.S. law, CIDT is found when the alleged cruel, inhuman and degrading treatment constitutes punishment.<sup>91</sup> The Human Rights Committee of the ICCPR has stated that it believes this limitation fails to meet the object and purpose of the ICCPR.<sup>92</sup> Thus, U.S. interpretation of CIDT is not in line with international human rights law. However, the U.S. is required to refrain from and prevent CIDT at least when conditions violate the Fifth Amendment to the Constitution – i.e., when such conditions constitute “punishment.”<sup>93</sup>

### 3. Right to Legal Access and Due Process

The right to due process found in international law guarantees that individuals – whether citizens or non-citizens – shall not be deprived of their liberty without the opportunity to be heard. The right to legal access and due process is a general principle of international law that has been codified in all human rights treaties and is found in all the major legal systems.<sup>94</sup> This right not only applies to all U.S. citizens, but to all persons subject to U.S. jurisdiction.<sup>95</sup> The ICCPR states that “[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”<sup>96</sup> Article 14 under the ICCPR guarantees the right to legal assistance.<sup>97</sup>

The UN’s Office of the High Commission for Human Rights has issued a Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (hereinafter UN Principles for Detained Persons).<sup>98</sup> The UN principles were adopted to give further guidance on minimum due process requirements, and thus should be used as a tool in assessing a detainee’s due process rights. In addition to reiterating the right to a court hearing and the assistance of counsel,<sup>99</sup> the Principles state that all detained persons who do not speak the language used by those responsible for his or her detention, must be provided information regarding his or her rights “*in a language which he understands the information...*”<sup>100</sup> In addition, the principles dictate that detained persons also should be provided with “adequate time and facilities for consultation with his legal counsel.”<sup>101</sup> The Principles also state that an “[i]nterview between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement officer.”<sup>102</sup>

Confidentiality and access to counsel is imperative to providing adequate due process. The right to legal access and due process is clearly a right guaranteed under customary

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<sup>90</sup> U.S. reservations, declarations, and understandings, Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, Cong. Rec. S17486-01 (daily ed., Oct. 27, 1990); U.S. reservations, declarations, and understandings, International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01, reservation 1(3) (daily ed., April 2, 1992).

<sup>91</sup> See discussion above, on pages 26-27, and notes 150-157.

<sup>92</sup> Human Rights Committee, Comments on the United States of America (Fifty-third session, 1995), Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, U.N. Doc. CCPR/C/79/Add 50 (1995).

<sup>93</sup> U.S. Const. amend. V; U.S. reservations, declarations, and understandings, Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, Cong. Rec. S17486-01 (daily ed., Oct. 27, 1990); U.S. reservations, declarations, and understandings, International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01, reservation 1(3) (daily ed., April 2, 1992).

<sup>94</sup> See UDHR, ICCPR art. 2(2), 14.

<sup>95</sup> Foreign Relations Restatement §711, cmnt. i.

<sup>96</sup> ICCPR art. 9(4).

<sup>97</sup> ICCPR art. 14.

<sup>98</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988) (hereafter UN Principles).

<sup>99</sup> UN Principles art. 11.

<sup>100</sup> UN Principles art. 14 (emphasis added).

<sup>101</sup> UN Principles art. 18(2).

<sup>102</sup> UN Principles art. 18(4).

international law as well the ICCPR, ICESCR and all regional human rights treaties.<sup>103</sup> The right to legal access and due process is also a general principle of law found in the majority of legal systems around the world, including the United States.<sup>104</sup>

#### 4. Right to Food and Medical Care

The UDHR declares that every human being has the right “to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”<sup>105</sup>

Although the ICCPR and CAT, treaties that the U.S. has ratified, do not require States to provide food and medical care, the Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the UN Principles for Detained Persons all acknowledge the basic right to be free from hunger and to be able to access both physical and mental healthcare.<sup>106</sup>

The right to health care is currently being debated within the U.S. while it continues to evolve significantly within international human rights law.<sup>107</sup> In addition, UN Principles for Detained Persons 24 states that in addition to ensuring a person entering detention has a proper medical exam, “medical care and treatment shall be provided whenever necessary.”<sup>108</sup> In addition, several regional human rights bodies have held that denying the right to health care may constitute CIDT.<sup>109</sup>

#### 5. Right to Family Unity

The right to family unity is deeply rooted in international human rights law and is an emerging customary international law norm.<sup>110</sup> It is codified in all major human rights treaties, including the UNDCHR,<sup>111</sup> ICCPR, ICESCR, Convention on the Rights of the Child, African Charter on the Rights and Welfare of the Child, the European Convention on Human Rights and the American Convention on Human Rights.<sup>112</sup>

The UN Principles for Detained Persons expands on the right to family unity, stating: “A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to

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<sup>103</sup> ICCPR art. 14; *see also* Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 (hereinafter American Convention); Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, C.E.T.S. No. 5 (hereinafter European Convention); and Organization of African Unity, African [Banjul] Charter of Human and Peoples’ Rights, Jun. 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) (hereinafter African Charter).

<sup>104</sup> U.S. Const. amend. V, XIV; ICCPR art. 14; *See also* American Convention, European Convention and African Charter.

<sup>105</sup> UDHR art. 25.

<sup>106</sup> UDHR art. 25; ICESCR art. 11; UN Principles art. 24.

<sup>107</sup> For example, *see* ICESCR art. 12, providing that “State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

<sup>108</sup> UN Principles art. 24.

<sup>109</sup> *See Nathaniel Williams v. Jamaica*, Communication No. 609/1995, U.N. Doc. CCPR/C/61/D/609/1995 (4 November 1997) (Holding that the denial of mental health for a death row inmate violated articles 7 and 10, paragraph 1, of the ICCPR). *See also D v. United Kingdom*, 24 EHRR 423 (European Court of Human Rights), (deporting a person dying in the advanced stages of AIDS back to a country that would not be able to provide the necessary medical care constituted inhuman treatment).

<sup>110</sup> Sonja Starr and Lea Brilmayer, “Family Separation as a Violation of International Law,” 21 *Berkeley J. Int’l L.* 213 (2003).

<sup>111</sup> The UDHR recognizes that “[n]o one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.” UDHR art. 12.

<sup>112</sup> ICCPR art. 17 and 23; ICESCR art. 10; Convention on the Rights of the Child art. 16, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2, 1990, (signed by U.S. Feb. 16, 1995) (hereinafter CRC); African Charter on the Rights and Welfare of the Child art. 10 and 18 adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986 (hereinafter African Charter); American Convention art. 11 and 17 O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, *entered into force* July 18, 1978, (signed by U.S. June 1, 1977); European Convention art. 8, [European] Convention for the Protection of Human Rights and Fundamental Freedoms, (ETS 5), 213 U.N.T.S. 222, *entered into force* Sept. 3, 1953, as amended by Protocols Nos 3, 5, and 8 which entered into force on 21 September 1970, 20 December 1971 and 1 January 1990, respectively.

communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.”<sup>113</sup>

### **Chen Jiang**

Chen came to the United States from China in 1994, at the age of 16, when smugglers brought him across the border from Canada. He worked in a factory in New York under conditions that amounted to slave labor. He believed at the time that his employers obtained legal immigration status for him, but they did not. Subsequently, Chen married a U.S. citizen, had two children, and had begun a successful restaurant business. One day, immigration officials came to his home with guns pointed at him and his wife, who was then six months pregnant. The officials tried to arrest them both; however, his wife was lucky to have her U.S. passport at hand.

Since Chen had been in detention for fifteen months and could not earn money for his family, his house and car had been taken by the bank, and his restaurant has gone out of business. His wife and children subsist largely on the savings Chen accrued from his business. He has never seen his youngest child, who was born since his detention. Chen says that he cries at night when nobody can see him because he thinks about the problems that his wife and children are presently facing. Chen has an ongoing legal case and is applying for asylum.

## **6. The Rights of Refugees under International Law**

### **Definition of a Refugee**

**any** person who has “a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return it.”

Nations have recognized that there are certain communities and groups of people who are the most vulnerable and require further protections. Refugees and asylum-seekers have been identified as one of these most vulnerable communities. Additional treaties and rights apply to both asylum-seekers and refugees.

The primary source of international law regarding the treatment of refugees is the Convention Relating to the Status of Refugees (hereinafter “the Convention”) drafted shortly after and as a result of WWII, as well as the Protocol Relating to the Status of

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<sup>113</sup> UN Principles art. 19.

Refugees (to which the U.S. is a party) that expanded the temporal geographic protections of the original Convention.<sup>114</sup> The Convention codifies previous international instruments relating to refugees and provides the most comprehensive codification of the rights of refugees under international law. *The United Nations High Commissioner for Refugees* (UNHCR) *Detention Guidelines* provide further guidance to the convention articles regarding the detention of refugees. Although the guidelines are not binding, the U.S. Supreme Court has stated that a similar document, *the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status*, provides significant guidance when interpreting the Convention.<sup>115</sup> The same should be true of the guidelines.

**a. The Convention on Refugees Prohibits Most Detentions of Refugees**

According to the United Nations High Commissioner on Refugees (UNHCR), the detention of refugees and those seeking asylum is “inherently undesirable.” Pursuant to the Convention, recognized refugees and asylum seekers whose cases are pending should not be detained except for a brief period of time to confirm their identity.<sup>116</sup> In addition, in order to prevent psychological harm to vulnerable refugees, unaccompanied elderly persons, torture or trauma victims and persons with a mental or physical disability should only be detained “on the certification of a qualified medical practitioner that detention will not adversely affect their health and well being. In addition there must be regular follow up and support by a relevant skilled professional. They must also have access to services, hospitalization, and medication counseling etc. should it become necessary.”<sup>117</sup>

The Convention places obligations on all States in relation to refugees, whether or not they have been formally recognized as refugees.<sup>118</sup> Article 26 requires that refugees who are lawfully in the territory have the right to move freely in that territory. The term “lawfully” under Article 26 is satisfied by the fact that United States law authorizes refugees to remain in the U.S. while their status is being verified.<sup>119</sup>

Article 31 states that refugees who have entered the country illegally or without authorization should not be penalized, provided that they present themselves within a reasonable amount of time and show good cause for their illegal entry. Penalization would include unnecessary detention. Article 31(2) prohibits restrictions on refugees’ movements unless such restrictions are necessary, typically long enough only to ascertain his or her identity.<sup>120</sup> Article 31 is especially relevant to the detention of immigrants because refugees who enter the United States often do so unlawfully. Refugees often must flee at a moment’s notice, and there is little time to secure a valid visa. In addition, fear of persecution by the government they are fleeing may require the use of false identification.

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<sup>114</sup> Convention Relating to the Status of Refugees, 189 U.N.T.S. 150, *entered into force* April 22, 1954; Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, *entered into force* Oct. 4, 1967.

<sup>115</sup> *L.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 438-439 (1987).

<sup>116</sup> U.N. High Commissioner for Refugees, Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers, Guideline 3 (1999), *available at* <http://www.unhcr.org.au/pdfs/detentionguidelines.pdf> (last accessed April 17, 2008). The only exception is for those who pose a threat to national security. *Ibid.*

<sup>117</sup> UNHCR, Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, Detention Guideline 7, 7 (February 1999) *available at* <http://www.unhcr.org.au/pdfs/detentionguidelines.pdf> (last accessed on Apr. 20, 2008).

<sup>118</sup> James C. Hathaway, *The Rights of Refugees under International Law*, 278 (Cambridge: Cambridge University Press, 2005).

<sup>119</sup> UN Doc. E/AC.32/SR.15, Jan. 27, 1950, 15 (“The stage between ‘irregular’ presence and the recognition or denial of refugee status, including the time required for exhaustion of any appeals or reviews, is also a form of ‘lawful presence.’”).

<sup>120</sup> U.N. High Commissioner for Refugees, Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers, Guideline 3 (1999), *available at* <http://www.unhcr.org.au/pdfs/detentionguidelines.pdf> (last accessed April 17, 2008).

It is important to note that asylum seekers arriving in the U.S. without proper documents are subject to ‘expedited removal’ in which undocumented immigrants, including asylum-seekers, arriving at ports of entry are subject to immediate removal without a judicial hearing.<sup>121</sup> If the immigrant expresses a desire to apply for asylum or a fear of persecution in his or her home country, he or she will be afforded an initial “credible fear” hearing by an immigration officer. If the officer finds he or she has no credible fear, he or she will be removed without the ability to appeal or have his or her case heard by an immigration judge. If he or she is found to have a “credible fear,” he or she will be subjected to mandatory detention until a decision is made on his or her case by an immigration judge, or an appellate body, a process that could take years.<sup>122</sup>

The United States’ practice of detaining refugees pursuant to expedited removal procedures is a violation of Article 26 and Article 31 of the Convention. The U.S. is violating Article 26 by restricting the movement of refugees in general and Article 31(2) by detaining refugees for longer than for identification purposes. Unless the refugee poses a threat, refugees should not be detained even while their formal recognition of their status is pending.

Despite Article 31(2) and the Department of Homeland Security having the discretion to parole refugees, the U.S. has recently made it more difficult to parole refugees currently in detention. On November 6<sup>th</sup> 2007, ICE issued new guidelines on the paroling of refugees in detention.<sup>123</sup> These guidelines further limit the release of refugees from detention and are inconsistent with international refugee and human rights law.

#### **b. Treatment of Refugees in Detention**

Refugees should not be held in detention for any amount of time longer than necessary to procure their correct identification, and once they are in detention, they are entitled to certain protections under international law. For example, Article 16 of the Convention requires that refugees have free access to courts of law with regard to legal assistance. Asylum seekers should also have the right and the means to communicate with their representatives in private. It is important to ensure that detention not constitute an obstacle to an asylum-seekers’ pursuance of their asylum application.<sup>124</sup>

For those refugees who are in detention, the UNHCR, has specific guidelines on how those in detention should be treated. *Guideline 10* addresses specifically the conditions of detention most relevant to this report. The Guideline lists the ten items that contracting parties to the Refugee Convention/Protocol should respect when detaining refugees:

- Initial screening of all asylum seekers at the outset of detention to identify trauma or torture victims, for treatment in accordance with Guideline 7.
- Segregation within facilities of men and women; children from adults (unless relatives).
- Use of separate detention facilities to accommodate asylum-seekers.

<sup>121</sup> Immigration and Nationality Act, 8 USCA §1225(b)(1)(A)(1), cited in James C. Hathaway, *The Rights of Refugees under International Law*, 373 (Cambridge: Cambridge University Press, 2005).

<sup>122</sup> Ruth Ellen Wassum, US Immigration Policy on Asylum Seekers: CRS Report for Congress, 5, <http://www.fas.org/sgp/crs/misc/RL32621.pdf>, May 5, 2005 (last accessed April 20, 2008).

<sup>123</sup> ICE, Parole of Arriving Aliens Found to Have a “Credible Fear” of Persecution or Torture, directive 7-1.0, November 6, 2007, available at <http://www.humanrightsfirst.org/media/asy/2007/statement/385/index.htm> (last accessed May 21, 2008).

<sup>124</sup> U.N. High Commissioner for Refugees, Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers, Guideline 6 (1999), available at <http://www.unhcr.org.au/pdfs/detentionguidelines.pdf> (last accessed April 17, 2008).

- Opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel.
- Opportunity to receive appropriate medical treatment, and psychological counseling where appropriate.
- Opportunity to conduct some form of physical exercise through daily indoor and outdoor recreational activities.
- Opportunity to continue further education or vocational training.
- Opportunity to exercise their religion and to receive a religious diet.
- Opportunity to have access to basic necessities, i.e., beds, shower facilities, basic toiletries, etc.
- Access to a complaints mechanism, (grievance procedures) made available in different languages.<sup>125</sup>

Of the 41 detainees interviewed for this report, 16 were refugees as defined by the Convention. Of those 16, four had told us they had already been given formal refugee status. The others had pending asylum cases.

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<sup>125</sup> *Ibid*, Guideline 10 (1999), available at <http://www.unhcr.org.au/pdfs/detentionguidelines.pdf> (last accessed April 17, 2008).

## V. Applicable Domestic Law

Although this report is measuring conditions of detention primarily against international human rights law, we have also chosen to measure them against the requirements of our domestic law. Immigrant detainees include lawful permanent residents, asylum-seekers, undocumented individuals, and, in some cases, United States citizens.<sup>126</sup> Like all persons in the United States, they should be afforded the protection of our Constitution and laws before, during, and after the time spent in civil detention.

### A. Federal Law and Regulations Governing Conditions of Detention

DHS has the full authority over administration of all immigration-related laws, including laws to regulate detention conditions in contract facilities such as the NWDC.<sup>127</sup> The one and only binding law which sets standards for detainees' treatment in non-ICE facilities is simply a federal regulation which cites "four mandatory criteria" for immigration detainees:

- (1) 24-hour supervision,
- (2) Conformance with safety and emergency codes,
- (3) Food service, and
- (4) Availability of emergency medical care.<sup>128</sup>

As mentioned above, federal immigration authorities adopted generalized detention standards. The 2000 standards, adopted by the former INS under the name of National Detention Standards (NDS), were established to ensure the "safe, secure, and humane conditions for all detainees."<sup>129</sup>

The 38 standards are contained within the Detention Operations Manual (DOM) and cover a broad spectrum of areas such as telephone access, legal access, medical services, detainee grievance procedures, food services, and recreation.<sup>130</sup> The standards establish the minimal detainee rights and protections that must be adhered to by Special Processing Centers (SPCs) and Contract Detention Facilities (CDFs). ICE officials have stated that these standards usually apply to state or local facilities as well,<sup>131</sup> with some exceptions.<sup>132</sup> However, the standards are not even enforceable by detainees to whom the standards do apply since the standards have not been adopted as laws.<sup>133</sup>

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<sup>126</sup> While ICE does not track the number of U.S. Citizens who are detained or deported, it does admit to detaining U.S. Citizens. See Gary Mead, Deputy Director, Office of Detention and Removal Operations, Regarding a Hearing on "Problems with ICE Interrogation, Detention and Removal Procedures," Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law, 2-3 (Feb. 13, 2008), available at <http://judiciary.house.gov/media/pdfs/Mead080213.pdf> (last accessed May 27, 2008).

<sup>127</sup> 8 U.S.C. § 1103(a)(1), (a)(11); see *Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003) ("It is clear that the INS does not vest the power over detained aliens in the wardens of detention facilities because the INS relies on state and local governments to house federal INS detainees. Whatever daily control state and local governments have over federal INS detainees, they have that control solely pursuant to the direction of the INS.")

<sup>128</sup> 8 C.F.R. §235.3(e).

<sup>129</sup> U.S. Dep't of Homeland Security, U.S. Immigration and Customs Enforcement, Detention Management Program, ¶ 7, <http://www.ice.gov/partners/dro/dmp.htm> (last accessed March 31, 2008).

<sup>130</sup> Since the original adoption of the standards in September 2000, two additional standards regarding staff-detainee communication and detainee transfer have been added. DOM, Detainee Transfer, <http://www.ice.gov/doclib/partners/dro/opsmanual/DetTransStdfinal.pdf> and DOM, Staff-Detainee Communication, <http://www.ice.gov/doclib/partners/dro/opsmanual/DetTransStdfinal.pdf>; see also DHS OIG Report, 2 (2006), [http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG\\_07-01\\_Dec06.pdf](http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_07-01_Dec06.pdf) (last accessed Mar. 31, 2008).

<sup>131</sup> GAO ADS Report, 9, n.8 (2007), available at <http://www.gao.gov/new.items/d07875.pdf> (last accessed Apr. 20, 2008).

<sup>132</sup> For instance, a law library is not required if the CDF is designed to detain persons for 72 hours or less. DOM, Access to Legal Material, 1, <http://www.ice.gov/doclib/partners/dro/opsmanual/legal.pdf> (last accessed April 20, 2008).

<sup>133</sup> Immigration scholars and human rights organizations have made convincing arguments that DHS could and should make the standards legally enforceable against ICE and contract facilities. See National Immigration Project of the National Lawyers Guild, Detention Petition, 8-31, [http://www.nationalimmigrationproject.org/detention\\_petition\\_final.pdf](http://www.nationalimmigrationproject.org/detention_petition_final.pdf) (last accessed May 11, 2008).

One standard entitled the Detainee Services Standard requires every facility to prepare a site-specific handbook for detainees. The handbook must be provided to each detainee upon admission to the facility. The handbook is to describe the “services, programs, and opportunities available through various sources, including the facility, INS, private organizations, etc.”<sup>134</sup>

After DHS was created in 2003, ICE has been responsible for the oversight and implementation of the National Detention Standards, including the site specific detainee handbooks. While ICE receives significant support and funding for detention services, the care and treatment of detainees continues to be a “significant challenge to ICE, and concerns have been raised by members of Congress and advocacy groups about the treatment of aliens while in ICE custody.”<sup>135</sup> These concerns have led to some effective changes in ICE’s overall compliance with the standards.<sup>136</sup> However, the standards are not codified in law and the rights provided under the standards remain largely unenforceable.<sup>137</sup>

## **B. Constitutional Rights of Immigrant Detainees**

The constitutional protections of substantive and procedural due process of law extend to all persons held in immigration detention. In 2001, the U.S. Supreme Court in *Zadvydas v. Davis* unequivocally reaffirmed that all immigrants—documented or not, and even those subject to a final order of deportation—are entitled to the due process protections of the 5<sup>th</sup> Amendment.<sup>138</sup> That landmark decision also reaffirmed a basic principle of justice with respect to detention—that arbitrary and indefinite detention is unconstitutional.<sup>139</sup>

### **1. Prohibition Against Cruel and Inhuman Treatment**

As mentioned above, in its reservations to various treaties prohibiting CIDT, the United States has indicated it will honor such obligations to the extent that conditions would amount to CIDT or punishment under the Eighth and Fifth Amendments to the Constitution. The Eighth Amendment prohibits cruel and unusual punishment and applies to individuals incarcerated within the prison system.<sup>140</sup> Immigration detainees, however, are not convicted prisoners and this protection does not directly apply to them.<sup>141</sup> Instead, like all government detainees,<sup>142</sup> immigration detainees derive their rights and liberty interests from the Fifth Amendment’s Due Process Clause, including its prohibition against punishment without due process of law.<sup>143</sup>

Since detention is not “punishment,” immigration detainees are owed even greater rights under due process than those owed to incarcerated criminal offenders under the Eighth Amendment.<sup>144</sup> The Eighth Amendment protects prisoners from cruel and unusual

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<sup>134</sup> DOM, Detainee Handbook, 1, <http://www.ice.gov/doclib/partners/dro/opsmanual/handbk.pdf>.

<sup>135</sup> GAO ADS Report, 1 (2007).

<sup>136</sup> See DHS OIG Report, 44-52 (2006).

<sup>137</sup> “According to ICE officials, ICE has never technically terminated an agreement for noncompliance with its detention standards. However, under ICE’s Detention Management Control Program policies and procedures, ICE may terminate its use of a detention facility and remove detainees or withhold payment from a facility for lack of compliance with the standards.” GAO ADS Report, 9, (2007).

<sup>138</sup> *Zadvydas v. Davis*, 533 U.S. 678, 678-80 (2001) (the Due Process Clause applies to all persons within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (even one whose presence is unlawful is entitled to constitutional protections under the 5th and 14th amendments); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (the “fourteenth amendment to the constitution is not confined to the protection of citizens.”)

<sup>139</sup> *Id.* at 691.

<sup>140</sup> U.S. Const. amend. VIII.

<sup>141</sup> *Cadet v. Bulger*, 377 F.3d 1173, 1173-75 (11<sup>th</sup> Cir., 2004).

<sup>142</sup> Government detainees in this category include pre-trial criminal detainees, civil detainees, and criminal detainees who, after finishing their criminal sentence, are held as civil detainees under civil law.

<sup>143</sup> U.S. Const. amend. V; *Youngberg v. Romeo*, 457 U.S. 307, 317 (1982).

<sup>144</sup> *Youngberg*, 457 U.S. at 324 (holding that persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish).

punishment while the Fifth Amendment protects immigration detainees from any condition or behavior amounting to punishment.<sup>145</sup>

The U.S. Supreme Court has also determined that if a condition constitutes cruel and unusual punishment under the Eighth Amendment, it is a presumptive denial of due process under the Fifth Amendment.<sup>146</sup> In addition, the U.S. Court of Appeals for the Ninth Circuit has held that conditions of confinement for civil detainees must be superior not only to convicted prisoners, but also to pre-trial criminal detainees.<sup>147</sup>

For 120 years, the Supreme Court has held that liberty interests protected by due process include reasonably safe conditions of confinement, freedom from unreasonable bodily restraint, right to adequate food, shelter, clothing, and medical care, and adequate training of personnel required by these interests.<sup>148</sup>

## 2. Rights to Family Unity

The U.S. Constitution's Due Process Clause, which protects everyone within the United States' jurisdiction, also protects the right of the family. Domestic courts have repeatedly recognized and protected the important role of family as the fundamental group unit in society.<sup>149</sup>

Historically, courts considered how a person's immigration status would affect his or her family and took the family into account in rendering immigration decisions.<sup>150</sup> While the effect on a family may still be considered under some forms of relief, two 1996 immigration reform laws signaled a general shift away from respecting the integrity of the family. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Antiterrorism and Effective Death Penalty Act (AEDPA) significantly expanded the criminal offenses defined as "aggravated felonies," for which immigrants, even lawful permanent residents, are automatically subject to deportation.<sup>151</sup> Such decisions are not subject to judicial review, foreclosing the possibility of a court choosing to consider the effect on a family.<sup>152</sup> Laws such as the IIRIRA and the AEDPA do not allow for considering family relationships, and in particular, they do not allow for considering the fundamental importance of relationship between parent and child.

However, recent Supreme Court decisions have re-emphasized that immigration laws must be in accord with due process, which includes the importance of the family as the fundamental unit of society.<sup>153</sup> In addition, to the necessity of amending these

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<sup>145</sup> *Bell v. Wolfish*, 441 U.S. 520, 535 (1979) ("In evaluating the constitutionality of conditions or restrictions of pretrial detention ..., we think that the proper inquiry is whether those conditions amount to punishment of the detainee. For under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.")

<sup>146</sup> *City of Revere v. Mass. General Hosp.*, 463 U.S. 239, 244 (1983) ("In fact, the due process rights of a person in Kivlin's situation are at least as great as the Eighth Amendment protections available to a convicted prisoner.")

<sup>147</sup> *Jones v. Blanas*, 393 F.3d 918, 918-922 (9th Cir., 2004) (holding that civil conditions of confinement which were the same as or similar to those for criminal prisoners or even pretrial detainees were presumptively punitive and unconstitutional).

<sup>148</sup> *Youngberg*, 457 U.S. at 307, 315-16.

<sup>149</sup> For example, in *Moore v. City of East Cleveland*, the Supreme Court stated that "Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural." 431 U.S. 494, 503 (1997). See also *Toxcel v. Granville*, 530 U.S. 57, 65, (2000).

<sup>150</sup> See Sonja Starr & Lea Brilmayer, "Family Separation as a Violation of International Law," 21 *Berkeley J. Int'l L.* 213, 236 (2003).

<sup>151</sup> § 348 (a) of the IIRIRA amended § 212(h) to preclude family hardship waivers for lawful permanent residents convicted of an "aggravated felony," and § 321(a) of IIRIRA simultaneously expanded the definition of "aggravated felony". Pub.L. No. 104-208, 321 (a), 348(a), 110 Stat. 3009, 3546 (1996).

<sup>152</sup> On April 14, 1996, Congress amended 8 U.S.C. § 1105 (a) to add subsection (a)(10), which provides: "Any final order of deportation against an alien who is deportable by reason of having committed a criminal offense covered in [8 U.S.C. § 1251(a)(2)(A)(iii)] shall not be subject to review by any court". Pub. L. No. 104-132, 440(a), 110 Stat. 1214, 1276-77 (1996).

<sup>153</sup> For instance, in *Zadvydas*, the Court stated that "...once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary or permanent." 533 U.S. at 284.

immigration laws to allow for family unity to be taken into consideration in immigration and deportation decisions, the federal government is obligated to respect the rights of family when a person is in immigration detention.

## VI. Conditions at the Northwest Detention Center (NWDC)

### A. Background

The Northwest Detention Center (NWDC) was built on the Tacoma tideflats, a former toxic waste dump and Superfund cleanup site, amid controversy in April, 2004. The NWDC was originally owned and operated by Correctional Services Corporation (CSC). In 2005, it was purchased by The Geo Group, Inc., a publicly traded, privately-run company primarily in the private prison business with facilities located around the globe. The NWDC was originally contracted to house 500 immigrants. With some structural changes inside the pods, or living centers, the NWDC now has the capacity to detain 1,000 individuals.

Since the NWDC opened, the number of individuals detained has continually increased just as the nation's detention population has increased. In the first four months of its operation from April to July 2004, NWDC admitted 1,855 individuals into the facility.<sup>154</sup> Over the next 12 months, NWDC admitted 6,456 individuals.<sup>155</sup> From June 2006 to June 2007 the number grew to 8,849.<sup>156</sup>

Of the approximately 1000 beds at the NWDC, the current average daily population is 985, with roughly 890 men and 95 women.<sup>157</sup> As of February 2008, the NWDC had 997 detainees.<sup>158</sup>

Detainees at the NWDC represent approximately 80 countries with the majority from Mexico, Guatemala, El Salvador, Honduras, China, Vietnam, and India.<sup>159</sup> Detainees are held in several different pods, or living areas, with men and women separated.

The average length of detention at NWDC is 35 days, with the longest period being four years, served by an individual who has been in detention eight years and was transferred to the NWDC when it opened.<sup>160</sup> While the facility is designed for short term detention, the reality is that there are a significant number of detainees held for long periods of time. Many of the detainees interviewed for this report had been in detention for an extended period of time.

### B. Oversight

Internal oversight of the NWDC consists of two annual internal reviews, one prepared by GEO and the other by ICE.<sup>161</sup> When conducting a review, ICE gives NWDC 30 days notice and spends two to three days at the NWDC to generate a report.<sup>162</sup>

Out of the four annual ICE reports on the NWDC, it has given GEO a rating of "good" three times and "superior" once with respect to compliance of detention standards. Yet, despite these ratings, ICE noted numerous violations of detention standards each year. For instance, employees were not

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<sup>154</sup> 2004 ICE Annual Review of NWDC, July 27-29, 2004.

<sup>155</sup> 2005 ICE Annual Review of NWDC, July 19-21 2005.

<sup>156</sup> 2007 ICE Annual Review of NWDC, June 19-21, 2007.

<sup>157</sup> NWDC tour with Jack Bennett, Asst. Field Office Director for NWDC, in Tacoma, WA (Feb. 25, 2008).

<sup>158</sup> *Ibid.*

<sup>159</sup> Northwest Detention Center Population, October 21, 2007, received from Jack Bennett during NWDC Tour, on file with author.

<sup>160</sup> *Ibid.*

<sup>161</sup> NWDC tour with Jack Bennett, Asst. Field Office Director for NWDC, in Tacoma, WA (Feb. 25, 2008).

<sup>162</sup> ACLU, "U.S. Immigration System: Substandard Conditions of Confinement and Ineffective Oversight, Prepared for the United Nations Special Rapporteur on the Human Rights of Migrants," May 3, 2007, on file with author (hereafter ACLU Substandard Conditions); *see also* ICE Annual Reviews of NWDC, on file with author.

documenting the time and date on which detainees were fed. ICE also found that staff-detainee communications was deficient, in that detainee request forms were not always being addressed or resolved timely. ICE further noted that officers were not logging request forms or documenting issues that had been resolved.<sup>163</sup>

In 2006, ICE noted even more concerns, such as detainees failing to receive their property back, problems with access to the telephones, high level offenders mixed with people with no criminal record, and lack of communication with the detainees' attorneys by the deportation officer.<sup>164</sup>

In 2007, ICE again found problems, such as improper serving of food and kitchen staffing. Furthermore, the report noted that "on one occasion during dinner feed-up the detainees received over cooked and cold meals."<sup>165</sup> All meals had to be collected and replaced. ICE also found that detainees' grievances were not being addressed in a timely fashion.<sup>166</sup>

Just recently, NWDC officials reported that they had hired a consulting firm to perform third-party, independent reviews of the NWDC's compliance with the National Detention Standards.<sup>167</sup> According to the officials, the auditor comes once a month to interview approximately 20 detainees.<sup>168</sup> Because NWDC just implemented this additional review, it is unclear at this time whether the review process is proving effective, or whether the results of such audits will be made public.

## **C. Conditions and Violations of Rights**

Our interviews with detainees revealed several major concerns regarding conditions at the Northwest Detention Center. Although certain of the conditions might not be problematic for those in detention for a short period of time, they certainly become problematic the longer a detainee is in detention. As mentioned previously, the NWDC was designed for short-term detention, but in reality, it is a facility for medium to long-term detention for many. Below is a summary of results of our interviews and the most prominent concerns raised.

### **1. Legal Due Process**

Detainees and attorneys who were interviewed expressed concerns regarding legal due process. Attorneys' concerns included the lack of adequate meeting rooms, insufficient training of officers working at the front desk and those monitoring attorney rooms, long waits to see detainees, and the unexpected transfer of detainees to other locations. Detainees were concerned about having legal mail opened and read, privacy and confidentiality when conversing with their attorneys (whether on the telephone or in person), and access to sufficient legal material, especially for those working on their own cases.

#### **A. Attorney's Concerns Regarding Due Process and Access to Representation**

A series of interviews with immigration attorneys revealed that there are numerous obstacles in the representation of those in detention. These obstacles result in many attorneys not wanting to represent detainees, even those who are able to pay. The attorneys noted a number of concerns. First, for the nearly 1,000 detainees at the center,

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<sup>163</sup> The Annual Report indicated that the Field Office has implemented a revised schedule mandating that ICE officers be present in detainee living units at least three times per week. The schedule is now posted in each pod. Additionally, a detainee request form log has been implemented to track the status of detainee concerns. 2005 ICE Annual Review of NWDC, July 19-21, 2005, on file with author.

<sup>164</sup> 2006 ICE Annual Review of NWDC, June 20-22, 2006, on file with author.

<sup>165</sup> 2007 ICE Annual Review of NWDC, June 19-21, 2007, on file with author.

<sup>166</sup> *Ibid.*

<sup>167</sup> NWDC tour with Jack Bennett, Asst. Field Office Director for NWDC, in Tacoma, WA (Feb. 25, 2008).

<sup>168</sup> *Ibid.*

there are only four attorney-client meeting rooms. The rooms were designed to accommodate a facility that held 500 detainees and were not modified when the population doubled. This has resulted in attorneys having to wait for long periods of time before talking with their clients. In the past, getting an interview room in a timely manner was not a problem as the attorney could phone ahead and reserve a room. However, without explanation, this system changed. As a result, a visiting attorney never knows what to expect with regard to wait time. Interviewers for this project experienced wait times of 1 to 2 hours to see a detainee. It takes approximately 45 minutes to travel from Seattle, where most attorneys are located. Thus, the combined travel and wait time make it either too expensive for detainees to retain counsel, or makes it not worthwhile for attorneys to take detained clients.

**David, a Seattle based immigration attorney**, stated that the time used traveling to Tacoma and waiting at the detention center adds a lot of cost to detention cases. This high cost deters potential clients from seeking representation by his firm. Attorneys at David's firm try to diminish these problems by trying to see as many clients as possible during each trip to the detention center. However, the attorneys cannot see all of the clients they had hoped to visit in one day due to several factors: (1) limited meeting space, (2) suspension of detainee movement during headcount, and (3) inconsistent detention center policies.

Second, the inconsistent treatment of attorneys by some of the officers working at the front desk and monitoring the interview rooms is a problem. For instance, attorneys are typically given expedited entry into the facility (i.e. moving to the front of the line before other visitors), yet sometimes officers refuse to let them through. Also, certain officers have improperly knocked on the windows of the interview rooms and entered, in order to gauge how much longer an interview was going to take. Interviewers for this project experienced officers who barged into the interviewing room without notice on two occasions. In another instance, interviewers noticed an officer who stood outside the door of the interview room and stared through the window into the room. Overall, there is the belief on the part of the attorneys we talked with that the officers need more training and better communication skills.

Third, when headcount takes place, the detainees cannot be transported between the pods and the visitation area of the detention center. If an attorney arrives but there is a delay in bringing the detainee to the interview room, he or she can expect to wait an additional half hour to an hour for the headcount to be completed in addition to the ordinary wait time for the arrival of the detainee.

Fourth, detention cases are difficult because of unexpected transfers of detainees to different locations. ICE is obligated to inform a detainee's attorney when they transfer a detainee to another facility; however this does not always happen. The attorneys who were interviewed thought this practice was completely unfair.

The interviewers involved in this project can corroborate the attorney statements regarding the frustrations experienced while attempting to meet with detainees. Although we had sent in the proper authorization letter and had received approval for law students to meet with detainees in the attorney conference rooms, in the beginning the officers

could not find our authorization and would not admit us. This also occurred on two occasions with interpreters whose authorization could not be found. There was no computerized system; rather, the authorization letters were kept in a large binder, and each time the officer at the front desk would spend time thumbing through the letters to find our authorization.

There were several occasions where upon arrival, we were informed that the detainee had in fact been released or deported, sometimes days before. This was after confirming the day before or on the morning of the interview that a detainee was still in detention. It appeared to us that often the person with whom we were speaking was not actually reviewing the list to ensure the person was still in detention. In fact, it was typically on these occasions that the problem occurred. Moreover, sometimes the NWDC staff was not always forthcoming with information, even though the proper name and identification number of the detainee was provided.

We typically had to wait before we could begin the interview, and often the wait was significant – up to several hours. Sometimes this appeared to be due to the fact that no attorney rooms were available (there are only four attorney rooms and often they were already in use), and other times it just appeared the NWDC was slow to bring the detainee to the attorney area. A few times, after being admitted and waiting several hours to conduct an interview, we would be informed that a detainee would be unavailable because the headcount had started. Finally, on a few visits to NWDC we did not conduct an interview because no rooms became available even after several hours. Sometimes the staff would ask us to meet with the detainee in the hallway, but we would not do so given that there was no semblance of privacy.

Finally, several interviewers in this investigation discovered that conversations taking place inside the interview rooms can be easily overheard by someone standing outside of the door. Thus, officers standing in the hallway where the attorney rooms are located can hear what transpires in these rooms and this in effect limits the confidentiality of such exchanges. This directly conflicts with the Detention Operations Manual, which states, "... officers may observe such meetings visually through a window or camera to the extent necessary to maintain security, as long as the officer cannot overhear the conversation."<sup>169</sup>

## **B. Detainees' Concerns Regarding Due Process**

Detainees we spoke with described incidents where they had legal mail opened or not sent; were not able to readily make confidential telephone calls to their lawyers; and in one case, not even allowed to take necessary documents to the courtroom.

### **i. Attorney/ Client Confidentiality**

Of significant concern to detainees was the lack of confidentiality when sending mail to their attorneys and when talking to their attorneys over the telephone. The Detention Operations Manual distinguishes between general and special correspondence – special correspondence would include letters to attorneys. With regard to special correspondence the manual states, "Outgoing special correspondence will not be opened, inspected, or read."<sup>170</sup> However, several of the detainees spoke of problems that they had encountered when attempting to send legal mail to attorneys. For unexplained reasons, these detainees' legal mail was not delivered, not sent, or tampered with en route.

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<sup>169</sup> DOM, Visitation, 1, <http://www.ice.gov/doclib/partners/dro/opsmanual/visit.pdf> (last accessed Apr. 12, 2008).

<sup>170</sup> DOM Manual: Correspondence and Other Mail, 1, <http://www.ice.gov/doclib/partners/dro/opsmanual/corresp.pdf> (last accessed Apr. 12, 2008).

A number of detainees also had similar misgivings regarding telephone conversations with their attorneys. Each pod contains four payphones, and above the telephones is a sign that reads: "All calls are recorded and monitored." The sign is only in English. Detainees told us that a specific request could be submitted to allow for a "non-monitored" call using a telephone in a different location. This often is not realistic. It takes at least three days to get access to the confidential telephone after one sends a request. Some detainees did not even know how to access the private telephone.

According to Jack Bennett, ICE Assistant Field Office Director, detainees can submit a request to make non-monitored calls to their attorneys. After receiving a request, detention staff calls the attorney and confirm that they represent this particular detainee. They then program that attorney's number into the system. Afterwards, when the detainee calls the attorney's number, there should be no call monitoring. However, there may still be a recorded message at the beginning of the call that would indicate the call was being monitored, even though it was not. Therefore, some detainees may not trust that their calls are actually confidential. In addition, they cannot make confidential calls using these telephones to potential lawyers who have not yet agreed to representation. Mr. Bennett confirmed detainees who wish to make a confidential call to potential lawyers, or those who may not trust their calls are confidential, can put in a request to use a phone outside of their housing unit, often in the intake area, to make unmonitored calls.

The Detention Operations Manual states, "The facility shall ensure privacy for detainees' telephone calls regarding legal matters. For this purpose, the facility shall provide a reasonable number of telephones on which detainees can make such calls without being overheard by officers, other staff or other detainees."<sup>171</sup> Detainees reported that it is difficult to find privacy because there are always a number of officers standing around "listening in," even at the telephone designated for non-monitored attorney calls. Listening in by officers seems to occur in part because these non-monitored telephones are located in the busy "intake" area of the facility.

**ii. Lack of Access to Legal Material**

Several of the detainees mentioned that the law library lacks sufficient material to adequately research their cases and that much of the material seems dated. One detainee told us that it was particularly difficult to find information on immigration and *habeas corpus* cases. For detainees working on their own appeals, this can pose significant barriers.

Detainees are also not permitted to have access to newspapers or the internet. This type of information about what is happening in one's home country may be useful and necessary as evidence to support an asylum claim.

**C. Conditions Relating to Due Process at the NWDC Violate Both International and Domestic Law**

Under principles of international law "a detained person shall be entitled to have the assistance of legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it."<sup>172</sup>

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<sup>171</sup> DOM Telephone Access, 1, <http://www.ice.gov/doclib/partners/dro/opsmanual/teleacc.pdf> (last accessed Apr. 12, 2008).

<sup>172</sup> UN Principles for Detained Persons, art. 17. The right to legal access and due process are fundamental international principles codified in every human rights treaty and this right has extensively been recognized as customary international law. The right to legal access and due process for detained persons has been expanded on in the U.N. Principles for Detained Persons. These guidelines were provided by the U.N. to provide some

International law also states that “interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.”<sup>173</sup>

Under domestic law, although courts do not afford individuals in deportation proceedings the right to a publicly-paid counsel under the Sixth Amendment, the violation of the right to access pro bono or privately-paid counsel is a violation of both statutory guarantees<sup>174</sup> and the Fifth Amendment’s right of due process.<sup>175</sup> Courts of appeal have treated the relationship between the statutory and constitutional right to counsel in a variety of ways.<sup>176</sup> However, it is agreed that, at minimum, the due process right of access to courts includes being able to have access to privately-paid or pro bono counsel.

At NWDC, the difficulties in accessing counsel are due to the relatively remote location of the detention center,<sup>177</sup> long waits, lack of punctuality and professionalism from the officers, the insufficient number of meeting rooms, and regularity of detainee transfers without notice.<sup>178</sup> This cumulatively results in a serious lack of access to counsel, and thus due process for detainees.

Second, attorneys must regularly engage in personal consultations in order to effectively represent their clients. At minimum, this requires a place for “private interviews, consultations, and necessary examinations” within the detention building.<sup>179</sup> The opening of mail, the lack of practical access to non-monitored telephones, officers barging into meetings unannounced, and the overhearing of confidential attorney/client meetings and calls by officers curtails a detainee’s ability to receive effective assistance of counsel.

## 2. Detainees Pressured to Sign Papers

One of the most commonly heard complaints by the detainees was the fact that they are often pressured to sign papers, or are asked to sign papers whether they understand them or not. Approximately one fourth of the detainees stated that they were either pressured to sign papers, overheard others being pressured or forced to sign papers, or were presented with papers that they could not understand and were required to sign them. According to some detainees, if they refused to sign, officers exerted psychological pressure upon them by way of verbal threats and even physical intimidation.

Furthermore, an attorney who was interviewed informed us that ICE improperly advises newly arriving detainees to take voluntary departure or removal. Detainees who take this advice never get to see attorneys. Those who sign removal orders are unaware of the fact that the removal

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minimum standards for countries to implement in order to be in compliance with international law. In order to comply with international human rights treaties and customary international law, the NWDC should adhere to these guidelines.

<sup>173</sup> UN Principles for Detained Persons, art. 18.4.

<sup>174</sup> The statutory right is encoded in INA § 240(b)(4), which states that “the alien shall have the privilege of being represented, at no expense to the Government, by counsel of alien’s choosing who is authorized to practice in such proceedings.” 8 U.S.C. § 1229a(b)(4)(A). This statutory provision has been tracked in the applicable INS regulations. See 8 C.F.R. §§ 3.16(b), 240.3, 292.1, and 292.5.

<sup>175</sup> See *Uspango v. Ashcroft*, 289 F.3d 226, 231 (3rd Cir., 2002).

<sup>176</sup> See *Ponce-Leiva v. Ashcroft*, 331 F.3d 369, 372-373 (3rd Cir., 2003) (“According to the Ninth Circuit, due process is violated only if a violation of the statutory right to counsel is accompanied by significant prejudice); *Castro-O’Ryan v. U.S. Dep’t. of Immigration and Naturalization*, 847 F.2d 1307, 1313 (9th Cir., 1987). The First Circuit has recognized both rights, but it has considered them without distinguishing them. See, e.g., *Nelson v. INS*, 232 F.3d 258, 261 (1st Cir., 2000). The Eighth Circuit has also recognized both, and it has suggested (but not explicitly stated) that in order for a due process violation to be found, the deprivation must be especially egregious. See, e.g., *United States v. Torres-Sanchez*, 68 F.3d 227, 230-31 (8th Cir., 1995).

<sup>177</sup> Though not many immigration cases have considered the remoteness of facilities, *Nunez v. Boldin*, which was dismissed without opinion on appeal, originally granted a preliminary injunction which reasoned that because of the remoteness of facility at which detainees were held, prohibiting attorneys from visiting their clients after 3:30 p. m. was unduly restrictive. 537 F Supp 578, (1982, SD Tex), *dismd without op* (CA5 Tex) 692 F2d 755.

<sup>178</sup> The failure to notify an attorney who has entered his appearance of any proceeding involving his client is a denial of due process. See *Mendez v. INS*, 563 F.2d 956 (9th Cir., 1977).

<sup>179</sup> ABA House of Delegates, *ABA Standards for Criminal Justice: Providing Defense Services*, App. B., 68-69. (3d ed. 1993).

orders can be summarily reinstated if they ever return to the U.S. Moreover, the removal orders use generic language that the detainees cannot understand and which is never explained to them. In the past, these forms were written in Spanish and English, but now are only available in English.

#### **A. Pressure to Sign Papers Violates Both International and Domestic Law**

In addition to the due process rights found under both international and domestic law discussed in the previous section, international law further states that, “A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred...”<sup>180</sup> In addition, since at least 1943, the United States Supreme Court has held that elementary fairness requires immigrants be allowed to make intelligent decisions about the documents they are signing.<sup>181</sup> ICE and GEO officers violate international and domestic law when they pressure detainees to sign legal documents and when they ask them to sign such documents without the detainee understanding what he or she is signing.

#### **Hector Pena Ortiz**

Hector came to the United States from Mexico in 1976 with a student visa. He attended college from 1976-1980 and became a legal permanent resident in 1981. He was convicted of a misdemeanor in 1989 and was picked up by immigration officials in 2005. He had been detained at the NWDC since; almost three years at the time of our interview.

When he first arrived in detention he had a continuous fear of being deported. At his initial intake he had to sit for six hours, sweating. He couldn't sleep at night, and still has problems sleeping at night. For a couple of months he took sleeping medication but he stopped because it made him feel like a zombie. He said many other detainees take medicine to sleep. Eventually, he realized they could not deport him while his case is pending, so he was no longer afraid.

He has been asked twice to sign papers that would allow ICE to deport him immediately. The first time, they shackled him and took him to the intake room. An officer told him to sign the papers. He argued with them, and told the officers that he had a pending appeal, but they did not believe him. He refused to sign the documents and asked them to check his file again. Eventually, an officer did check his file and confirmed that he had an appeal in federal court.

The second time, he was brought to the intake room, shackled, and told he should sign the papers and leave immediately. This time they had the wrong name. They were referring to him as Mr. Ortiz, even though he had always been called Mr. Pena-Ortiz before. He refused to sign the document again, despite their insistence and pressure. Eventually, the officers acknowledged that they had the wrong detainee.

<sup>180</sup> UN Principles, art. 14.

<sup>181</sup> See *Johnson v. United States*, 318 U.S. 189, 197 (1943) (holding that an intelligent waiver of options is required by elementary fairness and to hold otherwise would be to entrap persons); see also *Partible v. INS*, 600 F.2d 1094, 1096 (5th Cir., 1979) (remanding a deportation proceeding where the respondent had waived counsel without sufficient understanding of the complexities of her situation.)

### 3. Filing of Grievances

**Wilson** stated that when he filed a grievance, the officer he was writing the grievance about was the first to see it, and Wilson felt that the officer retaliated on this basis. Wilson also mentioned that one of the detainees who had filed several grievances seemed to have his bunk searched an inordinate number of times, which seemed unusual given that the searches are to be random.

When a detainee makes a request, he or she can file an informal kite. For example, a kite is required when a detainee wishes to use the law library or make non-monitored attorney phone calls. When, however, a detainee wishes to report a serious problem or make an official complaint, he or she files an official grievance. Of the 17 detainees we interviewed who had filed formal grievances, 12 experienced problems that included: 1) unanswered grievances; 2) a slow response time; 3) inconsistent decisions by the NWDC administration; 4) claims by officers that they had not received the grievances; 5) grievances being thrown away; 6) that grievances could only be filed in English as a practical matter; and 7) officials returning grievances because they are not “specific enough.” In one instance, a detainee told us that officers informed him that “stolen property” was not an appropriate issue for a grievance. The detainees who had filed grievances all shared the sentiment that the process was futile and consumed a lot of time with little or no result. Corroborating these concerns is a 2007 ICE audit of the NWDC revealing that “the procedures are in place but there are several grievances which were not addressed in a timely manner, some were actually resolved a month later.”<sup>182</sup> In addition, a detainee provided us his grievance that was several pages in length and very detailed, but was returned as “not specific enough.” We verified that the grievance was highly detailed and specific.

Beyond futility, there was also fear on the part of some detainees that the filing of a grievance would result in retaliation by the officers. In fact three of the detainees specifically stated that they did not file grievances because of fear of retaliation. While the Detentions Operations Manual explicitly states, “Staff will not harass, discipline, punish, or otherwise retaliate against a detainee lodging a complaint,”<sup>183</sup> detainees continue to observe retaliatory behavior and sentiment. Detainees told us that they often must hand the grievance to the very officer they have filed the grievance about. Notably, ICE’s 2007 Northwest Detention Center Annual Review found at least one documented, substantiated case of staff harassing, disciplining, penalizing, or otherwise retaliating against a detainee for lodging a complaint. This was a grievance titled “Protection From Harm” which should have raised red flags, but instead went unresolved for nine days.<sup>184</sup>

#### **A. Treatment of Grievances May Violate Both International and Domestic Law**

Under due process protections of both international and national law, the ability to be heard and/or complain about conditions is critical. In addition, when the Human Rights Committee of the ICCPR had occasion to comment on the prohibition of cruel, inhuman and degrading treatment, it stated that there is a right to lodge a complaint against

<sup>182</sup> 2007 ICE Annual Review of NWDC, June 19-21, 2007.

<sup>183</sup> DOM Manual, Detainee Grievance Procedures, 4, <http://www.ice.gov/doclib/partners/dro/opsmanual/griev.pdf> (last accessed Apr. 12, 2008).

<sup>184</sup> 2007 ICE Annual Review of NWDC, June 19-21, 2007.

maltreatment and seek appropriate redress as well as to have that complaint investigated promptly, impartially and by competent authorities that can make the remedy effective.<sup>185</sup> This right to seek redress for maltreatment is effectively eliminated when the grievance process discourages detainees from filing because of futility or fear of retaliation.

In addition, under domestic law, if the above-described problems related to grievance procedures constitute official practice, or if the official acted with “deliberate indifference” with regard to the grievance, it would constitute a violation of due process.<sup>186</sup> The flippant manner in which grievances are lost, ignored, or dismissed likely constitutes deliberate indifference in some cases. Thus, detainees likely have valid complaints of constitutional violations from the current grievance procedure.

#### **4. Treatment by Officers**

The majority of the detainees interviewed stated that most of the officers conduct themselves professionally and are fair with the detainees. There were, however, reported instances of serious misconduct by officers at the facility that involve allegations ranging from physical and verbal abuse in the forms of inappropriate physical contact, racial slurs and demeaning comments, to sexual harassment and strip searches.

##### **A. Verbal and Physical Abuse**

Approximately one out of every three detainees interviewed noted instances of verbal abuse and degrading comments from officers. Of these detainees, most felt that certain officers over-stepped their bounds and abused their power, creating an atmosphere of intimidation. As an example, one particular officer was cited several times by detainees as exceptionally belligerent and arrogant toward detainees. Several detainees independently described how this officer tore down shower curtains and or threw them open before the detainee’s shower had ended, leaving the detainee naked and exposed before the entire pod. This same officer was also heard making comments about prior gang affiliations and actively attempting to “wind up” detainees by provoking them to the brink of anger. Additionally, several detainees described an incident where this officer asked the detainees if they were watching a certain program on the television. When they answered in the affirmative, the officer turned off the television for no apparent reason except as a show of power. One detainee commented, “He just wants to show us who is boss” and “He treats us like we’re bad criminals.”

While ICE states their policy is that “the use of force is authorized only after all reasonable efforts to resolve a situation have failed,”<sup>187</sup> several of the detainees interviewed commented that on occasion certain officers have inappropriately grabbed detainees by the arm and have also pushed or shoved detainees. For example, when Joseph refused to get into line to take his ADHD medication, an officer grabbed him and pushed him into a wall. The officer also threatened to send Joseph to segregation if he did not get into the line. When Joseph told the medical staff that he did not want to take the medication, they told him it was not a problem.

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<sup>185</sup> Human Rights Committee, General Comment 20, Article 7 (forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/ GEN/ 1/ Rev.1, 30 (1994).

<sup>186</sup> If the complained-of condition is maintained by the detention center and found to be “promulgated” by the Center, it is assumed that the alleged constitutional violation was intended. See, e.g., *Hare v. City of Corinth*, 74 F.3d 633, 644 (5th Cir., 1996) (*en banc*). This triggers the reasonable relationship test of *Bell v. Wolfish*, resulting in a constitutional violation if it is found that the condition is not reasonably related to a legitimate and non-punitive governmental objective. 441 U.S. 520, 539 (1979). With regard to the “deliberate indifference” violations, see *Scott v. Moore*, 114 F.3d 51, 54 (5th Cir., 1997) (*en banc*).

<sup>187</sup> DOM, Use of Force, 1, <http://www.ice.gov/doclib/partners/dro/opsmanual/useoffor.pdf> (last accessed Apr. 12, 2008).

In addition, female detainees reported that there were certain female officers who were verbally and physically inappropriate with the detainees. Some officers in the female pod reportedly yell in a menacing tone, threaten physical violence, and push or shove detainees. One officer refers to Mexican detainees as “cucarachas”, the Spanish word for “cockroaches.” Another officer tells detainees, many of whom fear persecution in their home countries, that she wishes they would get deported. Detainees fear retaliation from the officers and believe that certain officers will lie about a detainee in order to put them in segregation. One officer sprayed cleaning chemicals on detainees’ food while they were eating. Although the officer eventually apologized, the detainees did not get additional food. Language barriers also contribute to the mistreatment of detainees by certain officers. One detainee was screamed at and shoved up against a wall for failing to follow orders in English, when the officer knew she only spoke Spanish.

#### **B. Sexual Harassment**

Two of the detainees interviewed discussed inappropriate sexual behavior and comments by two different officers. The most serious of the allegations was an escalating series of incidents ranging from sexual innuendos and predatory grooming to overt and inappropriate touching by an officer toward a detainee. Some of the alleged “grooming” behavior in this circumstance involved the officer offering “gifts” that made the detainee feel like the officer was “trying to buy him.” The detainee stated that the officer created an atmosphere of shame and embarrassment for him because the officer’s statements and actions were of such an overtly sexual nature. For example, on one occasion the officer rubbed the detainee’s buttocks in an effort to “wake him up.” This detainee told us that the inappropriate behavior made him fear for his safety and that other detainees in his pod noticed the inappropriate behavior as well.

Additionally, another detainee living in a different pod stated that an officer had stayed in one cell for a prolonged amount of time to talk with a particular detainee. This officer had been overheard asking detainees how sexually active they were and referring to their genitals. The detainee noted that the officer seemed to favor certain detainees and brings in items for these detainees.

#### **C. Strip Searches**

Five of the detainees complained of strip searches. Two of the instances were related to attorney visits. For example, one detainee described being strip searched after attorney visits and without his consent. He estimated it happened to him 5-10 times for a period of 2-3 months. It stopped after he told his lawyer. During these searches, he was stripped completely naked and made to stand in front of officers, as well as turn and bend over. He was not touched, but felt humiliated.

Another detainee, Claire, was strip searched multiple times. Claire was transferred by ICE, along with several other detainees, from NWDC to SeaTac Federal Detention Center because of overcrowding. Upon arrival at SeaTac Detention Center, a female officer strip searched Claire. Although the officer did not find anything, Claire was segregated in an uncomfortably cold room. After a period of time, an officer transferred Claire from this room to the area where the rest of the detainees were being held. Claire described each strip searching incident as shameful and embarrassing. Claire was also strip searched after attorney visits at the NWDC.

**Claire described a strip search incident:** “Here we were stripped completely naked, a female officer told me to open my legs wide and she peeped into my vagina and later, she asked me to turn my back-side and expose my anus [by separating the cheeks with her hands], I was told to cough several times while in this position- with the officer looking at my private parts. We were forced to subject ourselves to this dehumanizing treatment. For several days afterward I wept and have continued to have nightmares about this treatment. I have been so embarrassed and ashamed of this treatment, that it has hurt my self.”

#### **D. Inhuman Treatment by U.S. Marshalls During Transfer to Alabama**

One of the most disturbing events we were told about by six detainees involved a transfer of detainees on two flights to Alabama in the summer of 2007 in anticipation of overcrowding pending an ICE workplace raid in Portland, OR. The detainees interviewed, all of whom were subjected to the transfer, uniformly told the same story of abuse and neglect at the hands of United States Marshals. Such abuse included both physical abuse, and not allowing detainees to use the restroom for over 7 hours, resulting in some defecating in their seats and effectively having to sit in their own feces.

According to some of the detainees, while in custody of U.S. Marshals, but before the plane took off (at Boeing field), a Cambodian detainee who was mentally ill yelled something at the officers that provoked them. Four marshals began to hit and punch the detainee, mostly in the face. One detainee, Charles, explained that this particular detainee was mentally ill and had been in segregation the entire time Charles had been detained. Apparently, other detainees attempted to explain the man’s mental illness to the marshals to no avail. The marshals put a hood on the detainee before putting him on the plane. Charles said that the detainee at one point fell down some steps because he lost balance and that it was apparent that the detainee had trouble breathing the entire time the hood was on during the flight. He also said that detainee was bleeding and that his face was black and blue.

Some of the detainees also stated that they were not allowed to use the bathrooms on the flight. The detainees had not been informed about not being able to use the bathrooms prior to the seven hour flight and their requests were ignored by the officers. The detainees reported that at least three detainees on one of the planes defecated in their seats. One elderly Indian man who had defecated himself particularly seemed singled out. The marshals released one of the elderly man’s hands and told him to clean himself up, but he was only given some towels and not allowed out of his seat. He was not able to clean up the feces and remained sitting in it for the entire trip.

In addition, while on the airplane, the detainees were handcuffed and their feet were shackled. The detainees were given a sandwich, but could not eat it because of the handcuffs.

#### **E. Treatment by Officers Violates Both International and Domestic Law**

Under principles of international law, “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”<sup>188</sup> Under domestic law, conditions or restrictions on immigration detainees that are “not reasonably

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<sup>188</sup>ICCPR, art. 10.

related to a legitimate goal” and result in violations of personal security and liberty constitute a denial of due process.<sup>189</sup> So are conditions that amount to “punishment.”<sup>190</sup> To the extent that detainee claims of physical abuse, sexual harassment, arbitrary strip searches, and neglect and abuse in the transfer to Alabama are unrelated to a legitimate government objective, such conditions and behaviors constitute arbitrary infringements on liberty and security. For example, with regard to the detainee in the transfer to Alabama who was forced to sit in his own feces, a court has found that a similar situation constituted cruel and unusual punishment.<sup>191</sup>

The NWDC falls short of meeting the standards of both international and domestic law when detainees are verbally disrespected and pushed and shoved by officers. Furthermore, NWDC fails to treat detainees with respect for their inherent dignity by exposing them to officers who engage in sexually inappropriate behavior. Finally, much of what has been described also likely constitutes cruel, inhuman, and degrading treatment, a violation of both international law and the Constitution’s Fifth Amendment because such treatment also constitutes punishment.

## 5. Medical Care

The NWDC medical clinic is administered by the United States Public Health Service. Approximately 75 percent of the detainees we interviewed had experienced medical problems that required medical attention at the NWDC medical clinic. Of the total number of detainees who had sought medical attention, about 80 percent were dissatisfied with either the treatment that they received or the procedure for sick call.

In addition, the information derived from our interviews suggests that there is a widespread problem of inadequate access to medical care at the NWDC. For example, detainees reported problems with medical access for emergency medical needs. Detainees also reported problems with medical access to treat preexisting medical conditions. Moreover, there were instances of long delays prior to medically necessary surgical procedures, unresponsiveness to requests for medical care, and pure refusal to treat painful medical conditions.

### A. Access to Emergency Medical Care

The National Detention Standards state that “(e)ach facility will have a written plan for the delivery of 24-hour emergency health care when no medical personnel are on duty at the facility, or when immediate outside medical attention is required.”<sup>192</sup> The standards also state that the “[d]etention staff will be trained to respond to health-related emergencies within a 4-minute response time.”<sup>193</sup> In particular, the ICE website claims that the NWDC clinic is staffed 24 hours a day, seven days a week.<sup>194</sup> However, this does not appear to be accurate. For example, when a food poisoning outbreak occurred on August 11, 2007, and over 300 detainees complained of severe abdominal cramps and diarrhea, officers told detainees they had to wait until the in-house medical clinic opened in the morning before they could receive treatment. It was only because of the large volume of complaints that the administration eventually called the clinic staff to come in earlier.

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<sup>189</sup> *Block v. Rutherford*, 468 U.S. 576, 584 (1984).

<sup>190</sup> See notes 150-157, above.

<sup>191</sup> *Mitchell v. Newryder*, 245 F.Supp.2d 200 (D.Me., 2003) (Detainee’s complaint sufficiently pled both that he was denied minimal civilized measure of life’s necessity and that county jail correctional officer had a culpable state of mind, as required for Eighth Amendment cruel and unusual punishment claim; complaint alleged that detainee was purposefully subjected to dehumanizing conditions when he was denied access to facilities both to go to the restroom and to clean himself up during five hour period in which he sat in his feces, and that officer displayed hostility towards him, using insulting and offensive language and expressions.)

<sup>192</sup> DOM, Medical Care, 5, <http://www.ice.gov/partners/dro/opsmanual/medical.pdf> (last accessed Apr. 12, 2008).

<sup>193</sup> DOM, Medical Care, 6, <http://www.ice.gov/partners/dro/opsmanual/index.htm>.

<sup>194</sup> *Ibid.*

However, by that time, many of the detainees affected by the outbreak were unable to be seen at the medical clinic due to the long lines that formed when staff finally arrived. The information derived from the interviews suggests this was not an isolated occurrence. There were several incidents where detainees reported that officers had simply refused requests for emergency medical care.

**Charlie, who has been held at the NWDC for approximately two months,** described an elderly Mexican man who was suffering from a high fever. Once notified, emergency care personnel gave him a pill and told him to lie down. However, the fever got worse, and other detainees in the pod requested that someone from emergency care come and help this man. In response, the emergency staff told the detainees to put the man in the shower to cool him off. It was not until very early in the morning that emergency staff finally arrived and administered medical care.

## **B. Quality of Treatment**

The National Detention Standards state that “[e]ach facility will have a mechanism that allows detainees the opportunity to request health care services provided by a physician or other qualified medical officer in a clinical setting. The health care provider will review the request slips and determine when the detainee will be seen.”<sup>195</sup> Many of the detainees complained of the sick call and triage procedures related to medical care. Male detainees reported that they can access medical care in two ways. They can file a “kite” or request for medical attention and wait for a response, or go to “sick call” during the week. Female detainees do not have “sick call.” Sick call is Monday through Friday at 6 a.m. When sick call is announced, detainees wishing to be seen by the nurse proceed to the processing doorway and line up in the main corridor. Detainees are required to stand in line while waiting and may not sit down to rest at any time. Because there is normally a large number of detainees who seek medical attention, the line is long and detainees are often forced to wait in a standing position before seeing a nurse. Some detainees experienced an hour long wait, others described a wait time of up to four hours, making them miss breakfast. The line is often longest on Monday mornings.

One detainee, who suffered from both chronic back and foot pain, complained that his ailments were further aggravated while standing in line for sick call. Moreover, detainees also complained that after waiting uncomfortably in line for several hours, they would often receive ineffective medical treatment. Another detainee, who suffered from stomach pains so intense that he cried in pain, complained that he was only issued Pepto-Bismol after waiting in the sick call line. The Pepto-Bismol did nothing to relieve his excruciating stomach pains. Consequently, many detainees who are extremely sick may not pursue medical attention because the long periods of standing may aggravate their medical condition and the medical treatment is ineffective.

When a detainee files a “kite” requesting medical attention, the response time can be over a week. One detainee filed a kite when he had a fever and was taken to the medical clinic seven days later. Other detainees experienced similar periods of time, up to two weeks.

<sup>195</sup> DOM, Medical Care, 5, <http://www.ice.gov/doclib/pi/dro/opsmanual/medical.pdf> [last accessed May 21, 2008].

### **C. Access to Outside Medical Care**

Another concern is the treatment of detainees who require outside medical care. When the circumstances necessitate outside medical care, detainees are escorted by armed officers and must wear shackles around their hands and feet, even if they are not considered dangerous. The National Detention Standards state that “this means the detainee will attend the sickbed ... in restraints,” and “escorts can exercise no discretion in this matter; they are prohibited from removing the detainee's restraints.”<sup>196</sup> One such detainee, who had suffered a long episode of seizures, remained shackled for the entire five days that she spent at the hospital, even though she was not considered dangerous. When she was first seen in the emergency room, the attending doctor requested the shackles be removed in order to treat her, but the officer was unable or unwilling to remove them. Such extreme treatment of immigration detainees can create the misperception that the detainees are actual violent criminals. It was reported by administrators at the NWDC that outside doctors are often reluctant or simply refuse to treat detainees.<sup>197</sup>

One detainee was undergoing treatment for a cancerous brain tumor at the time he was arrested in his home by ICE and admitted to the NWDC. Juan informed officers and medical staff of his medical condition, and requested that they contact the hospital treating him. Staff at the hospital that was treating Juan contacted a doctor at the NWDC and offered to send his medical records, but the doctor declined, saying Juan would be deported soon. Juan had multiple seizures while in detention, an expected consequence of his condition that was likely to increase with changes in his medication. Hospital staff acknowledged that if deported to Mexico, Juan would not be able to access adequate medical treatment and his terminal condition would worsen. Juan was deported earlier this year.

Recently, the New York Times obtained a list of detainees who have died in immigration detention nationally. One of those detainees, Jesus Cervantes-Corona, died at the NWDC on December 13, 2006.<sup>198</sup> His cause of death is listed as coronary artery disease. We did not uncover any information regarding this person's death through our interviews, but urge ICE and GEO to fully disclose the circumstances of his death.

### **D. Failure to Provide Adequate Medical Care Is a Violation of Both International and Domestic Law**

Inadequate access to medical care is a violation of the UNDHR and the minimum standards of the UN Principles for Detained Persons. The UNDHR declares that every human being has the right “to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”<sup>199</sup> Principle 24 under the UN Principles for Detained Persons states: “A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary.”

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<sup>196</sup>DOM, Non-Medical Emergency Escorted Trips, 3, <http://www.ice.gov/doclib/partners/dro/opsmanual/index.htm> (last accessed Apr. 20, 2008).

<sup>197</sup> Email from Jack Bennett, Asst. Field Office Director for NWDC, in Tacoma, WA to Gwynne Skinner, Visiting Professor of Clinical Law, Seattle University School of Law (March 04, 2008, 8:56 AM) (on file with recipient).

<sup>198</sup> New York Times, Immigration Agency's List of Deaths in Custody, May 5, 2008, available at <http://www.nytimes.com/2008/05/05/nyregion/05detain-list.html?ref=nyregion> (last accessed May 23, 2008).

<sup>199</sup> UNDHR, Article 25.

In addition, failure to provide adequate medical care is a clear violation of the Fifth Amendment.<sup>200</sup> Moreover, failure to provide adequate medical care, or allowing a person to suffer from extreme pain without treatment is cruel, inhuman, and degrading treatment, a violation of both international law and the Fifth Amendment.

## 6. Mental Health Care and Treatment

One of the most disturbing problems we found at the NWDC was the inadequate and often nonexistent treatment of detainees' mental health problems, as well as punitive measures taken against those who suffer from mental health problems.

Approximately 20 percent of the detainees we interviewed reported they suffer from mental health problems that required attention at the NWDC medical clinic. In addition, while many detainees did not complain that they suffered from depression or other mental health issues, their speech and body language suggested otherwise. Many appeared overly subdued and others would cry. Our general impression was that a substantial percentage of the detainees interviewed appeared to be depressed, nervous, scared, or a combination thereof.

It should be noted that 37 percent of those we spoke with were asylees or refugees, which by definition means they likely suffered from some form of persecution. Many in detention, including refugees, have suffered traumatic events that likely contribute to mental health problems. In addition, some factors which have likely contributed to ongoing or new mental health problems include minimal exercise and lack of recreational or educational opportunities; grey and cold surroundings; lack of privacy; cultural isolation; limited or no communication with family; and the uncertainty generated by the indeterminate nature of their confinement. For several detainees, such conditions have either exacerbated preexisting conditions or led to new occurrences of serious mental health issues. Even though detainees may exhibit signs of severe mental illness, they are regularly placed in living quarters with the rest of the detainee population.

To administer mental health care to the approximately 1,000 detainee population, the NWDC employs only one full-time psychologist. Furthermore, many detainees are hesitant to share mental health problems with staff, in fear that they may be deported on that basis.

### A. Inadequate Mental Health Training for Prison Officers

The National Detention Standards state that “[a]ll staff working with INS detainees in detention facilities will be trained to recognize signs and situations potentially indicating a suicide risk. Staff will act to prevent suicides with appropriate sensitivity, supervision, and referrals. Any clinically suicidal detainee will receive preventive supervision and treatment.”<sup>201</sup> Seemingly, one of the major problems associated with the confinement of the mentally ill at the NWDC is a lack of officer training on how to deal with mental health issues. The information derived from the interviews suggests that the officers either exhibit a misunderstanding of or an indifference to mental health issues.

For instance, Charles recounted an incident of a detainee in his twenties whose personality and appearance had substantially changed over a period of time. Eventually, the detainee stopped talking all together. Other detainees pointed out this personality change to the officers, who responded that the detainee needed to request medical help if he so desired. While watching the Super Bowl, the man slumped over and fell out of the chair. Detainees again pointed the man out to the officers, but the officers did not

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<sup>200</sup> *Jones v. Blanas*, 393 F.3d 918, 931-32 (9th Cir., 2004); *Hare v. City of Corinth*, 36 F.3d 412, 415 (5th Cir., 1994), read in conjunction with *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976) and *Gregg v. Georgia*, 428 U.S. 153, 173 (1976) (concurring opinion).

<sup>201</sup> DOM, Suicide Prevention and Intervention, 1, <http://www.ice.gov/doclib/partners/dro/opsmanual/suciprev.pdf> (last accessed Apr. 20, 2008).

respond. Later that same night, the man passed out and collapsed on the upstairs floor. At this point, officers finally notified medical personnel of the troubled detainee.

Another description was given by Reginaldo, who reported that the detention center is unconcerned with mental health issues. For instance, one detainee who he described as “crazy” spoke incoherent Spanish when he attempted to communicate. This detainee came into the center weighing 87 pounds and was not given any extra food or special treatment. Reginaldo also mentioned another individual, who swung at persons with the sharp edge of a pencil if they came near him. Once this individual nicked himself while shaving and began to draw pictures with his own blood.

The identification and treatment of mentally ill detainees in detention raises additional legal issues. The Northwest Immigrant Rights Project (NWIRP), an organization that provides the Legal Orientation Program in the NWDC, has discovered approximately nine detainees who turned out to be U.S. citizens.<sup>202</sup> These detainees were subsequently released, as U.S. citizens cannot be held in immigration detention. It is the opinion of the attorneys at NWIRP that many of those U.S. citizens detained have suffered from mental illness.<sup>203</sup>

#### **B. Excessive Use of Solitary Confinement**

The National Detention Standards state, “When imminent risk of bodily injury or death is determined, medical staff will make a recommendation for hospitalization for evaluation and treatment.”<sup>204</sup> The Standards also recognize that “[a] mentally incompetent individual unable to appreciate the difference between appropriate and inappropriate behavior - between ‘right’ and ‘wrong’ - is not capable of acting in accordance with those norms. Therefore, he/she is not responsible for his/her ‘wrongful’ actions.”<sup>205</sup> In contrast to what is stated in the Standards, several detainees reported that the mentally incompetent are placed in segregation as “punishment.” While experiencing a psychiatric episode, mentally ill detainees may yell and scream. As punishment for their “disruptive behavior,” the officers will often send these detainees to segregation rather than provide them mental health treatment.

#### **C. Inadequate Treatment of Mental Health Problems Violates Both International and Domestic Law.**

Not only is the inadequate treatment of those with mental health problems a violation of international law’s requirement of adequate medical care described above, denying proper mental health can constitute cruel, inhuman, and degrading treatment (CIDT). For example, the Human Rights Committee of the ICCPR found that denying an inmate mental health treatment was a violation of article 7 of the ICCPR.<sup>206</sup> Furthermore, excessive use of solitary confinement can constitute CIDT. Under the HRC comments on interpreting the ICCPR, the HRC stated: “The Committee notes that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited under article 7.”<sup>207</sup>

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<sup>202</sup> Email from Jorge Baron, Executive Director of the Northwest Immigrants Rights Project, April 18, 2008, on file with the author.

<sup>203</sup> *Ibid.*

<sup>204</sup> DOM, Suicide Prevention and Intervention, 2, <http://www.ice.gov/doclib/partners/dro/opsmanual/suciprev.pdf> (last accessed Apr. 20, 2008).

<sup>205</sup> DOM, Disciplinary Policy, 2, <http://www.ice.gov/partners/dro/opsmanual/discip.pdf>.

<sup>206</sup> *Williams v. Jamaica*, Comm. No. 609/1995, UN Doc. CCPR/C/61/D/609/1995 (17 Nov 1997) (denying a death row inmate adequate medical treatment for his mental condition was inhuman treatment as well as a denial of respect for the inherent dignity of his person (Arts. 7, 10(1), the Political Covenant).

<sup>207</sup> HRC, General Comment 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1, 30 (1994).

Under domestic law, prisoners have a right to receive medical treatment for illness and injuries under the Eighth Amendment, which encompasses the right to psychiatric and mental health care and the right to be protected from self-inflicted injuries, including suicide.<sup>208</sup> As mentioned in the previous section, the United States Supreme Court has held that deliberate indifference to serious medical needs of prisoners constitutes the cruel and unusual punishment proscribed by the Eighth Amendment.<sup>209</sup> The medical needs of detainees must be treated with as high or a higher level of care than that owed prisoners.<sup>210</sup> For instance, the Fifth Circuit held that pretrial detainees enjoy an even greater right to accessing medical care than prisoners.<sup>211</sup> Thus, if a detainee's medical needs are treated with deliberate indifference by officers or doctors, it is a violation of the detainees' due process.<sup>212</sup>

## 7. Food

Problems with quality and quantity of food constituted the most common complaint about conditions at the detention center. Approximately 80 percent of the detainees interviewed stated that they received an insufficient quantity of food, and were often hungry after meals. Similarly, about 70 percent of the detainees reported that the quality of the food they received was poor and inadequate. Detainees labeled the food as bad, watery, tasteless, rotten, poor quality, low quantity, overcooked, repetitive, and cold. A few detainees who previously spent time incarcerated mentioned that the food was much better and more plentiful in prison. Many detainees complained that the food resulted in stomach and digestive problems. Unless a detainee is on a special diet, detainees usually do not receive fresh fruit and rarely receive fresh vegetables. A detainee reported that people can fill out a form to request vegetarian options, but they need a note from either a doctor or someone in the religious community stating that being a vegetarian is for health or religious reasons.

Detainees at the NWDC also reported that their food occasionally smells bad, appears rotten, has been served on dirty trays, and has even contained bugs. Additionally, the food that is served does not match the descriptions posted on the menu, and it is often served lukewarm or cold. For those who leave detention within a few days, the inadequate food is a passing problem and a temporary source of discomfort. However, for those who remain in detention for months or even years, the scarce food results in poor nutrition, digestive problems, continuous discomfort, and ongoing hunger.

In fact, many of detainees supplement their diet with food from the commissary. The commissary is a service that allows detainees to purchase food items, telephone cards, postage, writing supplies, and hygiene products to augment what is issued to them. Detainees obtain a commissary order form from an officer, and then commissary items are delivered on the next Thursday and Monday.<sup>213</sup> If a detainee receives money from his family, friends, or loved ones, he or she can use the money to buy food from the commissary. About 37 percent of the detainees mentioned that they rely on food from the commissary because the food they are served is inadequate. However, the commissary does not provide healthy and nutritious food options, such as fruits and vegetables, which are not available during regular meals. Rather, detainees are only able to purchase foods like instant noodles and granola, or chips and candy, all at inflated prices.

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<sup>208</sup> *Gish v. Thomas*, 516 F.3d 952 (11<sup>th</sup> Cir., 2008).

<sup>209</sup> *Estelle*, 429 U.S. at 104; *Gregg v. Georgia*, 428 U.S. 153, 173 (1976); (Howard B. Eisenberg, "Rethinking Prisoner Civil Rights Cases and the Provision of Counsel," 17 *S. Ill. U. L.J.* 417, 429 (1993).

<sup>210</sup> *Jones*, 393 F.3d at 931-37 (holding persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish).

<sup>211</sup> *Hare*, 36 F.3d at 415.

<sup>212</sup> *Jones*, 393 F.3d at 931-32.

<sup>213</sup> The GEO Group, Inc., Northwest Detention Center, *Detainee Handbook*, 10 (Dec. 10, 2007).

For example, a small package of ramen noodles costs 40 cents, which is more expensive than it would be at a regular store outside of detention.<sup>214</sup>

**Ricardo has also been in the detention for more than two years, and his biggest complaint was about the food.** Upon arrival to the NWDC, he weighed about 190 pounds, but he has lost fifty pounds largely due to the insufficient amount of food he receives. Ricardo also mentioned that many detainees lose a lot of weight during their first two weeks at the detention center due to lack of nutrition. Ricardo tries to stay busy by working out, but the doctor at the NWDC told him to stop exercising because the food he receives does not provide enough nutrition to continue daily physical exercise.

#### **A. Inadequate Food and Nutrition**

No federal or state laws exist governing the amount of food or nutritional balance provided to the hundreds of thousands of people in immigration detention each year.<sup>215</sup> ICE has stated through its non-binding food service guidelines<sup>216</sup> and has agreed in its contract with GEO that detainees should receive nutritionally-balanced meals and quantities of food in compliance with the Recommended Daily Allowances (RDAs) set forth by the National Academy of Sciences.<sup>217</sup> Additionally, federal case law provides some minimum guidance for what basic needs must be provided to a person in custody.<sup>218</sup> For treatment to be considered humane, prisoners must receive adequate food.<sup>219</sup>

Detainees are supposed to receive sufficient food as defined by the RDAs set forth by the National Academy of Science. Under the contract with the predecessor to GEO, the minimum diet in every 24 hour period must consist of the full number of servings that meet provisions of the RDAs.<sup>220</sup> The RDAs set forth specific guidelines for daily calorie, vitamin, protein, and carbohydrate consumption based on a person's age, gender, and activity level.<sup>221</sup> Additional recommendations are made for pregnant and lactating women.<sup>222</sup> The contract specifies that the detainees' diets must meet these requirements. Despite this, however, GEO does not alter meals based on a person's size or activity level. Each detainee receives the same amount of food and is not allowed second portions. Regardless of size, many detainees interviewed said they had to supplement their diets with food from the commissary or they were always hungry. However, a detainee without money would have no way to supplement his or her diet. One detainee, who remained in custody for over four years before a judge granted him asylum, had a doctor prescribe him fresh fruit because his health deteriorated substantially while at the detention center.

<sup>214</sup> In two local grocery stores, we found ramen priced at 29 cents per package.

<sup>215</sup> *Medical Care and Treatment of Immigration Detainees and Deaths in DRO Custody: Hearing Before the House Committee on the Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law Subcommittee*, U.S. House of Rep., 110<sup>th</sup> Cong., 2 (Oct. 4, 2007) (testimony of Gary E. Mead), available at <http://www.ice.gov/doclib/pi/news/testimonies/071004icetestimony.pdf> (last accessed Mar. 9, 2008).

<sup>216</sup> DOM Food Service Policy, <http://www.ice.gov/partners/dro/opsmanual/foodsvc.pdf> (last accessed Apr. 20, 2008).

<sup>217</sup> *Dietary Reference Intakes (DRIs): Recommended Intakes for Individuals, Vitamins*, Food and Nutrition Board, Institute of Medicine, National Academics, (2004), available at <http://www.iom.edu/Object.File/Master/21/372/0.pdf> (last accessed Apr. 20, 2008).

<sup>218</sup> See *Farmer v. Brennan*, 511 U.S. 824 (1994); *Pheps v. Kapnolas*, 308 F.3d 180 (2nd Cir., 2002); *Ramos v. Lamm*, 520 F.Supp. 1059 (D.C. Colorado, 1981).

<sup>219</sup> *Farmer v. Brennan*, 511 U.S. 825, 832 (1994).

<sup>220</sup> Correctional Services Corporation and U.S. Government Contract, Chapter 14-Food Service, C-62 (July 26, 2002), on file with author.

<sup>221</sup> Food and Nutrition Board, Institute of Medicine, National Academics, *Dietary Reference Intakes (DRIs): Recommended Intakes for Individuals, Vitamins* (2004), available at <http://www.iom.edu/Object.File/Master/21/372/0.pdf> (last accessed on Apr. 20, 2008).

<sup>222</sup> Food and Nutrition Board, Institute of Medicine, National Academics, *Dietary Reference Intakes (DRIs): Recommended Intakes for Individuals, Vitamins* (2004), available at <http://www.iom.edu/Object.File/Master/21/372/0.pdf> (last accessed on Apr. 20, 2008).

Furthermore, the contract requires GEO to provide alternative meals that are nutritionally adequate to ensure good health.<sup>223</sup> However, alternative meals provided to detainees also do not meet nutritional standards set forth in the contract or the ICE food guidelines. Detainees are provided with sack lunches as alternative meals, and specific guidelines for what a sack lunch must contain are specified in the ICE detention food guidelines. Each lunch must include two sandwiches (at least one must have meat), fruit, dessert, and a snack item (like fresh vegetables, snack crackers, or chips).<sup>224</sup> However, detainees' sack lunches have not matched up to those guidelines on several occasions. For example, one detainee discussed receiving a sack lunch with two peanut butter sandwiches.

Additionally, one detainee who has been in detention for over two years requires a special lactose free diet. She gave up trying to receive the lactose free diet because the officer refused to give the detainees their special meals. Furthermore, the detention center stopped providing soy milk as a milk replacement and told detainees it would only be available through the commissary. However, the commissary has never carried soy milk.

## **B. Meal Times**

Some detainees reported that the meals have been late almost on a daily basis. One detainee reported that other detainees will get very agitated and scream because they are hungry and do not have money to buy food from the commissary. Another detainee stated that he has seen detainees eat out of the garbage when they do not have money to buy food, and are still hungry. According to the NWDC's Detainee Handbook, breakfast is supposed to be served at approximately 5:30 a.m., lunch at 12 p.m., and dinner at 5 p.m.<sup>225</sup> Instead, lunch is sometimes served at 1 or 2 p.m., leaving detainees without food for nearly eight hours. Furthermore, dinner is not served sometimes until 7 or 7:30 p.m. Additionally, the delay in delivering food often results in lukewarm or cold food being served which raises concerns about food safety, discussed below.

## **C. Food Safety Standards**

Minimum standards for food safety require that food be served at specific temperatures to be safe to eat. Additionally, food safety laws set forth minimum standards for sanitation and food handling, which apply to food service at the NWDC. Safety guidelines require that hot food be served at a temperature of 60°C or 140°F.<sup>226</sup> Additionally, according to ICE's National Detention Standards for Food Service, it is ICE policy to "provide detainees with nutritious, attractively presented meals, prepared in a sanitary manner while identifying, developing and managing resources to meet the operational needs of the food service program."<sup>227</sup>

During an annual review of the NWDC during June 19-21, 2007, it was noted that "several meals were observed being served to detainees on one occasion during dinner feed-up [and] the detainees received over cooked and cold meals. The facility corrected the advisory during the review. All meals were collected and replacement meals were reserved."<sup>228</sup> However, the NWDC did not take heed to this warning, and less than two

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<sup>223</sup>Correctional Services Corporation and U.S. Government Contract, Chapter 14-Food Service, Subsection H, Alternative Meals, C-63-64 (July 26, 2002), on file with author.

<sup>224</sup>DOM, Food Service Policy, 22, <http://www.ice.gov/partners/dro/opsmanual/foodsvc.pdf>; see also Correctional Services Corporation and U.S. Government Contract, Chapter 14-Food Service, Subsection G, C-63 (July 26, 2002), on file with author.

<sup>225</sup>The GEO Group, Inc., Northwest Detention Center, *Detainee Handbook*, 7 (Dec. 10, 2007).

<sup>226</sup>U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, 2001 US Food Code (updated April 2004), available at <http://www.cfsan.fda.gov/~dms/fc01-3.html#3-2> (last accessed Apr. 20, 2008).

<sup>227</sup>DOM, Food Service, [www.ice.gov/doclib/pi/dro/opsmanual/foodsvc.pdf](http://www.ice.gov/doclib/pi/dro/opsmanual/foodsvc.pdf) [last accessed May 21, 2008].

<sup>228</sup>2007 ICE Annual Review of NWDC, June 19-21, 2007.

months later, an outbreak of food poisoning of the type associated with cold food occurred in August 2007.

The food poisoning outbreak was investigated by the Tacoma-Pierce County Health Department, which determined that a specific type of food poisoning made approximately 300 of the 1,000 detainees at the NWDC ill.<sup>229</sup> Many detainees we interviewed reported the food poisoning outbreak as much more widespread. Detainees were asked to fill out forms explaining whether they were sick and what they had eaten. However, by the time this form was handed out, many detainees had already left the area and had no opportunity to fill out the paperwork. Additionally, the forms were only in English so many detainees could not fill them out. One detainee, Chen, reported that although eighty people in his pod were sick, about 20 filled out the forms. Another detainee, Ernesto, in a different pod reported that everyone in his pod became ill. Ernesto was given “Gatorade” to drink, although he said it tasted like Kool-Aid, and felt ill for three days.

The Tacoma-Pierce County Health Department found this specific type of food poisoning resulted from heating or cooling food too slowly allowing bacteria to grow in great numbers.<sup>230</sup> Furthermore, it identified several problems with the food preparation procedures at the facility. For example, the NWDC’s practice of cooking certain foods too far in advance, cooling them improperly, and not reheating them properly resulted in the food poisoning outbreak.<sup>231</sup>

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<sup>229</sup>Scott Fontaine, *Detention Center Cooks Faulted in Food Poisoning Outbreak*, Dec.10, 2007, <http://www.thenewtribune.com/news/local/story/225491.html> (last accessed on Apr. 21, 2008).

<sup>230</sup>*Ibid.*

<sup>231</sup>*Ibid.* However, some detainees have mentioned that the food poisoning outbreak was actually much more widespread than official reports indicated.

### **Charlie Santoso**

Charlie came to the United States in 1992 from Indonesia on a student visa. He studied at Seattle Central Community College and earned an Associates Degree. Afterwards, Charlie applied to several universities for admission to Bachelors Degree program. However, due to economic problems in Indonesia, he was unable to secure financing for his tuition. Charlie's student visa expired in 1997. In 1998, Charlie's parents warned him not to return to Indonesia. Violence had broken out in his home country against ethnic Chinese Christians, a group to which his family belonged. Charlie applied for asylum without the assistance of an attorney, Charlie lost his case and subsequent appeal.

Charlie was arrested and detained in December of 2007. ICE officers came to his apartment and told him they were looking for a Mexican woman. They showed him a picture and description of the woman. The officers asked Charlie if they could check his room, and he said yes. Once they entered the apartment, they arrested him. Charlie still does not have an attorney.

Since entering detention, Charlie has been struggling with the food. The food is often so bad it is inedible, and he will throw it away even though he is very hungry. The portion size is far too small and he is very skeptical that the food is based on a 2,000 calorie diet like the staff claim. The food is also often served late and cold. Detainees who do not have money to buy food from the commissary get very agitated when meals are late. He also was frustrated that they were not served fresh fruits and vegetables, and were not able to buy them from the commissary.

#### **D. Poor Quality and Quantity of Food Violates International and Domestic Law**

Because the detainees are not afforded the basic human necessity of nutritious food, and such deprivations result in inhuman treatment, several international laws have arguably been violated. For example, Article 10 of the ICCPR provides that all detained persons should be treated with dignity,<sup>232</sup> and the UN Principles of Detained Persons states that all detained persons should be treated in a humane manner.<sup>233</sup> Similarly, the UDHR and the UN Principles of Detained Persons all acknowledge the basic right to be free from hunger.<sup>234</sup> For reasons outlined above, it is clear that detainees at the NWDC are not treated with dignity or humanely because they are not provided food of sufficient quantity or quality.

With regard to domestic law, although no federal or state law governs the amount of food or nutritional balance the NWDC is required to provide, the ICE National Detention Standards for Food Service, the Correctional Services Corporation and U.S. Government Contract, and federal case law set minimum guidelines for what the detainees should receive. The NWDC fails to meet many of these standards. The detainees do not receive adequate food and remain hungry after meals. Food provided to the detainees does not meet standards set forth by ICE to be palatable, nutritious, and appealing. All persons taken into custody by the United States government should receive adequate food, and the detainees at the NWDC are not afforded this basic human necessity.

<sup>232</sup>ICCPR, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>233</sup>UN Principles, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988).

<sup>234</sup>*Ibid*; UDHR art. 25.

In addition, federal constitutional law requires that immigrant detainees not endure conditions in detention that rise to the level of punishment.<sup>235</sup> The small quantity and poor quality of food rise to the level of punishment, thus violating the Fifth Amendment. Moreover, U.S. courts have consistently held that conditions in civil detention that are worse than conditions in criminal detention presumptively violate detainees' constitutional rights.<sup>236</sup> Because the food in detention is worse than food at most prisons, there is a presumption that the food served at the detention center is punitive in nature, thus violating the detainees' civil rights.

## 8. Living Quarters

About 75 percent of the detainees complained about the overcrowding, noise, lack of privacy, and unsanitary bathrooms in their pods.

### A. Pod Conditions and Privacy

Approximately 60 percent of the detainees complained about the lack of privacy, and about 80 percent complained of overcrowding in their pods. Many of the detainees felt that the pods were filled to capacity, with extra bunk beds added to the pods from time to time to keep up with the influx of detainees. As a result, privacy is almost non-existent, and detainees are doing their best to adjust to living in very crowded conditions.

Charlie has been in the detention center for two months, and he stated that his living quarters in pod C-3 are unsanitary because there are too many people living in one area. The pod was designed to hold 64 beds, but it currently holds more than 80 detainees, and the detention center keeps adding more and more people to his pod. There are four showers, six toilets, and two microwaves. Some people have to eat their meals in their bunk because there is not enough room at the tables for everyone. He also noted he has difficulty sleeping at night because detainees stay up late talking or making noise throughout the night. The officers keep the lights on at night, which also makes it difficult to fall asleep.

In one of the larger pods, B-1, Pablo reported that there were 40 cells with bunk beds, but the pod was holding 120 men. Additional bunks were added outside of the cells to accommodate the overflow. This meant that approximately 50 men did not have a cell, and had to share the bathrooms at the bottom of the pod. These bathrooms quickly became very dirty.

Charlotte reported that on June 13, 2007, the NWDC installed 40 additional bunks to the outside day room and received 63 women in one day from a workplace immigration raid in Portland, Oregon. She stated that "the population doubled" and "it was horrendous." She said that eight months later, her pod "still hasn't gotten back to normal." As a result of the new bunks, some cells were emptied out to make additional bathrooms. She stated that 50 detainees share four bathrooms.

Overcrowding also raises the issue of "mixing" detainees with different security levels. Detainees are administered colored jumpsuits. Blue uniforms indicate the lowest risk, level one, and may include detainees with minor criminal records and nonviolent felonies. Level one detainees may not be housed with Level three detainees.<sup>237</sup> Orange uniforms indicate medium risk, level two, and may not include detainees whose most recent

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<sup>235</sup> *Jones*, 393 F.3d at 932.

<sup>236</sup> *Jones*, 393 F.3d at 931-32 (civil conditions of confinement which were the same as or similar to those for criminal prisoners or even pretrial detainees were presumptively punitive and unconstitutional).

<sup>237</sup> The GEO Group, Inc., Northwest Detention Center, *Detainee Handbook*, 5 (Dec. 10, 2007).

conviction was for any offense under the 'highest' section of the severity scale.<sup>238</sup> Red uniforms are for the highest level of risk, level three, requiring medium to maximum-security housing.<sup>239</sup> Although detainees with blue jumpsuits are not allowed to be placed with red jumpsuits, several detainees have reported that detainees with all three colors are mixed together in the pod, raising security concerns among the detainees.

## **B. Bathrooms and showers**

Lack of privacy in the bathroom and showers was a constant complaint we received from detainees. Because the toilets do not have any doors and are only separated by dividers, many detainees feel uncomfortable using the toilets. Additionally, some of the showers do not have curtains so detainees have no privacy while bathing. Although some detainees reported the toilets and showers to be clean, others reported them to be extremely dirty. Moreover, in some pods, toilet paper and paper towels often run out, and they are not replaced in a timely manner. For instance, one detainee stated that toilet paper and paper towels have run out at least five times in the last four months. No substitute products were offered, and detainees were told that they should "improvise."

In Reginaldo's pod there are 80 people who share six or seven toilets. Though they are cleaned twice a day, they were still filthy. He said that nobody in the bathrooms has privacy because you can see people in the bathroom over the stalls, as the bathrooms have no doors. There are some dining tables near the bathroom also, which he felt gave rise to serious sanitation issues. Toilet water can spray onto food at these tables.

When the food poisoning incident occurred, one had to unclog other people's mess in the toilet before using it. Some people threw up in the sinks because the toilets were all full. Additionally, the toilets are often clogged, forcing the detainees to try to clean them in order to use them. About five months ago, Reginaldo saw a rat in the downstairs toilet in C-3. It was dead and was left there for two days: bloating, rotting, and preventing use of the toilet. He mentioned that the smell was terrible and very noticeable to everyone. Reginaldo also stated, "The toilets are very loud. People sleep with earplugs at night because it is so loud. The earplugs hurt, they are not soft, but it's better than hearing the toilet."

## **C. Living Conditions May Violate International and Domestic Law**

The right to privacy is codified in all international human rights. As stated by Article 12 of the Universal Declaration of Human Rights, everyone has the right to privacy, which is also reflected in Article 17 of the ICCPR and Article 11 of the American Convention.<sup>240</sup> Additionally, Article 8 of the UN Body of Principles provides that detainees should be treated appropriately to their non-criminal status. Because the detainees are not serving time for crimes committed, the invasion of their privacy in some instances may be arbitrary, and in other instances, may constitute cruel, inhuman, and degrading treatment.

Under domestic law, in determining whether a restriction on immigrant detainees or conditions of detention constitute punishment and thus deprives a detainee of liberty without due process of law, courts infer that a restriction is intended to be punishment if it appears to be unrelated to a legitimate governmental objective, and is, for example, arbitrary or purposeless.<sup>241</sup> While the NWDC clearly has the right to maintain security and order at the facility, such restrictions may not be "excessive in relation to that

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<sup>238</sup> *Ibid.*

<sup>239</sup> *Ibid.*

<sup>240</sup> Organization of American States, American Convention on Human Rights art. 5, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 (hereinafter American Convention).

<sup>241</sup> *Bell*, 441 U.S. at 561 (holding that even when limitations on a pretrial detainee's freedom are rationally related to a legitimate non-punitive governmental purpose, they will amount to punishment if "they appear excessive in relation to that purpose.").

purpose.”<sup>242</sup> Although safety and order is certainly a legitimate purpose, the intrusions into privacy, openness of toilets, lack of toilet paper, and level of cleanliness are all likely excessive in relation to their purposes. In addition, overcrowding violates the Eighth Amendment when it, by itself or in combination with other conditions, deprives detainees “of the minimal civilized measure of life’s necessities.”<sup>243</sup> Thus, the overcrowding that leads to detainees having to eat in their bunks, lack of sleep, and extreme lack of privacy likely collectively amounts to punishment and therefore violates detainees’ due process rights.<sup>244</sup> Although such may not be the case for a detainee in the pod for a short amount of time, the longer the detainee is in detention, the more such conditions likely to be seen as punitive in nature.

## 9. Visitation

Detainees have described the visitation policy at the NWDC as depressing, sad, and intolerable. Unlike many prisons where contact visits are permitted, visitation takes place behind a glass partition that separates the detainee from his or her family. Detainees communicate with visitors over a phone. Visits typically last no longer than 30 minutes. Many detainees have stated that they are willing to be strip searched after visits if contact was allowed. Such lack of contact is especially difficult for detainees who have young children or for those who cannot hug a sick or elderly family member.

According to the Detainee Handbook, visitors are permitted to meet with the detainees every day, except Tuesday and Wednesday.<sup>245</sup> Although the Handbook states that “sessions will normally be for one hour,” many detainees have reported that visits are limited to fifteen to thirty minutes, which is not a sufficient amount of time to connect with a family member or friend.<sup>246</sup> Additionally, due to mistakes made by officers, such as bringing the wrong detainee to a visitor, or leaving the detainee in the holding area too long, the time detainees are able to spend with their visitors is sometimes cut short. As a result, some detainees have requested that their family and friends do not visit because the short and no-contact visits only make them more depressed.

On one of our detention visits, we noticed a long line of visitors waiting. Although visiting hours are permitted until 3:30 p.m., the officer turned everyone away at 2:45, without warning. One visitor at the beginning of the line pleaded for entry, but was denied.

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<sup>242</sup> *Ibid.*

<sup>243</sup> *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981) (the definition of cruel and unusual punishment must be based on evolving and contemporary “standards of decency that mark the progress of a maturing society.”) The Court did not articulate the specific range of conditions that would lead to a finding of cruel and unusual punishment. Thus, lower courts are divided as to what conditions meet the overcrowding standard and different circuits take entirely different approaches.

<sup>244</sup> The Supreme Court has made clear that overcrowding may constitute punishment. For instance, “confining a given number of people in a given amount of space in such a manner as to cause them to endure genuine privations and hardship over an extended period of time might raise serious questions under the Due Process Clause as to whether those conditions amounted to punishment....” *Bell*, 441 U.S. at 542.

<sup>245</sup> The GEO Group, Inc., Northwest Detention Center, *Detainee Handbook*, 11 (Dec. 10, 2007).

<sup>246</sup> *Ibid.*

### **Ricardo Jiminez**

Ricardo left El Salvador and arrived in Los Angeles in 1982, at the age of 9. He became a lawful permanent resident. In 1994, he moved to Oregon, where he worked in construction. He was convicted of a felony and served time in 1996. In 2005, ICE arrested him in his home and brought him to the NWDC where he has been fighting his deportation ever since. Ricardo's wife and two children, ages 6 and 4, are U.S. citizens. His seven year old daughter has a debilitating, chronic illness and his wife had struggled to take care of the family and finances in his absence.

Knowing how sick his daughter is, he wants to have contact visits with his family, saying that "I want to hold her, hug her. It's hard on her, hard on me, but all I can do is see her through the glass." He stated that under the current process, he would be allowed only one contact visit with his family one week before he is deported. Being in detention has not only taken a toll on Ricardo emotionally and physically, but also on his family.

Donna, Ricardo's wife, says she tries to visit Ricardo at least once a month. It takes her about three hours to drive up from Oregon to see him at the detention center. Usually, she waits up to an hour for a fifteen minute, no-contact visit. The entire process of driving up, visiting and driving back takes a full day and is very taxing on her, the kids and Ricardo. There have been a couple of times where she has waited nearly two hours to meet with Ricardo. During these waits, she demanded that she be able to meet with him longer and was granted a longer visit on two occasions. Donna stated that this was because "depending on who has been there, the rules change."

Donna is concerned about the conditions of the visiting rooms and found them to be extremely dirty, which is very problematic for their ill daughter.

The visits to the detention center have been especially traumatizing for Donna and Ricardo's daughters. Donna stated that there are no toys or books to occupy the children while they wait, and they are not permitted to bring anything with them. Many of the visiting children have been in a car for a long period of time and are restless by the time they are in the waiting room. The guards do not seem understanding of normal childish behavior. Instead, they have threatened visitors and kicked them out because of their children. They have also loudly criticized the parenting abilities of visitors in front of their children. Guards have even intimidated children, by either yelling or trying to discipline them.

Finally, since Donna has been going to see Ricardo, the visiting rules have changed multiple times, further complicating the process and making it difficult for family who cannot visit often.

### **A. Visitation Policies May Violate Both International and Domestic Law**

The right to family unity is codified in every international human rights treaty and is recognized as a principle of customary international law.<sup>247</sup> Moreover, according to the UN Principles for Detained Persons, "A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to

<sup>247</sup> See UNDHR; ICCPR; ICESCR; American Convention; European Convention; African Charter.

reasonable conditions and restrictions as specified by law or lawful regulations.”<sup>248</sup> Laws and policies are to be assessed in light of their arbitrariness with respect to family unity related rights such as visitation and communication with family members. Thus, the no-contact visits and the short amount of time provided for visitation arguably violates international law. These procedures constitute an arbitrary interference of the right to family unity and do not afford the detainees humane and dignified treatment.

With regard to domestic law, the Constitution strongly indicates that family unity rights are protected by the Due Process Clauses of the Fourteenth and Fifteenth Amendments.<sup>249</sup> The current visitation policies at the NWDC have deprived detainees of family contact in one form or another. With respect to how these rights relate to protecting the family, the impact of detention policies should be considered.

## 10. Language Barriers

For detainees who do not speak English, language often creates barriers at the NWDC. Spanish, Russian, Chinese, and Haitian Creole are just some of the languages spoken by the detainees at the Northwest Detention Center; however, interpreters are rarely accessible.

Upon arrival at the detention center, detainees are supposed to be given a detainee handbook. However, the handbook is only available in English, with a truncated version provided in Spanish. Similarly, according to the detainees, although some officers speak Spanish most of the officers speak only English. If a detainee is unable to communicate with an officer, he or she usually relies on another detainee in his or her pod who can translate English into his or her native language. While some officers attempt to communicate with detainees, other officers ridicule detainees by repeatedly yelling orders at them in English, even though the officers are aware that the detainees do not understand. Claire, a detainee, explained that a detainee must speak English to really understand what is happening at the detention center.

**Kuo, a detainee who only spoke Chinese, communicated his frustration regarding the language barrier at the detention center.** He said that upon arrival he was given an instruction manual, but it was not in Chinese and he was not offered an interpreter. Additionally, none of the officers in his pod spoke Chinese, so he was forced to rely on his podmates to help him when he needed to communicate with the officers. He also found the language barrier to be a problem when he wanted to file a kite. Kuo wanted to request some books in Chinese for reading and to report that his laundry had been stolen, but the kite procedure was in English, so he did not know how to file his grievance. Kuo also had trouble with the telephones because the directions are not in Chinese. Additionally, signs on the walls state in English only that calls will be monitored, so those who do not speak English are not aware that their conversations are being taped.

<sup>248</sup>UN Principles art. 19.

<sup>249</sup>See *Moore v. City of Cleveland, OH*, 431 U.S. 494, 503 (1977) (“Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation’s history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural.”); *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

#### **A. Failure to Provide Information in a Detainee's Language Implicates Due Process Concerns of Both International and Domestic Law**

Due process rights, both substantive and procedural, are simply illusory if a detainee is not provided information in a language he or she understands. Moreover, under the UN Body of Principles, Principle 14 states that “[A] person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands...” the reason for his detention and his right to due process, including information and explanation about how to avail himself of such rights.<sup>250</sup> Consequently, not providing the Detainee Handbook in languages other than English and Spanish arguably violates these principles, even if they are non-binding.

### **11. Recreation & Exercise**

Approximately 50 percent of the detainees we interviewed felt that they received inadequate time to exercise or that the conditions for exercise are insufficient.

The National Detention Standards state that “all facilities shall provide INS detainees with access to recreational programs and activities, under conditions of security and supervision that protect their safety and welfare.”<sup>251</sup> There is one, large recreational yard available to the detainees every other day for one hour.<sup>252</sup> There is also a small partially enclosed quarter basketball court attached to each pod, or housing unit, which is available to detainees daily from 8 a.m. until 8 p.m. However, when detainees are permitted to exercise outdoors, very limited recreational equipment is made available to them. The NWDC Administration claims that free weights are not offered for security reasons, even though such equipment is readily offered to inmates in the recreational yards of many federal penitentiaries. Thus, during this recreation period made available one hour every other day, many detainees spend their time walking the parameter of the yard. The partially enclosed court is not large enough to really walk around in a manner that would allow sufficient exercise.

Detainees are not issued replacement clothing when it rains. Once outside, detainees are prohibited from going back inside until the recreational period has ended, even under extreme adverse weather conditions. Because detainees are issued limited clothing, they may not have a change of clothes if their uniform becomes wet from the rain. Consequently, a significant percentage of detainees abstain from participating in outdoor recreational activities because they worry that they will be forced to remain outside in bad weather.

### **12. Telephone Access**

The most common complaint regarding telephones, aside from the privacy issues raised above, is how expensive it is to make a call. The Detention Operations Manual does not specifically address what is a “reasonable expense” when making a telephone call, but the policy as to telephone access states, “Facilities holding INS detainees shall permit them to have reasonable and equitable access to telephones.”<sup>253</sup> Presumably “reasonable and equitable” would mean affordable. However, over half of the detainees we spoke with stated that they use phone cards to make calls but that the phone cards do not last very long. For example, many detainees said that a \$20 phone card generally lasts around 15 minutes. If a detainee does not have any money, it can be nearly impossible for him or her to make a call. One detainee stated in an interview that

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<sup>250</sup> UN Principles art.19.

<sup>251</sup> DOM, Recreation, 1, <http://www.ice.gov/doclib/partners/dro/opsmanual/recreat.pdf> (last accessed Apr. 20, 2008).

<sup>252</sup> The GEO Group, Inc., Northwest Detention Center, *Detainee Handbook*, 10 (Dec. 10, 2007).

<sup>253</sup> DOM, Telephone Access, 1, <http://www.ice.gov/doclib/partners/dro/opsmanual/teleacc.pdf> (last accessed Apr. 12, 2008).

detainees in general are not allowed to call 1-800 numbers and no explanation for this has been given. Thus, if a detainee only has the 1-800 number for his or her lawyer, the detainee is not able to contact them via telephone. In addition, another detainee stated that you can only put so many numbers in the phone, so that if you call 1-800 and use an extension, or if you call Bureau of Immigration Affairs to check on your case and you have to enter the number, the phone cuts off.

The other general issue concerning the telephones in the detention center had to do with availability. Many detainees commented on the long wait involved in using a telephone because so many detainees want to use the phone. The Detention Operations Manual states, "To ensure sufficient access, the facility shall provide at least one telephone for detainee use for every 25 detainees held."<sup>254</sup> Due to the crowded conditions there can be 80 or more detainees in a particular pod, and if one or two telephones happen to be out of service then sufficient access could be a problem. For example, one detainee stated that there were 110 people in her pod and five telephones, and that at peak calling time it was almost impossible to make calls on the phone. Compounding the load on the telephones is the fact that there is no time limit on how long a detainee can talk.

In addition to the phones being busy, phones are often broken, which increases the use on the phones that are working. Although the Detention Operations Manual states that telephones will be kept in proper working order and repair service will be prompt,<sup>255</sup> detainees stated that it often takes a long time for the NWDC to perform the necessary maintenance on the broken telephones.

These problems confirm the findings of United States Government Accountability Office (GAO) in 2006.<sup>256</sup> The GAO singled out the NWDC as having systemic telephone access problems in 2006 and found that problematic telephone access restricts detainees' ability to reach pro bono services.

### **13. Cumulative Effect of Conditions Results in Cruel, Inhuman and Degrading Treatment, Violating Both International and Domestic Law.**

In addition, considering all of the above conditions problems, the cumulative effect of the conditions of detention arguably results in inhuman and degrading treatment, especially for those who are in the detention facility for more than just a few days. Detainees consistently reported to us they felt as though they were being treated as prisoners. They also consistently described the treatment they received in detention as degrading and inhuman, and some stated that they felt they were being treated like animals.

For those in detention for more than a short time, the totality of conditions – the poor quality and quantity of food, gray and cold surroundings, lack of recreation and educational stimulation and lack of privacy - violates the prohibition of inhuman and degrading treatment found in both numerous treaties and customary international law. Such conditions also most certainly become punitive in nature, violating the detainees' rights under the due process clause of the Fifth Amendment.

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<sup>254</sup> *Ibid.*

<sup>255</sup> *Ibid.*

<sup>256</sup> GAO ADS Report, Highlights, (2007), available at <http://www.gao.gov/new.items/d07875.pdf> (last accessed Mar. 9, 2008).

## VII. Conclusion and Recommendations

When detaining immigrants, the U.S. has an obligation to comply with both international and domestic legal standards on detainee treatment. Detention without accountability only increases maltreatment and decreases the most basic American values of liberty and dignity. Current detention practices, including detention conditions such as those found at the NWDC, violate both international human rights law and domestic Constitutional protections. Moreover, immigration detention should not and is not meant to mimic a prison.

This investigation has uncovered serious problems regarding detainee treatment within the NWDC. Detainees have been subject to mistreatment in areas of legal access, family visitation, medical care, food, officer treatment and living conditions. The federal government should create a system of accountability to ensure that public entities such as DHS and private corporations like GEO are not violating the rights of individuals. There should also be a recognition that current immigration policy, which GEO cannot control, has led to overcrowding, which in turn has led to many of the problems this investigation has found. Current conditions at the NWDC and similar centers around the country should prompt the federal government to explore alternatives to detention that are humane and respect the dignity of legal permanent residents, asylum-seekers and undocumented individuals alike.

First, **the United States must adopt an immigration policy that comports with international human rights obligations**, including the use and conditions of immigration detention. Second, **an immigrant should not be subjected to detention** unless there has been an individualized finding that he or she poses a security threat or is a flight risk. It should also be noted that refugees have additional rights under the Refugee Convention to not be subject to on-going detention. For those who ICE has shown to be a potential flight risk, there should be **alternatives to detention, such as electronic monitoring or participation in the Intensive Supervision Appearance Program (ISAP)**.

However, as long as ICE continues to detain those who are not deemed to pose a security threat or flight risk, then **conditions for parole should be relaxed and amounts required for bonds should be reduced**. In addition, conditions inside the NWDC should be greatly improved. We recommend that the following alterations be made at the Northwest Detention Center as soon as possible so that ICE is in full compliance with international and domestic standards and to ensure the dignity of the civil detainees held inside. Outlined below are a series of comprehensive recommendations that would improve current conditions at the Northwest Detention Center.

- **The detention standards should be formally codified and made legally binding.** The detention standards and guidelines must become legally binding so there is a clear understanding and accountability for how detainees are treated and the conditions of the detention center. ICE must adopt the National Detention Standards as regulations through a formal rule-making process that includes input from civil society. Detainees must have legal means of redress for abusive conditions that holds DHS, ICE, and its private contractors accountable.
- **Detainees should be provided better legal access to their attorneys and the attorney-client privilege must be respected.** To enhance legal access for detainees, the following actions should be taken:
  1. attorneys should be notified of a detainee transfer;
  2. attorneys should be allowed to schedule appointments with detainees for a set time in advance;

3. the number of attorney visitation rooms should be expanded;
  4. the visiting rooms should be soundproofed;
  5. detainees should have prompt access to unmonitored telephones to speak with their attorneys or potential attorneys.
- **Officers should be better trained to identify and respond appropriately to issues of mental health and language barriers.** Regular trainings of officers should include more specialized training on identifying mental health issues and proper treatment of those with mental health problems. In addition, officers should be trained on recognizing language barriers.
  - **Resources and print material should be made available in all of the languages spoken by detainees, and interpreters should be provided in all languages.** Though a majority of detainees either speak Spanish or English, many do not. There are many different languages spoken by detainees as their sole or primary language. ICE must ensure that manuals, including the Detainee Handbook, and resources are available in all languages spoken by the detention population. ICE must also ensure access to interpreters in all languages.
  - **The NWDC should make structural changes to its facility to increase the privacy of those living in detention.** NWDC must stop adding additional beds to common areas and respect the intended capacity of each pod. To respect the privacy of the detainees, NWDC should reconfigure the bathrooms so that detainees are not exposed to the entire pod. Although it might not be feasible for security reasons to entirely enclose the bathrooms, at a minimum, structural changes should be made to ensure coverage over much of the body. For example, the restrooms could have a panel that would expose legs and the upper body, but would provide coverage over detainee's private parts. NWDC should also provide each detainee with a locker or private space for personal items. Concerns about safety and security on the part of the NWDC could be addressed by providing the administration with keys to lockers for random security checks.
  - **Food provided to detainees should comply with FDA and federal food safety standards.** The NWDC must increase the amount of food made available to detainees. If food cannot be served buffet-style, and if the portions cannot be individualized depending on each detainee's size, weight and activity level as recommend by the FDA, then portions should simply be increased. In addition, the NWDC must provide edible, unspoiled, and properly prepared food. Moreover, it is imperative that more fruit and vegetables are provided, and that fresh fruit and vegetables are provided as often as possible.
  - **To ensure food safety standards are met, NWDC should serve breakfast, lunch and dinner at a regular time, and more must be done to ensure proper temperature of food.** Finally, NWDC must acknowledge and respect special diets of detainees due to either health or religious reasons.
  - **Punitive segregation of detainees with mental health conditions must end.** Moreover, onsite mental health support must be made available. This report found that detainees with mental health issues are often placed in segregation. This practice needs to end and those with mental health issues need to be managed through more appropriate methods. In addition, many individuals arrive at the detention center with mental health issues that are further aggravated by detention, and others develop mental health issues while being detained. Moreover, fear of deportation prevents many detainees from coming forward with issues of depression, suicide and other mental health conditions. Therefore, more in depth and on-going mental health assessment is required, instead of just the initial screening process. The NWDC should also clearly state that physical and mental health information provided to medical personnel cannot and will not be shared with immigration officials. Proper identification and intervention of mental health issues will allow for better living conditions for detainees.

- **Medical care, including emergency medical care, needs to be improved.** ICE needs to ensure that detainees have prompt, direct access to medical treatment, including that treatment which can only be accessed outside of the detention facility. When treatment is sought outside the facility, detainees should not be shackled unless they are found to pose a specific threat. Second, ICE needs to ensure that the NWDC responds promptly and adequately to emergency medical situations 24/7. Third, ICE must ensure that chronic conditions are addressed promptly and adequately, especially those conditions that result in severe pain. Fourth, detainees should not be made to stand for any significant length of time when they are ill, as they currently must do during “sick call” each morning.
- **Family unity should be respected by reducing the restrictions on visitations, and improving telephone access.** Detention breaks up families and makes it difficult for loved ones to see each other. Current NWDC policies add to this tragedy. More rooms should be made available for family visits and visiting hours should be extended to accommodate families that travel great distance to visit detainees. Flexibility should be the rule and not the exception. Contact visits should be allowed, especially if detainees consent to being searched. Finally, cheaper phone cards should be made available. Preferably, detainees should have more phones available to be able to call family members and should ideally be provided free phone access, especially for local calls.
- **NWDC must ensure that abusive guard treatment ends, and detainees should be provided with safer and more efficient methods of having grievances addressed in detention.** First, officers that are alleged to be abusive, make sexual overtures, or retaliate should be investigated promptly, and where it is more likely than not that such allegations are true, the officers must be promptly removed. Second, NWDC must create a safe and fair process for submitting grievances and complaints. Alternative methods for being able to file written grievances about officers must be explored. There currently is no clear method that ensures that a detainee can safely write a grievance against an officer. The fact that a detainee may have to hand the grievance to the very officer that the grievance is against is unacceptable, and this process needs to be remedied. Additional changes may have to be implemented so that written grievances can be vetted and dealt with in a timely manner. This will help restore detainee confidence in written grievance process.
- **NWDC should improve the quality and quantity of leisure activities and enhance educational activities.** Given the amount of time detainees often spend in detention, combined with the requirement that detention not amount to punishment, detainees should have a greater variety of leisure activities. Reading material should be enhanced. In addition, be educational opportunities should be created.

## **Appendix A: NWDC Handbook**



The GEO Group, Inc.

# Northwest Detention Center

## Detainee Handbook



## **INTRODUCTION/ MISSION**

The Northwest Detention Center (NWDC) in Tacoma, Washington, is privately operated by THE GEO GROUP INC. under contract with the United States Department of Homeland Security, Immigration Customs Enforcement (ICE). The mission of the NWDC is to provide conditions that are safe, secure and sanitary for detainees waiting processing for an administrative hearing or removal.

## **PURPOSE**

The purpose of this handbook is to explain to detainees the specific rules, regulations, policies and procedures that must be followed while at this facility. The handbook will also help to provide you with a general overview of the programs, rules and regulations and services of the facility. You will be held accountable for your actions while at this facility. Therefore, it is each detainee's responsibility to become familiar with the contents of this handbook.

A copy of this handbook will be issued to each detainee at intake and copies are available in each housing unit. All detainees are required to acknowledge, by signature, receipt of this handbook.

## **MAILING ADDRESS**

Your Full Name  
Your "A" Number  
1623 East J Street, Suite 5  
Tacoma, WA 98421

## **BASIC DETAINEE RESPONSIBILITIES**

It is the policy of the Northwest Detention Center (NWDC) and Immigration Customs Enforcement (ICE) to treat detainees with dignity and respect while maintaining a safe, humane, secure and sanitary detention facility. It is expected that staff will receive your full cooperation while your case is being processed. In the simplest terms, you are expected to:

1. Follow and obey rules, laws, policies and procedures.
2. Obey **all** orders given by staff members.
3. Respect staff and other detainees at all times.
4. Respect facility property and the property of others.
5. Keep yourself, your clothing and living area clean at all times.
6. Obey **all** safety, security and sanitation rules, policies and procedures. **Walk** do not run throughout the facility.

If you observe and comply with the above guidelines, you should have no problem living at this facility while awaiting the outcome of your hearing.

When addressing staff, you should not refer to them by first name or by a nickname. Refer to uniformed staff by their rank and last name (i.e. Officer Jones, Capt. Smith). Refer to non-uniformed staff by title and last name (i.e. Nurse Brown, Dr. Ribas) or by Mr., Mrs., and Ms., followed by their last name. Staff members will address you in the same manner if they know your name. It is not reasonable to expect an officer to know the names of all detainees in the facility. However, the officer or staff member will address you in an appropriate manner.

## **STAFF – DETAINEE COMMUNICATIONS**

During intake / orientation you will be told of your right to correspond / communicate with ICE regarding your case and/or conditions of confinement. All correspondence with ICE staff will be handled as Special Communications (see page 15 of this Handbook). You also have the right to send a "Detainee Request Form" (kite) to any ICE, or GEO staff. Please place the kite in the appropriate mail box located in each housing unit. ICE and GEO staff will normally respond to your kite in writing within 72 hours. Additionally, ICE and GEO staff make announced and unannounced visits to the housing units each week. The ICE schedule for visiting the housing units is posted on every bulletin board along with the

list of deportation staff and the cases they are assigned by detainee A-number. Should you have any questions, please ask the housing unit officer.

### **INAPPROPRIATE RELATIONSHIPS with STAFF**

Detainees should be aware of how to handle situations in which they perceive themselves to be the object of sexual advances or other inappropriate behavior by staff members. Any type of sexual advances by any staff member directed toward any detainee is a strict violation of policy. Similarly, it is a violation of the rules for detainees to direct advances towards officers or other staff. Officers or staff may not solicit detainees in any way for any type of sexual favors. The same applies for detainees. This includes any conversations that might lead to sexual involvement.

Should any detainee find him /herself being pressured for either sexual favors or some other violation of a facility rule, the detainee should refuse to do the illegal act and either:

- File a formal grievance
- Request to see the Shift Supervisor or complete a Detainee Request Form marked "Emergency" to
  1. the Captain
  2. the Associate Warden
  3. the Warden, or
  4. the ICE Assistant Field Office Director (AFOD)
- Contact any staff member you feel comfortable with to let that person know and request help
- Write a family member and urge them to call the Warden and/or ICE AFOD.

### **DETAINEE PROTECTION**

The Warden and staff of the NWDC strive to maintain the safety and security of all detainees. However, in some situations, measures must be taken to achieve a greater degree of protection for certain detainees.

If another detainee is pressuring you for money, property, or sexual favors, the detainee should immediately contact a Detention Officer, Shift Supervisor, Captain, Associate Warden, Warden, ICE AFOD, or any staff member with whom you feel comfortable. It is imperative that one of these individuals be contacted immediately so that they can help by moving the detainee from a potentially serious situation.

### **SEXUAL ASSAULTS**

#### **A. Victims**

If you are the victim of a sexual assault, it is imperative that you immediately contact a Detention Officer, Shift Supervisor, Captain, Associate Warden, Warden, ICE AFOD, or any staff member with whom you feel comfortable. Do not bathe, shower, change your clothes, or brush your teeth. It is important that evidence be collected to assist in your attacker's prosecution. Physical evidence is important because law enforcement relies heavily on the information.

The person you contact will immediately take you to a safe place. You will be examined by qualified medical personnel and will receive treatment for any injuries while evidence is gathered. At your request, a representative for you will be present during the examination to counsel you and provide any other support you may need (Psychologist, etc.).

A variety of steps may be taken, based on your individual circumstances, to ensure your safety to include relocating you to safe housing. Additional counseling and medical assistance is available to you on a continual basis.

#### **B. Perpetrator**

If you are the perpetrator of a sexual assault, the following are the risks involved:

- The possibility of infection by HIV virus that causes AIDS
- The possibility of contracting other sexually transmitted diseases

- You may be subject to criminal prosecution. The more prior convictions you have, the higher the possible sentence.
- You risk confinement in Administrative or Disciplinary Segregation, a single person cell due to your being a threat to other detainees and the orderly operation of the facility.

Stay clear of assaultive, extortion and/or gang activity.

A representative will be available, upon a detainee's request, to be present during a forensic medical examination of a detainee alleged to have sustained injuries as the victim of a sexual assault. A forensic medical examination is conducted after an alleged sexual assault for the purposes of collecting and preserving evidence related to the investigation or prosecution of the alleged assault. The representative may only provide the injured person with counseling and other supportive services.

### INITIAL ADMISSION

A. Upon arrival, the processing officer will retain for safekeeping your clothes, personal property, valuables and funds. Itemized receipts will be issued to you for all clothing, personal property, valuables and funds. It is important that you keep these receipts to aid in claiming your property when you are released.

Identity documents such as passports, birth certificates, etc., will be inventoried and given to a deportation officer for placement in your A-file. You will receive, certified by an ICE Official, a copy of these documents upon request.

B. While at this facility, you are permitted to have in your possession:

1. Approved commissary items (Limited to the maximum number of items approved for any single purchase).
2. Facility issued shoes and clothing.
3. Facility issued bedding and towel.
4. Legal materials pertinent to your current case.
5. Mail and authorized correspondence.
6. Religious books or other authorized reading material (3).
7. Facility library book (1).
8. Personal photos (10, without hard backing, no larger than 5x7. No Polaroid pictures).
9. Health care items issued by or authorized by facility medical staff.
10. Eyeglasses, hearing aids, dentures, contact lenses or other authorized prostheses.
11. Plain wedding bands and watches (not to exceed \$50.00 in value).

Personal items must be stored on the shelf under your bunk. If assigned to a cell, items may also be stored neatly on the desk and shelf. No item is to be attached or placed on the bunks, walls, or windows. Detainees are responsible for the loss of personal items not safeguarded or stored by the NWDC or ICE.

C. Your initial issue of clothing and linens shall be:

- |                                    |                        |
|------------------------------------|------------------------|
| 1. One (1) detainee uniform.       | 7. One (1) pillow.     |
| 2. Two (2) pair of socks.          | 8. Two (2) blankets.   |
| 3. Three (3) pair of underwear.    | 9. One (1) pillowcase. |
| 4. One (1) pair of shower sandals. | 10. Two (2) sheets.    |
| 5. One (1) pair of shoes.          | 11. One (1) Towel      |
| 6. One (1) mattress.               | 12. Two (2) T-Shirt    |

**At no time should you have in your possession more than the above quantity of facility issued items.**

D. Your initial issue of personal hygiene items shall be:

- |                               |                             |
|-------------------------------|-----------------------------|
| 1. One (1) comb.              | 2. One (1) disposable razor |
| 3. One (1) tube of toothpaste | 4. One (1) toothbrush       |

Females will be issued additional hygiene items as required. All above hygiene items are exchanged on a one for one basis once each week.

- E. Your housing unit officer will provide writing paper, pencils or pens and envelopes for your personal use. Envelopes are not to be used for internal correspondence, or artwork.
- F. Should you require immediate medical attention, it will be provided as needed. Ordinarily, you will receive a medical examination within 14 days of your arrival by a member of the U.S. Public Health Service. Acceptance of the physical examination will not alter your case status and/or affect your length of detention.

## **CLASSIFICATION**

All detainees are classified upon arrival, before being admitted into the general population. Criminal history information provided by the committing officer will be used in the classification process. Your classification category will affect your housing assignment and ability to participate in facility programs. You have the right to appeal any classification decision and request a classification review should you disagree with the designation.

A detainee's classification will be periodically reassessed. The first reassessment will be completed within 45 to 60 days. Subsequent reassessments will be completed every 60 to 90 days thereafter, and before any release from administrative or disciplinary segregation. A detainee must be in general population for a minimum of 60 days (after release from SMU) before reclassification will be considered. Any disciplinary code conviction may affect your classification level.

Requests should be submitted on the Detainee Acknowledgement of (Classification) Decision / Appeal form or Request form (kite) addressed to the Classification Officer. He/she will review the request and make a recommendation to the Associate Warden for a decision. The Associate Warden's decision may be appealed to the Warden via the same process. The Warden's decision will be final.

The Classification Levels and restrictions are as follows:

### **Level 1 - Blue Uniforms and Wrist Bands:**

- May not be housed with Level 3.
- May not include any detainee with a felony conviction that included an act of physical violence.
- May not include any detainee with an aggravated felony conviction.
- May include detainees with minor criminal records and nonviolent felonies.

### **Level 2 - Orange Uniforms and Wrist Bands:**

- May not include detainees whose most recent conviction was for any offense under the "Highest" section of the severity scale.
- May not include any detainee with a pattern or history of violent assaults, whether convicted or not. It is considered as established for purposes of this guideline when an arrest record reveals two or more arrests in a five-year period for assault where force was used against another person with the intent to commit bodily injury.
- May not include any detainee convicted of assault on a correctional officer while in custody or where a previous institution record suggests a pattern of assaults while in custody.

### **Level 3 - Red Uniforms and Wrist Bands:**

- May include those detainees reclassified from levels one and two due to institutional incidents or changes in classification information.
- May be reclassified to level two only based on institutional behavior (no sooner than 60 days).
- **Level three detainees are considered a high-risk category, requiring medium to maximum-security housing. Level three detainees are always monitored and escorted.**

The detainee's classification level may determine the type of work assignment for which he/she is eligible.

General work does not require specific skills. A sample of work assignments and corresponding classification levels follow:

<u>Work Assignment</u>	<u>Level</u>
1. Kitchen worker (either shift)	1-2 (and 3, if screened for violence)
2. Recreation/Library/Barber	1-2 (and 3, if screened for violence)
3. Laundry	1-2 (and 3, if screened for violence)
4. Living area clean-up / janitorial	1-3
5. Evening workers (facility janitorial)	1-3
6. Maintenance	1
7. Lawn Care	1
8. Outside Work Detail	1

**NOTE:**

- 1) Detainees who are released from Disciplinary Segregation will not necessarily be considered for a work assignment until they have shown a positive period of adjustment.
- 2) Level One detainees may be allowed to work outside the secure perimeter of the facility so long as they are supervised at all times and the supervision ratio is not less than one officer to four detainees. Detainees must be within sight and sound of the supervising officer at all times.

**LIVING CONDITIONS**

Detainees are required to keep their assigned living areas clean at all times. Your bed must be made by 8:00a.m. If you choose to nap after that you may lie on the bed and cover yourself with a second blanket. The exception to this is night workers.

It is in your own best interest to maintain a clean living area and avoid the problems associated with unsanitary living conditions. Special care should be taken in housing unit restrooms to maintain cleanliness and sanitary conditions for everyone's benefit.

**SPECIAL MANAGEMENT UNIT**

**Administrative Detention** is intended for detainees with special housing requirements such as:

1. Pending investigation or hearing regarding prohibited act(s).
2. Pending transfer or release within 24hrs.
3. Security risk.
4. Protective custody.

**Disciplinary Segregation** is a special housing unit for detainees who are:

1. A serious disruption to facility operations.
2. In need of additional physical confines.
3. Under sanction of the Institutional Disciplinary Committee.

Detainees placed into Administrative Detention will be afforded the same general rights and opportunities as those in general housing with consideration given to the reason for their housing assignment.

Detainees placed into Disciplinary Segregation will be provided access to showers, recreation, visitation and other programs as deemed appropriate by facility administration based on the nature of the rule violation, but access shall never be limited beyond that which is guaranteed by ICE Standards or Standards of the American Correctional Association. Showers shall be provided at least three times per week. Recreation shall be offered for at least one hour, 5 days per week, but may be limited based on abuse of recreational equipment/facilities. Visitation shall not be denied unless the rule violation involved visitation.

Medical staff visit each detainee in the SMU on a daily basis. Sick call issues may be addressed at that time.

### **EVACUATION DRILLS**

Per local, state and federal laws, we are required to perform evacuation drills. At this facility we perform no less than one drill each month. These drills are not designed to inconvenience you, but rather to ensure that you know where the exits are located in case of an actual emergency such as a fire, gas leak or natural disaster. In your housing unit is a diagram showing you the location of all fire exits and which exits to use. Study this diagram carefully; your life may depend on it.

### **OFFICIAL COUNTS**

In order to maintain proper accountability of detainees at this facility, official counts are conducted at the following times: 2:00 a.m. 5:00 a.m. 11:30 a.m. 4:30 p.m. (Standing / Verbal Count) 10:00 p.m.

During official counts no movement or talking is permitted. Disruptions may result in disciplinary action.

### **MEALS**

All meals are nutritionally balanced, dietician approved and properly prepared and served. The use of food, i.e., the withholding of, or variation from, the standard menu, as a disciplinary measure or reward is prohibited. Food Service upon request and authorization provides special diets as required for medical/dental reasons or adherence to religious dietary law. PHS medical staff will order special medical diets as required.

If you have religious dietary requirements, are a vegetarian or have food allergies, you must notify a staff member as soon as possible so that arrangements can be made to accommodate your needs. If you request to be provided a special diet, you will be prohibited from accepting meals from the standard menu thereafter. Accepting items not provided as part of your diet may result in your removal from the special diet list. You will be issued an appropriate eating utensil. You are required to properly dispose of left over food and place your tray and utensil in the appropriate place at meals end. For health and sanitation concerns food items may not be retained in the living area.

Meals are served in the housing units at approximately 5:30 A.M., 12:00 Noon, and 5:00 P.M.

### **SMOKING POLICY**

Smoking and all tobacco products are strictly prohibited in all areas of this facility.

### **MEDICAL CARE**

This facility provides a fully staffed medical clinic operated by the United States Public Health Service (U.S. P.H.S.) to address your health care needs while in detention. An assessment will be completed during the intake process and a comprehensive medical examination will be conducted within 14 days.

**For men**, Sick Call and Triage is conducted 7 days per week at 6:00 AM. When controlled movement is announced, detainees wishing to be seen by the nurse are to proceed to the processing doorway and line up in the main corridor. The nurse will see patients one at a time. This will be a triage process and the nurse will assess the level of care required based on the emergent nature of the complaint. You will be given a timeframe for your follow up appointment appropriate to your medical condition. On holidays and weekends sick call will be conducted but only emergency same day appointments will be granted.

**For women** Sick Call and Triage is conducted in the same triage process except the location will be in the D – Unit control room.

Emergency care is provided 24 hours a day. If you have a medical emergency, contact any staff member and immediate medical care will be provided as needed.

## LYING IN BEDS AND UNCHANGED DIRECTIVES

Detainees are not permitted to have the right to change their living units. Detainees are not permitted to have the right to change their living units. The guidelines for living units are set forth by the Classification Officer. You may only request a change in your living unit at the discretion of the Classification Officer.

## CLOTHING/LINEN EXCHANGE

Clothing items will be exchanged three times each week. All items will be exchanged on a one-for-one basis. At no time should you have more than the issued quantity of any clothing or linen item in your possession. Possessing extra items is a violation of facility rules and is cause for disciplinary action. Sheets, pillowcases and towels will also be exchanged twice weekly in the same manner. Blankets are exchanged once per month.

Socks, underwear and t-shirts are collected, in the provided mesh bag, and washed daily, Monday through Friday.

Detainees are not permitted to wash clothing, bedding, linens, tennis shoes or other items in the housing units.

Detainee workers assigned to Food Service will receive clean white uniforms on a daily basis.

## PERSONAL HYGIENE

You will be living in a housing unit with other individuals, so personal hygiene is essential. You are expected to bathe regularly and to keep your hair clean. Personal hygiene items, such as soap, toothpaste, toothbrushes, razors and combs will be issued to you upon arrival or provided in your housing unit. Personal hygiene exchange will be conducted in your housing unit each week. Disposable razors will be exchanged on a one-for-one basis.

Detainees attending court will be afforded the opportunity to shave before reporting to court.

## BARBERING SERVICES

Hair cutting services are provided on Saturday and Sunday upon request. To be eligible, you must be here for a minimum of 30 days. The hours are from 9:00 a.m. until 11:00 a.m. and from 1:00 p.m. until 3:00 p.m. Detainee volunteers provide barbering services to fellow detainees in the Barber Shop. If you want barbering services, sign up with the housing unit officer the evening before services are being requested. Additional haircuts can be requested every 30 days.

If you want to volunteer to become a barber, you must complete a detainee request form and forward it to the Classification Officer. All haircutting equipment is cleaned and sanitized after each use.

Detainees are prohibited from cutting hair in the housing units and are not to possess cut hair or clippings.

## SLEEPING AREA/SANITATION

You are required to keep your bed and immediate area clean and neat. The living units must be cleaned and beds are to be made everyday by 8:00am. If you choose to nap after that you may lie on the bed and cover yourself with a second blanket. The living units are to be kept clean throughout the day. The hanging of sheets, towels, blankets or clothing from bunks, etc. is prohibited. If hooks are provided, wet towels are to be hung from them. Towels may be hung over the shelf opening.

Personal items, including hygiene items are to be stored on the shelf under your bunk. The bunk is not to be used as a shelf. These items will be confiscated when left in unauthorized areas. It will be your responsibility to identify and reclaim the items through the housing unit officer.

## FINANCES

The booking staff upon admittance will collect all money, checks, money orders, valuables or other financial instruments. All US currency regardless of how it is received will be placed in an account for your use while detained. Only **US Postal, Canadian Postal (payable in U.S. currency only) and Western Union** money orders and checks from Federal, State, City or County agencies or other correctional facilities will be cashed and placed in your account. We will not cash personal checks, payroll checks or any other money orders. Upon your release you will receive cash for the amount remaining in your account, in addition to all of your stored personal property, foreign currency, and valuables. If anything is missing or broken, you may fill out a Claim for Lost or Damaged Property form. Following an investigation, if it is determined that NWDC employees are at fault, a reimbursement check will be mailed to your forwarding address.

Possession of cash, checks or any other financial instrument inside the facility is a violation of facility rules and will subject you to disciplinary action.

## ACCESS TO TELEPHONE

Telephones are provided in each housing unit and the booking area for your use. Telephones are turned on following the completion of sanitation duties each morning and will remain on until lights out (11:30 p.m.). All telephone calls will be collect to the party receiving the call, unless you purchase a calling card from Commissary. The cost for using the detainee telephone system is posted in each of the housing units. When telephone demand is high, you are expected to limit your calls to twenty minutes in length to allow others the opportunity to place calls. If you are unable to place calls from the telephone in your housing unit or you need to place an emergency call, such as an illness or death in the family; you may complete a detainee request form to access an office telephone. All calls to consular officials or free legal services are provided at no cost to you on the unit phones.

**Emergency calls: If unable to make those calls, please contact your Expedition Office.**

To purchase calling cards, you must complete a "Commissary Order Form". Cards are distributed on Monday and Thursday. Visitors may purchase phone cards for detainees at the front entrance. Detainees should protect Phone Cards as personal, valuable property.

Staff will take telephone messages from outside callers and deliver them to the housing units at the beginning of each shift. Messages regarding an emergency will be delivered as soon as possible.

There is at least one Telecommunications Device for the Deaf (TDD) for detainees with hearing and/or speech disabilities, and for detainees wishing to communicate with parties that have such disabilities. Access to TDD equipment requires the detainee to submit a request to the Shift Supervisor.

Telephones are made available as necessary with adjustable volume for detainees with hearing impairments.

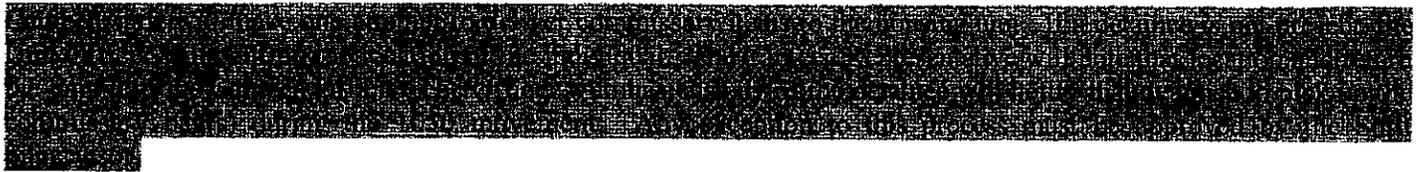
## RELIGIOUS SERVICES

All detainees shall have access to religious resources, services, instruction and counseling on a voluntary basis. Detainees shall be afforded the greatest freedom and opportunity to pursue legitimate religious beliefs or practices within the constraints of safety and security requirements. Services are provided by community volunteers at least once per week. Schedules for religious services are posted at each housing unit. If you desire religious services or privileges not provided, you must complete a detainee request form. Designated staff will consult with appropriate members of the religious community in assessing your request.

## COMMISSARY

This facility provides a commissary service that allows you to purchase food items, hygiene products, telephone cards, postage and writing supplies to supplement what is issued to you. A commissary order form can be obtained from your housing unit officer at any time. The form must be properly filled out with the detainee's A-number printed in the appropriate box plus the individual numbers entered into the bubble. The form is to be dated, include the detainee's printed name, signature, and housing unit information. **Order forms must be turned in to your housing unit officer no later than 7:00 a.m. on Tuesday and Friday. Failure to provide complete and correct information on an order form may result in that order being rejected.** Tennis shoes can be purchased either directly by you or by your friends / family. Order forms are available in the living units or your friends / family may request an Order form from the front desk officer. Commissary orders will be processed and delivered on the next Thursday and Monday. There is a \$50.00 limit a week on all orders, not to include tennis shoes, radios, stamps or phone cards.

Commissary bags are NOT to be opened prior to verifying the bags content. An opened bag indicates that a detainee has inventoried and accepted his/her order.



## VOLUNTARY WORK PROGRAM

Every effort will be made to provide you an opportunity to participate in the voluntary work program. Wages are \$1.00 per day. Ordinarily you will not be permitted to work more than eight hours per day or 40 hours per week. Wages earned are calculated and credited to your account, daily.

**Note:** A detainee must submit a claim for non-payment within 14 days of the date in question. Detainees may also request a copy of their personal account once each week.

You will be provided any necessary training to perform the job to which you are assigned and will be required to sign a voluntary work program statement. You must complete a detainee request form indicating that you wish to participate in the voluntary work program and are encouraged to list any special skills or experience that you may have on the form. The form is routed to the Classification Officer. Prior experience and/or specialized skills are not a requirement for participation in the voluntary work program. However, medical staff must first physically clear detainees requesting to work in Food Services before that assignment can be made. Detainees who choose to participate in the voluntary work program are required to work according to an assigned work schedule. Unexcused or frequent absences or unsatisfactory work performance may result in your removal from the voluntary work program.

## LIBRARY

Each housing unit contains a library where a wide variety of donated materials are maintained. The cultural diversity of the detainee population has been carefully considered in soliciting donation of printed materials. A wide variety of subject matter and language is represented in the collection. You may have one library book at a time and are asked to return it in a timely manner so that others may enjoy it. Books are periodically rotated throughout the housing units so all detainees have access to all of the donated reading materials.

## LAW LIBRARY

A law library is available for use in preparing your case. A large number of documents are provided and regularly updated in order to provide you with current reference materials. A computer, typewriter, paper and writing supplies are provided. The reference materials and equipment in the law library are provided at great expense. Damaging or removing materials or equipment will result in disciplinary sanctions that may include financial restitution.

To use the law library, submit a "Detainee Request" form (Kite) to the Law Library Officer the day before the intended use. Kites should include the hours of your work detail (if applicable); whether you want to use the computer, typewriter or books; and, the name, A-number, and pod of the detainee assisting (if applicable). The detainee offering assistance also needs to submit a kite with the name, A-number and pod of the detainee asking for assistance. Detainees will be scheduled in one hour increments, Monday through Friday (except holidays), from 7:50 am until 4:00 pm, up to a minimum of 5 hours per week. Requests for additional time and days are also to be submitted on a Kite, and arrangements may be made as time and resources permit. Special priority will be granted for additional library time when a detainee has provided the Law Library Officer with a court deadline.

Detainees may also request that copies be made of their legal material. Requests are to be submitted on a Kite that includes the number of copies and who the copies will be sent to. The Kite along with the material to be copied is to be handed in and picked up from the Law Library Officer during the 8:50 am controlled movement. Copies will generally be available within 72 hours of the request.

Detainees who are indigent may mail legal material by delivering it to the Law Library during the 8:50 am movement. If necessary, envelopes will also be provided, if addressed for mailing at this time. A Kite requesting this service is to be submitted with the legal material.

### **TYPEWRITERS AND COMPUTERS**

A typewriter and a word processing computer are provided in the law library for preparation of legal documents **ONLY**. This equipment is not to be used for personal correspondence. If you need to use the computer you must complete a detainee request form for access to the law library. A supervisor will issue you a disk so that you can save your work. This disk will be used to print your work in the administrative office. In addition, this disk will remain the property of GEO upon your release or transfer. No supervisor or staff member will read your documents beyond verifying that they are in reference to legal matters.

### **VISITATION**

Facility visiting hours are as follows:

<b><u>Days</u></b>	<b><u>Hours</u></b>	
Tuesday and Wednesday	CLOSED	
Thursday	8:00 am - 11:00 am	1: 00 pm to 3: 30 pm
Friday	8:00 am - 11:00 am	1: 00 pm to 3: 30 pm
Saturday	8:00 am - 11:00 am	1: 00 pm to 3: 30 pm
Sunday	8:00 am - 11:00 am	1: 00 pm to 3: 30 pm
Monday	8:00 am - 11:00 am	1: 00 pm to 3: 30 pm
Holidays	8:00 am - 11:00 am	1: 00 pm to 3: 30 pm

Every effort will be made to allow you to receive visitors. Sessions will normally be for one hour, with a 30-minute minimum dependent upon the number of visitors and staff availability. More time may be authorized by the Shift Supervisor for family members traveling significant distances. A maximum of two adults and two children may visit at any one time. This regulation will be interpreted flexibly and subject to exceptions. Members of clergy who present proper identification will be admitted to visitation upon request. Visitors will be limited to one session per day.

Any disruptive behavior by either party will result in the termination of the visit and may cause future visits to be denied. If your visitor(s) bring children (17 years of age or younger) they are expected to maintain direct supervision of those children and prevent disruption to other visitors. Visitors must be in appropriate and socially accepted attire. A dress code for visitors is posted at the visiting area. Visitors are not permitted to carry personal items into the visiting area. Lockers are provided to secure these items.

## **Dress Codes for Visitors**

The facility maintains a dress code for visitors. The dress code shall be posted and freely available to the public. The minimum dress code follows.

### **Female Visitors Age 12 and Older**

- a. Shorts shall cover customarily covered areas of the anatomy, including the buttocks and crotch area, both when standing and sitting. Shorts no higher than mid-thigh comply. Short-shorts, jogging shorts, cut-offs, and other obviously inappropriate short garments are prohibited.
- b. Skirts and dresses shall extend to mid-thigh, seated.
- c. Slits in skirts and dresses shall rise no higher than mid-thigh, seated.
- d. Sheer (see-through) clothing is prohibited.
- e. The top of clothing shall be no lower than the underarm in the front and back. Bare midriffs and strapless tops, tube tops, and swimsuits are prohibited.
- f. Shoes shall be worn at all times.
- g. Gang "colors" and other gang displays are prohibited.

### **Male Visitors Age 12 and Older**

- a. Shorts shall cover customarily covered areas of the anatomy, including the buttocks and crotch area, both when standing and sitting. Shorts no higher than mid-thigh comply. Short-shorts, jogging shorts, cut-offs, and other obviously inappropriate short garments are prohibited.
- b. Shirts shall be worn at all times. Muscle shirts, bare midriff shirts and sleeveless shirts are prohibited.
- c. Shoes shall be worn at all times
- d. Gang "colors" and other gang displays are prohibited.

## **ATTORNEY VISITS**

Attorneys and/or paralegals may visit detainees seven (7) days a week from 6:00 a.m. until 11:00 p.m. If necessary, you will be given the option to meet with your attorney during scheduled meal times and you will be provided with a sack meal. A list of free legal services is posted at each housing unit, and is updated quarterly. If you wish to see a representative from this list, it is your responsibility to contact them for an appointment.

If you have made an appointment to meet with an attorney, legal representative or paralegal from an organization, legal firm, or other association or company, it is your responsibility to cancel the appointment if you do not intend to keep the appointment. Appointment cancellations will not be accomplished on your behalf by, or through an officer or another detainee.

## **CONSULAR VISITS**

You have a right to contact your consular representatives and receive visits from your consulate officer. These visits may take place during normal attorney visiting hours or with special permission from the Warden. These visits may be private.

## **CONSULAR VISITATION FOR DETAINEES SUBJECT TO EXPEDITED REMOVAL**

If you are subject to expedited removal and have been referred to any asylum officer, you are entitled to consult with anyone you choose before the interview while the officer's decision is under review. This includes family, friends, legal representatives, members of nongovernmental organizations (NGOs), etc. These consultations are to be private, just like meetings with attorneys. You may also have these persons with you during the asylum officer's interview and during an immigration judge's review of a negative credible fear determination if the judge allows it.

## **CONSULATE AND COURT SERVICES**

You are encouraged to request assistance from your consulate. They can help you with your case. If you have trouble contacting your consulate, you may request assistance by completing a Detainee Request Form (kite) and addressing it

to ICE. You also have access to the immigration court information number: 1-800-898-7180. Once you are in ICE custody, your consulate will be notified if you are a citizen of a mandatory notification country in accordance with Department of State Publication #10969.

### **PRO BONO LIST OF LEGAL ORGANIZATIONS**

The current list of pro bono legal organizations and individuals is posted in each housing area. They are:

- Northwest Immigration Rights Project, telephone: 1 - (206) 587-4009
- Volunteer Advocates for Immigration Justice, telephone: 1 - (206) 359-6202

### **GROUP LEGAL RIGHTS PRESENTATIONS**

Group legal rights presentations are provided. A sign-up sheet will be provided prior to the presentation and you will be given the opportunity to attend. Presentations are open to all detainees, regardless of the presenters intended audience, unless attendance by a particular detainee would pose a security risk.

Detainees in segregation will be allowed to attend if security is not compromised. If a detainee in segregation cannot attend for this reason, and both he/she and the presenter so request, alternative arrangements shall be made. If it becomes necessary, presentations may be made to individuals in segregation, if the presenter agrees and security can be maintained.

### **INSPECTIONS OF PERSONS AND PROPERTY**

You are subject to search upon admittance into the facility and when there is reasonable cause to believe that you may have contraband concealed on your person. Additionally, searches are routine requirements when entering housing units or when leaving the visiting area. Routine, unscheduled searches of the facility, detainee's property and persons will be conducted as deemed necessary. There are occasions when random searches will be conducted when entering or leaving an area.

All searches are conducted as a means of preventing contraband and ensuring that safe and sanitary conditions are maintained in the facility. Searches are not punitive in nature.

### **CONTRABAND / UNAUTHORIZED PROPERTY**

Items not inherently illegal may be considered contraband when possession of the item(s) is prohibited by facility policy or, while not a prohibited item, a greater quantity of the item than allowed is possessed.

Contraband items include but are not limited to:

1. Any dangerous drug, narcotic drug, marijuana, intoxicating liquor of any kind, deadly weapons, dangerous instruments, explosives or any other article that, if used or possessed, would endanger the preservation of order in the facility.
2. Any item which could be used as an aide to escape.
3. Any item which could be used to disguise or alter the appearance of a detainee.
4. Any article of clothing or item for personal use or consumption which has not been cleared first through the Warden or purchased by a detainee from the commissary.
5. Cameras, video, audio, or related equipment that can be used to make unauthorized photographs or audio, or audio/video recordings of detainees, staff or government property.
6. Contraband includes material prohibited by law or regulation, or material that can reasonably be expected to cause physical injury or adversely affect the security, safety, or good order of the facility.
7. Any item altered from its original condition.

Procedures for Handling Contraband

1. Staff shall seize any item identified as contraband, whether found in the physical possession or living area of a detainee, in a common area, or in incoming or outgoing mail.

2. Staff shall inventory, receipt, and store in a secure area with the detainee's other (stored) personal property contraband that is not illegal. This property shall be held until the detainee's release when, unless it is illegal under criminal statutes or could pose a threat to security, it will be returned to the detainee. Nuisance / perishable contraband will be immediately destroyed (cigarettes, food, alcohol, etc.).

Staff shall handle items seized as contraband in accordance with the following procedures.

1. These procedures apply to contraband found in the physical possession or living area of a detainee, in common areas, or in incoming or outgoing mail. They also apply to contraband discovered during in-processing and in the possession of a detainee awaiting interviews, hearings, etc. Exceptions to these procedures may occur only upon written authorization of the Warden, or designee.
2. Contraband that is illegal (under criminal statutes) will be inventoried, held, and reported to ICE for action and possible seizure.
3. Contraband that is facility or government property will be retained as evidence for possible disciplinary action or criminal prosecution. If appropriate, the property will be returned to the issuing authority if not needed as evidence or, if needed, after its use. Alternatively, staff may return the property to normal stock for reuse or, if the property has been altered, the Warden, or designee, may order it destroyed.
4. The Warden, or designee, shall generally consult a religious authority about the handling of religious items prior to confiscation. Such consultation is not required before confiscation of religious items categorized as "hard contraband".
5. Contraband that is illegal under criminal statutes may be destroyed when no longer needed for possible disciplinary action or criminal prosecution. All destruction of illegal hard contraband must have the approval of the Warden, or designee, prior to destruction.

Examples of "hard contraband" include:

- a. Tools that could aid in an escape (e.g., rope);
  - b. Ammunition or explosives;
  - c. Combustible or flammable liquids;
  - d. Hazardous or poisonous chemicals and gases;
  - e. Weapons;
  - f. Intoxicants;
  - g. Currency.
6. Narcotics and other controlled substances not dispensed or approved by the Northwest Detention Center medical department constitute hard contraband. Medicine dispensed or approved by the medical department is hard contraband if found in the possession of a detainee for whom it was not prescribed, or if not used as prescribed. Medicine the detainee brings into the facility upon arrival will be forwarded to the facility medical staff for disposition. Duly approved medicine will be returned to the detainee.
  7. If the personal property of a detainee exceeds storage capacity, the Warden, or designee, will determine which items are excess, and arrange to ship them to a third party chosen by the affected detainee. The Northwest Detention Center will pay shipping costs for a detainee who cannot afford the postage. If, however, the detainee chooses not to provide an appropriate mailing address, or is financially able but unwilling to pay the postage, the Warden, or designee, may dispose of the property as described within Policy 4.1.2, Detainee Personal Property, after providing the detainee with written notice of the intent to destroy the property and how to prevent that outcome.  
When it is clear that an appropriate mailing address does not exist, the Northwest Detention Center will store the property for the detainee.
  8. The following procedures will be followed when a detainee's claim of ownership of contraband material is in question:
    - a. Inventory and store item pending verification of ownership;
    - b. Provide detainee(s) claiming ownership with a copy of the inventory as soon as practicable, and place a second copy in the detainee detention file(s);
    - c. The detainee(s) shall have seven days following receipt of the inventory to prove ownership of the listed items. Staff will deny a detainee's claim of ownership for an item acquired without authorization from another detainee;

- d. If the detainee cannot establish ownership, staff shall attempt to resolve the question before any decision is made regarding appropriate handling. If ownership cannot be reasonably established, the property may be destroyed as outlined in Policy 4.1.2, Detainee Personal Property.

### **Destruction of Contraband**

1. The Warden, or designee, determines whether an item will be destroyed.
2. The Warden, or designee, will generally hold an item of questionable ownership for 120 days before considering its destruction.
3. The officer who physically destroys the property and at least one official observer shall attest, in writing, to having witnessed the property's destruction.
4. A copy of the property disposal record shall be placed in the detainee's detention file. Records of property disposal shall remain on file for at least two years.

### **CORRESPONDENCE / PACKAGES**

You may send or receive mail to or from anyone you know personally. Stamps or pre-stamped envelopes are available for you to purchase through the Commissary. You may seal your outgoing letters and place them in the mailbox in the unit. Drawing on the front of your outgoing envelopes is prohibited by postal regulations. If you receive incoming social or legal mail, it will be opened in your presence and inspected for contraband.

You must use the following address to send or receive mail at this facility:

Your Full Name  
Your "A" Number  
1623 East J Street, Suite 5  
Tacoma, WA 98421

If you do not accept the mail or permit it to be inspected, it will be returned to the sender. **Your mail will not be read; it will only be examined for contraband.**

You will not be allowed to send or receive packages without advance arrangements, approved by the administration. You will pay the postage for sending packages for oversized or overweight mail. The contents of any outgoing or incoming packages will be inspected in your presence.

If you are indigent (defined as a detainee who has an account balance of \$12.00 or less and has not exceeded that amount for the previous 30 days):

- You may send up to three personal letters per week, weighing no more than two ounces each, at no cost to you.
- A reasonable number of legal (special) correspondence may also be sent at no cost to you.

Magazines may be ordered from a local distributor and be delivered via the U.S. Postal Service. All magazines are subject to review as they cannot contain improper material or be sexually explicit. Books must be requested in advance via a "Request to Receive a Package or Property" form. The title(s) of the book(s) must appear on the "Request" form. Books must be paperback and must come directly from a publisher or an authorized bookstore / outlet.

Any mail received after you depart the facility will be endorsed, "No Forwarding Address, Return to Sender". All such mail will be returned to the Post Office.

### **SPECIAL CORRESPONDENCE**

"Special correspondence" is the term for detainees' written communications to or from private attorneys and other legal representatives; government attorneys; judges, courts; embassies and consulates; the President and Vice President of the United States, members of Congress, the Department of Justice (including ICE and the Office of the

Inspector General); the U.S. Public Health Service; administrators of grievance systems; and representatives of the news media.

Correspondence will only be treated as special correspondence if the title and office of the sender (for incoming correspondence) or addressee (for outgoing correspondence) is unambiguously identified on the envelope, clearly indicating that the correspondence is special.

Staff will not treat outgoing correspondence as special if the name, title, and office of the recipient are not clearly identified on the envelope to provide a clear indication that the mail is special.

**NOTICE: ALL INCOMING AND OUTGOING MAIL TO INCLUDE SPECIAL CORRESPONDENCE IS SUBJECT TO INSPECTION FOR CONTRABAND.**

## NOTARY

To request Notary Services submit a Detainee Request Form to the Records Administrator. This service is available for individuals detained in this facility only. Documents for friends, relatives or spouses will not be notarized. ICE approval is required when requesting Notary Services regarding identification. This includes but is not limited to driver's licenses, passports, birth certificates, marriage license requests, etc. **ALL DOCUMENTS MUST BE PRESENTED TO THE RECORDS ADMINISTRATOR FOR REVIEW.**

## DETAINEE DISCIPLINE

In a facility where many individuals live together in a relatively small amount of space, it is extremely important that order and discipline be maintained. Discipline and order are not only for the benefit of staff, but also for the safety and welfare of you and all other detainees. While many problems can be solved informally through counseling, disciplinary measures must be imposed at times. The following is a list of offenses and associated penalties. Any detainee who is charged with a violation of facility rules will receive a disciplinary hearing and be permitted to speak, call witnesses, have a staff representative and present evidence before a penalty is imposed. Detainees have the right to appeal the decision of the Disciplinary Committee within fifteen (15) days.

Detainees have the following rights:

1. The right to protection from personal abuse, corporal punishment, unnecessary or excessive use of force, personal injury, disease, property damage and harassment;
2. The right of freedom from discrimination based on race, religion, national origin, sex, handicap, or political beliefs;
3. The right to pursue a grievance in accordance with written procedures;
4. The right to correspond with persons or organizations, consistent with safety, security, and the orderly operation of the facility; and,
5. The right to due process, including the prompt resolution of a disciplinary matter.

### Category I Offenses:

Listed below are Category I or Greatest offenses. The Discipline Committee may impose any combination of penalties for Category II, III, or IV offenses as well as the following penalties:

- (1) Refer to ICE for Criminal Proceedings
- (2) Disciplinary Transfer
- (3) Disciplinary Segregation up to 60 days
- (4) Restitution

100 Killing

101 Assaulting any person (includes sexual assault)

102 Escape

103 Setting a fire (charged with this act in this category only when found to pose a threat to life or a threat of serious bodily harm or in furtherance of a prohibited act of greatest severity, e.g. a riot or an escape, otherwise the charge is classified as code 219 or 322.)

104 Possession or introduction of a gun, firearm, weapon, sharpened instrument, knife, dangerous chemical, explosive, escape tool, device or ammunition

105 Rioting

- 106 Inciting others to riot
- 107 Hostage-taking
- 108 Assaulting a staff member or any law enforcement officer
- 109 Threatening a staff member or any law enforcement officer with bodily harm.
- 110 Attempt to commit any of the above offenses or assist others to commit any of the above acts.
- 198 Interfering with a staff member in the performance of duties (conduct must be of the greatest severity). This charge is to be used only if another charge of greatest severity is not applicable.
- 199 Conduct that disrupts or interferes with the security and orderly operation of the facility (conduct must be of the greatest severity.) This charge is to be used only if another charge of greatest severity is not applicable.

Category II Offenses:

These acts listed below shall be considered Category II or High Offenses. The Discipline Committee may impose any combination of the following penalties:

- (1) Refer to ICE for criminal proceedings
  - (2) Disciplinary transfer
  - (3) Disciplinary Segregation up to 60 days
  - (4) Restitution
  - (5) Loss of privileges
  - (6) Change of housing
  - (7) Remove from programs / group activities
  - (8) Loss of job
  - (9) Impound and store personal property
  - (10) Confiscate Contraband
  - (11) Restrict to living unit
- 200 Escape from unescorted activities or escape from facility without violence
  - 201 Fighting, boxing, wrestling or any other form of physical encounter, including horseplay, that causes or could cause injury to another person; except when part of an approved recreational or athletic activity
  - 202 Possession or introduction of an unauthorized tool
  - 203 Loss, misplacement or damage of any restricted tool
  - 204 Threatening another with bodily harm
  - 205 Extortion, blackmail, protection; demanding or receiving anything of value in return for protection against others, avoiding bodily harm or avoiding a threat of being informed against
  - 206 Engaging in sexual acts

- 207 Making sexual proposals or threats
- 208 Wearing a disguise or mask
- 209 Tampering with or blocking any lock device
- 210 Adulteration of food or drink
- 211 Possession, introduction or use of narcotics, narcotic paraphernalia or drugs not prescribed for the individual by the medical staff
- 212 Possessing a staff member's clothing
- 213 Engaging in or inciting a group demonstration
- 214 Encouraging others to participate in a work stoppage or to refuse to work
- 215 Refusing to provide a urine sample or otherwise cooperate in a drug test
- 216 Introducing alcohol in to the facility
- 217 Giving or offering an official or staff member a bribe or anything of value
- 218 Giving money to or receiving money from any person for an illegal or prohibited purpose, such as introducing / conveying contraband
- 219 Destroying, altering or damaging property (facility, government or another person's) worth more than \$100.00
- 220 Being found guilty of any combination of three or more high moderate or low moderate offenses within 90 days
- 221 Signing, preparing, circulating or soliciting support for prohibited group petitions
- 222 Possessing or introducing an incendiary device, e.g. matches, a lighter, etc.
- 223 Any act that could endanger person(s) and/or property
- 224 Attempt to commit any of the above acts or assists other to commit any of the above acts.
- 298 Interfering with a staff member in the performance of duties (conduct must be of highest severity). This charge is to be used only when no other charge of highest severity is applicable.
- 299 Conduct that disrupts or interferes with the security or orderly operation of the facility (conduct must be of highest severity). This charge is to be used only when no other charge of highest severity is applicable.

Category III Offenses:

These are considered to be Category III or High Moderate Offenses. Any combination of the following penalties may be imposed:

- (1) Refer to ICE for criminal proceedings
- (2) Disciplinary Transfer
- (3) Disciplinary Segregation up to 72 hours
- (4) Restitution

- (5) Loss of privileges
  - (6) Change of Housing
- Note: IDP must impose the above sanctions

- (7) Removal from Program
  - (8) Loss of Job
  - (9) Impound and store personal property
  - (10) Confiscate Contraband
  - (11) Restrict to living unit
  - (12) Reprimand
  - (13) Warning
- 
- 300 Indecent Exposure
  - 301 Stealing (theft)
  - 302 Misuse of authorized medication
  - 303 Loss, misplacement or damage of a less restricted tool
  - 304 Lending property or other item of value for profit / increased return
  - 305 Possession of item(s) not authorized for receipt or retention, not issued through regular channels
  - 306 Refusal to clean assigned living area
  - 307 Refusing to obey a staff member Officer's order (may be categorized and charged as a greater or lesser offense depending on the kind of disobedience; continuing to riot is Code 105-Rioting, continuing to fight, Code 201-Fighting)
  - 308 Insolence towards a staff member
  - 309 Lying or providing false statement to staff
  - 310 Counterfeiting, forging or other unauthorized reproductions of money or other official document, identification card, etc. (may be categorized a lesser offense, depending on the nature and purpose of the reproduction, e.g., counterfeiting release papers to effect escape – Code 102 or 200)
  - 311 Participating in an unauthorized meeting or gathering
  - 312 Being in an unauthorized area
  - 313 Failure to stand count
  - 314 Interfering with count
  - 315 Making, possessing or using intoxicants
  - 316 Refusing a breathalyzer test or other test of alcohol consumption
  - 317 Gambling
  - 318 Preparing or conducting a gambling pool
  - 319 Possession of gambling paraphernalia
  - 320 Unauthorized contact with public
  - 321 Giving money or another item of value to or accepting money or another item of value from anyone, including another detainee, without staff authorization

- 322 Destroying, altering or damaging property (facility, government or another person's) worth less than \$100.00
  - 323 Attempt to commit any of the above acts or assists other to commit any of the above acts.
  - 398 Interfering with a staff member in the performance of duties (offense must be of high moderate severity.) This charge is to be used only when no other charge in this category is applicable.
  - 399 Conduct that disrupts or interferes with the security or orderly operation of the facility duties (offense must be of high moderate severity}. This charge is to be used only when no other charge in this category is applicable
- Any combination of high moderate and low moderate offenses during a 90-day period shall constitute a high offense

Category IV Offenses:

These are considered to be Category IV or Low Moderate Offenses. Any combination of the following penalties may be imposed:

- (1) Restitution
  - (2) Loss of privileges
  - (3) Change in Housing
- Note: IDP must impose the above sanctions

- (4) Removal from Program / Activity
  - (5) Loss of Job
  - (6) Impound, store personal property
  - (7) Confiscate Contraband
  - (8) Restrict to living unit
  - (9) Reprimand
  - (10) Warning
- 
- 400 Possession of property belonging to another person
  - 401 Possessing unauthorized clothing
  - 402 Malingering, feigning illness
  - 403 Smoking
  - 404 Using abusive or obscene language
  - 405 Tattooing, body piercing or self mutilation
  - 406 Unauthorized use of mail or telephone (with restriction or temporary suspension of the abused privileges often the appropriate sanction)
  - 407 Conduct with a visitor in violation of rules and regulations (with restriction or temporary suspension of the abused privileges often the appropriate sanction)
  - 408 Conducting a business
  - 409 Possession of money or currency

- 410 Failure to follow safety and sanitation regulation
- 411 Unauthorized use of equipment or machinery
- 412 Using equipment or machinery contrary to posted safety standards
- 413 Being unsanitary or untidy, failing to keep self and living area in accordance with standards
- 414 Attempt to commit any of the above acts or assists other to commit any of the above acts
- 498 Interfering with a staff member in the performance of duties (offense must be of low moderate severity). This charge is to be used only when no other charge in this category is applicable
- 499 Conduct that disrupts or interferes with the security or orderly operation of the facility duties

(offense must be of high moderate severity). This charge is to be used only when no other charge in this category is applicable

- When the prohibited act is interfering with a staff member in the performance of duties (Code 198,298,398 or 498) or conduct that disrupts (Code 199,299,399 or 499), the Disciplinary Committee should specify in its findings the severity level of the conduct, citing a comparable offense in that category. For example, "We find the act of the highest severity, most comparable to Code 213, "engaging in a group demonstration."

**NOTE:** Detainees who are released from Disciplinary Segregation will normally not be considered for a work assignment until they have shown a positive period of adjustment. Additionally, any disciplinary code conviction may affect a detainee's classification level.

### APPEALS PROCESS

You may appeal the decision of the Disciplinary Committee(s) within fifteen days using the Formal Grievance Form (#4). The Grievance / Appeal must be presented in writing.

### DETAINEE GRIEVANCE PROCEDURE

Detainee grievance forms are available in the housing units. You have the right to request staff or detainee assistance in preparing a grievance, although no detainee may submit a grievance on another detainee's behalf. Informal resolution of problems is encouraged. You have (5) days in which to submit a grievance from the date of the incident or issue. Grievances concerning operational issues (food, clothing, property, etc.) are to be directed to GEO. Medical grievances are to be forwarded to "DIHS" and deportation matters to "ICE". Grievances on the same subject cannot be submitted to multiple sources.

You also have the right to pursue a grievance through formal channels. A grievance must address only one issue or closely-related issues occurring within a limited period of time. You cannot file an Informal Grievance and a Formal Grievance on the same issue at the same time. Doing so will result in both grievances being returned without processing. You must wait until each level in the grievance process is completed before submitting the issue to the next level (e.g. Informal, Formal, Detainee Grievance Committee, Warden, or ICE). Grievance committee decisions may be appealed within 5 days to the Warden, and if necessary, to ICE.

An Emergency Grievance, which involves an immediate threat to your health or safety, will be given immediate attention by the Shift Supervisor, or through the chain-of-command, as necessary. A Sensitive or Confidential Grievance may also deal with your safety or wellbeing, but it is to be submitted in a sealed envelope, addressed to the Warden and include the reasons for going outside of the chain-of-command.

No detainee will be subjected to harassment, punishment or disciplinary action for seeking resolution of legitimate complaints in good faith. However, if you demonstrate a pattern of abusing the grievance system, resulting in unnecessary burdens at the expense of legitimate complaints, such grievances will be returned unprocessed. Continued abuse may result in adverse actions initiated against you.

Completed grievance forms should be placed in the collection box in your housing unit or they may be given to any staff member. A copy of your grievance will be maintained in your file for three (3) years.

## **ALLEGATIONS OF STAFF MISCONDUCT**

The Northwest Detention Center must forward detainee grievances alleging officer misconduct to ICE. ICE will investigate every allegation of officer misconduct.

You may also file a complaint about officer misconduct directly with the Department of Homeland Security by calling 1-800-323-8603 or by writing to: Department of Homeland Security  
Office of Inspector General  
245 Murray Drive S.E., Building 410  
Washington, DC 20528

## **RECREATION FACILITIES**

The facility provides recreational activities within the housing units in the form of cards and games that are available at no cost to you. Television viewing shall be available from the time morning cleaning duties are completed until lights out at 11:30 p.m. Television settings are controlled in each living unit by remote control.

Outdoor recreation equipment within the housing units is also available, including basketballs, etc. Hours are from 8:00 a.m. (if the housing unit is in acceptable condition according to the Pod Officer) until 8:00 p.m., daily.

The use of the outside recreation yard is rotated through each of the housing units each week and is available in hourly segments beginning at 8:00 A.M. Detainees are required to:

1. Sign up 1 hour prior to the scheduled recreation time.
2. Be in their issued uniform or sweats, not a combination of both.
3. Have their radios in either hand with ear phones out of the ears.
4. Not stand or place any items within the red lines.
5. Continue walking and not touch the fence while using the walking path.
6. Stand for count and/or search against the wall under the basketball hoops when directed.
7. Not bring dorm recreational equipment to the outside yard unless directed to do so by the Recreation or Dorm Officer.

## **MARRIAGE REQUESTS**

Detainees may request permission to marry by submitting a Detainee Request form (kite) through the Warden to ICE. The request is to include an attachment that addresses the following information:

1. He/she is legally eligible to be married;
2. He/she is mentally competent (which must be determined by a qualified medical practitioner);
3. The intended spouse has affirmed, in writing, his/her intent to marry the detainee; and
4. Identify the arrangements that will be made, and by whom, for such items as, but not limited to, obtaining a marriage license, retaining an official to perform the marriage ceremony, etc.

Neither ICE nor NWDC staff will participate in making marriage arrangements or the ceremony. Any marriage request that is approved will occur within the NWDC.

## **DETAINEE DRESS CODE**

Detainees are required to keep themselves clean and wear proper clothing/footwear during all activities. Detainees are reminded that poor hygiene, poor sanitation and not wearing proper clothing and footwear can cause potential conflict with your peers and others and can have a negative impact on the health and safety of yourself and others. Failure to comply with the dress code and grooming standards will ultimately become an issue that requires staff intervention in the form of appropriate disciplinary action to correct the situation.

Detainee uniforms will be worn in the manner that is intended by the manufacturer. Altering detainee uniforms or wearing them in any manner other than the commonly accepted manner is prohibited. Undergarments may not be worn without

outer garments or be visible in any way only while in sleeping areas or restrooms. Pants will be worn at a point about the waist that prevents the exposure of undergarments or commonly covered parts of the anatomy. T-shirts are to be worn at all times, except while at recreation or in the shower. Detainees are not to walk about the facility with their hands inside waistbands of pants, regardless of weather conditions. **No Exceptions!**

Ordinarily, detainees may wear any hairstyle with the following exceptions:

1. For safety and hygiene reasons, kitchen workers and detainee workers operating machinery will keep their hair in a neat, clean and commonly accepted style.
2. The hairstyle will not interfere with safety and hygiene requirements.
3. ALL kitchen workers will wear a hairnet or hat (only) while working in the kitchen.
4. Ordinarily, facial hair may be grown without restriction with the following exceptions:
  - a. For safety and hygiene reasons, certain kitchen workers and detainee workers operating machinery are not authorized to wear facial hair and are expected to be clean shaven at all times while performing these duties.
  - b. These restrictions are a requirement for employment in the above-described functions and acceptance of the assignment denotes acceptance of the grooming standards.
  - c. There will be no exceptions to this requirement, including medical reasons.

### **LEGAL FILE**

The Detention and Deportation Section maintain an immigration legal record, commonly called an "A" File, for each detainee. Your "A" File contains legal transactions and documentation related to your case, including but not limited to identification cards, photos, passports and records of your immigration history.

### **CUSTODY FILE**

The NWDC maintains a detention record for each detainee. This custody file shall record no less than the following:

1. Facility disciplinary actions.
2. Behavior reports.
3. Funds, valuables and property receipts.
4. Detainee request forms, complaints and/or grievances.
5. Responses to the aforementioned.
6. Special housing unit records.
7. Classification documents

### **INFORMATION REGARDING STRESS AND DETENTION**

If this is your first time detained, or if you feel like you are extremely stressed at this time, the following information may be helpful to help reduce the anxiety you feel.

#### **A. DETENTION IS NOT PRISON**

Detention is NOT prison. It may feel like you are in prison but this detention facility is a place to have you stay while it is determined whether you will be deported or be allowed to remain in the U.S. The officers are here to keep you and others safe. The tone of their voice or actions they must take can some times seem harsh if you have never been in an environment where there are many people. But sometimes this is necessary. Rules are important to keep order. They are not there to cause you unnecessary stress. Try not to take things personally.

#### **B. LENGTH OF DETENTION**

The court and the officers in charge of the facility do not want to keep you any longer than necessary in detention. Unfortunately, the court system and the legal process sometimes take awhile. Don't assume there is something wrong because you have not yet received your court date or if someone who arrived here after you has already been to court. There can be many reasons for this. Each person's circumstances are different. Please accept the fact that this is a PROCESS and a SYSTEM that does not move as quickly as you might want. Many of you spent a great deal of time and energy to get here and have been through many hardships. You are stronger than you think and you can cope.

## C. THE PROCESS

At court you may have the opportunity to sign paperwork if you wish to return to your country and don't wish to stay. The judge will issue an "order of removal". The next step is an interview with your country's consulate. When the consulate verifies your citizenship and approves the paperwork, they will issue a travel document. Once the travel document is issued, the deportation process moves faster. The next step is for the flight to be booked to your country. Depending on the country and how many detainees are going to that country, the time for departure can vary until you leave. Be patient! However, if the court orders deportation and you appeal this decision; understand that you will be here longer.

## D. STRESS AND SLEEP

Many of you may be having problems sleeping because you feel anxious, depressed or are worried about your family. Please understand that it is normal to have problems with sleep in this type of situation. While it may seem that medication to help you sleep is the answer, this is not true. Medication for sleep is a last resort, not a first choice. Pills do not give you restful sleep.

It is better to try to practice relaxation techniques such as deep breathing, meditation or muscle relaxation. (Ask medical clinic staff for copies of these handouts). You should also try to talk yourself through your anxiety. What this means is to change thoughts that make you feel worse to ones that are more realistic and hopeful. If you continue to have problems sleeping, you may wish to discuss this with your health care provider, by submitting a sick call request.

When you do feel anxious or stressed, remember that you are not alone. Talk to others in the dormitories who are positive and who seem to be coping. Avoid people who are negative and who tell you information that is not true. Don't get stressed about something that you can't control. Do the best you can, keep a positive attitude, and remember that your family would want you to be healthy while you are here. They would not want you to be so worried about them that you are not feeling well physically or emotionally.

## E. WHEN TO SEEK HELP

Sometimes your stress may be more severe and relaxation techniques and thought changes aren't enough. If you are experiencing severe depression, anxiety, or are having some emotional problem that is making you feel that you cannot cope, please request to see the mental health provider by putting in a sick call slip. The mental health provider, can help you cope with the stress that you are experiencing from being detained. However, the mental health provider is part of the medical staff and is NOT part of the Immigration Staff and cannot assist with court or legal matters. Also, mental health problems do not influence the court, and the mental health provider is never involved in the court process. If you need information regarding court, deportation dates or other legal matters, you need to request to see your deportation officer.

If you are scheduled to see the social worker, you will be asked many questions in order to determine the best way to help you. You will be asked about your current problem, any past psychological or emotional problems, family information, your past and present alcohol and drug use, past and current medical problems, whether you have ever had or are currently having thoughts of hurting yourself or hurting someone else, any learning or memory problems, as well as other questions. This information is entered into your medical record and remains in the medical clinic.

After this evaluation, the mental health provider may provide education to help you cope, may offer short term individual counseling, or may refer for medications for psychological problems. (Not sleeping pills.)

## F. WHAT YOU CAN DO TO HELP YOURSELF AND OTHERS

- Listen to others who are having difficulty and encourage them to keep busy and stay positive.
- Recognize what you HAVE control over, and what you don't have control over. You have control over your thoughts and your reactions. You are not powerless. Don't waste your energy on those things that you do not have control over.
- Attend religious activities or recreational activities and encourage others to attend also.
- Remember that the choices you have made have consequences — the harsh reality is that if you came here illegally, or were legal but got into trouble, detention is part of the process.

- Take personal responsibility for your actions and remember that you are stronger than you think.
- Remember that your family would want you to be healthy. If you don't take care of your stress and anxiety, you are hurting your physical health. Stress can cause headaches, stomach aches, muscle aches, etc. Long-term stress can affect your heart and your immune system.

#### G. THE CONNECTION BETWEEN FEELINGS, THOUGHTS AND ACTIONS:

Remember that a **SITUATION** doesn't make you **FEEL** any certain way. It is your **THOUGHTS** that make you feel the way you do. The fact that you are in detention does not mean you **MUST** feel anxious, worried, or depressed. It is your negative thoughts about your situation that make you feel bad. This does not mean that your situation is good; it just means that everyday you can make a **CHOICE** to be happy and positive. Look at it this way, worrying and feeling bad will not change the fact that you are in detention. But you can be here and decide to focus on positive thoughts and do positive actions. Try to learn something new each day, or try to do something positive for someone else. When you take these **ACTIONS**, you will **FEEL** better.

#### H. EMERGENCIES

If you or someone in your dormitory has made statements of wanting to hurt yourself or hurt someone else, notify the security officer immediately. **Do not keep this information to yourself.** Or if you feel like someone in your dormitory is in real danger of being hurt by someone else, again, let the security officers know immediately.

### DEPARTMENT OF IMMIGRATION HEALTH SERVICES DENTAL POLICY

#### A. SICK CALL

The Northwest Detention Center dental clinic is established mostly for emergency dental treatment. Some examples include severe tooth pain, infection and swelling, and trauma to teeth. To receive dental care from the dentist for **EMERGENCY TREATMENT** fill out a **SICK CALL REQUEST FORM** and put it in the red sick call pick up box located in your pod and an appointment will be made for you. You will be called by one of our officers to be escorted to the dental clinic at the time of your dental appointment.

**DO NOT USE THE SICK CALL PROCESS TO REQUEST ANY OTHER KIND OF DENTAL TREATMENT. SICK CALL IS FOR EMERGENCY DENTAL PROBLEMS ONLY!!**

To be eligible for routine dental care you **MUST** be in ICE custody for 10 MONTHS or more. Some examples of routine dental treatment are cleanings, permanent fillings, false teeth, etc.

#### B. ORAL HEALTH EDUCATION

Bleeding gums are the first sign of the oral infection called periodontal disease. The first stage of the disease is called gingivitis. This is when your gums become tender and start to bleed due to a build up of bacteria on your teeth and gums. This bacterial build up is called plaque, and it will cause both cavities and gum infections if it is not removed daily by brushing and flossing. We all know a build up of plaque will also cause bad breath. Brushing and flossing twice daily will remove the bacterial plaque and help to keep your teeth and gums healthy. **YOU** can prevent dental problems with good oral hygiene. If your gums are tender and bleeding it is an early sign that you need to brush your teeth more often, and if you begin brushing and flossing right away the bleeding and tenderness will go away after about a week of good oral hygiene.

If you don't brush and floss as you should the bacterial plaque will continue to grow on your teeth and gums and start to gather in the pockets between your teeth and gums. When the plaque begins to grow and gather in your mouth like this it can destroy the gums and the bone supporting your teeth. The germs in the plaque are very toxic for your mouth, and eventually the gums and the bone surrounding your teeth will shrink away leaving loose and sensitive teeth. This is the stage of gum infection called periodontitis. While there will be some damage to your gums and bone, you can usually still save your teeth at this point if you begin regular brushing and flossing along with regular visits to the dentist for special cleanings.

Finally, if this stage of gum infection called periodontitis is not treated and the plaque is allowed to continue to build up on the teeth and gums, the teeth will become very loose and painful and will need to be pulled out by a dentist. At this stage there is too much damage to repair. No one wants to lose their teeth, so brush and floss daily. Keeping

your mouth healthy is good for your self esteem, and it is also a very important part of keeping the rest of your body healthy.

### C. ORAL HYGIENE

Using a soft bristle toothbrush with fluoride toothpaste start on your

1) Outside front teeth:

Hold brush at an angle where the teeth and gums meet

Move the brush gently in a circular motion while also moving the brush sideways using short strokes.

2) Inside and outside surfaces of back teeth:

Use short angled, circular brush strokes brushing both teeth and gums

3) Inside surfaces of front teeth:

Hold brush flat on inside surface and brush back and forth

Don't forget to brush your tongue. Your tongue is a hiding place for the bacteria that cause cavities, gum disease and bad breath.

### D. BRUSHING YOUR TEETH and GUMS HARD CAN CAUSE PERMANENT DAMAGE! BE CAREFULL!

#### Helpful Hints:

Brush two or three times a day for a few minutes each time you brush. Make sure you brush all surfaces of your teeth.

Use toothpaste containing fluoride to help fight tooth decay.

Use dental floss to clean between your teeth once a day. This cleans areas your brush can't reach. If you don't floss between your teeth you will miss 35% of all your tooth surfaces.

**IMPORTANT:** Dental floss can be purchased through Commissary.

## RIGHTS AND RESPONSIBILITIES

1. You have the right to be informed of the rules, procedures and schedules concerning the operation of the facility.  
*You have the responsibility to know and abide by them.*
2. You have the right to freedom of religious affiliation and voluntary religious worship.  
*You have the responsibility to recognize and respect the rights of others in this regard.*
3. You have the right to healthcare which includes nutritious meals, proper bedding and clothing, a laundry schedule for cleanliness of the same, an opportunity to shower regularly, proper ventilation for warmth and fresh air, a regular exercise period, toilet articles and medical treatment.  
*It is your responsibility not to waste food, to follow laundry and shower schedule, to maintain neat and clean living quarters, and to seek medical care as needed.*
4. You have the right to have family members and friends visit with you in keeping with the facility rules and schedules.  
*It is your responsibility to conduct yourself properly during visits and to not accept or pass contraband.*
5. You have the right to unrestricted and confidential access to the courts by correspondence.  
*You have the responsibility to present honestly and fairly your petitions, questions, and problems to the court.*

6. You have the right to legal counsel from an attorney of your choice by means of interviews and correspondence at no cost to the United States Government.

*It is your responsibility to obtain the services of an attorney honestly and fairly.*

7. You have the right to have access to reading material for your own enjoyment. These materials may include approved magazines.

*It is your responsibility to seek and utilize such material for your personal benefit, without depriving others of the same benefit.*

8. You have the right to participate in the use of the law library reference materials to assist you in resolving legal problems. You also have the right to receive help when it is available through a legal assistance program.

*It is your responsibility to use those resources in keeping with the procedures and schedule prescribed and to respect the rights of other detainees to the use of the material.*

9. You have the right to a wide range of reading material for educational purposes and for your own enjoyment. These materials may include magazines and newspapers sent from the publishers.

*It is your responsibility to seek and utilize such material for personal benefit, without depriving others of their equal rights to the use of this material.*

10. You have the right to participate in a work program as far as resources are available, and in keeping with your interests, needs and abilities.

*You have the responsibility to take advantage of activities which may help you live a successful and abiding life within the facility and in the community. You will be expected to abide by the regulations governing the use of such activities.*

11. You have the right to an administrative hearing before an Immigration Judge to determine your status in the United States.

*It is your responsibility to seek and provide evidence for your defense.*

12. If you are not an exclusion case and eligible, you have the right to be released on bond until your scheduled administrative hearing.

*It is your responsibility to seek methods of payment for your bond.*

13. You have the right to apply for political asylum if you believe that you will be persecuted because of your race, religion, nationality, membership in a social group or political opinion.

*It is your responsibility to prepare and submit the proper forms accurately.*

14. You have the right to request voluntary departure, if statutorily eligible, prior to a hearing but if you request voluntary departure, you waive the right to a hearing.

*It is your responsibility to inform an ICE Officer that you request voluntary departure.*

**This handbook is designed to provide you with a general overview of facility procedures and services and describe prohibited acts and associated penalties. Every potential question and/or eventuality cannot be addressed completely in this format. Any questions or concerns should be directed to your dormitory officer. You may contact a supervisor or ICE officer by completing a detainee request form at any time.**