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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.