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INTERIOR IMMIGRATION ENFORCEMENT RESOURCES

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

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INTERIOR IMMIGRATION ENFORCEMENT RESOURCES

THURSDAY, MARCH 10, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION,
BORDER SECURITY, AND CLAIMS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 12:14 p.m., in Room 2141, Rayburn House Office Building, Hon. John N. Hostettler (Chair of the Subcommittee) presiding.

Mr. HOSTETTLER. The Subcommittee will come to order.

Last week, this Subcommittee reviewed the lack of adequate resources to secure our national borders against the entry of criminals, gangs, terrorists, and other law breakers. But what resources have we committed to finding and removing such aliens who are already living among us? That is the subject of this week's hearing.

The 9/11 Commission staff report on terrorist travel stated it had, "identified numerous entry and embedding tactics associated with earlier attacks in the United States," and that prior to 9/11, "abuse of the immigration system and a lack of interior immigration enforcement were unwittingly working together to support terrorist activity."

But this threat is hardly one for the history books. Admiral James Loy, Deputy Secretary of Homeland Security, recently testified that, "We believe that attacking the homeland remains at the top of al-Qaeda's operational priority list. . . . We judge . . . that the next dramatic attack will attempt to replicate the 9/11 model of multiple attacks against geographically distant and symbolic targets that cause unprecedented economic damage, mass casualties, and physical destruction. . . . Thus, the probability of an attack in the United States is assessed to be high."

And Director of the Federal Bureau of Investigation, Robert S. Mueller, testified that, "In 2004, we learned that operatives had conducted detailed surveillance of financial targets in New York, Washington, D.C., and New Jersey . . . a sobering reminder of the threat we continue to face. . . . [There] is the threat from covert operatives who may be inside the U.S. who have the intention to facilitate or conduct an attack. I remain very concerned about what we are not seeing. Efforts by extremists to obtain training inside the U.S. is also an ongoing concern."

Also, Representative Solomon Ortiz told us last week that, "Enforcement officers routinely release illegal immigrants into the general population of the U.S. because they do not have the sufficient

funds and space to detain them at detention facilities. Captured [Other-Than-Mexican aliens] are released on their own recognizance and are ordered to appear at a deportation hearing weeks after their release . . . but the number of released illegal immigrants not returning for deportation grows by the hundreds each week. [This is] undermining our national objective to take the war to the enemy so we do not have to fight the war on terror inside our country."

My colleague from the minority is quite correct. I am concerned that we must, indeed, 'fight the war on terror inside our own country.' And while an aggressive and committed strengthening of our borders by the doubling of Border Patrol agents is a vitally important layer in our homeland security, it is but one layer of what should be a multi-layered approach.

Recently, there has been much discussion centering around the comments of members of the Administration regarding the use of our porous borders by terrorists to enter this country illegally and striking the homeland. But the question that I ask today is this, 'Why would a terrorist, or group of terrorists, risk possible interdiction at the border and subsequent detention, questioning, arrest, or removal when they could obtain, say, a student visa or visas, enter the country legally, melt into society, and stay as long as they wish, knowing the Federal Government will likely never give them another thought, even if they overstay their visa?'

Purely imaginary, you would say? Well, imagine this. All 19 of the 9/11 hijackers legally entered the United States. However, on September 11, 2001, three of the 19 were illegally present in our country because their visas had lapsed. Due to a lack of resources, a lack of policy emphasis of removal of illegal aliens, or a combination of the two, there was no action taken to aggressively enforce the immigration laws in the interior United States, and the rest, as they say, is history.

These facts led the 9/11 Commission to report that apprehension of, [b]oth Hazmi and Mihdhar [two of the 9/11 hijackers] could have derailed the plan.' '[The] plan' that the Commission refers to is the flying of planes into buildings and that cornfield on that fateful day. The continuation of the lack of interior enforcement most probably encourages future terrorists to ask, 'If it's broke and they're not going to fix it, why change tactics?'

But as our colleague, Mr. Ortiz of Texas, testified last week, terrorists do not come into our country with a big "T" painted on their forehead. They make their way into our country-to use the gentleman from Iowa, Mr. King's, analogy-as that needle in a haystack of millions of legal and illegal immigrants. If we are to have any hope of ever exposing the needle, we must greatly diminish the size of the haystack.

'How do we do that?' You may ask? By remembering what the U.S. Commission on Immigration Reform said in its 1997 Executive Summary when it stated, "[r]educing the employment magnet is the lynchpin of a comprehensive strategy to deter unlawful migration." By aggressively enforcing our immigration laws in the interior United States and especially worksite enforcement, significantly increased numbers of Immigration and Customs Enforce-

ment, or ICE Agents, will complement the increased manpower defending the integrity of our borders.

Likewise, Representative Ortiz told us the consequences of inadequate detention beds. And because of a lack of ICE Agents, absconders go free and as I said earlier, employer sanctions have been abandoned.

As Hal Rogers, Chairman of the Appropriation Committee's Homeland Security Subcommittee recently stated, "Detention and removal officers had to reduce the number of detainees held at one time, about 23,000, to below 18,000. . . . ICE has not been fully engaged in going after absconders and is removing deportable aliens at a slower rate than in 2004. . . . There is roughly 465,000 absconders. . . . Forty-five of those are criminals . . . this has got to be on the top of our list, has it not?"

Last year, this Congress passed and the President signed the Intelligence Reform and Terrorism Prevention Act. This Act called for an 800-agent increase in ICE strength in 2006 and for 8,000 more detention beds in 2006. Yet, the President's budget calls for only 143 new ICE investigators, and 1,920 detention beds, both less than 20% of the number we authorized.

I am deeply disappointed by the Administration's budget. It would be a horrible lapse of duty for this Subcommittee to allow a lack of resources to facilitate the embedding of terrorists and criminals in our country. I will do my utmost to ensure that the promise that Congress made to the American people in last year's legislation will be fulfilled.

The witnesses at today's hearing will examine the need for the increases set forth in the Intelligence Reform and Terrorism Prevention Act from each of their unique perspectives.

At this time, the chair now recognizes the Ranking Member from Texas, Ms. Jackson Lee, for purposes of an opening statement.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. Let me also welcome the witnesses, and as well, welcome new Members of our Committee, particularly those on the minority side. We welcome, as the Chairman has done, those who have been added on the majority side.

We have had now a series of hearings on how we can do better, and frankly, we have also had a series of hearings that would point out some of the fractures in the system. Today, we talk about the ICE functions and the Bureau of Immigration and Customs Enforcement that was merged—had merged investigative functions of the former Immigration and Naturalization Service and the Customs Service.

Yesterday, in Homeland Security, we had an opportunity, as well, to listen to the questions being raised as to whether or not we should reengage those two entities under one and whether or not the idea of the enforcement inside the United States and enforcement at the border should be as one.

Frankly, Mr. Chairman, I think that in light of the needed requirements to up it, if you will, to ratchet it up on protecting this nation, I think we should leave no stone unturned on how we could be more effective in doing that. So this is a particularly important hearing as we address the question of whether or not we have the appropriate resources.

The Bureau of Immigration and Customs Enforcement merged the investigative function of the former Immigration and Naturalization Service and the Customs Service, the INS detention and removal functions, most of the INS intelligence operation, the Federal Protective Service, and the Federal Air Marshals Service. ICE's areas of responsibility include the enforcement of laws dealing with the presence and activities of terrorists, human trafficking, commercial alien smuggling operations, document fraud, and drug trafficking, and many important aspects of their work have been successful.

Just recently, for example, we were able to applaud Operation Predator, which was able to bring in 5,000 arrests since 2003 on the question of those who are non-citizens who have come into this country and who have been predators against our children.

Also, for instance, ICE investigators conducted an 8-month investigation last year of two men who were selling false identity documents to members of terrorist organizations. The ICE investigators developed such a strong case against these individuals that they pleaded guilty on February 28, 2005, to a charge of involvement in a conspiracy to sell false documents to purported members of Abu Sayyaf, a Philippines-based group that has been designated as a foreign terrorist organization.

The Intelligence Reform and Terrorism Prevention Act of 2004 authorized 800 new ICE investigators for FY 2006 through FY 2010. The President's budget only requests funding for 143 new ICE investigators for FY 2006, which is only 17 percent of the authorized number. We need all of the 800 additional ICE investigators authorized by the Intelligence Reform and Terrorism Prevention Act.

And with a little lightness, Mr. Chairman, maybe the Administration was simply trying to tease us, to egg us on, to see if we had the stomach to do what is right, and that means that we need to fully fund the 800 additional ICE investigators. Let's take the bait, if you will, accept the challenge, and do what we need to do.

The National Intelligence Reform and Terrorism Prevention Act also authorized 8,000 new detention beds each year from FY 2006 through 2010. The President, however, has requested funding for 1,920 beds for FY 2006, which is only 24 percent of the authorized number. Mr. Chairman, I know that you are headed to the border, at least a portion thereof. I have spent some time at the border with Congressman Ortiz. I saw what the need was and the crisis—hard-working men and women who understand the needs of securing the border, but more importantly, understanding the needs of retaining those who have entered this country illegally. They cannot do their job without the full funding of these detention beds and the recognition that, in fact, we have a responsibility to provide them with the necessary resources.

Now, to have 8,000 detention beds also means that we must have a process that recognizes the need for an expedited response to individuals who are detained. It doesn't make any sense to detain individuals for months and months, separating them from their family and not allowing them to petition their rights in the immigration judicial system. We must fix that, as well.

Again, these beds are necessary to provide appropriate detention facilities for asylum seekers and to detain people who might be dangerous, but as I said, we must find a pathway, a justice system that allows those asylum systems to be heard as quickly as possible.

In a recently issued report on asylum seekers and expedited removal proceeding, the U.S. Commission on International Religious Freedom provides information about 19 detention facilities that house asylum seekers. The facilities are located in 12 different States and include six county jails, 15 Homeland Security facilities, 17 private contract facilities, and one special county-run detention facility for alien families. These institutions housed more than 70 percent of all aliens subject to expedited removal in FY 2003. Overall, they house approximately 5,585 alien men and 1,015 alien women. More than half of the facilities reported that they house asylum seekers with criminals. Among the eight facilities that housed criminal inmates, seven permitted some contact between them and the detained alien. In four of the facilities, this included shared sleeping quarters.

Mr. Chairman, I think all of us would admit that is inappropriate and it must stop. The 8,000 beds are necessary not only for detention, but simply for justice and what is fairness. In only one of these facilities were the line officers or guards explicitly told which inmates were asylum seekers. Also, very few of the facilities provide any specific training to sensitize guards to the special needs or concerns of asylum seekers. Even fewer facilities provide training to recognize or address the special problems experienced by victims of torture and other forms of trauma.

One of the oppositions, or one of the reasons for opposing the intelligence bill before it had been amended or before that language had been eliminated was the language that was included about asylum seekers, and one of the reasons for opposing the recent bill that was on the floor dealing with asylum seekers was it was simply inappropriate, unfair, and did not recognize the plight that asylum seekers face.

All the facilities but five reported that they used strip or other kinds of invasive searches on detainees as a standard procedure during the time they were processed into the facility. All but three reported using strip or invasive searches for security-related reasons during the detainees' subsequent confinement. Virtually all of the facilities reported using physical restraints. For example, the Tri-County Jail in Illinois used handcuffs, belly chains, and leg shackles when detainees left the facility. Only a few of the facilities provide the detainees with access to private, individual toilets, and only slightly more of our facilities were detainees able to shower privately. The overwhelming majority of the facilities require detainees to wear uniforms.

Some might say these individuals are undocumented and illegal, but what I would simply say to those in this country, to our Committee Members, that we can do better. America is known to do better and we would want to be treated in such a way if we were detained elsewhere around the world. It is what you do within your own boundaries and, as well, in what you do in upholding your values that speaks more volumes to the world.

It is unconscionable that we are treating asylum seekers this way. They have not been sentenced to incarceration as convicted criminals. Why are they being treated as if they were convicted criminals? This is especially distressing in view of the fact that some of them have come to the United States seeking refuge from torture and other forms of oppression and abuse.

The failure to provide adequate detention facilities does not just result in inappropriate incarceration of asylum seekers. It also results in the release of aliens who might be a threat to our national security. Although a large number of aliens cross the border between Mexico and the United States illegally, the U.S. Border Patrol catches many of them and returns many of them to Mexico.

The Mexican government, however, usually does not accept aliens from other countries. These aliens are referred to as "other than a Mexican," or OTMs. Due to a shortage of detention beds, these individuals cannot be detained. According to information from the Congressional Research Service, USBP released 30,000 OTMs last year on their own recognizance and many of them do not return for trial. Most of the OTMs are ordinary people who come to the United States to seek a better life for themselves and their families.

There is a concern, however, that has been expressed by my colleague, Congressman Ortiz, that terrorists can use these fractures in our system, these weaknesses in our border security as a way to enter the country to do harm. Also, we have a growing number of MS–13, Mara Salvatrucha, gangs in our major cities and members of these bloody, violent Central American gangs are entering the United States as OTMs.

Mr. Chairman, you mentioned the desire to fix our immigration system and you also mentioned the fact that visas can be abused. You are absolutely right, but I don't think we should use a blanket concern about a broken immigration system and our borders being porous to not recognize the validity of student visas. Even universities throughout America, some in your State and district, I know, find the student visa program and other visa programs to be helpful in the intellectual exchange and international exchange and the positiveness of working together around the world, collaborating to fight terror, to promote peace, to educate and understand each other's customs and values. It is important to have a system like that that works in a positive sense.

But we must fix our broken immigration system and provide adequate lawful access to the United States. The population of undocumented aliens and the number of aliens who come here illegally will be reduced greatly. Then it will be easier to deal with enforcement problems. We can even find a way to re-merge, if you will, these two entities, internal defense and external defense. But we need many more detention beds, and might I add, we need 10,000 Border Patrol Agents for the Northern and Southern border.

In the meantime, however, we need additional ICE investigators and more detention beds. We also need to stop the inhumane practice of housing asylum seekers in penal settings where they are treated as incarcerated criminals.

I look forward to working with you, Mr. Chairman, on these very important issues.

Mr. HOSTETTLER. I thank the gentlelady, and without objection, all Members may insert their opening statements into the record.

[Whereupon, at 12:32 p.m., the Subcommittee proceeded to other business, to resume at 12:42 p.m.]

Mr. HOSTETTLER. The Subcommittee now moves to the consideration of the hearing before us, and will the witnesses please return to the panel. Thank you for your indulgence, and I want to thank Members of the Subcommittee for your attendance.

Paul K. Martin has served as Deputy Inspector General at the Department of Justice since June 2003, and in the Inspector General's office since 1998. Mr. Martin was a founding staff member of the United States Sentencing Commission and served as its Deputy Director for 7 years. Mr. Martin received his Juris Doctorate from the Georgetown University Law Center in 1990 and a Bachelor of Arts in Journalism from the Pennsylvania State University in 1982. He is married to Rebekah Liu, an attorney in Washington, D.C., and they have three daughters.

Mr. Michael Cutler began working for the former Immigration and Naturalization Service, or INS, in 1971, as an Immigration Inspector assigned to JFK International Airport in New York. In 1973, he was assigned as an examiner responsible for adjudicating petitions filed by American citizens on behalf of their alien spouses. His goal in this assignment was to attempt to uncover fraudulent marriage scams. In August 1975, he became a criminal investigator for the INS. From 1988 on, he was assigned as the INS representative to the Unified Intelligence Division of the Drug Enforcement Agency. In 1991, he was promoted to the position of Senior Special Agent and was assigned to the Organized Crime, Drug Enforcement Task Force. His investigations of major alien drug trafficking organizations ultimately resulted in successful prosecutions for a wide variety of criminal violations. Mr. Cutler graduated from Brooklyn College of the City University of New York in 1971 with a B.A. in Communications, Arts, and Sciences.

Randy Alan Callahan is Executive Vice President of the National Homeland Security Council, AFGE, the union representing ICE Agents. He began his career in the Federal Government in 1996 as an Immigration Inspector in Calexico, California. In August 1997, he transferred to San Diego to be a Detention Enforcement Officer. Randy served in that capacity until 2003, when his position was reclassified and called Immigration Enforcement Agent. Randy served 14 years in the U.S. Army and Army Reserves and is a Desert Storm veteran. He became a union steward in July 1998 and quickly rose through the ranks, becoming Western Region Vice President in August of 2000, Secretary-Treasurer in 2002, and Executive Vice President in 2004.

Professor Craig Haney is currently a professor in the Psychology Department at the University of California at Santa Cruz. He is most well known for his work as one of the principal researchers on the highly publicized Stanford prison experiment in 1971. Professor Haney has published widely on prison-related topics in a variety of scholarly journals. Craig Haney was appointed by the United States Commission on International Religious Freedom to serve as an expert on detention issues. He received his Ph.D. in psychology and J.D. degrees from Stanford University in 1978.

At this time, due to the Committee's policy with regard to an oath, I ask the witnesses to please rise and raise your right hand.

Do you solemnly swear that the testimony you are about to give before the Subcommittee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. MARTIN. I do.

Mr. CUTLER. I do.

Mr. CALLAHAN. I do.

Mr. HANEY. I do.

Mr. HOSTETTLER. Thank you, and let the record reflect that the witnesses have responded in the affirmative.

Gentlemen, once again, thank you for being here. We have a 5-minute limit to our opening statements. We would hope that you would stay as closely to that 5 minutes as possible.

Mr. Martin, you're recognized.

TESTIMONY OF PAUL K. MARTIN, DEPUTY INSPECTOR GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. MARTIN. Thank you very much. Chairman Hostettler, Congresswoman Jackson Lee, and Members of the Subcommittee, I appreciate the opportunity to testify before the Subcommittee as it examines the issue of interior immigration enforcement. I represent the Office of the Inspector General at the U.S. Department of Justice where, up until March 2003, we were responsible for oversight of the former Immigration and Naturalization Service until it transferred to the Department of Homeland Security.

In 1996 and again in 2003, the OIG examined the INS's effectiveness at removing aliens after they had received final orders of removal. In both reviews, we found the INS generally successful at removing a high percentage of aliens it had detained, pending their removal. However, both reviews found that the INS was far less effective at apprehending and removing non-detained aliens with final orders. In addition to a lack of resources, we concluded that the INS had not effectively implemented the recommendations in our 1996 report to improve its performance at removing these aliens.

While 2 years have passed since we issued our last report on this subject, our findings remain relevant as this Subcommittee examines the appropriate level of resources to dedicate to interior immigration enforcement.

Our reports found that the INS was effective at removing more than 90 percent of detained aliens issued final removal orders. However, in 1996, we found that the INS removed only 11 percent of non-detained aliens. To improve its ability to carry out removals, our 1996 report recommended that the INS take more aggressive actions to remove non-detained aliens, including moving more quickly to present surrender notices to aliens after receiving final orders, delivering such notices to aliens instead of mailing them, and coordinating with other Government agencies to make use of all available databases for tracking aliens who failed to appear for removal.

In late 2002, we initiated a follow-up review to assess the INS's progress in implementing these recommendations. Our February 2003 report found that the INS had made little progress in remov-

ing non-detained aliens since 1996 and had increased its removal rate to only 13 percent. We also found that the INS did not act timely, or, in some cases, did not act at all to correct deficiencies that were within its control. These included failing to follow through on a pilot project that targeted alien absconders for removal and failing, at least prior to September 11, to enter alien absconder information into the FBI's National Crime Information Center so that Federal, State, and local law enforcement agencies could assist in apprehending criminal absconders.

Our 2003 review also examined three high-risk groups of non-detained aliens and found that the INS was ineffective at removing these individuals. Specifically, we found that during a 15-month period ending in December 2001, the INS removed only 6 percent of non-detained aliens from countries identified by the State Department as sponsors of terrorism.

In addition, although the INS had established removal of criminal aliens as its first priority, we found that it had removed only 35 percent of the non-detained criminals in our sample.

And third, we found that the INS removed only 3 percent of the non-detained aliens who sought asylum, were denied, and had received final removal orders. We were concerned by the low removal rate for unsuccessful asylum seekers because several individuals convicted of terrorist acts in the United States requested asylum as part of their efforts to remain in this country.

As a result of these continuing problems, our February 2003 report made eight additional recommendations to the INS to help improve its ability to remove aliens issued final orders. The INS did not respond to these recommendations before the agency was transferred to the DHS in March 2003. Since then, the DHS Inspector General's office has had the responsibility for monitoring the response to these recommendations.

Oversight of the Federal Government's immigration enforcement efforts now rests with the DHS Inspector General. We, therefore, cannot provide the Subcommittee with definitive information about the DHS's current progress in removing aliens issued final orders. However, we believe that effective interior enforcement remains an important issue and the DHS, as well as this Subcommittee and the DHS IG's Office, should continue to focus attention on this important area.

This concludes my prepared statement. I would be happy to answer any questions.

Mr. HOSTETTLER. Thank you, Mr. Martin.

[The prepared statement of Mr. Martin follows:]

PREPARED STATEMENT OF PAUL K. MARTIN

Chairman Hostettler, Congresswoman Jackson Lee, and Members of the Subcommittee on Immigration, Border Security, and Claims:

I. INTRODUCTION

I appreciate the opportunity to testify before the Subcommittee as it examines the level of resources dedicated to interior immigration enforcement. I represent the Office of the Inspector General (OIG) at the Department of Justice (DOJ) where, up until March 2003, we were responsible for oversight of the former Immigration and Naturalization Service (INS) until it transferred from the DOJ to the Department of Homeland Security (DHS).

The 2000 census estimated that as many as 8 million unlawful aliens reside in the United States. That total includes individuals who entered the United States without proper documentation and those who entered legally but overstayed or violated their visas or terms of entry.

In 1996 and in 2003, the OIG examined the INS's effectiveness at removing aliens after they had received final orders of removal from the Executive Office for Immigration Review (EOIR).[1] In both reviews, we found that the INS removed more than 90 percent of aliens it detained pending their removal.[2] However, both reviews also found that the INS was far less effective at apprehending and removing non-detained aliens who had received final orders to leave the country. In both reviews, no more than 13 percent of the non-detained aliens in our samples left the country. Importantly, the 2003 review found that non-detained aliens in high-risk groups such as those from countries designated as state sponsors of terrorism and aliens with criminal records generally were not removed. In addition, we found that the INS had made little progress between 1996 and 2003 in implementing recommendations to improve its ability to remove aliens issued final orders of removal.

Because of a variety of factors, it is clear that detaining every alien undergoing a removal proceeding is not practical or desirable. However, we reviewed the INS's experience in removing aliens who had been issued final orders of removal after their cases had been adjudicated and finalized, including all appeals. We concluded that the INS did not effectively use all means at its disposal to improve its performance at removing aliens who were not detained. While two years have passed since we issued our last report and the INS moved to the DHS, the reasons for the agency's historical inability to remove non-detained aliens, as documented in our reports, and the possible approaches we identified for improving its capability in this area remain relevant as the Subcommittee examines the appropriate level of resources to dedicate to interior immigration enforcement.

II. REMOVAL OF UNLAWFUL ALIENS WITH FINAL ORDERS

When unlawful aliens are apprehended, the removal process begins with the filing of charging documents with the EOIR. After court hearings are scheduled with the EOIR, the INS—now the Bureau of Immigration and Customs Enforcement (ICE) in the DHS—mails information about the dates, times, and locations of the hearings to aliens. To ensure that aliens that could pose a danger are removed, the INS was required to detain certain categories of aliens. In September 1996, the Illegal Immigration Reform and Immigrant Responsibility Act required that aliens with criminal backgrounds, those deemed a flight risk, those with mental illnesses, and those with dangerous physical illnesses be detained pending their removal. Other aliens are "non-detained," the term used to describe aliens who either are not taken into custody or are released from custody while their immigration cases are pending. At the removal hearings, an Immigration Judge adjudicates the alien's case and either allows the alien to remain in the United States or orders the alien removed. Aliens may appeal EOIR rulings to the Board of Immigration Appeals and then to federal courts.

The cases we reviewed for our 1996 and 2003 reports included aliens who either had exhausted their appeals or did not appeal the initial court decisions. Therefore, the removal orders for these aliens were final and could be carried out by the INS. Both reports found that the INS was effective at removing more than 90 percent of *detained* aliens issued final removal orders by the EOIR. The reasons for allowing the other detained aliens to remain in the United States included political or humanitarian concerns, grants of administrative relief, and the INS's inability to obtain necessary travel documents from the aliens' home countries.

However, both of our reviews found that the INS was far less effective at apprehending and removing non-detained aliens ordered to leave the country. In 1996, only 11 percent of non-detained aliens who had received final orders were removed. In some cases, the INS did not pursue removal because of political or humanitarian concerns, but in most cases the aliens had moved or failed to appear for removal after issuance of final orders (*i.e.,* absconded), and the INS was unable to find them. Delays in transmitting the aliens' final removal orders from the EOIR to the INS may have contributed to the INS's difficulty in locating aliens. In addition, the INS

[1] The EOIR, a DOJ component, is responsible for adjudicating immigration cases at the trial and appellate levels.

[2] *See* U.S. Department of Justice, Office of the Inspector General, *Immigration and Naturalization Service's Deportation of Aliens After Final Orders Have Been Issued (Report No. I–96–03), March 1996, and The Immigration and Naturalization Service's Removal of Aliens Issued Final Orders* (Report No. I–2003–004), February 2003.

did not always act promptly to carry out removals, and these delays also may have contributed to making it difficult to locate aliens for removal.

To improve the INS's ability to carry out removals, in 1996 the OIG recommended that the INS take more aggressive actions to remove non-detained aliens, such as:

- Moving more quickly to present surrender notices to aliens after receiving final orders;
- Delivering surrender notices instead of mailing them to aliens;
- Taking aliens into custody at hearings when final orders are issued;
- Pursuing aliens who fail to appear and reviewing procedures for closing cases for aliens who fail to appear; and
- Coordinating with other government agencies to make use of all databases available for tracking aliens who fail to appear.

In late 2002, we began a follow-up review to assess the status of the INS's efforts to remove aliens with final orders and the progress of the INS's actions to implement the recommendations in our 1996 report. Our February 2003 report found that the INS had made little progress in removing non-detained aliens since 1996, improving its rate of removal to only 13 percent. We also examined three high-risk groups of non-detained aliens and found that the INS was ineffective at removing these individuals. The groups we examined were:

- *Aliens from countries identified as sponsors of terrorism.* In 2001, the Department of State identified seven countries as state sponsors of terrorism: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria. We found that from October 1, 2000, to December 31, 2001, the INS removed only 6 percent of the non-detained aliens from these countries. Further, half of these removals occurred in the 3½ months after the September 11, 2001, terrorist attacks.
- *Aliens with criminal records.* Although the INS established the removal of criminal aliens as its first priority in its 1999 Interior Enforcement Strategy, we found that it had removed only 35 percent of the non-detained criminals in our sample.
- *Aliens denied asylum.* We found that the INS removed only 3 percent of the non-detained asylum seekers who received final removal orders. We were concerned by the low removal rate for unsuccessful asylum seekers because this group may include potential terrorists. Several individuals convicted of terrorist acts in the United States requested asylum as a part of their efforts to remain in the country.

Because of its ineffectiveness at removing aliens with final orders, as of June 2002 the INS estimated that a backlog of about 355,000 aliens remained in the United States with unexecuted removal orders. According to the INS, at the rate that the INS removed aliens in 2002 that backlog represented a 20- to 30-year workload. During our 2003 review, INS officials acknowledged that they did not have the resources to mount a substantial effort to locate and remove the large number of aliens who had absconded.

We also found that the INS had done little to timely or fully implement the recommendations we made in 1996 to improve its removal rate of aliens issued final orders. I will now briefly describe the INS's lack of progress in addressing the recommendations from our 1996 report before discussing other factors that affect alien removals.

III. THE INS FAILED TO TAKE TIMELY CORRECTIVE ACTIONS

While some factors regarding removal of aliens issued final orders, such as resource limitations, were wholly or partially outside the control of the INS, our reviews found that the agency did not act to correct factors that were within its control. In response to our 1996 report, the INS agreed to implement a variety of specific actions we recommended that would improve its effectiveness at removing non-detained aliens. However, in our 2003 follow-up review we found that the INS had delayed or failed to complete the implementation of these corrective actions and had failed to significantly improve its removal of non-detained aliens between 1996 and 2002.

Pilot absconder removal project. In response to our 1996 report, the INS agreed to conduct field tests in which alien absconders would be targeted for removal. The INS later reported to us that a limited duration pilot had been conducted with positive results and that the INS intended to conduct two additional field tests before expanding the program. However, when we conducted our 2003 follow-up review, the INS was unable to provide any information regarding the pilot projects, the im-

plementation of the program in response to the pilot projects, or even to locate anyone who could remember the pilot program.

Resources for apprehending absconders. In response to our 1996 report, the INS agreed to use a fiscal year (FY) 1996 budget enhancement of $11.2 million to fund 142 positions to remove alien absconders. It also agreed to use its Law Enforcement Support Center to enter alien absconder information into the National Crime Information Center and develop an automated list of criminal absconders so that federal, state, and local law enforcement agencies could assist in apprehending them. However, the INS did not establish absconder removal teams or develop an automated list of absconders until after the September 11 terrorist attacks. Moreover, the INS was unable to document how it used the $11.2 million budget enhancement it received in FY 1996 for this program.

Rulemaking to improve notification methods. In 1996 we found that the INS was not effective at notifying aliens to surrender for removal and therefore we recommended that the INS present surrender notices to aliens more promptly after the aliens had received their final orders. We also recommended that the INS deliver surrender notices instead of mailing them to aliens. After agreeing to improve its methods of notifying aliens of their duty to surrender for removal and publishing a proposed rule in 1998 that would have enhanced its ability to remove aliens expeditiously if they failed to appear, the INS allowed the rulemaking to lapse. After the September 11 attacks, the INS revived and expanded the rulemaking titled *Requiring Aliens Ordered Removed from the United States to Surrender to the Immigration and Naturalization Service for Removal.* In preparation for this hearing, we checked with the EOIR on the status of the rulemaking and were told that as of March 2005 the rule still was not final.

IV. RECOMMENDATIONS IN OUR FEBRUARY 2003 REPORT

As a result of the continued problems we found in our follow-up review, our February 2003 report made eight additional recommendations to the INS to improve its ability to remove aliens issued final orders of removal. For example, we recommended that the INS establish annual goals for apprehending and removing absconders and other non-detained aliens with final orders. In addition, we recommended that the INS identify the resources required to achieve its annual and strategic performance goals and track its resources to ensure they were used as intended.

Because of the data problems we encountered in reviewing the INS's electronic records, we also recommended that the INS establish a program to correct missing and inaccurate data and work with the EOIR to reconcile discrepancies between INS and EOIR data systems. We recommended that the INS work with the EOIR to implement a shared data system for case tracking, similar to the Interagency Border Inspections System, to identify and process aliens with final orders.[3] Finally, we recommended that the INS improve the utility of its website for informing the public about high-risk absconders and to facilitate reporting of leads on absconders.

The INS did not respond to these recommendations before the agency was transferred to the DHS in March 2003. Since March 2003, the DHS Inspector General's Office has had the responsibility for tracking and monitoring the DHS's response to these recommendations. In preparation for this hearing, we asked the DHS OIG about the status of the response to these recommendations. The DHS OIG provided us with information that indicates that ICE has followed up on several of our recommendations. According to a March 2004 DHS report on management challenges, ICE developed a six-year plan to align its long-term detention and removal strategies with the resources required to fulfill those missions. ICE also created fugitive operations teams, issued new guidance to ensure administrative case closures were not abused, was working to replace its electronic case tracking system, and was working with the EOIR to improve the quality of data in its system. Finally, ICE established a "Most Wanted" section on its website.

V. OTHER FACTORS AFFECTING ALIEN REMOVALS

In our two reviews, we also identified a variety of factors that limited the INS's effectiveness at removing aliens with final orders. Some of these factors were within the INS's control, but others were not. For example, limitations in resources are an issue in addressing the detention and removal of aliens issued final orders. The re-

[3] The Interagency Border Inspections System is an interagency effort by the INS, U.S. Customs Service (now part of ICE), Department of State, and Department of Agriculture to improve border enforcement and controls and to facilitate the inspections of applicants for admission to the United States.

source limitations that hindered the INS's removal of aliens included a lack of detention space, limited numbers of detention officers, and too few investigators and special agents to locate aliens in order to carry out the removals. According to the DOJ's FY 2001 Performance Report, the INS continued to face a "severe shortage of bed space and personnel to effectively handle the processing and removal of aliens in immigration proceedings."[4] Although we have not reviewed this issue since the INS left the DOJ two years ago, February 2004 congressional testimony by a DHS official indicated that ICE had a daily detention population of approximately 21,000 aliens.

We note that the DHS appears to have directed some additional resources to removing aliens with final orders. According to the DHS Office of Detention and Removal's Strategic Plan for 2003 to 2012, the agency has dedicated 40 officers to its National Fugitive Operations Program/

Absconder Apprehension Initiative. However, the plan acknowledges that the staffing level is "woefully inadequate to achieve the goal" of eliminating 100 percent of the backlogged unexecuted orders of removal.

Another factor we found that affected the INS's ability to remove aliens was the lack of complete and accurate data, especially correct addresses for aliens. Our own reviews, as well as Government Accountability Office and INS internal audits conducted between 1996 and 2003, found that the INS had serious and continuing problems with data reliability that impaired its ability to process aliens for removal. For example, in our 2003 review we found errors in aliens' names, missing cases, nationality errors, and incorrect case file numbers in 11 percent of the files we reviewed from the group of aliens from states that sponsor terrorism.

In addition, during our field work for our 1996 and 2003 reports, we found that the INS and the EOIR were unable to share information on immigration cases automatically. As a result, according to an INS statistician we interviewed for our 2003 report, an estimated 20 percent of the total cases in INS and EOIR systems did not contain matching data. Moreover, 195,000 files in the EOIR's system did not appear in the INS's system. As I noted earlier, the DHS has reported that ICE is working to correct its data problems.

External factors limiting removals include the quality of diplomatic relations between the United States and other nations. The INS was unable to remove aliens with final orders if they were from countries designated by the President for Deferred Enforced Departure. Examples of these cases include deferrals granted over the last 15 years to aliens from China, Haiti, and Liberia. The INS also was unable to remove aliens if they had been granted Temporary Protected Status by the Attorney General for humanitarian or other reasons.[5]

VI. CONCLUSION

Our office no longer has oversight of the federal government's immigration enforcement efforts. That jurisdiction now rests with the DHS Inspector General's Office. We therefore cannot provide the Subcommittee with definitive information regarding whether the actions taken by ICE during the past two years fully implement our February 2003 recommendations or the extent to which ICE has made progress in removing aliens issued final orders. However, we believe that effective interior enforcement remains an important issue, and we believe that the DHS—as well as this Subcommittee and the DHS OIG—should continue to focus attention on this important area.

This concludes my prepared statement. I would be pleased to answer any questions.

Mr. HOSTETTLER. Mr. Cutler, you are recognized for 5 minutes.

TESTIMONY OF MICHAEL W. CUTLER, FORMER I.N.S. SPECIAL AGENT

Mr. CUTLER. Thank you, Mr. Chairman. Chairman Hostettler, Ranking Member Jackson Lee, distinguished Members of Congress, members of the panel, ladies and gentlemen, I welcome this oppor-

[4] The DOJ's *FY 01 Performance Report/FY 02 Revised Final Performance Plan/FY 03 Performance Plan.*

[5] In 1990, Congress provided the Attorney General authority to grant Temporary Protected Status to aliens from certain countries if the aliens' lives would be threatened by natural disasters, armed conflicts, or other extraordinary conditions. As of July 2002, the Attorney General had granted or extended Temporary Protected Status to nationals from Angola, Burundi, El Salvador, Honduras, Montserrat, Nicaragua, Sierra Leone, Somalia, and Sudan.

tunity to provide testimony today on the critical issue of interior enforcement resources for the immigration laws.

A country without secure borders can no more stand than can a house without walls. The task of securing America's borders falls to the dedicated men and women of CBP and ICE. These law enforcement officers are often put in harm's way as they try to prevent aliens from gaining unauthorized entry into our country. They are not succeeding in this vital mission, as evidenced by the millions of illegal aliens who currently live within our nation's borders today. This is not because of failings which the employees of ICE or CBP bear the responsibility, but rather because our Government has consistently failed to provide them with the resources that they need to make certain that this basic job gets done.

The 9/11 Commission ultimately came to recognize the critical nature of immigration law enforcement where the war on terror is concerned. In fact, page 49 of the report entitled, "9/11 and Terrorist Travel: A Staff Report of the National Commission on Terrorist Attacks Upon the United States," contains a sentence that reads, and I quote, "Thus abuse of the immigration system and a lack of interior immigration enforcement were unwittingly working together to support terrorist activity," unquote.

Acting on recommendations of the Commission, Congress authorized the expenditure of funds to enable 800 new special agents to be hired to enforce the immigration laws from within the United States for each of the next 5 years. I would actually argue that this number of new agents would not be enough, especially considering the findings of the 9/11 Commission staff report that I have just quoted, and, therefore, I am frankly at a loss to understand why the Administration is not requesting at least as many new special agents as Congress authorized rather than the requested funding for the hiring of only 143 new special agents. I firmly believe that this represents a false economy and jeopardizes our nation's security.

Clearly, the effective enforcement of the immigration laws from within the interior of the United States is critical for our nation to gain control of its borders and to protect its citizens from aliens who come to this country to engage in criminal activities and terrorism.

Our nation's inability and apparent unwillingness to enforce the immigration laws has caused our nation to pay a heavy price. As we know, on September 11, 2001, terrorist attacks were launched from within our borders by aliens who exploited various weaknesses in the immigration system. We must not think of the attacks of September 11 as being a single attack, nor should we think of the attacks as being consisting of three attacks, the destruction of the World Trade Center, the destruction of a segment of the Pentagon, and the downing of United Airlines Flight 93 in that field in Pennsylvania. Rather, I would ask that you think of those attacks as being thousands of separate attacks because each of the nearly 3,000 lives that were so violently and horrifically ended was a precious and irreplaceable life. The loss of these lives to their families, loved ones, and friends has forever altered their lives, as well. Additionally, thousands more people were grievously injured, both emotionally as well as physically.

The victims of 9/11 came from all over the United States and from other countries. No American city is safe if any American city is attacked, and I would like to point to that map that we've put up over there that shows how many States suffered how many casualties on that day, on September 11, 2001, and I would love to see that remain on permanent display somewhere as a reminder to Members of Congress that it was the entire country, not just New York and Washington, that were attacked on that day.

The specter of terrorist attacks is not the only price to be paid for our failure to secure our borders. Illegal immigration impacts more aspects of this country than does any other issue. It impacts everything from education, the economy, health care, criminal justice, and national security. In fact, it is estimated that some 30 percent of the Federal inmate population is comprised of aliens. It is not unreasonable to say that more people lose their lives each year as a result of crimes committed by criminal aliens within our borders than were killed on that horrific day in September of 2001.

When he testified before the Senate Select Committee on Intelligence last month, FBI Director Robert Mueller testified that he is very concerned about the lack of data on a network of al Qaeda sleeper cells in the United States. He went on to say, and I quote, "finding them is a top priority for the FBI, but it's also one of the most difficult challenges," unquote.

Sleeper cells are not like cicadas. They do not simply slip into our country and then burrow into a hole for months or years awaiting instructions to emerge to carry out a terrorist attack. Sleepers are, in fact, aliens who, upon entering our country, manage to hide in plain sight by finding a job, attending a school, or managing to hide in plain sight by doing things that do not call attention to them. Someone once said that an effective spy is someone who could not attract the attention of a waitress at a greasy spoon diner, and the same could be said of an effective terrorist.

It is, therefore, vital that we regain control of our borders and the entire immigration bureaucracy and enforcement program if we are to protect our nation against terrorists and criminals, and this requires that we have an adequate number of law enforcement agents dedicated to this critical mission.

It has been estimated that more than 40 percent of the illegal aliens in the United States did not evade the valiant Border Patrol Agents who stand watch on our nation's border, but rather strolled through ports of entry, having been inspected by the process and then went on to hide in plain sight within our country, and many aliens find this to be a relatively easy endeavor. And as you know, I speak from experience, having been an immigration inspector at JFK Airport. Additionally, the visa waiver program further hampers the inspections process.

There's another critical element to the interior enforcement of the immigration laws that's seldom discussed, the investigation of applications for immigration benefits to uncover fraud, which, according to a GAO report issued 3 years ago, is a pervasive problem within the immigration benefits program. A terrorist bent on attacking the United States would most want three things to attack our nation: Money, a weapon of mass destruction, and a U.S. passport. The passport enables an alien to easily travel across our bor-

ders, but also across the borders of other countries. And, as we now know, the 9/11 commission found that the ability to travel freely and extensively was essential to the terrorists of 9/11 as they prepared to attack us.

Aliens who succeed in acquiring resident alien status can more readily embed themselves in our country and ultimately attain U.S. citizenship, making them eligible for that highly coveted U.S. passport. Immigration fraud enables aliens to avail themselves of this opportunity through deception.

While technology can and should play a role in enforcing the laws and helping to lend integrity to these processes, we must remember that law enforcement is a labor-intensive activity. Computers don't arrest law violators, law enforcement officers do. We can use computers for data mining to help uncover fraud, but again, it is the agent conducting field investigations who is most likely to uncover fraud or other criminal activities. While technology can be a force multiplier, in the end, without sufficient numbers of dedicated law enforcement officers and appropriate resources, including sufficient detention facilities, the job will simply not get done.

Mr. HOSTETTLER. Mr. Cutler, could you summarize the remainder of your testimony?

Mr. CUTLER. Sure. The one point that I would make is that Vice President Cheney aptly compared 9/11 to what happened on December 7. After December 7, this nation made a tremendous effort to build airplanes, battleships, nuclear weapons, whatever was needed to get the job done. The efforts that we do today must be no less intensive to wage war on the terrorists who are just as intent on destroying us today.

I know there's a clip. I don't know if this would be the time to do it or not. But CNN did a piece that I think relates to what we're doing today and I would like the opportunity for the Committee to see it.

Mr. HOSTETTLER. Without objection.

Mr. CUTLER. Okay. Thank you. Thank you, Mr. Chairman.

[A videotape was shown.]

Mr. HOSTETTLER. I thank the gentleman.

Mr. CUTLER. I just wanted to thank CNN for providing that and I look forward to your questions.

[The prepared statement of Mr. Cutler follows:]

PREPARED STATEMENT OF MICHAEL W. CUTLER

Chairman Hostettler, Ranking member Jackson Lee, distinguished members of Congress, members of the panel, ladies and gentlemen. I welcome this opportunity to provide testimony today on the critical issue of interior immigration enforcement resources.

A country without secure borders can no more stand than can a house without walls. The task of securing America's borders falls to the dedicated men and women of CBP and ICE. These law enforcement officers are often put in harm's way as they try to prevent aliens from gaining unauthorized entry into our country. They are not succeeding in this vital mission as evidenced by the millions of illegal aliens who currently live within our nation's borders. This is not because of failings for which the employees of ICE or CBP bear the responsibility, but rather because our government has consistently failed to provide them with the resources they need to make certain that this basic job gets done.

The 9/11 Commission ultimately came to recognize the critical nature of immigration law enforcement where the "War on Terror" is concerned. In fact, page 49 of

the report entitled, *"9/11 and Terrorist Travel, A Staff Report of the National Commission on Terrorist Attacks Upon the United States"* contains a sentence that reads, "Thus abuse of the immigration system and a lack of interior immigration enforcement were unwittingly working together to support terrorist activity." This page incidentally is contained in the chapter entitled, "Terrorist Travel and Embedding Tactics." Acting on recommendations of the Commission, Congress authorized the expenditure of funds to enable 800 new special agents to be hired to enforce the immigration laws from within the United States for each of the next 5 years. I would actually argue that these new agents would not be enough especially considering the findings of the 9/11 Commission staff report I quoted. Therefore I am frankly at a loss to understand why the administration is not requesting at least as many new special agents as Congress authorized rather than the requested funding for the hiring of only 143 new special agents. I firmly believe that this represents a false economy and jeopardizes our nation's security.

Clearly the effective enforcement of the immigration laws from within the interior of the United States is critical for our nation to gain control of its borders and to protect our citizens from aliens who come to this country to engage in criminal activities and terrorism.

Our nation's inability and apparent unwillingness to enforce the immigration laws has caused our nation to pay a heavy price. As we know, on September 11, 2001 terrorist attacks were launched within our borders by aliens who exploited various weaknesses in the immigration system. We must not think of the attacks of September 11 as being a single attack, nor should we think of the attacks as consisting of three attacks; the destruction of the World Trade Center, the destruction of a segment of the Pentagon and the downing of United Airlines Flight 93 in that field in Pennsylvania. I would ask that you think of those attacks as being thousands of separate attacks, because each of the nearly 3,000 lives that was so violently and horrifically ended was a precious and irreplaceable life. The loss of these lives to their families, loved ones and friends has forever altered their lives as well. Additionally, thousands more people were grievously injured, both emotionally as well as physically. The victims of 9/11 came from all over the United States and from many countries. No American city is safe if any American city is attacked. However, the specter of terrorist attacks is not the only price to be paid for our failure to secure our borders. Illegal immigration impacts more aspects of this country than does any other issue. It impacts everything from education, the economy, health care and the environment to criminal justice and national security. It has been estimated that aliens account for some 30% of the inmate population in federal correctional institutions. It is not unreasonable to say that more people lose their lives each year as a result of crimes committed by criminal aliens than were killed on that horrific day in September of 2001.

When he testified before the Senate Select Committee on Intelligence last month, FBI Director Robert S. Mueller III testified that he is "very concerned" about the lack of data on a network of al Qaeda "sleeper" cells in the United States. He went on to say that, "Finding them is a top priority for the FBI, but it is also one of the most difficult challenges."

Sleeper agents are not like cicadas; they do not simply slip into our country and then burrow into a hole for months or years awaiting their instructions to emerge to carry out a deadly terrorist attack. Sleepers are, in fact, aliens who, upon entering our country, manage to hide in plain sight by finding a job, attending a school or doing other such "ordinary things" that do not call attention to them. Someone once said that an effective spy is someone who could not attract the attention of a waitress at a greasy spoon diner. The same can be said of an effective terrorist. It is vital that we regain control of our borders and the entire immigration bureaucracy and enforcement program if we are to protect our nation against terrorists and criminals. This requires that we have an adequate number of law enforcement officers who are dedicated to this critical mission.

I have read estimates that more than 40% of the illegal aliens in the United States did not evade the valiant Border Patrol agents who stand watch on our borders, but rather strolled through ports of entry intent on violating our laws. Many aliens find this to be a relatively easy endeavor. As you know, I speak from experience, having spent four years as an Immigration Inspector assigned to John F. Kennedy International Airport in New York before I became a Special Agent for the former INS. The inspectors are supposed to conduct an inspection of an arriving alien in about one minute. In that brief period of time the inspector is supposed to examine the arriving alien's passport, compare the alien's name against a watch list to make certain that the person standing before him is not prohibited from entering the United States and then ask a few questions to try to determine the intentions of the alien seeking to enter our country. Of course, if serious questions are raised

the inspector has the option of referring the alien to a section known as "Secondary" where a more intensive effort can be made to determine whether or not the alien in question should be admitted, but the pressure is on to quickly move the lines of arriving aliens. Additionally, the Visa Waiver Program further hampers the inspection process.

An adequate number of special agents is needed to back up the Border Patrol and the CBP inspectors.

There is another critical element to the interior enforcement of the immigration laws that is seldom discussed. The investigation of applications for immigration benefits to uncover fraud, which according to a GAO report issued three years ago, was a pervasive problem within the immigration benefits program. A terrorist bent on attacking the United States would most want three things in order to attack our country; money, a weapon of mass destruction and a United States passport to facilitate travel not only across the borders of the United States, but to also facilitate travel into many other countries. The 9/11 Commission found, in fact, that the ability to travel freely and extensively was essential to the terrorists of 9/11 as they prepared to attack us. Aliens who succeed in acquiring resident alien status can more readily embed themselves in our country and ultimately attain United States citizenship thereby making them eligible to receive that highly coveted United States passport. Immigration fraud enables aliens to avail themselves of that opportunity through deception and places such aliens on the road to United States citizenship. It is therefore crucial that we do a far better job of making certain that the immigration benefits program has real integrity.

While technology can and should play a role in enforcing the laws and helping to lend integrity to these processes, we must remember that law enforcement is a labor-intensive activity. Computers don't arrest law violators, law enforcement officers do. We can use computers for data mining to help uncover fraud, but again, it is the agent conducting field investigations who is most likely to uncover fraud or other criminal activities. While technology can be a force multiplier, in the end, without sufficient numbers of dedicated law enforcement officers and appropriate resources, including sufficient detention facilities, the job will simply not get done.

During the last Presidential campaign, Vice President Cheney aptly compared the attacks of September 11, 2001 with the attack on Pearl Harbor launched on December 7, 1941. I would like to point out that after the attack on Pearl Harbor our nation created fleets of aircraft that had never existed before. We created fleets of ocean going warships that had never existed before and we even created nuclear weapons that had never been constructed before. Less than 4 years after that terrible attack we defeated the enemy that was bent on the destruction of our nation, our allies and our way of life. The terrorists that attacked us on September 11 are just as determined to destroy us today. We are in the fourth year of our "War on terror." Our resolve to win this war must be as strong as it was for those who fought World War II. We must do everything reasonable to secure our country's borders, and the time to act is now. Our nation's future hangs in the balance.

I look forward to your questions.

Mr. HOSTETTLER. Mr. Callahan.

TESTIMONY OF RANDY CALLAHAN, EXECUTIVE VICE PRESIDENT, NATIONAL HOMELAND SECURITY COUNCIL, AFGE

Mr. CALLAHAN. Thank you, Mr. Chairman, Ranking Member Ms. Jackson Lee, Members of the Subcommittee. I'm an Immigration Enforcement Agent with the Department of Homeland Security's Bureau of Immigration and Customs Enforcement. Today, I'm here as the Executive Vice President of the National Homeland Security Council, AFGE. The Council represents approximately 15,000 employees of the former Immigration and Naturalization Service, which was split into three bureaus, Customs and Border Protection, Immigration and Customs Enforcement, and Citizenship and Immigration Services.

The purpose of today's hearing is to address the budget crisis at ICE, and believe me, there is a crisis. Though the overall budget for ICE in fiscal year 2005 increased over fiscal year 2004, many of the programs that had full funding in 2004 do not have funding

in 2005. ICE programs are short-staffed due to a hiring freeze that has been in place for some time now.

The Detention and Removal Operations Division alone is short approximately 1,300 full-time and part-time employees. If Detention Removal, or DRO, were a military unit, it would be considered nondeployable.

All academy training for fiscal year 2005 and ICE has been canceled for the rest of the year. This includes training designed to train up to approximately 2,000 former Detention Enforcement Officers who were reclassified and combined with Immigration Agents into one position called Immigration Enforcement Agent. There are approximately 900 employees who anxiously await the opportunity to attend this training because it would mean they would then have the training and the authority to perform expanded immigration law enforcement functions, which would allow DRO to locate and apprehend more fugitive aliens at large across the country, thereby making the country safer.

There are no funds available for uniforms, so uniformed Immigration Enforcement Agents are not able to replace worn-out uniforms. Worse than this is the fact that the uniform in use today still has the Immigration and Naturalization Service patch on it. I've been trying to work with ICE to develop a new uniform and a grooming standards policy, but ICE simply has no money to develop or purchase new uniforms.

My badge still says Immigration Detention Enforcement Officer, a position which no longer exists, and my credentials still say Department of Justice. This was understandable for about the first six to 9 months after the creation of the Department of Homeland Security, but now it is just embarrassing.

The most disturbing fact with regard to ICE's budget is the detention bed space issue. Within 5 days after today's hearing, I am told that ICE will no longer have enough money to detain suspected illegal aliens in custody. I've talked with ICE management about this issue and they believe they will receive either an approved reprogramming request to continue detention operations or they will receive a supplemental appropriation from Congress to keep over 17,000 illegal aliens, many of which are criminals, in custody. I have since found out that many offices are already reducing their adult detained population.

What are ICE's immediate funding needs? First and foremost, funding needs to be immediately approved for the continued detention of immigration law violators. To do otherwise would be a violation of the public trust.

The hiring freeze needs to be lifted. We need to train our Immigration Enforcement Agents and other ICE officers. We need new badges and credentials issued. ICE needs funds to develop a new uniform with the correct bureau patch on it, or eliminate the uniform entirely and save a million dollars a year or more.

ICE is a bureau in financial crisis. They don't have enough money to hold people in custody, buy new uniforms and equipment for employees, or even issue badges and credentials with the correct Department on them. Something needs to be done to correct this problem.

The union asks that you fast-track approval of funding—funds to keep ICE operating and investigate potential mismanagement issues.

On a final unrelated note, my ability to testify at this hearing stems from my right to be part of a union. It is an honor for me to be here, and I hope to be the voice of ICE employees for a long time to come.

My colleagues in the ICE Office of Investigations, the Federal Air Marshals Service, the Transportation Security Agency, and other agencies that make up the Department of Homeland Security do not have the same protective rights. Please correct this injustice by allowing them to join the union and strengthening whistleblower protection laws.

Thank you again for the opportunity to provide this testimony, and I will be happy to answer your questions.

Mr. HOSTETTLER. Thank you, Mr. Callahan.

[The prepared statement of Mr. Callahan follows:]

PREPARED STATEMENT OF RANDY CALLAHAN

Mr. Chairman, Members of the Subcommittee:

My name is Randy Callahan. I am currently an Immigration Enforcement Agent with the Department of Homeland Security's Bureau of Immigration and Customs Enforcement, Office of Detention and Removal Operations. I began my career in 1996, when I was hired by the Immigration & Naturalization Service as an Immigration Inspector. In 1997, I became an Immigration Detention Enforcement Officer. In August of 2003, the Detention Enforcement Officer was reclassified into my current position. I am here today as the Executive Vice-President of Council 117 of the American Federation of Government Employees, also known as the National Homeland Security Council 117. The Council, represents approximately fifteen thousand employees of the former Immigration and Naturalization Service, which was split into three separate Bureaus: Customs and Border Protection (C.B.P), Immigration and Customs Enforcement (I.C.E) and Citizenship and Immigration Services (C.I.S) in March of 2003. On behalf of the bargaining unit members of these Bureaus, I thank you for inviting me to present our organization's views on the Bureau of Immigration and Customs Enforcement (I.C.E) budget crisis.

CURRENT FINANCIAL STATUS OF I.C.E:

The purpose of the hearing is to address the budget crisis at I.C.E and believe me, there is a crisis. Though the overall budget for I.C.E in FY 2005 increased over FY 2004, many of the programs that had full funding in 2004 do not have funding in 2005. For several months, there has been a hiring freeze in place. All Academy training has been canceled for the remainder of FY 2005, so even if I.C.E began hiring today, it would take months to ready the Academy for classes. I am told that the Detention & Removal Operations (DRO) branch of I.C.E is short approximately 1300 full time and part time employees. I am told that our "warfighter" levels are down to approximately 70%, which I hear would make DRO undeployable if it were a military unit. In addition to the hiring freeze, I.C.E has put a hold on all permanent changes of station (PCS) moves.

I mentioned the cancellation of training earlier, this includes activities designed to fully train approximately two thousand former Detention Enforcement Officers, who were reclassified and combined with Immigration Agent into a position called, Immigration Enforcement Agent (IEA). The training is just over half way completed, but I.C.E still has a significant number of employees, approximately nine hundred, who do not have the training yet. Without the training, which is called the enforcement transition program (ETP), I.C.E cannot use the officers for any type of law enforcement function, except transportation officer and possibly some computer work.

There is no money for uniforms, so uniformed Immigration Enforcement Agents are not able to order replacement uniforms. In fact, the uniforms being used nationwide right now still have Immigration & Naturalization Service patches on them. The Union has been trying for several months to work with I.C.E to develop a new uniform and grooming standards policies, but with the budget problems, I.C.E can not afford to do it. I.C.E employees still use Department of Justice credentials and old INS badges to identify themselves as federal agents. One would think that two

years after the creation of I.C.E they would be able to design and get approval for new uniforms, as well as badges and credentials. While I.C.E can not get out of the expense of changing the badges and credentials of I.C.E employees, the Union has recommended that DRO eliminate the uniform requirement and make all positions "plain clothes" positions. This would save at least $1 million per year. It may be a drop in the bucket in the grand scheme of things, but it's a start!

Perhaps the most disturbing fact with regard to the I.C.E budget, is the detention bed space issue. I received a call about two weeks ago from a concerned employee, who told me that Headquarters I.C.E was seriously discussing the release of detainees from custody, because I.C.E would run out of money by March 1st. I later found out that the money will actually run out in the middle of March. I attempted to secure documentation that would corroborate the rumors I had heard, but I.C.E management said that the release of detainees from custody would only be considered as a last resort.

Unfortunately, I found out last week that DRO in San Diego, CA was already releasing detainees from custody. Apparently, management told employees that the office had to reduce their adult detention bed space to one hundred from over several hundred. I.C.E management said that they believed they would get the funding they needed to keep the detention spaces open, either by the reallocation of funds request currently on its way to the Department, or by a supplemental appropriations request. Just one of these funding requests will keep current funding levels of bed space, which is approximately 17,000 nationwide, for a few more months. I understand that Congress funded approximately 22,000 bed spaces nationwide in the FY 2005 Appropriations bill. If it is true that the current bed space used is at 17,000, so I am forced to ask: What happened to the funds that were appropriated for the remaining five thousand beds?

POSSIBLE CAUSES OF THE I.C.E BUDGET CRISIS:

The Department's Office of Inspector General (OIG) was ordered to conduct an audit of I.C.E's financial records. Though I have not seen the OIG report, I have heard that approximately $300 million to $500 million was given to the bureaus of Customs and Border Protection (C.B.P) and Citizenship and Immigration Services (C.I.S).

It is unclear where this money has gone, but DHS mismanagement is certainly a possibility. I hear from employees who complain that their managers may be misusing government vehicles. In San Diego, for example, several managers are assigned their own government vehicle as a commuting vehicle. These managers are not supervising fugitive operations teams, conducting investigations or surveillance in the field, so how is it they are authorized a take home government vehicle for commuting purposes? I hear also that these same managers are offering ride sharing opportunities to their friends that work in the same location. The Union asks that an inquiry be done to determine if any vehicles are being misused by I.C.E managers and take appropriate action to correct the problem. In our view, this kind of government excess and waste is unforgiveable, especially when the security interests of the nation are at stake.

IMMEDIATE FUNDING NEEDS:

First and foremost, funding needs to be approved for the continued detention of immigration law violators. To do otherwise would be a violation of the public trust. I.C.E needs funds to start training back up again. IEAs that need the ETP classes should be started up ASAP, while at the same time bringing in new hires. The Bureau needs to

fund the development and purchase of new uniforms for DRO personnel, or make it a plain-clothes position. We need new badges and credentials issued. I.C.E needs to fill approximately 1300 positions. All they need is money to bring the new hires on board and get them to training.

CONCLUSION:

I.C.E is a bureau in financial crisis. They do not have enough money to hold people in custody, buy new uniforms and equipment for employees, or even issue badges and credentials with the correct Department on them. Some of the funds for I.C.E were incorrectly sent to the other two Bureaus created from the former Immigration & Naturalization Service. Some of I.C.E's resources have been misused. Something needs to be done to correct this problem. The Union asks that you fast track approval of the reallocation of funds request, any and all supplemental appropriations requests, as well as investigate the allegation of misuse of government vehicles.

Mr. Chairman, I want to express our Organization's strong support for provisions in the 2005 Intelligence Reform legislation that increased the number of I.C.E Investigators by 4,000 over the next five years and the number of detention beds by 40,000 over the same period of time. We were disappointed to see that the Administration proposed an increase of only 1920 beds in FY06 and 484 I.C.E Investigators. I can only hope that the Appropriations Committees share your commitment to improving the desperate situation which currently exists in I.C.E.

On a final, unrelated note, my ability to testify at this hearing stems from my right to be part of a union. It is an honor for me to be here and I hope to the voice of I.C.E employees for a long time to come. My colleagues in the I.C.E Office of Investigations, the Federal Air Marshal Service, the TSA, and other agencies that make up the Department of Homeland Security do not have the same protected right. Please correct this injustice, whether by allowing them to join a union, or by strengthening whistleblower protections. Employees should not have to suffer gladly management fraud, waste and abuse. Thank you again for the opportunity to provide this testimony.

Mr. HOSTETTLER. Professor Haney.

TESTIMONY OF CRAIG HANEY, PROFESSOR, UNIVERSITY OF CALIFORNIA AT SANTA CRUZ

Mr. HANEY. Chairman Hostettler, Ranking Member Jackson Lee, and Members of the Subcommittee, thank you for this opportunity to testify. I'm here to speak today about what I learned as a detention expert appointed by the U.S. Commission on International Religious Freedom to conduct a Congressionally authorized study of the treatment of asylum seekers who were placed in expedited removal proceedings. The study uncovered serious problems with the way in which asylum seekers are detained and released. These problems are disturbing from a national security standpoint as well as a human rights standpoint.

The study findings and recommendations that relate to detention are attached to my written testimony and I respectfully request that these be included in the record.

Mr. HOSTETTLER. Without objection.

Mr. HANEY. My testimony represents only my views except for when I cite to the specific findings in which the Commission and the other experts concurred.

Among other things, the study found that the availability of bed space is clearly an important issue, made more important by dramatic regional variations in release rates that appear to be related to the number of incoming asylum seekers and the space available in which to house them.

However, I would suggest that the answer is not simply for Immigration and Customs Enforcement to provide more bed space. We urge that ICE consistently enforce its own policies to ensure that aliens who should be detained are detained, but also that aliens who need not be detained, particularly non-criminal asylum seekers who establish identity and pose neither a flight nor security risk are released.

In addition, the part of the study that I conducted focused on the conditions of detention for asylum seekers, aliens who claim to have fled religious, political, or other forms of persecution and applied to the United States for protection. As someone whose academic expertise is not in immigration law or the asylum issue per se, I have spent more than three decades studying the psychological effects of conditions of confinement, what happens to people when they are confined in prisons and jails in the United States

and other countries. But I was not sure what to expect when I began to examine the conditions under which asylum seekers were detained in the United States.

The results of the study were sobering. Unfortunately, in fact, I found that the conditions of confinement for asylum seekers were remarkably similar to those I had often encountered in the past in examining domestic prisons and jails. In virtually every important respect in the overwhelming majority of facilities that we investigated, examined, and surveyed, asylum seekers were being kept under conditions that were virtually identical to the harsh places that our society has reserved for persons who have committed crimes.

Indeed, one-third of asylum seekers are detained not merely in jail-like facilities but in actual jails and prisons in which DHS rents beds. And although a violation of DHS's own detention standards, asylum seekers in such facilities are often intermingled with criminal aliens and even with inmates still serving criminal sentences.

Let me be more specific. In terms of the training of the staff who operate the facilities, the way the facilities themselves are physically constructed, the kind of elaborate security procedures that are imposed, multiple fences, barriers, locked gates and doors that separate the exterior of the facilities from the housing areas where detainees are kept and the tightly restricted movement of asylum seekers inside, these facilities are virtually identical to conventional prisons and jails. There are widespread and commonplace invasions of privacies and asylum seekers are denied the opportunity to take a shower or use toilet facilities outside the presence of another person. They are limited in terms of meaningful programming opportunities.

Many asylum seekers in detention are not proactively monitored for signs of psychological distress or exacerbated mental illness. Their contact with the outside world is greatly constricted. Virtually all the facilities we surveyed limited the ability of asylum seekers to make phone calls, correspond with others, and even have contact visits.

Precisely because of what we know about the potential negative psychological consequences of jail or prison confinement on inmates, no matter who they are or why they are incarcerated, the authors of the study concluded that the kind of detention to which these asylum seekers are being subjected is inappropriate, unnecessarily severe, and a matter of grave concern. Thus, any expansion of DHS bed space must address the nature of the conditions of confinement themselves.

We strongly urge that for non-criminal asylum seekers, a model of non-jail-like confinement be adopted. In fact, as you will see in the report and in our discussion of the recommendations supplementing my testimony, we found one model actually in operation in the United States, the Broward Facility in Florida, which again is elaborately detailed in my report and in the supplement to my testimony. It is a humane alternative which demonstrates that those asylum seekers who genuinely must be detained can be kept under conditions that are secure, that better protect their mental health and well-being, and also that this can be done in a

way that is no more costly than the jail-like facilities currently in use.

In addition to recommending that ICE ensure that its field officers implement existing ICE parole policies in a consistent manner and that ICE stop using jail-like facilities to detain asylum seekers who do not meet those release criteria, we also urge Secretary Chertoff to establish a refugee coordinator position with delegated authority to see such reforms through, since under current organizational structure of DHS only the DHS Secretary and Deputy Secretary have the authority to coordinate changes affecting the expedited removal process, as these procedures involve three distinct DHS bureaus, U.S. CIS, ICE, and CBP.

Thank you, and I look forward to answering your questions.

Mr. HOSTETTLER. Thank you, Professor Haney.

[The prepared statement of Mr. Haney follows:]

PREPARED STATEMENT OF CRAIG HANEY

TESTIMONY BY CRAIG HANEY, Ph.D.
Before the Subcommittee on Immigration, Border Security and Claims
United States House of Representatives Committee on the Judiciary
Oversight Hearing on
Interior Immigration Enforcement Resources
March 10, 2005

Chairman Hostettler, Ranking Member Jackson-Lee, and Members of the Subcommittee.

Thank you for the opportunity to testify before you today.

I am here today in my capacity as the detention expert appointed by the U.S. Commission on International Religious Freedom to study the treatment of asylum seekers in Expedited Removal proceedings. The Study, which was authorized by Congress in Section 605 of the International Religious Freedom Act of 1998, uncovered some serious problems with the way in which asylum seekers subject to Expedited Removal are detained in the United States. We also uncovered major problems with the way asylum seekers are released – and not released – from detention. The problems that we uncovered are disturbing from a national security standpoint, as well as a human rights standpoint. The Study findings and recommendations that relate to detention are attached to my written testimony. My testimony represents only my own views, except for when I cite to the specific findings in which the Commission and the other experts concurred.

As you are aware, Expedited Removal was originally limited to aliens arriving at ports of entry without proper documentation. On August 11, 2004, the Department of Homeland Security announced an expansion of Expedited Removal to aliens apprehended within 100 miles of the Border within 14 days after entering the United States without inspection. By that date, the Study had completed data collection, and was therefore unable to collect and analyze data from this exercise of Expedited Removal authority by the Border Patrol. Commission experts did, however, visit the two Border Patrol sectors where this expansion is being piloted -- Laredo and Tucson -- to better understand its implementation. I took part in the visit to the Laredo sector.

We learned that, other than multiple offenders or individuals with criminal records, Mexican nationals who are apprehended by the Border Patrol are generally not being placed in Expedited Removal but, rather, continue to be offered "voluntary return." Voluntary return is even more expedited than Expedited Removal, and can generally be affected within less than 24 hours. While an Expedited Removal order prohibits the alien from applying for re-entry to the United States for five years, voluntary return carries no such penalty.

Expedited Removal, therefore, is being applied primarily to aliens who are "Other Than Mexican" ("OTM"). The law requires that an alien placed in Expedited Removal must be detained until removed – unless that alien has a "credible fear" of persecution or torture upon return. This requirement can result in weeks or months of detention for OTMs, who may not be removed until DHS has obtained appropriate travel documents from the consulates representing their countries of origin. The decision to expand Expedited Removal to the Southern border,

where detention beds were already in short supply, will presumably put additional demands on bed-space in that region.

As I stated, we completed data collection before Expedited Removal was expanded to the interior of the United States. However, we identified several problems related to the detention of asylum seekers subject to Expedited Removal which, in all likelihood, has only been exacerbated by the expansion of Expedited Removal and the resulting increased demands on bed-space.

Expedited Removal was created to strengthen the security of America's Borders, without closing them to those persons fleeing persecution. The reality, however, is that non-criminal asylum seekers subject to Expedited Removal are detained - and released - on what often appears to be an arbitrary basis.

Under the policy of Immigration and Customs Enforcement (ICE), asylum seekers subject to Expedited Removal are to be released if they establish a credible fear of persecution, identity, and demonstrate that they are neither a security risk nor likely to abscond. The reality is, however, that Professor Kate Jastram - my colleague on the Study who reviewed hundreds of alien files - found no evidence in ICE files that would explain ICE's decisions to release – or not to release – individual asylum seekers. She found no evidence that ICE consistently followed its own release policy. The Study did find, however, that release (or "parole") rates varied widely from place to place. The variations were quite extreme. For example we found that, during the months long asylum adjudication process, ICE (and its predecessor, the Immigration and Naturalization Service (INS)) released only 3.6% of asylum seekers in Newark versus 79% in Miami; they released 8.4% in New York versus 81% in Chicago; 33% were released in Washington but only 6% in Baltimore; in California, 76% were released in San Diego, versus 58% in San Francisco, down to a low of 30% in Los Angeles; and in Texas, there were 98% released in Harlingen, and 94% in San Antonio, but 75% in El Paso and only 46% in Dallas and a low of 21% in Houston. These statistics were the latest made available to us – from FY2003.

Although we did not have exact ICE statistics on available bed-space, and therefore could not precisely calculate the role of supply and demand in causing these disparities, perhaps this Committee can ask ICE to analyze our findings with this issue in mind. That is, to report to you on how these dramatic regional variations are correlated with the ratio of the numbers of incoming detainees to the amount of available bed-space for detainees, especially bed-space reserved for non-criminal aliens.

In any event, I would suggest to you that the answer is not simply to provide more bed-space to detain aliens. The Study found, and the Commission concurred, that ICE needs to enforce its own policies and establish national quality assurance procedures to ensure that aliens who should be detained are detained, and that aliens who need not be detained —particularly non-criminal asylum seekers who establish identity and pose neither a flight nor a security risk – are released. Right now, there is such a policy, but there are no procedures in place to ensure that the policy is being carried out. The portion of our Study that addressed this issue provided much reason for concern that the policy is being applied inconsistently and, it would seem, in some places, not at all. As a result, many asylum seekers – both those who have bona fide asylum claims and those who do not – are aware that, if they arrive in certain parts of the United States, they will almost

certainly be detained. They are also aware that, with the exact same claims and background factors, if they arrive in other parts of the country, they will almost certainly be released.

A second part of our Study, and the one for which I took primary responsibility, focused on the conditions under which asylum seekers were being detained and a determination of whether those conditions were inappropriate. I should note that we did not examine detention conditions for ICE detainees in general. Rather, we looked only at asylum seekers – aliens who claim to have fled religious, political, or other forms of persecution and applied to the United States for protection. And we looked primarily at a sample of the 19 facilities that are responsible for detaining more than 70% of the asylum seekers whom we hold in detention. I should also note that my academic expertise is not in immigration law or the asylum issue per se. Instead, I have spent more than three decades studying the psychological effects of conditions of confinement—what happens to people when they are confined in prisons and jails in the United States and in other countries. So I was not sure what to expect when I began to examine the conditions under which asylum seekers were detained in the United States.

The results of the Study were sobering. Unfortunately, in fact, the conditions of confinement I encountered for asylum seekers were remarkably similar to those I had learned to expect in examining domestic prisons and jails. In virtually every important respect, in the overwhelming majority of facilities that we investigated and examined and surveyed, asylum seekers were being kept under conditions that were virtually identical to the harsh places that we have reserved for persons who have committed crimes in our society. Indeed, one third of asylum seekers are detained not merely in jail-like facilities, but are in actual jails and prisons, in which DHS rents "beds." Even though it is a violation of DHS's own detention standards, asylum seekers in such facilities are often intermingled with criminal aliens, and even with inmates who are still serving criminal sentences.

In terms of the training of the staff who operate the facilities, in terms of the way in which the facilities themselves are physically constructed, in terms of the kind of elaborate security procedures that are imposed—the multiple fences, barriers, and locked gates and doors that separate the exterior of the facilities from the housing areas where the detainees, and in terms of the tightly restricted movement of asylum seekers inside these facilities, they were virtually identical to conventional prisons and jail. In terms of the widespread and commonplace invasions of privacy—an asylum seeker's ability to take a shower or use toilet facilities outside the presence of another person—in terms of the almost total lack of educational and vocational training or other meaningful programming opportunities, these facilities were virtually identical to—and in some instances, worse than—conventional jails and prisons.

But there was more. Asylum seekers in detention have the same or worse limited access to mental health resources and are not carefully and proactively monitored for signs of psychological distress or exacerbated mental illness. Their contact with the outside world is greatly constricted—virtually all of the facilities we surveyed limited the ability of asylum seekers to make phone calls, to correspond with others, and even to have contact visits with loved ones. Nor may detainees receive incoming phone calls – even from their attorneys – and there is an absolute prohibition against doing *any* internet research to find legal and human rights materials to support their asylum claims. Again, these severe restrictions and the manner in

which they were imposed (and the kinds of punishments that were imposed for violations of these or other rules—including even, in many facilities, the use of solitary confinement) were jail-like in nature.

Precisely because of what we know about potential for jail or prison confinement to have negative psychological consequences for people—no matter who they are or why they are incarcerated—my colleagues and I who conducted the Study concluded that the kind of confinement to which detained asylum seekers are being subjected is inappropriate, unnecessarily severe, and a matter of grave concern.

Any expansion of DHS bed-space must address the nature of the conditions of confinement themselves. We strongly urge that – for non-criminal asylum seekers - a model of non-jail-like confinement be adapted. And in fact, as you will see in the report and in our discussion of the recommendations, we found one such model actually in operation in the United States. The facility in Broward County, Florida is one very distinct and successful counter example to the otherwise dismal picture that our Study found of the jail-like conditions under which asylum seekers are detained. This humane alternative demonstrates that those asylum seekers who genuinely must be detained can be kept under conditions that are secure, that better protect their mental health and well being, and also that this can be done in a way that is cost-effective. In fact, the cost of the Broward alternative model of detention was under $85 per bed per night – the national average for all detention facilities.

Thus, for those asylum seekers who do need to be detained, the Study recommended, and the Commission concurred, that any expansion of DHS bed-space should create a limited number of facilities designed along the lines of the Broward model, and that non-criminal asylum seekers who do not meet the parole criteria be detained in appropriate facilities. Detaining asylum seekers who are fleeing persecution in jails is dangerous to their well-being, not to mention to the American tradition of being a safe haven for asylum seekers. Jails, prisons, and prison-like facilities are simply not an appropriate safe haven for asylum seekers.

In summary, additional bed space would not be enough to protect both national security and asylum seekers in need of protection. As the Study and the Commission found, the Department of Homeland Security also needs to (1) develop procedures to consistently document and enforce its own policies relating to the release of aliens; (2) establish cost-effective and non-jail like facilities for the detention of those asylum seekers who do not meet the release criteria, along the lines of the ICE contract facility in Broward Country, Florida; and (3) establish a high level Refugee Coordinator within DHS to see these changes through, since right now only the DHS Secretary and Deputy Secretary have the authority to oversee asylum issues that involve the three bureaus that process asylum seekers subject to Expedited Removal (U.S. Citizenship and Immigration Services, Immigration and Customs Enforcement, and Customs and Border Protection.).

Thank you. I look forward to answering any questions you may have.

APPENDIX A

ASYLUM SEEKERS IN EXPEDITED REMOVAL:

A Study Authorized by Section 605 of the International Religious Freedom Act of 1998

EXCERPTED FINDINGS RELATED TO DETENTION

ARE IMMIGRATION OFFICERS, EXERCISING AUTHORITY UNDER EXPEDITED REMOVAL, DETAINING ASYLUM SEEKERS IMPROPERLY OR UNDER INAPPROPRIATE CONDITIONS?

Asylum seekers subject to Expedited Removal must, by law, be detained until an asylum officer has determined that they have a credible fear of persecution or torture, unless release (parole) is necessary to meet a medical emergency need or legitimate law enforcement objective. The Study found that most asylum seekers are detained in jails and in jail-like facilities, often with criminal inmates as well as aliens with criminal convictions. While DHS has established detention standards, these detention facilities closely resemble, and are based on, standards for correctional institutions.

In one particularly innovative Immigration and Customs Enforcement (ICE) contract facility, located in Broward County, Florida, asylum seekers are detained in a secure facility which does not closely resemble a jail. While Broward could be the model in the United States for the detention of asylum seekers, it is instead the exception among the network of 185 jails, prisons and "processing facilities" utilized by DHS to detain asylum seekers in Expedited Removal.

DHS policy favors the release of asylum seekers who have established credible fear, identity, community ties, and no likelihood of posing a security risk. However, there was little documentation in the files to allow a determination of how these criteria were actually being applied by ICE.

In FY2003, only 0.5 percent of asylum seekers subject to Expedited Removal in the New Orleans district were released prior to a decision in their case. In Harlingen, Texas, however, nearly 98 percent of asylum seekers were released. Release rates in other parts of the country varied widely between those two figures.

Specific Findings

A. The law and regulations require that aliens in Expedited Removal be detained until it is determined that they have a credible fear of return unless parole is necessary to meet a medical emergency or legitimate law enforcement objective.

B. The overwhelming majority of asylum seekers in Expedited Removal are detained in jails and jail-like facilities, often with criminal inmates and aliens with criminal convictions.

The standards applied by ICE for all of their detention facilities are identical to, and modeled after, correctional standards for criminal populations. In some facilities with "correctional dormitory" set-ups, there are large numbers of detainees sleeping, eating, going to the bathroom and showering out in the open in one brightly lit, windowless and locked room. Recreation in ICE facilities often consists of unstructured activity of no more than one hour per day in a small outdoor space surrounded by high concrete walls or a chain link fence. All detainees must wear prison uniforms, and a guard is posted in each dormitory room all day and night. Conditions do vary from facility to facility, but nearly all are prisons or prison like. In contrast, the Executive Committee of the United Nations High Commissioner for Refugees, of which the United States is a member, has recommended that national legislation and administrative practice make the necessary distinction between criminals, refugees and asylum seekers, and other aliens.[1]

C. DHS detains some asylum seekers in Expedited Removal in a secure facility which does not resemble a conventional jail and at a cost comparable to that of other DHS detention centers.[2] The facility, located in Broward County, Florida, has the potential to be copied in other locations, but has not yet been.

The Broward County facility allows detainees to walk outside in a secure grassy courtyard during all daylight hours, use the toilet and the shower without anyone else watching, wear civilian clothing, and freely walk to class or other programmed activities without an armed escort.

D. DHS Policy Guidance, while not set in regulation, favors the release of asylum seekers who establish credible fear, identity, community ties, and who do not pose a security or flight risk.

E. The decision-making criteria applied by Immigration and Customs Enforcement (ICE) in considering parole are not readily discernible from the information contained in the file.

ICE has not developed a form that documents the decision-making process for parole. Thus, it cannot be easily ascertained from ICE records whether the criteria are being appropriately applied to asylum seekers subject to Expedited Removal.

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[1] UNHCR Executive Committee Conclusion No. 44 (1986) on Detention of Refugees and Asylum Seekers, paragraphs (a), (d) and (f). In that conclusion, the Executive Committee "(a) *Noted* with deep concern that large numbers of refugees and asylum seekers in different areas of the world are currently the subject of detention or similar restrictive measures by reason of their illegal entry or presence in search of asylum, pending resolution of their situation; …(d) *Stressed* the importance for national legislation and/or administrative practice to make the necessary distinction between the situation of refugees and asylum seekers, and that of other aliens; and (f) *Stressed* that conditions of detention of refugees and asylum seekers must be humane. In particular, refugees and asylum seekers shall, whenever possible, not be accommodated with persons detained as common criminals, and shall not be located in areas where their physical safety is endangered…"

[2] The Broward County facility costs DHS approximately $83 per bed per night, compared to a national average cost of $85.

F. The USCIS (U.S. Citizenship and Immigration Services) Form I-870, completed by an asylum officer during the credible fear interview, collects information relating to some of the criteria which DHS guidance indicates should be applied to parole decisions. The asylum officer, however, does not make a recommendation to ICE concerning release. ICE and USCIS, however, seem to have different interpretations of key definitions relevant to the release criteria. For example, while ICE does not define its interpretation of release criteria, USCIS determines identity on the basis of "a reasonable degree of certainty."

According to the file review, 20 percent of asylum seekers whom USCIS determined identity with a reasonable degree of certainty and collected community ties information were not released from detention by ICE prior to their asylum hearing. From most of these files, the Study could not ascertain the basis for ICE's decision whether or not to release the alien.

A. The Study found no evidence that ICE is consistently applying release criteria.

Statistical review also revealed that while the average ICE district releases 63 percent of asylum seekers prior to their asylum hearing, release rates varied in major districts from .5 percent (New Orleans) to 97.6 percent (Harlingen). With such variations, the Study concludes that the formal release criteria are not being consistently applied. Moreover, the Study's statistical review found that variations in parole rates from ICE facilities across the country are associated with factors other than the established parole criteria, including port of entry and country of origin.

B. DHS regularly places aliens with facially valid documents in Expedited Removal and mandatory detention, for the sole reason that they expressed an intention to apply for asylum.

According to the review of 353 files, 18 asylum seekers with facially valid documents were placed in Expedited Removal proceedings and were subject to mandatory detention, solely because they informed the inspector of an intention to apply for asylum. Six of these asylum seekers volunteered their intention to apply for asylum at primary inspection. According to CBP, such asylum seekers "in most cases" are subject to Expedited Removal because, while they hold a temporary visa, their intention to apply for asylum indicates that they intend to reside in the United States permanently.[3]

[3] In its policy memorandum on the topic, DHS (then INS) does not define "most cases." *See* "Aliens Seeking Asylum at Land Border Ports of Entry," Memorandum from Michael A. Pearson, Executive Associate Commissioner, Office of Field Operations, Immigration and Naturalization Service, to Regional Directors (2/6/2002).

APPENDIX B

ASYLUM SEEKERS IN EXPEDITED REMOVAL:
A Study Authorized by Section 605 of the International Religious Freedom Act of 1998

EXCERPTED RECOMMENDATIONS RELATING TO DETENTION

RECOMMENDATION ONE

IN ORDER TO MORE EFFECTIVELY PROTECT BOTH HOMELAND SECURITY AND BONA FIDE ASYLUM SEEKERS, THE DEPARTMENT OF HOMELAND SECURITY SHOULD CREATE AN OFFICE- HEADED BY A HIGH-LEVEL OFFICIAL- AUTHORIZED TO ADDRESS CROSS CUTTING ISSUES RELATING TO ASYLUM AND EXPEDITED REMOVAL.

1.1 ***The Department of Homeland Security should create an office headed by a high-level Refugee Coordinator, with authority to coordinate DHS policy and regulations, and to monitor the implementation of procedures affecting refugees or asylum seekers, particularly those in the Expedited Removal process.***

The Study found that responsibilities for the treatment of asylum seekers in Expedited Removal are divided among several entities within DHS; therefore, resolving policy or procedural issues in this area currently requires the involvement of the Secretary or Deputy Secretary.[4]

The Study also found that there was no effort or program at DHS to assess on an agency-wide basis the treatment of asylum seekers in Expedited Removal. Nor were there adequate quality control measures in place to assess the impact on asylum seekers of the individual pieces of the process.

The Study also identifies significant problems in implementing and maintaining the safeguards for asylum seekers that Congress established. In order for these problems to be addressed, and given the current structure and lines of authority at DHS, a coordinating office is necessary to (a) ensure consistent asylum policy and legal interpretations Department-wide; (b) coordinate implementation of necessary changes set forth in the Study's recommendations; and (c) monitor the system on an agency-wide basis to see that changes take hold and that emerging problems are addressed as they arise. For example, the office would address problems identified

[4] Although overall DHS was cooperative, difficulties in liaising with the agency during this study re-enforced the conclusion concerning the need for an individual with coordinating authority across bureaus. Specifically, DHS was unable to name any individual in a position to act as the primary liaison between the Department and Commission experts. While DHS assigned USCIS as the nominal primary contact, conducting the Study required establishing separate working relationships with Detention and Removal Operations within the Bureau of Immigration and Customs Enforcement (ICE-DRO), Inspections, Border Patrol, USCIS, the Office of Immigration Statistics, as well as the Executive Office for Immigration Review (EOIR), in the Department of Justice. While the Study was being conducted, the experts were unable to discern who at DHS had responsibility for inter-bureau policy or DHS-wide operational asylum issues. Nevertheless, all agencies with whom we worked were cooperative in working with the Study. A number of agency officials confirmed that inter-bureau differences in approach are currently difficult to resolve.

in this Study concerning credible fear referrals at ports of entry; credible fear determinations; decisions concerning withdrawals of applications for admission; dissolutions of credible fear claims; the development of detention standards and facilities specific to asylum seekers; and information relating to parole criteria and conditions of detention specific to asylum seekers. Addressing these problems would require a consistent DHS-wide asylum and refugee policy, as well as inter-bureau discussions of how the various pieces of the process function and relate to one another.[5]

With the expansion of Expedited Removal authority, there are now four entities within DHS that can enter an Expedited Removal order: CBP Inspectors at ports of entry (for arriving aliens); Border Patrol (for aliens apprehended in the interior pursuant to the inland Expedited Removal procedures promulgated on August 11, 2004); the Office of Asylum (for aliens who fail to establish a credible fear of persecution); and Immigration and Customs Enforcement (ICE). It is critical to have these four entities treating asylum seekers by the same rules and procedures, and to ensure that information is being adequately shared. At this point, such coordination is only possible if done by the Office of the Secretary. The Secretary should delegate this responsibility to an individual who is authorized to coordinate the various entities' work relating to the protection of refugees and asylum seekers. Otherwise, with the recent expansions of Expedited Removal, and its serious flaws, the United States' tradition of protecting asylum seekers – not to mention those asylum seekers' lives – continues to be at risk.

RECOMMENDATION THREE

ESTABLISH DETENTION STANDARDS AND CONDITIONS APPROPRIATE FOR ASYLUM SEEKERS. DHS SHOULD ALSO PROMULGATE REGULATIONS TO PROMOTE MORE CONSISTENT IMPLEMENTATION OF EXISTING PAROLE CRITERIA, TO ENSURE THAT ASYLUM SEEKERS WITH A CREDIBLE FEAR OF PERSECUTION- AND WHO POSE NEITHER A FLIGHT NOR A SECURITY RISK- ARE RELEASED FROM DETENTION.

3.1 *DHS should address the inconsistent application of its parole criteria by codifying the criteria into formal regulations.*

The INS established criteria for the release of asylum seekers (i.e. credible fear, community ties, establishment of identity, and not a suspected security risk) and these criteria continue, in theory, to be in effect at DHS. The Study, however, found that rates of release vary dramatically in different parts of the country and there is no evidence that these criteria are being applied consistently. Codification of the parole criteria into regulations will help ensure that DHS consistently detains those aliens who do not meet the criteria and releases those who do.

[5] We recognize, however, that such an office need not be focused exclusively on Expedited Removal issues, but other inter-bureau refugee and asylum issues as well; e.g. refugee issues arising from interdictions of aliens at sea; asylum issues arising from the Memorandum of Understanding on Asylum with Canada; the detention of asylum seekers other than those in Expedited Removal proceedings; linkages between overseas enforcement programs and the refugee resettlement program, etc.

3.2 ***DHS should develop standardized forms and national review procedures to ensure that its parole criteria are more consistently applied nation-wide.***

In addition to codifying its criteria in formal regulations, DHS should create standardized forms and review procedures to address inconsistent application of its release criteria for asylum seekers. In trying to understand the wide variations in release rates, the Study found no evidence of quality assurance procedures to ensure that these criteria are being followed. Nor do DHS files usually include the information or forms necessary to ascertain whether or not the criteria are being applied. Detention and Removal Operations (ICE-DRO) should develop a form, perhaps modeled after the USCIS Form I-870, as well as associated national review procedures, to assess consistent application of the parole criteria. This will help ensure that asylum seekers who do not pose a security risk and who establish a credible fear of persecution, community ties, and identity are not improperly detained. The form would require DHS to document its assessment of each of the parole criteria.

3.3 ***When non-criminal asylum seekers in Expedited Removal are detained, they should not be held in prison-like facilities, with the exception of those specific cases in which DHS has reason to believe that the alien may pose a danger to others. Rather, non-criminal asylum seekers should be detained in "non-jail-like" facilities such as the model developed by DHS and INS in Broward County, Florida. DHS should formulate and implement nationwide detention standards created specifically for asylum seekers. The standards should be developed under the supervision of the proposed Office of the Refugee Coordinator, and should be implemented by an office dedicated to the detention of non-criminal asylum seekers, developing a small number of centrally managed facilities specific to and appropriate for, asylum seekers. The current DHS standards – based entirely on a penal model -- are inappropriate.***

U.S. law and DHS regulations are silent on whether asylum seekers should have detention standards that are different from those applied to other aliens. The Executive Committee of the United Nations High Commissioner on Refugees (UNHCR) has, however, spoken on the subject. Specifically, in UNHCR Executive Committee Conclusion No. 44 (1986) on Detention of Refugees and Asylum Seekers, the Executive Committee noted "deep concern" that large numbers of asylum seekers are the "subject of detention" and "stressed the importance for national legislation or administrative practice to make the necessary distinction between the situation of refugees and asylum seekers, and that of other aliens" and "stressed that conditions of detention of refugees and asylum seekers must be humane and that, in particular, refugees and asylum seekers shall, whenever possible, not be accommodated with persons detained as common criminals…."

We have found that detained asylum seekers in Expedited Removal are subjected to conditions of confinement that are virtually identical to those in prisons or jails. These conditions create a serious risk of institutionalization and other forms of psychological harm. They are inappropriate, particularly for an already traumatized population of asylum seekers, and unnecessary. ICE's own "non-jail-like detention" model in Broward County, Florida has

demonstrated that asylum seekers may be securely detained in an environment which does not resemble a jail and which is no more expensive than more secure facilities. Broward is, however, the only such non-jail-like detention facility among the 185 jails, prisons, and detention centers where ICE detains asylum seekers.

The Study concurs with the UNHCR Executive Committee that asylum seekers have different issues and needs than those faced by prisoners or even other aliens, and standards should be developed in recognition of this important distinction. While DHS has its own "Detention Standards" to ensure that aliens are detained under acceptable conditions, these standards are virtually identical to, and indeed are based on, correctional standards. Asylum seekers who are not criminals should not be treated like criminals.

We recommend that the proposed Office of the Refugee Coordinator oversee the development and implementation of those standards, and that an office be established to oversee the centralized development and management of non-jail-like asylee detention facilities. Standards appropriate for asylum seekers cannot be implemented in the existing decentralized network of 185 detention facilities, nearly all of which are either jails or jail-like detention centers.

3.4 ***DHS should ensure that personnel in institutions where asylum seekers are detained are given specialized training to better understand and work with a population of asylum seekers, many of whom may be psychologically vulnerable due to the conditions from which they are fleeing.***

In the Study's survey of approximately 20 detention facilities that house more than 70 percent of the population of asylum seekers subject to Expedited Removal, only one facility indicated that line officers or guards were explicitly told which detainees were asylum seekers. In addition, staff at very few facilities were given any specific training designed to inform them of the special needs or concerns of asylum seekers, and in only one facility did the staff receive any training to enable them to recognize or address any of the special problems which victims of torture or other victims of trauma may have experienced. As noted above, asylum seekers have different needs than, and should be distinguished from, other aliens. Indeed, unlike other migrants, bona fide asylum seekers have a well-founded fear of persecution, and may also have special needs and problems stemming from that fear. This distinction underscores the need for specialized training for guards and other detention center employees.

3.5 ***DHS should exercise discretion and not place a properly documented alien in Expedited Removal – and mandatory detention – when the sole basis for doing so is the alien's expression of a desire to apply for asylum at the port of entry.***

Under DHS policy, when an alien at a port of entry indicates a desire to seek asylum, that alien is placed in Expedited Removal after being charged with inadmissibility as an intending immigrant under section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act for having misrepresented the purpose of obtaining a visa to the United States. According to DHS, the intention to apply for asylum is not permissible with a visa for a temporary stay in the United States. The Study reviewed 353 files of aliens referred for credible fear from FY2002 to

FY2003, and found 18 asylum seekers who had valid documents and were placed in Expedited Removal proceedings after expressing an intention to apply for asylum.[6]

The Study questions whether it is necessary or desirable to place such aliens with facially valid documents and whose identity is not in doubt in Expedited Removal and mandatory detention solely because the alien expresses an intention to apply for asylum. We urge DHS to revisit its presumption that an intention to apply for asylum is tantamount to an intention to "immigrate" to the United States. Asylee status is not "immigrant" status. In fact, asylees may not apply for "immigration" status (i.e. lawful permanent residence) until twelve months after they receive asylum. Even then, asylees can only become lawful permanent residents after an "asylum adjustment" number becomes available, which now takes more than a decade.

RECOMMENDATION SUMMARY

THIS STUDY HAS PROVIDED TEMPORARY TRANSPARENCY TO EXPEDITED REMOVAL – A PROCESS WHICH IS OPAQUE NOT ONLY TO THE OUTSIDE WORLD, BUT EVEN WITHIN THE DEPARTMENT OF HOMELAND SECURITY. AS A RESULT OF THIS TRANSPARENCY, SERIOUS – BUT NOT INSURMOUNTABLE – PROBLEMS WITH EXPEDITED REMOVAL HAVE BEEN IDENTIFIED. THE STUDY'S RECOMMENDATIONS CONCERNING BETTER DATA SYSTEMS, QUALITY ASSURANCE MEASURES, ACCESS TO REPRESENTATION, AND A DHS REFUGEE COORDINATOR WOULD ALL CONTRIBUTE TO A MORE TRANSPARENT AND EFFECTIVE EXPEDITED REMOVAL PROCESS. WE ALSO RECOMMEND THAT CONGRESS REQUIRE THE DEPARTMENTS OF JUSTICE AND HOMELAND SECURITY TO PREPARE AND SUBMIT REPORTS, WITHIN 12 MONTHS OF THE RELEASE OF THIS STUDY, DESCRIBING AGENCY ACTIONS TO ADDRESS THE FINDINGS AND RECOMMENDATIONS OF THIS STUDY.

[6] Recently, this practice was the subject of press attention, when the 81 year old Reverend Joseph M. Dantica, a frequent visitor to the United States in possession of a valid visitor visa from Haiti, was placed in Expedited Removal proceedings. Rev. Dantica was placed in Expedited Removal because, when asked by the inspector how long he intended to remain, the Reverend responded that he intended to apply for "temporary asylum." Dantica was sent to the Krome detention center in Florida, where he collapsed during his credible fear interview and died shortly thereafter.

APPENDIX C

STUDY ON ASYLUM SEEKERS IN EXPEDITED REMOVAL

As Authorized by Section 605 of the International Religious Freedom Act of 1998

(Hereafter, Commission Report)

CONDITIONS OF CONFINEMENT FOR DETAINED ASYLUM SEEKERS SUBJECT TO EXPEDITED REMOVAL

SUBMITTED: FEBRUARY 2005

Craig Haney, Ph.D.

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CONDITIONS OF CONFINEMENT FOR DETAINED ASYLUM SEEKERS SUBJECT TO EXPEDITED REMOVAL

Detention is a critical issue for asylum seekers subject to Expedited Removal in the United States. In FY2003, asylum seekers constituted only 6 percent of the 230,000 aliens in the custody of the Department of Homeland Security (DHS).[7] However, all asylum seekers subject to Expedited Removal are, by law, detained until a credible fear determination has been made in their case.[8] Even after the Credible Fear determination, which normally occurs between two and fourteen days after an alien's arrival, it is at the discretion of the DHS Bureau of Immigration and Customs Enforcement (ICE) Office of Detention and Removal Operations (DRO) to determine whether to release an asylum seeker prior to his or her hearing before an immigration judge. According to ICE, the average length of detention for released asylum seekers in Expedited Removal was 64 days, and 32 percent were detained for 90 days or longer.[9]

Detention is clearly a significant factor in an asylum seeker's experience in the Expedited Removal process. Consequently, Congress authorized the United States Commission on International Religious Freedom to appoint experts to examine the conditions under which these asylum seekers are confined.[10] This report attempts to describe those conditions.

I. THE DETENTION OF ASYLUM SEEKERS SUBJECT TO EXPEDITED REMOVAL

The rationale for detaining asylum seekers who are subject to Expedited Removal has several components. For one, section 235 (b) (1) (B) (iii) (IV) of the Immigration and Nationality Act provides that any alien subject to Expedited Removal procedures "shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." If credible fear is found (a process that can take between 48 hours to two weeks), ICE District Directors may parole at their discretion those aliens who meet the credible fear standard, can establish identity and community ties, and who are not subject to possible bars to asylum involving violence or other misconduct.

Since, by definition, aliens who are placed in Expedited Removal proceedings either have no documents, faulty documents, or ones that an immigration inspector has determined were fraudulently obtained, detention serves the purpose of detaining aliens until their identity can be determined. Moreover, since ICE is charged with the responsibility of insuring that asylum seekers subject to Expedited Removal actually appear for their asylum hearings, and that they appear for their removals (if asylum is not granted), detention helps to insure that both goals are met.

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[7] Fact Sheet – ICE Office of Detention and Removal (May 4, 2004) (available at www.ice.gov); and Report to Congress, Detained Asylum Seekers, Fiscal Year 2003, Prepared by U.S. Immigration and Customs Enforcement Office of Detention and Removal and the Department of Homeland Security, Management Directorate, Office of Immigration Statistics.

[8] Section 235(b)(1)(B) of the Immigration and Nationality Act ("The INA"), 8 USC 1225(b)(1)(B) (2004).

[9] Report to Congress, Detained Asylum Seekers, FY2003.

[10] Section 605 of the International Religious Freedom Act of 1998, 22 USC 6474 (2004).

However, it also is possible that asylum seekers who are subject to Expedited Removal are held in detention unnecessarily (i.e., when less onerous measures could accomplish the same goals equally well), for too long a period of time (i.e., when they otherwise could be paroled pending the adjudication of their asylum hearings), or that the conditions under which they typically are detained are inappropriate (i.e., the nature of their confinement may be psychologically harmful or otherwise interfere with their successful integration into U.S. society or the home country to which they are removed). This report addresses the latter concern—the nature and appropriateness of the actual conditions under which asylum seekers subject to Expedited Removal are detained.

It is important to acknowledge at the outset that this report analyzes the conditions of confinement for post-credible fear asylum seekers largely in reference to their similarity with traditional correctional environments. There are several reasons for this. For one, the issue of whether the detention of asylum seekers subject to Expedited Removal "criminalizes" them—by treating them in much the same way as criminals are treated in our society—has been the subject of much controversy in the United States and abroad.[11] Examining whether and to what extent the conditions under which post-credible fear asylum seekers are kept approximates conditions in the nation's penal system helps to clarify that debate.

In addition, both the letter and spirit of the DRO detention standards appear to embody a traditional correctional system approach to the housing and treatment of post-credible fear asylum seekers. These standards clearly model those in use in traditional prisons and jails and, in fact, explicitly refer to the Bureau of Prisons and American Correctional Association (ACA) Standards for Adult Local Detention Facilities.[12] The use of traditional correctional standards for the detention of asylum seekers in the Expedited Removal process contributes to the sense that they are being criminalized by the nature of the conditions in which they are confined.

On the other hand, despite their heavy reliance on a traditional correctional approach, the DRO standards and guidelines also were designed to be flexible in their application. That is: "Since the standards as written could not be imposed on IGSA (Intergovernmental Service Agreement) facilities, which house diverse groups of individuals, the format of the standards was altered so that they could be more flexible. The new standards will be required for all facilities

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[11] The Executive Committee of United Nations High Commissioner for Refugees (UNHCR), of which the United States is a member, in its Conclusion 44 (1986), expressed that, "in view of the hardship which it involves, detention (of asylum seekers) should normally be avoided." *See* Appendix E to this Report, in Volume II of the Commission Report. It also stressed "the importance for national legislation and/or administrative practice, to make the necessary distinction between the situation of refugees and asylum seekers, and that of other aliens," and that "refugees and asylum seekers shall, whenever possible, not be accommodated with persons detained as common criminals..." The UNHCR Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers (1999) reiterated that the detention of asylum seekers is "inherently undesirable…(and) should only be resorted to in cases of necessity;" emphasizing the importance of "the use of separate detention facilities to accommodate asylum-seekers. The use of prisons should be avoided. If separate detention facilities are not used, asylum-seekers should be accommodated separately from convicted criminals or prisoners on remand. There should be no co-mingling of the two groups." *See* Appendix F to this Report in Volume II of the Commission Report.

[12] "The standards are based on current INS detention policies, Bureau of Prisons' Program Statements, and the widely accepted ACA Standards for Adult Local Detention Facilities, but are tailored to serve the needs of INS detainees." INS News Release, INS to Adopt New Detention Standards, November 13, 2000.

holding INS detainees, but they include flexibility to allow IGSAs to use alternate means of meeting the standards if necessary."[13] Thus, at the same time the DRO standards incorporate a traditional corrections approach to detention, and some of the facilities in which aliens are detained are actual jails, they seem to contemplate the possibility of using different, alternative approaches to the handling of asylum seekers subject to Expedited Removal.

Moreover, it is clear that the specific conditions of confinement in DRO detention facilities are not dictated by the nature of the alien population housed in them. For example, there is a dramatic contrast between the approach to the detention of post-credible fear asylum in the Queens Contract Detention Facility, which is structured and operated much like a traditional jail or correctional facility, and the Broward Transitional Center, which appears to be a much more humane and far less intrusive form of confinement that bears only minimal resemblance to a traditional prison or jail. Coincidentally, despite their dramatic differences in conditions and approach, both facilities are operated by the same parent company, GEO (Global Expertise in Outsourcing, formerly part the Wackenhut Corporation).

In fact, the dramatic differences between these two facilities appear to be largely a function of the terms of the ICE contracts under which they each operate, rather than differences in the nature of the populations served. Thus, the nature of the conditions under which the group of asylum seekers subject to Expedited Removal are kept appears to be a policy choice, rather than a detention-related mandate.

II. Assessing Conditions of Confinement at the Detention Facilities in Which Asylum Seekers Subject to Expedited Removal Are Housed

The present descriptions and assessment of the conditions under which asylum seekers are housed are based on several sources. The *primary* data source consisted of a series of structured interviews conducted by telephone with administrators who worked at 19 pre-selected detention facilities throughout the United States (described in detail below).[14] The results of the facility survey also were supplemented with direct observations that were conducted at 4 detention facilities (Broward Transitional Center, Elizabeth Detention Center, Krome SPC, and the Laredo Contract Detention Center), and with two group interviews that were conducted with former DHS detainees (one organized in New York City by Human Rights First, and another in Miami by Florida Immigrant Advocacy Center). In addition, the results were verified and compared with: 16 unreleased monitoring reports by the United Nations High Commissioner for Refugees (UNHCR) that ICE authorized to be shared with the Commission; 30 unreleased

[13] ibid.

[14] It is important to note at the outset that these data are limited in several ways. For one, although facilities in which the great majority of post-credible fear asylum seekers are housed were surveyed, not every facility was included. Although unlikely, it is possible that the facilities that were not included in the survey differed in some important respects from those that were, altering the accuracy of the overall descriptions. Second, and more importantly, as our primary data source, the survey depended *entirely* on information provided by the facility administrators themselves. Aside from the possible tendency for administrators to portray their own facilities in a positive light, the descriptions and accounts on which we relied in the survey were entirely those who operated the facilities rather than, for example, those of the detainees who were housed in them. In institutional settings, these two perspectives often differ from one another; conditions and procedures are not always experienced by inmates in exactly the way they are intended by administrators.

monitoring reports of site visits to detention facilities by the American Bar Association (ABA) that ICE authorized be shared with Commission experts; information obtained from visits of other Commission experts in the course of the Study.[15] Finally, Commission researchers interviewed 39 asylum seekers who had decided to "dissolve" their asylum claims while in detention. Those interviews were evaluated to determine what effect, if any, detention conditions might have had on the aliens' decision to dissolve their asylum claim. They, too, were used to supplement the facility survey.[16]

A. The Facility Survey

As noted above, the primary data source was a survey of a sample of facilities where asylum seekers subject to Expedited Removal were detained. The sample of surveyed facilities was designed to represent the different types of institutions currently used by the Department of Homeland Security for this purpose and also to include ones that encompassed a large percentage of the population of post-credible fear asylum seekers currently in DHS custody.[17] Thus, the total of 19 facilities were located in 12 different states and included 6 county jails, 5 DHS run facilities, 7 private contract facilities, and one special county-run detention facility for alien families (Berks County). The institutions surveyed housed more than 70 percent of all aliens subject to Expedited Removal in FY 2003. Overall, the facilities that were surveyed were

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[15] These included visits by Commission expert to: the Queens New York Contract Facility; the Comfort Inn, Miami, Florida; San Pedro Detention Facility; Otay Mesa Detention Facility (CCA), San Diego, California; Mira Loma Detention Facility, Lancaster, California; Kenosha County Jail, Kenosha, Wisconsin; Florence SPC, Florence, Arizona; Piedmont Regional Jail, Farmville, Virginia; Aguadilla, Puerto Rico; Guaynabo-MDC, Puerto Rico; and Office of Refugee Resettlement (ORR) juvenile contract facilities in Chicago, Illinois, and San Diego, California.

[16] In a letter dated June 22, 2004 from Acting DRO Director Victor Cerda to USCIRF Immigration Counsel Mark Hetfield, Mr. Cerda indicated that ICE was providing the ABA and UNHCR reports to the Commission for "informational purposes only," as they are not as comprehensive as DHS's own monitoring reviews. As Mr. Cerda pointed out, the UNHCR and ABA reports are based on short facility tours, while the DRO monitoring reports are the result a much more comprehensive two to three day inspection of individual detention facilities. Immediately upon receipt of the letter, USCIRF made the first of many repeated requests to ICE for an opportunity to review the DRO inspection reports. ICE, however, never made those reports available to Commission experts.

[17] As Appendix A (appended to this Report in Volume II of the Commission Report) indicates, we had intended to survey 22 facilities. Three facilities (Ozaukee, Guaynabo, and Orleans) declined to participate. Consequently, we did not include any data or reach any conclusions pertaining to those facilities. However, note that in one case—the Ozaukee County Jail—an inspection done in September, 2003 by another outside agency that looked at many of the same issues reached many of the same overall conclusions that we did about the facilities we surveyed. Among other things, the other agency inspection reported "[d]etainee complaints about jail conditions and treatment by guards as disrespectful, rude, and unprofessional."

Reasons for the failure to participate varied. For example, after making and breaking several appointments with Commission staff to complete the survey, Ozaukee county ultimately refused to cooperate. On the other hand, MDC Guaynabo, a facility run by the Bureau of Prisons (BOP), was unable to participate in the survey because, in spite of a number of requests made by Commission staff to BOP at the US Department of Justice, the facility was not able to get the necessary clearance from Washington in time to participate. While in Puerto Rico interviewing aliens in Expedited Removal proceedings, USCIRF Immigration Counsel Mark Hetfield was given a tour of the facility by BOP officials. Hetfield reported that, while the facility was cleaner and had more extensive programming, access to outdoor recreation and natural light, and privacy than virtually any other adult facility visited in connection with the Study (except for Broward), the facility was clearly run as a high security correctional institution. Thus, Guaynabo detainees were permitted contact attorney visits and supervised personal visits, but were strip searched after each one. Moreover, criminal detainees were co-mingled with asylum seekers with no distinction whatsoever.

A list of the facilities actually included in the sample, and from which they data on which this report relies were obtained, appears in Appendix B of this Report, in Volume II of the Commission Report.

responsible for housing approximately 5585 alien men and 1015 women. (A list of the sampled facilities appears in Appendix A attached to this Report in Volume II of the Commission Report.) The cost of detaining an alien at these facilities varied from between $30 to $200 per detainee per day, with an average cost of approximately $83.[18] This estimate is similar to the one reported in the EOIR Legal Orientation Executive Summary—that is, that overall "[t]he average cost to DHS for each detainee is $85 per day."

To begin the survey, administrators at each facility were asked a series of preliminary questions designed to elicit information about the cost of housing detainees there, and information about the gender and legal status of the detainees themselves.[19] Questions then focused at length on specific aspects of the conditions under which detainees lived, the particular procedures that governed the detainees' day-to-day behavior, and other aspect of the institutional environment in which they were housed. By design, the survey addressed a standard set of characteristics or dimensions of institutional life, intended to determine the extent to which aliens housed in these detention facilities may be subjected to conditions of confinement that were similar to those of in-custody inmates housed in traditional jails and prisons.

1) Special Treatment of Alien Detainees

One important initial issue concerned whether any special forms of treatment and protection were provided to post-credible fear asylum seekers who were in DHS detention—including whether the non-criminal and criminal aliens were kept separate from one another, whether aliens were kept separate from jail inmates (in those facilities that housed both), and whether the detention staff had any special knowledge or training that would enable them to address the special needs and unique status of asylum seekers.

More than half (13/18) of the facilities where male aliens were detained reported that they housed detainees both with and without criminal convictions. Similarly, more than half of the facilities that housed female aliens (10/13) had detainees who had been convicted of one or more criminal offense as well as those who had none. Of the facilities that housed male or female detainees who had criminal convictions with detainees who had none, 11 not only allowed some contact or interaction between both groups but also provided for shared sleeping quarters where both groups were co-mingled. Among the 8 facilities that housed non-DHS jail inmates (either sentenced or awaiting trial), 7 permitted some contact between them and the detained aliens and, in the case of 4 facilities, this included shared sleeping quarters.

Several questions addressed the issue of whether detention facility staff had special knowledge and received special training with respect to asylum seekers. In only one of the detention facilities were the line officers or guards explicitly told which specific inmates were asylum seekers. In addition, staff at very few of the facilities were given any specific training

[18] Note: In the case of several private contract facilities, the daily cost per detainee was reduced once the facility began to operate above a certain population level. The standard cost—not exceeding the lower population level—was used in calculating the overall average. In the case of one facility, Mira Loma, only a range was provided by the administrator and the midpoint of that range was used. Two facilities (Berks County Family Shelter and San Pedro) did not report average costs.

[19] A copy of the entire questionnaire appears in Appendix C to this Report, in Volume II of the Commission Report.

that was designed to sensitize them to the special needs or concerns of asylum seekers, and in even fewer facilities did they receive any training to enable them to recognize or address any of the special problems from which victims of torture and other forms of trauma might suffer or the special difficulties they might experience in the course of their detention. Specifically, only 3 of the facilities in the sample reported that staff members received "some cultural sensitivity training" and only one—Broward —reported that its staff received any training with respect to what asylum seekers "might have gone through." In addition to the lack of specific training among line staff, only a small number of facilities (5/19) reported that anyone on-site—including higher level officials and administrators—had received such training.

2) Use of Correctional Models of Security, Surveillance, and Control

The first series of detailed confinement-related questions posed in the survey pertained to the basic security arrangements and procedures that were in use at the particular detention facilities. On the whole, responses indicated that these facilities were extremely secure and highly security-conscious.

All of the detention facilities but one had secure barriers (locked doors and/or gates) that separated the housing units from the initial entrance into the facility itself. The number of such security barriers ranged from 1 to 8, with a mean of 3.7 security barriers between the entrance and the detainee housing units. All but one employed special security procedures that restricted general access to the detainees' housing units and to their individual cells or sleeping areas.

Similarly, all of the detention facilities but one employed multiple inmate "counts" during the day by which the detainees' whereabouts were formally monitored. The number of such counts ranged from 2 to 10, and averaged 5 counts per day in the 18 facilities that used them.[20] All of the facilities but 5 reported that they used strip or other kinds of invasive searches on detainees as a standard procedure during the time they were processed into the facility. All but 3 reported using strip or invasive searches for security-related reasons during the detainees' subsequent confinement. In addition, all of the facilities reported that guards conducted security-related searches of the detainees' general living or housing areas. Some reported that these searches occurred as frequently as once a day, although in most facilities once a week or less was the norm.

The facilities also reported a heavy emphasis on the direct monitoring and surveillance of the detainees. Specifically, all but three of the facilities reported that there were fixed and secure guard stations in the detainee housing or living areas, and virtually all (18/19) had constant sight and/or sound surveillance in the housing units themselves (which typically meant the nearly constant presence of a facility staff member). In addition, most (14/19) had surveillance cameras operating inside the detainee housing units, and all but one had surveillance cameras in operation elsewhere in the facility.[21] All of the detention facilities used 24-hour surveillance lighting (i.e., there were key areas inside the institutions where the lights were never turned off).

[20] One facility—the Yuba County Jail—reported "hourly safety checks" in addition to three "actual head counts" per day. We used only the head counts in this calculation.

[21] Many of the facilities reported the use of numerous surveillance cameras throughout. For example, the Yuba County Jail reported that it had approximately 70 surveillance cameras were in regular operation.

3) Restricted Movement and Segregated Confinement

Prisons and jails are characterized by the limitations they place on the liberty of inmates. Indeed, it is one of their defining qualities. The freedom of movement of post-credible fear detainees in the facilities that were surveyed was restricted in a number of important respects. For one, virtually all of the detention facilities (18/19) reported using physical restraints with the detainees. In some instances the use of restraints was reported as rare and minimal, in others it appeared to be frequent and more extensive. For example, the Tri-County Jail in Ullin, Illinois reported that the staff used "handcuffs, belly chains, and leg shackles… when detainees leave the facility." On a day-to-day basis, detainees in virtually all (17/19) of the facilities were restricted in their movement outside of their direct housing units, and only a few (4) allowed detainees to have access to other housing or living areas within the facility. In addition, all of the facilities but 2 reported that they required the detainees to have staff escorts whenever they moved throughout the facility. The only areas within the institutions to which detainees were given relatively unrestricted, unescorted access were the dayrooms that were attached to their living areas.

The use of segregation, isolation, or solitary confinement for disciplinary reasons was widespread among the detention facilities that were sampled. All but 3 of them reported that they used some form of this kind of specialized, punitive confinement in response to certain kinds of disciplinary infractions by the detainees.

4) Limitations on Privacy and Personal Freedom

Significant limitations were reported in the amount of privacy, personal freedom, and individuality that detainees were afforded in virtually all of these facilities. Thus, detainees in only a few of the detention facilities (4/19) had access to private, individual toilets that they could use when no one else was present. In only slightly more of the facilities (5/19) were detainees able to shower privately (i.e., outside the presence of others). Very few detainees had the opportunity to be alone in their cells or rooms (something that was possible in only 4 facilities). In addition, detainees at very few facilities (4/19) were given any opportunity to personalize their living quarters by decorating them, and the overwhelming majority of the facilities (16/19) required detainees to wear uniforms rather than street clothes. Similarly, only 2 of the facilities permitted detainees to have personal hygiene items that were not sold at the facility commissary or provided by the government. In fact, there were 6 detention facilities—about a third of the sample—that did not extend commissary privileges of any kind to the detainees.

5) Pursuit of Legal Claims

The detention facilities that were surveyed did acknowledge the importance of allowing the detainees to pursue their legal claims in several ways. For example, all of the facilities reported providing the detainees with at least some kind of law library access, and in 5 of them

such access was described as essentially unlimited. (However, in *none* of the facilities visited by the experts were all the legal materials listed in the DHS detention standards—listed in Appendix E of this Report in Volume II of the Commission Report—present and up-to-date, a problem consistently reported by the UNHCR and ABA monitoring reports as well.) Virtually all (18/19) of the facilities reported that "know your rights" presentations were conducted, either by their own staff (5), NGO representatives (8), or both (5).[22] The great majority also indicated that the "know your rights" handouts were issued or made available to detainees. Most facilities reported handbooks were available in English and Spanish, with Chinese (6), French (4), and Creole (4) also covered in several of the facilities.[23]

6) Access to Programming and Meaningful Activity

There were a significant number of restrictions placed on the detainees' opportunities to engage in meaningful activities or programs of any kind while they were confined. The degree of the restrictions varied according to the nature of the activity. Thus, virtually all of the facilities reported that they provided detainees with some opportunity for what they characterized as outdoor recreation or exercise. (The one exception—Oakland County Jail—provided 3 hours per week in an indoor gym at the facility.) However, the number of hours of outdoor exercise per week varied widely from as many as 40 (in a few facilities where detainees were reported to have virtually unlimited daytime outdoor access) to as few as one hour to an hour and a half per day (the rule in 8 facilities). In virtually every case in which outdoor exercise was provided (15/18), the facilities reported that the detainees were still in a circumscribed, confined environment (described in one case as a "small concrete slab that is well fenced in with razor wire").[24]

In terms of other activities routinely available to detainees, no detention facility provided detainees with access to the internet. Moreover, a majority (11/19) of the facilities reported that they had no educational or vocational training activities whatsoever available in which detainees could participate. Among the 8 facilities that offered some kind of programming activity, most offered ESL classes, and several gave the detainees an opportunity to participate in several kinds of classes (e.g., in "life skills" or art).

On the other hand, all of the facilities but 2 allowed detainees to work. In most of the detention facilities where work was allowed (12/17), detainees were paid. However, in each case the rate of pay for their labor was very minimal—$1 per day.

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[22] In some instances, these presentations were infrequent. For example, the Yuba County Jail reported that the UC Davis law school provided "know your rights" presentations "when they chose," but this averaged only about three times per year. Given the fact that the average stay in detention is 64 days, "know your rights" presentations that occurred approximately three times per year would fail to reach a large segment of the detained asylum seeker population.

[23] We note that here, as with all of the data presented concerning access to services and the like, we were unable to directly assess the quality of the "know your rights" presentations, the materials that were distributed, or the accuracy of the translations.

[24] It should be noted that the nature of these outdoor facilities appeared to vary widely. In the inspection of the Elizabeth facility, for example, Commission researchers noted that the cramped, enclosed exercise area hardly was "outdoor" at all, even though it was characterized as such in the survey results.

7) Access to Religious, Mental Health, and Medical Services

In addition to meaningful activity and programming, incarcerated persons often have special needs that arise from time to time and that must be addressed by specialized personnel. The special services available to detainees at the facilities that were surveyed varied. For example, most (13/19) of the detention facilities had at least one full-time chaplain (another had a part-time chaplain), virtually all had weekly religious services that detainees were permitted to attend, most conducted special religious services in conjunction with certain religious holidays, and all but one facility accommodated at least some religious or special diets.

On the other hand, even though all facilities employed some kind of mental health screening at the time detainees were being processed into the institution, and most made mental health services available to detainees who requested it later on, only 5 of the facilities had any full-time mental health staff members. Among the 14 that reported having no full-time mental health staff was the large Mira Loma facility where as many as 1200 DHS detainees can be held at a time. The survey did not address the issue of whether detainees had access to ongoing therapy or mental health counseling, if so, on what basis, or the quality of the care that actually was provided.[25] Nonetheless, the lack of full-time mental health staff in many of these facilities raised concerns about these issues.

Moreover, in only 2 of 19 facilities did mental health staff members conduct regular rounds or make any kind of effort to directly monitor the mental health status of the detainees. Most of the facilities did report that they had special suicide prevention procedures in the case of detainees who were suspected of being suicidal, although in most instances this consisted of placing the detainee in a segregation or isolation unit.[26]

Medical care tended to be handled more consistently. Thus, the overwhelming majority of the facilities reported that at least one full-time nurse was present, and nearly half (8/19) had full-time physician coverage.

8) Contact with the Outside World

Finally, significant limitations were placed on the detainees' contact with the outside world in most of the detention facilities that were surveyed. For one, in virtually all of the facilities (except one), there were limitations placed on the frequency and length of the social visits that were permitted. In fact, the majority of the facilities (11/19) limited visiting days to only 1-2 days per week; only 4 permitted visiting every day. In addition, 10 facilities reported that visiting was restricted to 1 hour or less per visit, and only 2 placed no time limits on the lengths of social visits. The majority of the detention facilities (11/19) prohibited any kind of

[25] For example, note that a Bellevue/NYU study of detained asylum seekers reported that "most of the asylum seekers interviewed (69 percent) reported that they wanted counseling for their mental health problems although few received such services… Among those who wanted counseling, only 6 (13 percent) reported receiving counseling from someone provided by the detention facility." Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers (2003), at p. 63.

[26] It should be noted that confinement in isolation is likely to exacerbate depression and, for this reason, generally is not regarded as an appropriate response to suicidality.

contact visiting with social or family visitors, which meant that visits often occurred behind plexi-glass windows. However, attorney visiting was handled more generously: attorney visitation was unlimited in all of the facilities and, in all but 2 facilities, they were allowed to be contact visits.

Detainees at all facilities were permitted phone calls, although these were outgoing phone calls only, and even in-coming calls from attorneys were prohibited. Only a few facilities placed limits on number and length of calls (except on the basis of phone availability), and some provided pro bono calling privileges on a limited basis. Virtually every facility placed limitations on the kind of mail detainees could receive (only one reported it did not). Incoming letters were opened in every facility, and 6 detention facilities even placed restrictions on the number of letters detainees could send out in a week.[27]

Summary

Appendix D (which appears in this Report, as part of Volume II of the Commission Report) contrasts the characteristics of the alien detention facilities in which detained asylum seekers are housed (as measured in the survey described above) with those of traditional jails and prisons that are intended for accused and/or convicted criminals. Indeed, as one chief administrator of a detainee-only facility put it, "the people here are all our prisoners."[28] Thus, Appendix D (appended to this Report in Volume II of the Commission Report) shows that, in most critical respects, the DHS detention facilities are structured and operated much like standardized correctional facilities. Indeed, in some instances, actual criminal justice institutions—in this case, county jails—are operated as dual use facilities that simultaneously house asylum seekers and criminal offenders, side-by-side. Even in those DHS or contract detention facilities that explicitly are designed to house only alien detainees, the physical structure, day-to-day operations, and treatment of residents appear to be corrections-based in virtually all important respects. Moreover, there were few systematic differences between the several types of facilities. That is, whether they were county jails, DHS run facilities, or private contract facilities, they were operated in more or less the same way. With the exception of the Broward Transitional Center (a private contract facility) and the Berks Family Shelter (a county run detention facility), the facilities employed similar rules, with similar conditions of confinement, that greatly resembled traditional correctional settings.

B. Interviews with Former Detainees

The results of the facility surveys were supplemented by face-to-face interviews conducted in Miami and, especially, New York, with asylum seekers who had been in detention but subsequently were released. The interviewees (who, in the case of those in New York, had been confined either in the Elizabeth Detention Center or the Queens Contract Detention Facility and, in the case of those in Miami, had been confined either in Krome SPC or the Broward Transitional Center) recalled many painful and even traumatic aspects of their detention. Several

[27] In some instances, the limitations were placed on mailing by indigent detainees. For example, the Yuba County Jail allows indigents to send a maximum of two letters per week free of charge.
[28] Interview at Laredo Processing Center, September 22, 2004.

complained of physical as well as mental abuse suffered in the course of their detention. One of them summarized the hardships of institutional life this way:

> You had to put on a uniform, were taken to a dormitory to live, had no privacy—and even had to shower in the presence of a guard (who could be a male or female—it didn't matter). You must conform to all the arbitrary regulations—eat what you are given, when you are given it, and get used to being searched each time you leave your dormitory. They can touch you anywhere.

Another former detainee said, "you have to endure many cultural violations in the detention center. In my country, we are not supposed to see our elders naked. But we had to there. And you are afraid, you don't know the law here." In addition to fear, many talked about depression at the prospect of what they worried would be indefinite detention. Indeed, some encountered asylum seekers in the facilities who already had been detained for several years without release. They reported that deep concerns about their own uncertain fate in the asylum process affected them psychologically during their confinement. Yet there was no active monitoring of their mental or emotional condition.

The adverse treatment took a toll on a number of the persons interviewed. One of them said:

> I felt really isolated and humiliated. I felt like a person who had no value. At any time, the security guards made us do whatever they wanted. I felt traumatized by my treatment. My blood pressure went higher and my medical problems worsened there.

Other former detainees described the conditions in the facilities as "psychologically degrading… stressful and depressing." They also reported that they could be placed in isolation—in essence, solitary confinement—for trivial offenses such as verbal disagreements with other detainees.

A number of those interviewed told compelling stories of the torture and persecution in their home countries that had led them to seek asylum in the United States. Yet they felt that their treatment in detention, while they awaited the resolution of their asylum case, added to their pre-existing emotional distress. As one of them put it: "The whole detention system is there to break you down further. The time you spend there prolongs your trauma. And you are not even allowed to cry. If you do, they take you to isolation." Another said, "I fled my country because of this. I broke down and cried when it happened here."

Other former detainees spoke of being "treated like children" at the detention facilities, of having very little to do, and being "treated like a criminal." Even at Broward—which otherwise was an exception to the very severe conditions in the other detention facilities—at least one former detainee noted that many of the women were depressed and that there were several suicide attempts during the period she was kept there.

Language barriers were described as a consistent problem. A number of the former detainees reported that even when there were translations provided for important legal

documents, there were few if any key facility staff members (for example, in mental health) who spoke the language of many of the detainees. This made effective communication extremely difficult.

C. Facility Tours

The tours of the facilities confirmed the fact that, except for the Broward Transitional Center, these detention units are structured and run much like traditional correctional institutions. There is a high premium placed on security and surveillance, and this is evident from the moment anyone enters the facilities themselves. Indeed, at Krome, for example, the security exceeded the level that exists at most correctional facilities. There were armed guards stationed at the entrance to the facility and it was impossible to even drive into the parking lot without first showing them proper identification. Once inside, in each of these facilities, the characteristic sounds of slamming gates and locked doors closing behind serve to remind visitors and residents that they are in a high security correctional environment.

The atmosphere inside the facilities that were examined by Commission researchers were unmistakably somber. The stark conditions appeared to have a direct effect on the residents. As one official at the Elizabeth Detention Center acknowledged, "mental health is a big problem. Sometimes people get very depressed, and just getting them a change of scenery, getting them out of this place for a while, improves their mental health." He went on to note that:

> Detention itself is really depressing. But when you don't know when you are getting out, that's really bad. I worked in a federal correctional facility and, although the inmates were not happy, they at least knew when they were getting out and had something definite to look forward to. Here, they don't.

Again, with the exception of Broward, the detention facilities that were inspected looked very much like county jail facilities that exist throughout the United States—physically drab, lacking personalized decorations and the like, and without much open space or common programming areas for meaningful activities in which detainees could participate. Most of the so-called "recreation" areas were cramped and restricted (with the exception of the outdoor recreation areas at Broward, Mira Loma, Florence, Laredo and Krome), and they had little if any exercise equipment. The libraries were small and sparse, and appeared to have comparatively few volumes (most of which were in written in English). The dayrooms were drab and uninviting.

Interestingly, all of the facilities that were inspected, except Broward, used standard correctional nomenclature for their isolation unit—"SHU" (the correctional acronym for "special housing unit")—that is employed in most prisons and jails in the United States. Moreover, the SHU units in these detention facilities appear to be structured and to operate in very much the same way as in traditional correctional settings. That is, they were run as punishment units that subjected detainees to virtually around-the-clock enforced isolation, in extremely sparse cells, and under heightened levels of deprivation.

III. The Psychological Impact of Confinement

The fact that the detention facilities that were surveyed and inspected so closely resembled traditional correctional institutions poses a number of concerns. Adaptation to prison-like environments is difficult for virtually everyone confined in them. Most people experience incarceration as painful and even traumatic. The experience also can have long-term consequences. Beyond the psychological effects of trauma, life in a prison-like environment requires people to change and adjust in ways that may prove difficult for them to relinquish upon release. That is, in the course of coping with the deprivations of life in a prison or jail, and adapting to the extremely atypical patterns and norms of living and interacting with others that incarceration imposes, many people are permanently changed.

Psychological reactions to the experience of living in a prison-like environment vary from individual to individual, making generalizations difficult. It is certainly *not* the case that everyone who is incarcerated is disabled or psychologically harmed by it. But few people end the experience unchanged by it. Among the commonsense generalizations that have been corroborated by research is the fact that persons who have psychological vulnerabilities *before* their incarceration are likely to suffer more problems later on, and that the greater the level of deprivation and harsh treatment and the longer they persist, the more negative the psychological consequences.

Perhaps the most comprehensive summary of research on the effects of living in a prison-like environment included these findings: that "physiological and psychological stress responses… were very likely [to occur] under crowded prison conditions"; inmates are "clearly at risk" of suicide and self mutilation; that "a variety of health problems, injuries, and selected symptoms of psychological distress were higher for certain classes of inmates than probationers, parolees, and, where data existed, for the general population"; that imprisonment produced "increases in dependency upon staff for direction and social introversion," "deteriorating community relationships over time," and "unique difficulties" with "family separation issues and vocational skill training needs."[29] The same literature review found that a number of problematic psychological reactions occurred after relatively brief exposure to a prison-like environment. For example, higher levels of anxiety have been found in inmates after eight weeks in jail than after one, and measurable increases in psychopathological symptoms have been found to occur after only 72 hours of confinement. Research in which college student participants were placed in a simulated prison-like environment also found that extreme reactions occurred after only a short period—less than a week—of incarceration.[30]

The term "institutionalization" is used to describe the process by which inmates are shaped and transformed by the institutional environments in which they live. Sometimes called "prisonization" when it occurs in prison-like settings, it is the shorthand expression for the broad negative psychological effects of incarceration. Thus, prisonization involves a unique set of psychological adaptations that typically occur—in varying degrees—in response to the extraordinary

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[29] James Bonta and Paul Gendreau, P., Reexamining the Cruel and Unusual Punishment of Prison Life, 14 Law and Human Behavior 347-372 (1990), at pages 353-359.
[30] Haney, Craig, Banks, William, & Zimbardo, Philip, Interpersonal Dynamics in a Simulated Prison, 1 International Journal of Criminology and Penology 69 (1973).

demands of prison life.[31] In general terms, this process involves the incorporation of the norms of prison life into one's habits of thinking, feeling, and acting.

Persons who enter prison-like environments for the first time must adapt to an often harsh and rigid institutional routine. They are deprived of privacy and liberty, assigned to what they experience as a diminished, stigmatized status, and live under extremely sparse material conditions. For many of them, the experience is stressful, unpleasant, and difficult to tolerate. However, in the course of becoming institutionalized, persons gradually become more accustomed to the wide range of restrictions, deprivations, and indignities that institutional life imposes.

The various psychological mechanisms that must be employed to adjust become increasingly "natural"—that is, second nature—and, to a degree, are internalized. To be sure, the process of institutionalization can be subtle and difficult to discern as it occurs. Many people who have become institutionalized are unaware that it has happened to them. Few of them consciously decide to allow the transformation to occur, but it occurs nonetheless.

There are several components to the psychological process of adaptation that can have adverse long-term consequences for incarcerated persons after their release. They are summarized below.[32]

A. Dependence on Institutional Structure and Contingencies

Living in prison-like environments requires people to relinquish the freedom and autonomy to make many of their own choices and decisions. Over time, they must temper or forego the exercise of self-initiative and become increasingly dependent on institutional contingencies. In the final stages of the process, some inmates come to depend on institutional decision makers to make choices for them and they rely on the structure and schedule of the institution to organize their daily routine. In extreme cases, their decision-making capacity is more significantly impaired. Thus, some prisoners lose the ability to routinely initiate behavior on their own and cannot exercise sound judgment in making their own decisions. Profoundly

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[31] For example, see: Donald Clemmer, The Prison Community. New York: Hold, Rinehart & Winston (1958); Erving Goffman, Asylums: Essays on the Social Situation of Mental Patients and Other Inmates. New York: Anchor (1961); Lynne Goodstein, Inmate Adjustment to Prison and the Transition to Community Life, Journal of Research on Crime and Delinquency, 16, 246-272 (1979); Barbara Peat, Barbara and Thomas Winfree, Reducing the Intra-Institutional Effects of "Prisonization": A Study of a Therapeutic Community for Drug-Using Inmates, Criminal Justice and Behavior, 19, 206-225 (1992); C. Thomas and D. Peterson, A Comparative Organizational Analysis of Prisonization, Criminal Justice Review (6): 36-43 (1981); Charles Tittle, Institutional Living and Self Esteem, Social Problems, 20, 65-77 (1972).

[32] Some of these issues are discussed at greater length in: Craig Haney, The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment, in J. Travis & M. Waul (Eds.), Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families, and Communities (pp. 33-66). Washington, DC: Urban Institute Press (2003); Craig Haney, Psychology and Prison Pain: Confronting the Coming Crisis in Eighth Amendment Law, Psychology, Public Policy, and Law, 3, 499-588 (1997); and Craig Haney and Donald Specter, Vulnerable Offenders and the Law: Treatment Rights in Uncertain Legal Times, in J. Ashford, B. Sales, & W. Reid (Eds.), Treating Adult and Juvenile Offenders with Special Needs (pp. 51-79). Washington, D.C.: American Psychological Association (2001).

institutionalized persons may even become extremely uncomfortable and disoriented when and if previously cherished freedoms, autonomy, and opportunities to "choose for themselves" are finally restored.

A slightly different aspect of this process involves developing a subtle dependency on the institution to control or limit one's behavior. Correctional institutions force inmates to adapt to an elaborate network of typically very clear boundaries and rigid behavioral constraints. The consequences for violating these bright-line rules and prohibitions can be swift and severe. The use of continuous and increasingly sophisticated surveillance devices and practices means that prison-like environments are quick to detect and punish even minor infractions.

Institutional settings surround inmates so thoroughly with *external* limits, immerse them so deeply in a network of rules and regulations, and accustom them so completely to such highly visible systems of monitoring and restraints that *internal* controls may atrophy. Thus, institutionalization or prisonization renders some people so dependent on external constraints that they gradually cease relying on their own self-imposed internal organization to guide their actions or restrain their conduct. If and when this external structure is taken away, severely institutionalized persons may find that they no longer know how to do things on their own, or how to refrain from doing those things that are ultimately harmful or self- destructive.

B. Hypervigilance, Interpersonal Distrust and Suspicion

In addition, because many prison-like environments keep people under conditions of severe deprivation, some inmates accommodate by exploiting others. In such an environment, where the possibility of being taken advantage of or exploited is very real, inmates learn quickly to become hypervigilant, always alert for signs of threat or personal risk. Many inmates learn to become interpersonally cautious, even distrustful and suspicious. They attempt to keep others at a distance, for fear that they will become a victim themselves. For some inmates, these survival strategies develop quickly, become reflexive and automatic, and are difficult to relinquish upon release.

Distancing oneself from others also requires carefully measured emotional responses. Many incarcerated persons struggle to control and suppress their reactions to events around them; emotional over-control and a generalized lack of spontaneity may result. Persons who over-control their emotional responses risk alienation from themselves and others. They may develop a form of emotional flatness that is chronic and debilitating in social interactions and intimate relationships.

The alienation and social distancing from others serves as a defense against the interpersonal exploitation that can occur in prison-like settings. However, it also occurs in response to the lack of interpersonal control that inmates have over their immediate environment, making emotional investments in relationships risky and unpredictable. The disincentive against engaging in open, candid, trusting communication with others that prevails in prison-like settings

leads some persons to withdrawal from authentic social interactions altogether.[33] Obviously, such an extreme adaptation will create special problems when inmates attempt to reintegrate and adjust to settings outside the institution.

C. Social Withdrawal and Self Isolation

Some incarcerated persons learn to create psychological and physical safe havens through social invisibility, by becoming as inconspicuous and unobtrusively disconnected as possible from the people and events around them. The self-imposed social withdrawal often means that they retreat deeply into themselves, trust virtually no one, and adjust to prison stress by leading isolated lives of quiet desperation. One researcher found not surprisingly that prisoners who were incarcerated for longer periods of time and those who were punished more frequently by being placed in solitary confinement were more likely to believe that their world was controlled by "powerful others."[34] Such beliefs are consistent with an institutional adaptation that undermines autonomy and self-initiative.

In more extreme cases, especially when combined with apathy and the loss of the capacity to initiate behavior on one's own, the pattern closely resembles clinical depression. Inmates who are afforded little or no meaningful programming in institutional settings lack pro-social or positive activities in which to engage during their incarceration. If they also are denied access to gainful employment where they can obtain meaningful and marketable job skills and earn adequate compensation, or are allowed to work only in settings where they are assigned to menial tasks that they perform for only a few hours a day, then they are more likely to become lethargic and depressed. The longer the period of exposure to prison-like environments, the greater the likelihood that this particular psychological adaptation will occur. Indeed, one early analyst wrote that the long-term prisoners manifest "a flatness of response which resembles slow, automatic behavior of a very limited kind, and he is humorless and lethargic."[35] In fact, another researcher analogized the plight of long-term women prisoners to that of persons who are terminally-ill, whose experience of this "existential death is unfeeling, being cut off from the outside… (and who) adopt this attitude because it helps them cope."[36]

D. Diminished Sense of Self-Worth and Personal Value

As noted above, inmates often are denied basic privacy rights and lose control over the most mundane aspects of their day-to-day existence. Prisoners generally have no choice over when they get up or have lights out, when, what, or where they eat, whether and for how long they shower or can make a phone call, and most of the other countless daily decisions that persons in free society naturally take for granted in their lives. Many inmates feel infantalized by this loss of control.

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[33] For example, see: C. Jose-Kampfner, Coming to Terms with Existential Death: An Analysis of Women's Adaptation to Life in Prison, Social Justice, 17, 110-XXX (1990); R. Sapsford, Life Sentence Prisoners: Psychological Changes During Sentence, British Journal of Criminology, 18, 128-145 (1978).
[34] Hannah Levenson, Multidimensional Locus of Control in Prison Inmates, Journal of Applied Social Psychology, 5, 342-347 (1975).
[35] A. Taylor, Social Isolation and Imprisonment, Psychiatry, 24, 373-XXX (1961), at p. 373.
[36] C. Jose-Kampfner, Coming to Terms with Existential Death: An Analysis of Women's Adaptation to Life in Prison, Social Justice, 17, 110-XXX (1990), at p. 123.

Prison-like environments also typically confine persons in small, sometimes extremely cramped and deteriorating spaces. The 60 square foot average cell size in the United States is roughly the size of a king-size bed. Inmates who are double-celled or assigned to dormitory-style housing typically have no privacy and have little or no control over the identity of the person with whom they must share small living spaces and negotiate intimate forms of daily contact this requires. The degraded conditions under which they live serve as constant reminders of their compromised social status and their stigmatized social role as inmates.

A diminished sense of self-worth and personal value may result. In extreme cases of institutionalization, the symbolic meaning that can be inferred from this externally imposed substandard treatment and confinement in degraded circumstances is internalized. That is, inmates may come to think of themselves as "the kind of person who deserves" no more than the degradation and stigma to which they have been subjected during their incarceration.

E. Post-Traumatic Stress Reactions to the Pains of Imprisonment

For some inmates, life in a prison-like environment is so stark and psychologically painful as to be traumatic. In extreme cases, the trauma is severe enough to produce post-traumatic stress reactions after release. Thus, former inmates may experience unexplained emotional reactions in response to stimuli that are psychologically reminiscent of painful events that occurred during incarceration. They may suffer free floating anxiety, an inability to concentrate, sleeplessness, emotional numbing, isolation, and depression that are connected to their prison traumas. Some may relive especially stressful or fear-arousing events that traumatized them during incarceration. In fact, psychiatrist Judith Herman has suggested that a new diagnostic category—what she termed "complex PTSD"— be used to describe the trauma-related syndrome that prisoners are likely to suffer in the aftermath of their incarceration, because it is a disorder that comes about as a result of "prolonged, repeated trauma or the profound deformations of personality that occur in captivity."[37]

Moreover, it is now clear that certain prior experiences—ones that pre-date confinement in prison-like environments—may predispose inmates to these post-traumatic reactions. The literature on these predisposing experiences has grown vast over the last several decades. A "risk factors" model helps to explain the complex interplay of earlier traumatic events (such as abusive mistreatment and other forms of victimization) in the backgrounds and social histories of many incarcerated persons. As Masten and Garmezy noted in the seminal article outlining this model, the presence of these background risk factors and traumas in earlier in life increases the probability that someone will be plagued by a range of other problems later on.[38]

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[37] See: Judith Herman, A New Diagnosis, in J. Herman (Ed.), Trauma and Recovery. New York: Basic Books (1992); and Judith Herman, Complex PTSD: A Syndrome in Survivors of Prolonged and Repeated Trauma, in G. Everly & J. Lating (Eds.), Psychotraumatology: Key Papers and Core Concepts in Post-Traumatic Stress (pp. 87-100). New York: Plenum (1995).

[38] Ann Masten and Norman Garmezy, Risk, Vulnerability and Protective Factors in Developmental Psychopathology, in F. Lahey and A Kazdin (Eds.), Advances in Clinical Child Psychology (pp. 1-52). New York: Plenum (1985).

To those persons who already have experienced a series of earlier, severe traumas, life in a harsh, punitive, and often uncaring prison-like environment may represent a kind of "re-traumatization" experience. That is, time spent in prison-like environments may rekindle not only bad memories but also the disabling psychological reactions and consequences of those earlier damaging experiences.

The various psychological consequences of institutionalization that have been described above are not always immediately obvious once the structural and procedural pressures that created them have been removed. Indeed, persons who leave a prison-like environment and are fortunate enough to return to moderately structured and especially supportive settings—stable family, work, helpful forms of agency supervision, supportive communities—may experience relatively unproblematic transitions. However, those who return to difficult and stressful circumstances that lack supportive structure and services are at a greater risk of post-incarceration adjustment problems. In these cases, the negative aftereffects of institutionalization often appear first in the form of *internal* chaos, disorganization, stress, and fear. Because the process of institutionalization has taught most people to cover or mask these internal states, and to suppress feelings or reactions that may indicate vulnerability or dysfunction, the outward appearance of normality and adjustment may hide a range of common but serious problems that are likely to be encountered in free society.

IV. Special Psychological Issues for Asylum Seekers Subject to Expedited Removal

Because many asylum seekers have suffered severe and sometimes very recent trauma and abusive treatment preceding their detention in the United States, their incarceration would be expected to have more severe psychological consequences. These prior trauma histories—ones that often include torture, imprisonment under inhumane conditions in their native countries, and exposure to other extreme kinds of abuse—mean that a number of asylum seekers who are subject to Expedited Removal will enter the United States in fragile psychological states. As a result, they will be more vulnerable to emotional crises than the average person who is exposed to the rigors of institutional life. Indeed, there is reason to expect that, for many of these post-credible fear asylum seekers, the painful and traumatic aspects of detention (as outlined above) will represent a form of "re-traumatization" whose long-term consequences may be deeper and more long-lasting. In fact, one study of a sample of detained asylum seekers indicated that more than four of five manifested symptoms of clinical depression, three quarters had anxiety-related symptoms, and that fully half showed signs of post-traumatic stress disorder.[39]

[39] Keller, A., Rosenfeld, B., Trinh-Sherwin, C., Meserve, C., Sachs, E., Leviss, J., Singer, E., Smith, H., Wilkinson, J., Kim, G., Allden, K., & Ford, D., Mental Health of Detained Asylum Seekers, The Lancet, 362, 1721-1723 (2003). A number of detailed and comprehensive reports have raised a broad set of concerns about the detention of asylum seekers in the United States. For example, see: Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers (2003); Amnesty International, Lost in the Labyrinth: Detention of Asylum Seekers. New York: Amnesty International (1999). Human Rights Watch, Locked Away: Immigration Detainees in Jails in the United States. New York: Human Rights Watch (1998).

In addition to the increased painfulness of incarceration for an already vulnerable population of detainees, several longer-term consequences for this group of asylum seekers may be of special concern. For one, some of those subjected to the Expedited Removal process may decide to terminate their asylum application, despite credibly fearing return to their home country, because they are traumatized and disheartened by their experiences in detention. Indeed, to study this potential problem, as part of the evaluation of consequences of current detention practices, the results of interviews conducted by Commission researcher with 39 asylum seekers who decided to "dissolve" their asylum claims while in detention were reviewed.

Many of the interviewees indicated that the nature of their post-credible fear detention and treatment was one of the factors that led to their decision to terminate their application. They expressed these concerns in a variety of ways, ranging from one detainee who said that he terminated his asylum application because "it is not worth it to sit in jail while applying for asylum," to another who said that "I need to help my children and I cannot do so from jail," to one who preferred to go home "because detention is affecting my head and my spirit," and a fourth who acknowledged that detention "instills fear in people" and that locking down "human beings who are not harming anybody" is "not right."

Others complained that "when I found out the conditions of my compatriots, and how they are waiting months after months in detention, I decided I would prefer to go back." Another asylum seeker who attributed his decision to terminate his asylum claim directly to his detention experience put it succinctly: "I'm not used to living in prison. This situation is not good for me… I can't live in jail any longer."

Of course, it was impossible to tell whether these detention-related explanations were genuine as opposed to, say, detainees finally concluding or conceding that their asylum claims had no merit. Yet there was no obvious advantage or benefit for a detainee to cite detention conditions as the reason for dissolving his or her asylum claim. Nonetheless, explanations based on the harshness of detention were commonplace among the 39 persons interviewed in this portion of the study. Asylum seekers who terminated said that they were "sick and tired of prison," that they'd never been incarcerated before and didn't think they deserved such treatment, and that they "didn't know I'd be imprisoned," sometimes for months or years. These comments suggest that some number of asylum seekers who might otherwise qualify for asylum could be deterred from continuing to pursue their claims because they are forced to remain in detention in the course of the asylum process.

Finally, detained post-credible fear asylum seekers—whether they ultimately are granted asylum or are returned to their home countries—may suffer from long-term psychological consequences of detention. In recent years, a large literature has developed that examines the aftereffects of incarceration.[40] The literature on the aftereffects of incarceration in general suggests that— especially for persons who lack access to significant social and economic resources when they are released, who may have begun their period in detention with special psychological vulnerabilities, and who are likely to re-enter free society without any adequate

[40] For example, see the various studies and references described and cited in in J. Travis & M. Waul (Eds.), Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families, and Communities. Washington, DC: Urban Institute Press (2003).

transitional services to assist them in the difficult post-institutional adjustment process—successful reintegration often proves a difficult if not impossible task. Many people released from traditional prisons and jails cannot find productive work or sustain meaningful social and personal relationships; an unusually high number eventually engage in criminal activity and return to custody. Most experts believe that their continued social and economic marginality is at least in part the result of the lasting psychological effects of incarceration. Asylum seekers held in jail-like conditions may suffer from exactly the same kinds of post-incarceration adjustment problems, exacerbated by the additional problems they will encounter attempting to integrate into a strange and unfamiliar culture (in those cases where asylum is granted and they assume residency in the United States).

V. Discussion, Alternatives, and Need for Further Study

The data from this Study, however, raises a number of questions about the conditions of confinement under which asylum seekers who are subject to Expedited Removal are detained. Even under the best of conditions and most humane practices, incarceration is psychologically stressful and potentially harmful. As long as procedures are used to insure that post-credible fear asylum seekers appear at asylum hearings and removal proceedings, policies that minimize the number of asylum seekers in Expedited Removal who are kept in detention, shorten the length of time during which they are detained, and keep those who are detained under the most humane possible conditions will reduce the psychological risks of incarceration and lessen the potential damage that may be done to this already vulnerable group of people.

These questions warrant further study. As DHS endeavors to improve the detention environment for those asylum seekers whom it must detain, there should be a careful, systematic assessment of the impact of detention on asylum seekers that not only documents the administrators' descriptions of conditions at each facility (as our Report did), but supplements that assessment with detailed inspections of a representative sample of facilities by knowledgeable researchers (with experience in evaluating correctional environments), and extended interviews (including mental health assessments) of a representative sample of asylum seeking detainees

Forcing asylum seekers to become dependent on institutional structures and contingencies (which, in extreme cases, means they may relinquish self-initiative and self-generated internal behavioral controls), and increasing the likelihood that some will become distrustful, fearful, and hypervigilant in jail-like settings where they are kept seems ill-advised. Subjecting them to conditions where some of them will feel the need to withdraw and isolate themselves from others, in addition to experiencing the enforced social isolation from their families that often occurs, is likely to impair their social relationships and future adjustment. So, too, will exposing them to conditions of confinement that diminish their sense of self worth and personal value by placing them in deprived circumstances where they have little or no control over mundane aspects of their day-to-day lives. The possibility that detained asylum seekers will experience post-traumatic stress disorder, or have pre-existing medical or psychological conditions exacerbated is a serious concern. Especially because of the vulnerabilities with which many of them initially enter detention facilities, high incidences of clinical syndromes—pre-existing or acquired during confinement—are likely.

Some asylum seekers subjected to Expedited Removal will have their petitions denied and will be returned to countries where they must re-establish themselves. Others will be granted asylum and face the challenge of integrating into a free but complex society. In neither case will the process of transition be facilitated by long periods of potentially damaging incarceration.

Of course, the exact nature of the conditions of confinement under which persons are housed matter. This study identified a number of severe jail-like conditions that went beyond anything necessary to insure the safe and secure housing of persons pending hearings and removal proceedings. Given the severity of the conditions of confinement identified in the present study, the Physicians for Human Rights study conclusion that "the psychological health of detained asylum seekers is extremely poor and worsens the longer asylum seekers remain in detention" is not surprising.[41]

In addition, staff members in the overwhelming majority of detention facilities surveyed received little or no client-appropriate training. As noted above, only one of 19 facilities surveyed provided its staff with any specialized training designed to sensitize them to the unique background and potential trauma histories of asylum seekers. Instead, the overwhelming majority of staff members have received jail-appropriate training in security and custody-related matters. Many have become accustomed to working with a domestic criminal population who have little in common with asylum seekers. This is especially true in the case of women and children asylum seekers, whose trauma histories and emotional needs may be more severe and require more specialized training.[42]

Many of the facilities surveyed appeared to fall short of existing ICE detention guidelines. Moreover, while DHS and contract facilities make an effort to carry out the guidelines, other facilities run by other government agencies are not required to follow them. For example, the guidelines make an effort to separate asylum seekers from criminals and criminal aliens. According to the guidelines: "The classification system shall assign detainees to the least restrictive housing unit consistent with facility safety and security. By grouping detainees with comparable records together, and isolating those at one classification level from all others, the system reduces noncriminal and nonviolent detainees' exposure to physical and psychological danger."[43] However, the guidelines are not binding on detention facilities operated by local, state, or federal government agencies through intergovernmental service agreements (IGSAs). Consequently, our survey found that, in IGSA facilities, asylum seekers are frequently co-mingled or even sleep next to criminal aliens, detainees awaiting criminal trial, and convicts.

On the other hand, we were very impressed with the Broward Transitional Center "non-jail-like" model of detention, which appeared to have achieved a much more appropriate balance between security concerns and the mental health and emotional needs of asylum seekers subject

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[41] Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers (2003), at p. 5.

[42] As stated in the UNHCR Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers (1999), "The detention of asylum-seekers is, in the view of UNHCR, inherently undesirable. This is even more so in the case of vulnerable groups such as single women, children, unaccompanied minors and those with special medical or psychological needs." *See* Appendix F to this Report, in Volume II of the Commission Report.

[43] INS Detention Standard: Detainee Classification System (p. 5) (2003).

to Expedited Removal. Broward detainees were regarded less as criminals and more as human beings whose past trauma and future transition into free society warranted caring, respectful treatment. The detainees were given a significant amount of freedom (despite being confined in a secure detention facility), their ability to maintain and strengthen family ties was supported (through a liberal contact visiting policy), and the likelihood that they would suffer various forms of social, psychological, and cognitive deterioration associated with incarceration was minimized (through a full range of activities and programs in which detainees can participate on a daily basis).

The Broward model is still a form of detention, to be sure, and it is experienced as such by the detainees who are kept there. However, it appears to be designed to reduce the harmful effects of incarceration as much as possible.

Staff members who were interviewed at Broward believed that their model was transferable to other facilities in which post-credible fear asylum seekers are held and we concur. We would anticipate that the transfer of the Broward model would meet pockets of resistance among more traditionally trained correctional staff and administrators. Yet, just as at Broward itself (whose administration and staff includes former correctional personnel), committed leadership and active guidance has resulted in the creation of a model facility, run and staffed by persons who appeared to take great pride in the alternative model of detention they had created and were devoted to its continuing success. Moreover, along with the Broward administrators with whom we discussed this issue, we saw no reason why the model could not be extended to detention facilities in which male as well as female detainees were housed.

In terms of cost, it is worth noting that, according to our survey, use of Broward costs DRO $83 per night per alien. This is slightly less expensive than the national average per ICE detention bed. (And the much more prison-like facility operated in Queens by GEO, the same contractor which manages Broward, costs ICE an average of $200 per night. The cost of bed space in the New York metropolitan area, however, is considerably more expensive than in South Florida.).

Finally, the present report was written without an opportunity to systematically study the implementation and effects of the newly implemented Intensive Supervision Appearance Program (ISAP).[44] The increased use of electronic monitoring and related alternatives offers the obvious advantage of providing security and surveillance data without the corresponding economic as well as psychological costs of incarceration. At the same time, however, it is important to note that several of the asylum seekers in the Expedited Removal process that we interviewed who currently were participating in ISAP complained about the conditions that were imposed on them. That is, in discussions with a small number of persons enrolled in the program in the Miami area, complaints were expressed to the effect that unrealistic limits were set on

[44] In September, 2002, an Electronic Monitoring Device Program (EMD) contract was awarded to ADT, and initially piloted in Anchorage, Detroit, Miami, Seattle, Portland, Orlando, and Chicago. On March 22, 2004, an ISAP contract was awarded to Behavioral Interventions, Inc., of Boulder, Colorado, providing for the community supervision of up to 1600 aliens. A total of 8 ICE field offices—in Baltimore, Philadelphia, Miami, St. Paul, Denver, Kansas City, San Francisco, and Portland—have implemented this program.

times and distances that they could travel that, in turn, restricted or prevented participants from working and otherwise engaging in normal daily routines.

The use of monitoring devices such as ankle bracelets also constitutes a form of criminalizing post-credible fear asylum seekers—albeit on a more mild basis than detention in jail-like settings. The issue of whether ISAP (with or without electronic monitoring) is being used with asylum seekers who would otherwise qualify for and likely have been granted parole without any such conditions merits further study.[45] That is, it is important to determine whether alternatives to detention (such as electronic monitoring) are being used as genuine alternatives to detention—in which case they would lessen the criminalization of this population of asylum seekers, and reduce the psychological risks of incarceration for them. If, on the other hand, these programs actually are being implemented as alternatives to parole, then they are extending potential criminalizing and other adverse effects to persons who would not otherwise be subjected to them.

[45] "Parole is a viable option and should be considered for aliens who meet the credible fear standard, can establish identity and community ties, and are not subject to any possible bars to asylum involving violence or misconduct…" Office of Field Operations Memorandum, December 30, 1997.

Mr. HOSTETTLER. At this time, we will move to questions by Members of the Subcommittee.

First of all, Mr. Martin, your testimony asserts that, historically, formerly INS and now DHS has been unable to remove non-detained aliens to a great extent. Is that because it simply doesn't have enough agents to find the absconders?

Mr. MARTIN. Certainly, resources was one of the issues over the years. As our report indicates, in the 15-month period that we examined, there were 140,000 aliens who were issued final orders of removal. Fifty-five percent of those aliens issued final orders of removal were detained. Forty-five percent were non-detained. The INS was effective in removing 90 percent of the detained aliens. So I think resources is one issue. It's also a priority issue of INS over the years.

Mr. HOSTETTLER. Your testimony also states that resource limitations that hindered the removal of aliens included a lack of detention space. Are you saying that ICE needs more detention space?

Mr. MARTIN. I think what we're saying in our reports is the INS was very effective at removing aliens issued final orders if they were detained. They were significantly less effective if they were not detained.

Mr. HOSTETTLER. Thank you. Then are you saying that the only way to enforce the laws is to actually detain all aliens who have final removal orders?

Mr. MARTIN. I don't think that's the only way. I think our report also points out that the INS had not been as effective with the resources that it had been afforded as it could have been, and we made a series of recommendations to improve that.

Mr. HOSTETTLER. Very good. Thank you.

Mr. Callahan, as an experienced veteran of immigration enforcement, can you tell us how you assess the security situation, the national security situation, with regard to dangerous aliens today?

Mr. CALLAHAN. Dangerous aliens as in out in the public at large or in the criminal population? I'm not sure I understand the question.

Mr. HOSTETTLER. Dangerous aliens who are at large.

Mr. CALLAHAN. It is a priority for our fugitive operations teams, of which there are only a few nationwide, that those are the people that we try to find first. Unfortunately, we're not as successful as we could be if we had, again, the resources, the staffing levels and the authority to really go out and do more fugitive operations.

Mr. HOSTETTLER. How is morale for ICE Agents in the field?

Mr. CALLAHAN. Right now, morale is at an all-time low. We have, as I mentioned, 900 people that are waiting to go to training, there are two things with the training. Number one, after completing the training, the employee is going to get a promotion because they're going to be expected to do higher-level work. The other aspect of it, the more operational aspect of it is, right now, these officers don't have the authority to go out and find people that are out in the public that are removable. With this training, they'll then have the authority to go out and effect those arrests.

Mr. HOSTETTLER. Are ICE Agents being told to concentrate more on Customs enforcement than Immigration enforcement?

Mr. CALLAHAN. Unfortunately, I can't answer that very well because our criminal investigators that were INS criminal investigators were taken out of the union, and a lot of them honestly are afraid to talk to me as a union rep. They're afraid to talk to me for fear of reprisal by managers. I have heard that they are focusing more on money laundering and traditional Customs-type investigations, but that's the best information I have.

Mr. HOSTETTLER. Thank you.

Mr. Cutler, about our security situation, has ICE been able to enforce the immigration laws enough to say that potential alien terrorists have been deterred from embedding themselves safely in our society?

Mr. CUTLER. I wish I could say it was, but that's not the case. And there are two things that I need to make clear. You just asked about whether or not the mission is being pushed over toward the Customs side. Let's start with training.

Right now, the new agents going through ICE Academy are not even getting Spanish language training. Customs traditionally never gave Spanish language training. The new agents aren't getting it. It's been estimated that 80 percent of the illegal alien population is Spanish speaking. There's no way that you can investigate people that you can't communicate with. So to my thinking, it's perfectly clear that the Immigration mission is being made secondary to the Customs mission. So that's a major problem right there.

And with the lack of resources, we're very much at risk. You know, I spoke during my prepared testimony about the problem of benefit fraud. The whole idea to embedding himself in our society for a terrorist or a criminal is to do whatever it takes to keep a low profile. Obtaining immigration benefits is the best way of doing it. This means they no longer have to fear deportation, not that that's a very big fear the way things now stand. There are so few Immigration Agents. Let me just give you a fast analogy.

I'm a New Yorker. New York likes to brag that it's the safest big city in America. We have eight million people. We are policed by a department that has nearly 40,000 police officers confined to the City of New York. There is probably at least double that number, 15, 16, 17 million illegal aliens living in the United States, scattered across a third of the North American continent, being policed by 2,000 special agents. What would happen to New York's crime rate if there were only 2,000 police officers instead of 40,000 police officers? That's the reason that we're in such chaos right now.

We need the agents desperately. We need it not only to react to people that have committed crimes and people who are working illegally. Frauds have been ignored. And when I've spoken to people who were involved with the adjudications process, there's a great reliance on computers, almost no reliance on field agents. You can't uncover fraud without putting boots on the ground, people out there to knock on the doors and conduct the field investigations. It's labor-intensive work, but it's critical work to prevent terrorists and bad guys from putting themselves on the road to that very much desirable U.S. passport.

So right now, I would say that we are no safer than we were in the days before 9/11, and that's not acceptable, Mr. Chairman.

Mr. HOSTETTLER. Thank you, Mr. Cutler.

The chair now recognizes the Ranking Member, Ms. Jackson Lee, for 5 minutes.

Ms. JACKSON LEE. I thank the Chairman. It causes one to just want to sit and be still and absorb the testimony of all of the witnesses because it is striking where we find ourselves today.

We spent 2 days as Members of the Homeland Security Committee looking at some of the stark realities of securing the nation. It was a very effective opportunity for a Committee now that has been established as a permanent Committee of the House of Representatives, enunciating or at least reaffirming to America that the Congress believes this is an important duty.

Mr. Chairman, this is a budget hearing and therefore, I think, I am going to focus my questioning along the lines of ratcheting up, as I said, the crisis that we face. Now, let me say this. I think there needs to be a balance and some order to this question of removal. I think, Mr. Cutler, the vignette that you showed us is an abomination, criminals, predators running amok and not being detained. The interesting thing is, a Palestinian family of seven who had given out flags after 9/11, whose children were in medical school and other schools, was easily deported, people who begged to be able to stay in a country they love. But we have criminal predators and others who we don't know who might do harm to this country running amok.

Frankly, we have an expedited or a supplemental appropriations coming through this Congress that I will purposely go and look Mr. Callahan, for funding for your agency. The question is, in the wisdom of the Administration, have they failed to acknowledge that we are in the midst of an abysmal crisis, in a dark hole, if you will, struggling to get out? Eight hundred requested, 143 still—143 as the offering. It's a pittance. We shouldn't even dignify that number. Eight hundred ICE recommended, which I'm sure was at the low end, and only 143 in the Administration's budget. And an emergency supplemental of $82 billion.

Now, let me say this. You know, we won't quarrel over supporting troops, and that's what's going to be utilized against those of us who are going to be challenging the emergency supplemental as failing America. Oh, we're supporting troops. In fact, we would like them to come home and have a secure Iraq. This is not a hearing on that at this point, but it is a hearing dealing with emergencies. You have said and indicated we have an emergency.

So my line of questioning will focus on that because we have a budget that is going to put us in a trillion dollars' worth of debt, with tax cuts to those who don't need it, the 1 percent of this country that happen to be beyond the need of tax cuts, and we have Mr. Callahan and his team without badges. Frankly, you know that if someone was doing their duty, they could tell you to go away. You are not credentialed. You are not documented. In fact, as you walked into this building, if someone asked you for your documentation, you are, in essence, misrepresenting to law enforcement officers in the United States Capitol that you are someone who you are not. You have no documentation——

Mr. CALLAHAN. That is correct.

Ms. JACKSON LEE.—in a hearing on immigration that wants people to be documented.

So, Mr. Cutler, let me just—we had a hearing yesterday. Could you just give me just a sentence that ties into this, of fixing this split that we have? Did you come to a conclusion at the Homeland Security hearing that this is something we need to expedite and fix, and this question of the divide between Border and ICE, is that something that we need to fix, as well, as we look at the budget process here?

Mr. CUTLER. We need to fix it. We need to fix it quickly. My recommendation, to sum it up as briefly as I know how, we've erected an artificial border between two agencies that are supposed to be doing the same job, that is CBP and ICE. I think that makes no sense. We need to fortify our nation's exterior border but not create internal borders among the bureaucracies that are charged with this vital mission.

So what I've recommended is that we should link the two agencies together, eliminate this gap that exists between CBP and ICE, put it under one roof, but at the same time, I would like to see a separate chain of command, separate training, and separate budgeting for the immigration mission simply so that we don't wind up with what I referred to yesterday as the Customization of immigration law enforcement. We need to make certain that the resources that are dedicated to Immigration enforcement are, indeed, dedicated to Immigration enforcement, not to say that Customs enforcement isn't critical, but what I'm seeing here is the total abdication, or close to a total abdication, of the enforcement of the immigration statutes that would protect us from criminal aliens and terrorists. So that was the Cliff Note, the short version, of my recommendation at yesterday's hearing.

Ms. JACKSON LEE. Mr. Callahan—thank you very much. Mr. Callahan, obviously, the lack of firewalls on 9/11 was raised as a problem when the intelligence agencies were not speaking to each other. Obviously, that is what is happening now with ICE and Border Patrol.

But Mr. Callahan, just quickly, you mentioned some terrible, beyond your documentation and lack of a badge, but you mentioned the issue of the hiring freeze and the fact that you are unable even to have funding for detention. Would you view this as an emergency deserving of being looked at as to be included in what is now called an emergency supplemental? Would you think we're at a point where your funding needs to be included in the emergency supplemental?

Mr. CALLAHAN. Absolutely. I mean, within 5 days, as I testified, we either have to go in to violate the Anti-Deficit Act and keep people in custody but be in violation of that Act, or we have to release them. So I'd say it is an emergency.

Ms. JACKSON LEE. Mr. Chairman, I would just simply ask that we, as a Committee, make a request that the full funding for ICE be included into the emergency supplemental and, as well, on Mr. Haney's testimony, realize that the brutalizing of asylum seekers is not compatible with the values of America, and if necessary, ask for emergency funding, as Mr. Haney has indicated, the problems

we face with asylum seekers, and I make that request. I thank the Chairman. Thank you.

Mr. HOSTETTLER. I thank the gentlelady.

The chair now recognizes the gentleman from Texas, Mr. Gohmert, for 5 minutes.

Mr. GOHMERT. Thank you, Mr. Chairman, and thank you people for your testimony at this hearing. You are all so equivocal in your positions. Sarcasm. [Laughter.]

We obviously have a major problem. As a former district judge and Chief Justice, I ran into this problem constantly. We had one INS Agent for the entire East Texas area. But I do have some questions to clarify some of the testimony.

Mr. Martin, you had indicated 35 percent of the non-detained aliens who were criminals were deported, I believe, of the sample, and I think maybe those figures you were giving us were of the sample that was taken. Can you tell us what sample was taken?

Mr. MARTIN. Right. The aliens in the database when I used the 55 percent detained versus the 45 percent was over a 15-month period. It was approximately 141,000 aliens.

Mr. GOHMERT. Oh, your sample was 141,000?

Mr. MARTIN. A hundred-and-forty-one-thousand——

Mr. GOHMERT. Okay. That's a good sample.

Mr. MARTIN. It was a smaller sample, though, when we looked at these high-risk groups, the state-sponsored terrorism, the asylum seekers who were denied and not detained. That was a smaller group.

Mr. GOHMERT. Okay. What would you give as the number one reason why people are not detained in the various categories that you mentioned?

Mr. MARTIN. I think it's a lack of resources coupled with a lack of priority.

Mr. GOHMERT. Lack of resources, meaning what?

Mr. MARTIN. Meaning officers, meaning detention space.

Mr. GOHMERT. So you're saying we need more detention space to get them out of the country?

Mr. MARTIN. Well, again, our reviews have shown that the INS is effective, and if they detain the alien, they are effective in removing the alien.

Mr. GOHMERT. Well, I can tell you from my own experience that one anecdotal situation, for example, a guy is repeatedly arrested for DWI. He doesn't get deported until it's a felony, comes to my felony court. I send him to prison. He's immediately deported once he gets to prison. He comes back to my court because he's in an accident and hits somebody while drunk and I see that he's going to keep coming back. I send him to 10 months of treatment where I can at least lock him down where he won't hurt people, and after a few months, they get him and deport him and who knows where he is now hurting whom.

But those kind of things lead me to ask, when aliens are deported, where are they taken? What is done with them?

Mr. MARTIN. I will defer to the ICE Agent.

Mr. GOHMERT. Is that Mr. Callahan? Is that your bailiwick?

Mr. CALLAHAN. I can actually answer that. It depends on where they're from. If they're from Mexico, we just take them down to the border at Mexico. There is a program——

Mr. GOHMERT. You take them down there and do what?

Mr. CALLAHAN. We watch them go across the border.

Mr. GOHMERT. Watch them go across the border. Okay. Do you know if people hang around long enough to watch them come back, or do they just turn around and leave?

Mr. CALLAHAN. Where I'm from in San Diego, there's a large Border Patrol contingent there that is at the border and if they are coming back—a lot of times, what'll happen is they speak good enough English to where they can go around to come in through the port of entry, and if they can convince that inspector, since there's no requirement—right now, there's no requirement to have a U.S. passport or U.S. documentation to come in from Mexico. So if he speaks good enough English and can convince that inspector that he's a U.S. citizen, they'll let him through.

Mr. GOHMERT. Another question, Mr. Callahan. You said you could do more if you had more staffing and authority to go into the field. We heard discussion and I think a couple of you have indicated there may be more priority with Customs than with Immigration. Who makes that decision as to what is the priority?

Mr. CALLAHAN. Well, right now Detention and Removal Operations is charged with locating fugitive aliens. So we need more staff there. There are about 2,000 to 3,000 Immigration Enforcement Agents and Detention or Deportation Officers, but not all of them are assigned that work. I'd say probably, you know, 200, 300 at best.

Mr. GOHMERT. Yes, but my question was who makes the priority? Who sets the priority?

Mr. CALLAHAN. It would be the headquarters ICE or headquarters Detention Removal.

Mr. GOHMERT. Okay. Mr. Cutler, I appreciated everything you had to say. I couldn't agree more with everything you had to say except for one thing. You said, we're no safer now than we were on 9/11. It seems like in so many areas we have become safer, everywhere except in the area of immigration, that that's——

Mr. CUTLER. Well, I do have to clarify that——

Mr. GOHMERT. Yes?

Mr. CUTLER.—and that is the area of concern for me, though. And if you read the——

Mr. GOHMERT. Well, for a lot of us.

Mr. CUTLER. Well, yes. And if you read this 9/11 staff report, they talk about terrorist travel. It seems as though our Government, and I don't mean you, I mean the powers that be——

Mr. GOHMERT. We're all part of it.

Mr. CUTLER. Well, but you understand what I'm trying to say, sir.

Mr. GOHMERT. Sure.

Mr. CUTLER. As a New Yorker, as an American, as a former agent, I don't think that the Government has learned the lessons that we should have learned. The fact that we haven't appreciably increased the number of agents to do interior enforcement, the fact that we're talking about 843—goodness gracious, 2,000 special

agents for the entire country. Look at the manpower that we flooded into Iraq, and this isn't going to be about Iraq, but the point is, we should match the effort to secure Iraq with an effort to secure our own country up close and in person, and it really pales by comparison.

Mr. GOHMERT. Yes.

Mr. CUTLER. It's troubling.

Mr. GOHMERT. Yes. I'm not advocating pulling from one to go to the other. We just need to——

Mr. CUTLER. No, no, no. You understand what I'm saying, sir?

Mr. GOHMERT. Yes. We need to make this a priority.

Mr. CUTLER. And to say we're fighting it there so we don't have to fight it here is foolish. I mean——

Mr. GOHMERT. I think we're on the same page. Thank you very much for your efforts.

Mr. CUTLER. Okay, sir. Yes.

Mr. HOSTETTLER. Thank you, Mr. Gohmert.

The chair now recognizes the gentlelady from California, Ms. Sánchez, for 5 minutes.

Ms. SÁNCHEZ. Thank you. Mr. Callahan, I found your testimony particularly compelling, I must say, because you're one of those folks that, day in and day out, are on the front lines. And what I found particularly interesting about your testimony is that on numerous occasions, we have had Department heads from ICE and Border Patrol tell this Committee that they have sufficient resources to do the job, and yet I'm hearing the exact opposite from your mouth. I just want to reassure you that you're not alone, because I recently heard from several ICE Agents that, in fact, they oftentimes have to pay for their own gasoline to do their patrols and conduct their raids.

Now, a question I have for you is why do you think there's this discrepancy between what the Administration officials are telling us and what the folks who are on the front line doing the job day in, day out, are experiencing firsthand?

Mr. CALLAHAN. Well, I think it comes down to the fact that the senior leadership in the Department serve, honestly, at the will of the President, and so they need to reflect what—they need to show support for his budget, and that's where I think the discrepancy comes from. It's not that they don't want to come out and say, we need more; I think you'd have to ask them that question themselves, but I think they honestly feel that they need to support the President's budget.

Ms. SÁNCHEZ. Let me ask you something. Do you think that we're safer since September 11 in how we conduct our internal security and our homeland security?

Mr. CALLAHAN. I think we're more focused than we were before September 11, but we've got a long way to go.

Ms. SÁNCHEZ. As another note, as an IBEW member myself, I know how helpful unions can be in giving workers a voice and a say in what is going on and getting some of these concerns addressed by higher-ups in the organization. What are some things that you can suggest perhaps to Congress that we can do to help return—or retain, pardon me, ICE Agents and to overall try to im-

prove the retention rate of employees for the Department of Homeland Security?

Mr. CALLAHAN. Well, that's a very good question and one of the ways is awarding—recognizing employees that perform. It's funny that you bring that up, because I'm told that we don't have funds right now to award employees for performance, and as you know, in the future, the very near future, we will be moving to a pay-for-performance system, and if our budget is so tight that we can't afford to award employees, then effectively you're saying to them, you didn't perform well enough this year.

Ms. SÁNCHEZ. Excellent. Another question that I have for you is with respect to the training, or the lack of training, I guess is a better way of addressing it. How important do you think training is for new officers who are just coming onto the job?

Mr. CALLAHAN. Well, training is critical, not just for new officers. I mean, obviously, you have to get them through a basic level of training to begin with, but it's also important for those that go into the field, especially these Immigration Enforcement Agents that were Detention Enforcement Officers before that had never gone through the type of training to identify someone who's here illegally. It's critical for that. If you're going to give them the authority to determine their alienage, or determine alienage and put people into removal proceedings, they need to know the law, and right now, they don't have it. So that's absolutely critical.

Ms. SÁNCHEZ. Let me ask you something. Do you think it would be—this is my last question—a good idea to have local law enforcement officers who have no training to do the job that agents like you are supposed to be doing? Does that sound like a good idea to you?

Mr. CALLAHAN. Well, without any training, certainly, it's not a good idea. If the idea is to hold someone until an INS-trained officer can come in and determine alienage and begin the removal proceedings, that would be a good idea. That would actually be helpful, because that—and that does happen somewhat in the field.

Ms. SÁNCHEZ. But doing something proactively, going out on a day-to-day basis trying to do the similar type of job that you are doing, do you think that's a good idea, without any training?

Mr. CALLAHAN. Without any training, I would disagree with that.

Ms. SÁNCHEZ. Okay. Thank you. I have no further questions. I yield back.

Mr. HOSTETTLER. I thank the gentlelady.

The chair now recognizes the gentleman from Texas, Mr. Smith, for 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman.

First of all, Mr. Martin, thank you for your past good work as Inspector General at the INS. We both go back to those times that you always did a great job.

I had a number of questions today, but let me start off with trying to make the point that I think the problem is greater than any of us think that it is. You mentioned in your testimony that you thought there were eight million illegal aliens in the United States. I think the Census actually revised that to ten to 11 million. But the census figure, as you and I know, is based upon the number of illegal aliens who are permanent residents, who are residents in

the United States. It does not count the number of illegal immigrants who might be in this country on a temporary basis, whether it be 1 day or 11 months and 29 days.

So to me, it's reasonable to say that the problem may be twice as great as many of us, or as most people think. Instead of having ten million illegal aliens, there may be 20 million on a given day in the United States. Would you agree, generally, with that statement?

Mr. MARTIN. I can't disagree with that statement. I haven't done enough research on that. We haven't looked at that.

Mr. SMITH. Suffice it to say the problem is greater than just the people who are in the country illegally on a permanent basis.

Mr. MARTIN. We would agree with that.

Mr. SMITH. The question that I wanted to ask Mr. Martin, Mr. Cutler, and Mr. Callahan, and Mr. Haney, I don't mean to omit you, but your testimony is primarily on asylum and that's not the thrust of my question, but do you all support Congress in our efforts to try to get 800 new ICE investigators a year and the 8,000 new detention beds a year? Mr. Callahan, you said we had a budget crisis in your testimony, and Mr. Cutler pointed out accurately that 40 percent of the people in the country illegally actually came over legally on visas and then overstayed, and Mr. Martin pointed to the need, as well. Would you support our efforts to get those numbers? Mr. Martin?

Mr. MARTIN. I would support—I think we support—our research has shown that, again, the INS is effective if aliens issued final orders for removal are detained. And so whatever resources are provided to the ICE——

Mr. SMITH. Okay. Mr. Cutler?

Mr. CUTLER. Absolutely.

Mr. SMITH. And Mr. Callahan?

Mr. CALLAHAN. Absolutely, but in addition to detention bed space, we need to realize that you could have 10,000 more bed spaces, but if you don't have personnel to manage that——

Mr. SMITH. Actually, you anticipated my next question, which is why did the Administration cancel the training when you've got people waiting to and want to go through that training and when you have such a great demonstrated need?

Mr. CALLAHAN. You'd have to ask Mr. Garcia that question, but I believe they just don't have any money.

Mr. SMITH. They ought to request the money if they don't have it.

Mr. CUTLER. But the training also needs to be in-service, document training, for example. Documents are the lynchpin that holds immigration together. And I don't know that there's any ongoing program to give document training to any of our line personnel. Now, this isn't an acceptable situation, so——

Mr. SMITH. Let me try to bring another question to you. We have a series of votes that have been called.

Mr. Martin, we have a problem with non-detained aliens who receive their final deportation orders. What is the solution to that? What would you recommend, and then I will ask Mr. Cutler and Mr. Callahan the same question?

Mr. MARTIN. I think resources are a big part of it. I think it's also a focus on interior enforcement, which we do go back a lot of years looking at the INS. It has not been a historic——

Mr. SMITH. Speaking of interior enforcement, do you all realize that the Administration in 2004 did not fine a single employer for hiring illegal immigrants?

Mr. CALLAHAN. Yes, I'm aware of it and I think it's outrageous.

Mr. SMITH. I interrupted you, Mr. Martin, but we need to——

Mr. MARTIN. No, I'm all right.

Mr. SMITH. Mr. Cutler, what is your solution to the non-detained aliens who have received final deportation notice?

Mr. CUTLER. All I can tell you is I know right now, there's well in excess of 400,000 such aliens that are wandering around the United States. I think we need many more beds. We need to do a better job. And I think we need to be more creative in the way we try to enforce the laws, also.

Mr. SMITH. Mr. Callahan?

Mr. CALLAHAN. The Fugitive Operations Team in San Diego started to, instead of mailing out the notice that their final hearing has been adjudicated and they're removed, we've gone out to their residence to hand deliver it to them and pick them up at the same time. So I think something along those lines would be effective.

Mr. SMITH. Okay. Thank you, Mr. Chairman.

Mr. HOSTETTLER. I thank the gentleman.

The chair now recognizes the gentlelady from California, Ms. Waters.

Ms. WATERS. Thank you very much, Mr. Chairman and Members. I am new to this Committee, but I have witnessed this Administration organize the so-called war on terror and they said that homeland security was perhaps the top priority. To come into this Committee today and hear that we do not have enough agents, that we don't have enough beds to detain illegal aliens who have been involved in criminal activity, to find out that we're releasing aliens out into the general public and we don't track them, we don't know where they are, it's all very strange to me.

Mr. Martin, does the President of the United States know that his homeland security is at great risk because of the problems that were identified here today and other problems we have?

I want to add to this the fact that I just learned that suspected terrorists can buy handguns in the United States, and also, we are—and I am from Los Angeles here. We're real worried about a lack of security at our ports, and still we don't have the answer to how we secure containers, let alone nuclear facilities. So, I mean, every day, I learn something new.

Mr. Martin, does the President of the United States know that homeland security is not working in the United States?

Mr. MARTIN. Congresswoman, since March of 2003, the immigration enforcement effort has been moved out of the Department of Justice to the Department of Homeland Security. We are the Inspector General's office for the Department of Justice, so I think that's probably a more appropriate question for the IG's Office of Homeland Security.

Ms. WATERS. But you haven't heard anything? Aren't you concerned about security, even though it's not in your Department, as you have described?

Mr. MARTIN. As the father of three daughters, I'm concerned about security.

Ms. WATERS. So what have you heard? Tell us what you know about this. You must know more than you say.

Mr. MARTIN. Again, what we're reporting on today at this hearing are studies that we have conducted in 1996 and 2003 that focus on the INS's effectiveness at removing detained and non-detained aliens.

Ms. WATERS. All right. Well, let me just ask Mr. Cutler, you mentioned something about sleeper cells.

Mr. CUTLER. Yes.

Ms. WATERS. Is that true?

Mr. CUTLER. Well, if you're concerned about sleepers, then what you need to do is remove the foliage that they hide behind. I mean, that's the whole idea of embedding. If somebody is in the United States looking to hide in plain sight, which is really what a sleeper is, it's somebody that you might pass on the street 1 day and not realize that this person is waiting for that phone call or that letter to arrive in the mail telling him or her to go out and commit an attack against us. That's what a sleeper is.

What we saw when you look at the report from the 9/11 Commission was that the terrorists who attacked us became very adept at using our systems against us to go out there, hide in plain sight, and then position themselves so that they could attack us. And we're not using the resources and we aren't getting the resources that we need to defend ourselves against this sort of thing and it makes no sense to me. I don't understand it.

I don't understand why have a 9/11 Commission if you're not going to take the advice that they give you at great expense and at great effort.

Ms. WATERS. I agree with you and I guess, you know, being new to this Committee, I don't understand why the Members on the opposite side of the aisle who represent the majority in the Congress of the United States can't convince their President that there's something wrong with not having enough agents to investigate and protect the interior and not having enough detention beds, not having a real homeland security program as it does with immigration. I don't know why we are here. This is the kind of problem that should be discussed right inside the Administration and the Members on the opposite side of the aisle, we would like us to feel safer since 9/11, should be in the forefront of this in ways that we shouldn't be dallying around. It should be reflected in the budget. I just don't understand.

Mr. CUTLER. I want to say one thing. I don't think it's one side of the aisle or the other. If you look at what happened in 1993 after the first Trade Center attack, nothing changed in terms of immigration enforcement. We don't, as a country, seem to learn the lessons, and I blame both sides of the aisle for this. We've got to get away from the idea that we can ignore the problem and it'll go away. It only gets worse.

Ms. WATERS. Yes, but we've had 9/11 and it's been referred to many times here today as you talk about the Commission——

Mr. CUTLER. Absolutely.

Ms. WATERS. The definition of this Administration is the war on terror.

Mr. CUTLER. Absolutely.

Ms. WATERS. This is what the President is all about. This is his big push. This is his top priority. So we are to sit here and talk about he's nickel and diming us on the agents that are supposed to be responsible for the investigation and enforcement in the interior? What are we talking about? So what do you suggest we do, Mr. Callahan?

Mr. CALLAHAN. I think we definitely need to go beyond what was requested in the President's budget. We need to go with what was recommended on the Congressional side.

Mr. HOSTETTLER. I thank the gentlelady.

Ms. WATERS. I'm not finished yet——

Mr. HOSTETTLER. Well, the red light is—we're facing——

Ms. WATERS. Unanimous consent for 30 more seconds so I can put a little heat on you. [Laughter.]

Mr. HOSTETTLER. For 30 more seconds, without objection.

Ms. WATERS. Well, let me just address my comments in these 30 seconds to say time is very precious around here and it seems absolutely ridiculous that we should be spending time trying to convince the President of the United States to do what he said he was doing, and that is protect the homeland. And so I would hope we would not take up more time with witnesses, we would not keep identifying what's wrong in immigration, that somehow, my friends on the opposite side of the aisle would just tell the President to do the right thing and to advance the budget, increase the numbers for the agents, put the money where it's supposed to be, and let's protect the homeland.

Mr. HOSTETTLER. I thank the gentlelady.

Ms. WATERS. I yield back the balance of my time.

Mr. HOSTETTLER. I thank the gentlelady and welcome you to the Subcommittee.

For the time being, the Subcommittee will recess. We have votes on the floor, two votes. We will return shortly thereafter. I appreciate the indulgence of the witnesses. We have at least a couple more Members that would like to ask you questions. We are recessed.

[Recess.]

Mr. HOSTETTLER. The Subcommittee is called back to order. The chair thanks the witnesses for your patience and recognizes now the gentleman from California, Mr. Lungren, for 5 minutes.

Mr. LUNGREN. Thank you very much, Mr. Chairman, and I thank the panelists for being here. I appreciate this. This is a subject I've been dealing with for the last 26 years, both as a Member of Congress and then as Attorney General of California and now as a Member of Congress again.

Some of the questions that have been raised about lack of support for interior enforcement, and maybe you don't want to venture this opinion, but I would just ask you, have you ever noticed Congress attempting to influence this Administration and prior Admin-

istrations about interior enforcement? And by that, I recall not too long ago Congress trying to stop some interior enforcement and giving some rather strong signals to the Administration in charge that we ought not to do this because somehow, it would cause discrimination against folks. Are any of you aware of Congress being part of the problem rather than just the executive branch? Yes, sir, Mr. Cutler?

Mr. CUTLER. Well, I recall a Member of Congress making a speech in Mexico equating a raid on, I believe it was Wal-Mart, with an act of terrorism being committed against aliens. I have to tell you that as a former INS Agent, I had steam blowing out of my ears when I heard it.

The bottom line is we've politicized immigration to an extent that's incredible. You know, they call Social Security the third rail. It doesn't have nearly as much juice as a third rail as the immigration issue does. And I think what we really need to understand is that you get one shot at a first impression. It's the immigration laws that serve as that first impression for people from all over the world and we can't afford to politicize it.

And now, of course, with the war on terror ongoing, we certainly need to make certain that the immigration laws are properly, fairly, and effectively enforced and interior enforcement is the key. You can't control the border at the border if you don't take care of the interior. The Maginot Line didn't work in the Second World War and it certainly doesn't work here.

Mr. LUNGREN. See, my problem is sometimes it looks like we're too busy finger pointing rather than realizing that we have a national problem——

Mr. CUTLER. Right.

Mr. LUNGREN.—that stems from a lack of national will and a lack of national strategy, which stems from both the Congress and the executive branch, Democrat and Republican, not taking this subject seriously.

I was one of those who volunteered for service on this Subcommittee 26 years ago and it was not difficult to get on the Subcommittee because nobody wanted to be on the Subcommittee.

Mr. CUTLER. I suspect your colleagues thought it was political suicide.

Mr. LUNGREN. Well, I can show you some results in some campaigns that I've been in that might suggest that to be true.

The question I have is, does it make sense to have a division between the CBP and ICE? Am I wrong in assuming that this is similar to a police department dividing its detectives from its foot patrol?

Mr. CUTLER. I think that's a great analogy and it makes no sense, because what we've done is to erect an artificial barrier between the interior and the border, and it's a continuum and there's so much overlap and we need to understand that they're all trying to work the same goal. And, in fact, I've spoken to people at ICE and at CBP, and by the way, under the new management rules, these people were petrified that I might identify them in any way, shape, or form for fear of reprisal, and that's not the way the Congress can do effective oversight, but that's an effective issue.

But the point of the matter is that we need to have a coordinated effort, because right now, we have CBP Agents calling up the FBI when there are violations of law that more appropriately should be handled by ICE, and that's counterproductive. It's terrible for morale. It's terrible for a sense of continuity. You need to have seamless enforcement.

Years ago, I called for a tripod. I want everybody in this enforcement tripod. You've got the inspectors enforcing the laws at ports of entry, the Border Patrol between ports of entry, backed up by the special agents and Deportation Officers operating from within the interior of the United States, making up the third leg. Well, look how truncated that third leg is, 2,000 interior agents versus 10,000 Border Agents. We need to have legs of equal length, and so we need to have equal emphasis on the interior and the border and they need to be coordinated and understand that they all work in the same program to accomplish a common goal. The problem is, no one's ever established what the goal is.

Mr. LUNGREN. Mr. Martin, I'd like to ask you to address this question. In my prior service in the Congress, I remember many times there were questions raised by Members of Congress concerning the separation between the Customs Service and the INS, Border Patrol, that it would make more sense from an efficiency standpoint if we brought them together. Do you fear, as Mr. Cutler has suggested, that the result of the reorganization has been an over-emphasis on Customs duties to the exclusion of or to the detriment of Immigration or Border Patrol, as we used to call it?

Mr. MARTIN. Congressman, our expertise looking at the immigration matter really ended almost 2 years ago when INS moved to the Department of Homeland Security. I understand the DHS IG's office is currently studying the issue about whether or not the two entities should be brought together.

Mr. LUNGREN. Mr. Callahan?

Mr. CALLAHAN. I think that irregardless of the organizational structure, you need to have good leaders in place to concentrate on the mission and you need to have adequate staff and resources to get the job done.

Mr. LUNGREN. There's been a suggestion here that we don't have enough money, don't have enough people. You know something? That's absolutely true, and one of the reasons that we never talk about here in Congress is when you try to do everything, you don't do anything well.

I was in a hearing yesterday on the budget, and as we were marking up budget people are saying, "We are responsible in the Congress for putting boots on the ground in every single law enforcement agency in the country. That, somehow, it's the Federal obligation to pay for local law enforcement officers. It's a Federal obligation to pay for local drug agents. It's a Federal obligation to do all of these things." But frankly, under the Constitution, it is the Federal Government that has the sole responsibility for Border Patrol. We can ask local law enforcement to assist us but because we're spreading ourselves so thin to do everything for everybody and never say no, we can't do the job that we're supposed to be doing here.

I'm absolutely convinced that if the Administration didn't have these other concerns and other responsibilities in many ways imposed upon them by this and prior Congresses, they would give you the money and the manpower you need because we'd have it. But the problem is, we are three-plus years past 9/11 and we have not reorganized ourselves in terms of priorities to recognize the Federal Government has the sole responsibility for Border Patrol. The Federal Government has the primary responsibility for dealing with terror inside and outside this country.

And if that be true, then we ought to organize ourselves that way and maybe in some ways we tell, as tough as it is politically, some local governments and State governments, you know, police responsibility is primarily yours, and if you don't do that, there's no reason for you to exist, and we have to go about the business of doing what we're supposed to do.

Instead of having an Administration bragging about the fact they put 100,000 cops across this nation, and that was a little bait-and-switch because the original program was we pay 100 percent the first year, 75 percent the second year, 50 percent the third, 25 percent the fourth year, and nothing the fifth year, and you all know what happened. Around the fourth year, local jurisdictions came here and said, "You're responsible for paying for these folks."

What if we instead had gotten 100,000 Federal officers involved with Border Patrol, interior inspection, and the other things that are our responsibility? I doubt any of you'd be here. We'd probably have enough money to treat people properly under Mr. Haney's consideration. But instead, we're sitting here chasing our tails. Sorry, that's not a question. [Laughter.]

Thank you, Mr. Chairman.

Mr. HOSTETTLER. No, but it does deserve a hearty amen.

I thank the witnesses for your testimony today and your service to our country. All Members will have seven legislative days to enter remarks into the record, extension of remarks into the record.

The business before this Subcommittee being completed, we are adjourned.

[Whereupon, at 2:20 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

QUESTIONS FOR THE RECORD SUBMITTED TO DHS IMMIGRATION AND CUSTOMS ENFORCEMENT BY CHAIRMAN JOHN HOSTETTLER

How many spaces did ICE commit to using contract/ local facilities instead of its own?

DACS indicates 19,508 detainees on March 1. Of those, 16,013 were NOT in SPCs

Have contract facilities ever released detained aliens by mistake?

In FY 2005, we have had six detainees escape from custody. DRO will have to look into the individual incident reports to see if any of these escapees used false IDs and was "released."

How many previously detained aliens were released last year? (similar - how many aliens with final orders were released last year?)

The attached Excel sheet has the releases by type and month for all locations, locations excluding SPCs, and SPCs only. "Unknown" releases are those in which the last detention record for an alien indicates a transfer to another facility but there is no record from that facility.

Releases from detention in FY 2005
(through March 5, 2005)

All detention locations

	All releases	Removal	Vol Depart	Withdraw	Bond	OR	OS	Parole	Case terminated	US Marshals	Other	Unknown
All	84,641	56,877	6,109	391	4,953	3,257	2,579	4,453	1,278	2,453	35	2,256
Oct-04	17,309	11,893	1,251	71	1,007	691	445	865	214	526	4	342
Nov-04	16,125	10,905	1,147	97	989	661	405	820	301	467	9	324
Dec-04	16,877	11,041	1,306	73	997	789	477	972	261	485	6	470
Jan-05	15,776	10,864	1,058	82	803	531	478	779	215	405	4	557
Feb-05	15,503	10,294	1,059	62	993	505	675	801	255	488	12	359
Mar-05	3,051	1,880	288	6	164	80	99	216	32	82	.	204

All detention locations except SPCs

	All releases	Removal	Vol Depart	Withdraw	Bond	OR	OS	Parole	Case terminated	US Marshals	Other	Unknown
All	68,349	47,016	5,245	388	4,053	2,989	2,207	1,304	1,003	2,219	34	1,891
Oct-04	14,184	10,105	1,035	70	826	640	392	204	169	473	3	267
Nov-04	13,068	9,040	1,035	97	815	608	341	236	233	411	9	243
Dec-04	13,419	8,962	1,021	73	830	752	390	300	211	452	6	422
Jan-05	12,929	9,107	968	80	627	500	417	224	171	358	4	473
Feb-05	12,291	8,275	919	62	826	457	582	218	197	449	12	294
Mar-05	2,458	1,527	267	6	129	32	85	122	22	76	.	192

SPCs only

	All releases	Removal	Vol Depart	Withdraw	Bond	OR	OS	Parole	Case terminated	US Marshals	Other	Unknown
All	16,292	9,861	864	3	900	268	372	3,149	275	234	1	365
Oct-04	3,125	1,788	216	1	181	51	53	661	45	53	1	75
Nov-04	3,057	1,865	112	.	174	53	64	584	68	56	.	81
Dec-04	3,458	2,079	285	.	167	37	87	672	50	33	.	48
Jan-05	2,847	1,757	90	2	176	31	61	555	44	47	.	84
Feb-05	3,212	2,019	140	.	167	48	93	583	58	39	.	65
Mar-05	593	353	21	.	35	48	14	94	10	6	.	12

PREPARED STATEMENT OF CONGRESSWOMAN SHEILA JACKSON LEE

The Bureau of Immigration and Customs Enforcement (ICE) merged the investigative functions of the former Immigration and Naturalization Service (INS) and the Customs Service, the INS detention and removal functions, most of the INS intelligence operations, the Federal Protective Service, and the Federal Air Marshals Service. ICE's areas of responsibility include the enforcement of laws dealing with the presence and activities of terrorists, human trafficking, commercial alien smuggling operations, document fraud, and drug trafficking.

For instance, ICE investigators conducted an eight-month investigation last year of two men who were selling false identity documents to members of terrorist organizations. The ICE investigators developed such a strong case against these individuals that they pleaded guilty on February 28, 2005, to a charge of involvement in a conspiracy to sell false documents to purported members of Abu Sayyaf, a Philippines-based group that has been designated as a foreign terrorist organization.

The Intelligence Reform and Terrorism Prevention Act of 2004 authorized 800 new ICE investigators for FY2006 through FY2010. The President's budget only requests funding for 143 new Ice investigators for FY 2006, which is only 17% of the authorized number. We need all of the 800 additional ICE investigators authorized by the Intelligence Reform and Terrorism Prevention Act.

The National Intelligence Reform and Terrorism Prevention Act also authorized 8,000 new detention beds each year from FY2006 through FY2010. The President, however, has requested funding for 1,920 beds for FY2006, which is only 24% of the authorized number. We need all of the 8,000 beds that were authorized. They are necessary to provide appropriate detention facilities for asylum seekers and to detain people who might be dangerous.

In a recently issued *Report on Asylum Seekers in Expedited Removal Proceedings*, the U.S. Commission on International Religious Freedom provides information about 19 detention facilities that house asylum seekers. The facilities are located in 12 different states and include 6 county jails, 5 Homeland Security facilities, 7 private contract facilities, and one special county-run detention facility for alien families. These institutions housed more than 70 percent of all aliens subject to Expedited Removal in FY 2003. Overall, they housed approximately 5585 alien men and 1015 alien women.

More than half of the facilities reported that they housed asylum seekers with criminals. Among the 8 facilities that housed criminal inmates, 7 permitted some contact between them and the detained aliens. In 4 of the facilities, this included shared sleeping quarters.

In only one of these facilities were the line officers or guards explicitly told which inmates were asylum seekers. Also, very few of the facilities provide any specific training to sensitize guards to the special needs or concerns of asylum seekers. Even fewer facilities provided training to recognize or address the special problems experienced by victims of torture and other forms of trauma.

All of the facilities but 5 reported that they used strip or other kinds of invasive searches on detainees as a standard procedure during the time they were processed into the facility. All but 3 reported using strip or invasive searches for security-related reasons during the detainees' subsequent confinement.

Virtually all of the facilities reported using physical restraints. For example, the Tri-County Jail in Ullin, Illinois, used handcuffs, belly chains, and leg shackles when detainees left the facility.

Only a few of the facilities provided the detainees with access to private, individual toilets. In only slightly more of the facilities were detainees able to shower privately. The overwhelming majority of the facilities required detainees to wear uniforms.

It is unconscionable that we are treating asylum seekers this way. They have not been sentenced to incarceration as convicted criminals. Why are they being treated as if they were convicted criminals? This is especially distressing in view of the fact that some of them have come to the United States seeking refuge from torture and other forms of extreme abuse.

The failure to provide adequate detention facilities does not just result in inappropriate incarceration of asylum seekers. It also results in the release of aliens who might be a threat to our national security. Although a large number of aliens cross the border between Mexico and the United States illegally, the U.S. Border Patrol (USBP) catches many of them and returns them to Mexico. The Mexican government, however, usually does not accept aliens from other countries. These aliens are referred to as "Other than Mexican" or "OTMs." Due to a shortage of detention beds, USBP cannot detain all of them. According to information from the Congressional Research Service, USBP released 35,000 OTMs last year on their own recognizance.

Most of the OTMs are ordinary people who have come to the United States to seek a better life for themselves and their families. There is concern, however, that terrorists will use this weakness in our border security as an easy way to enter the country. Also, we have a growing number of Mara Salvatrucha (MS 13) gangs in our major cities, and members of these bloody, violent Central American gangs are entering the United States as OTMs.

If we fix our broken immigration system and provide adequate, lawful access to the United States, the population of undocumented aliens and the number of aliens coming here illegally will be reduced greatly. Then, it will be easier to deal with enforcement problems, and we will not need as many detention beds. In the meantime, however, we need additional ICE investigators and more detention beds. We also need to stop the inhumane practice of housing asylum seekers in penal settings where they are treated as incarcerated criminals.

PREPARED STATEMENT OF REPRESENTATIVE LINDA SÁNCHEZ

- I want to thank Chairman Hostettler and Ranking Member Jackson Lee for holding this important oversight hearing on our nation's Interior Immigration Enforcement Resources.
- Like all Americans, I know that our immigration system is broken. Without a doubt we need to fix it and we need the Bush Administration to provide the necessary funding to secure our borders.
- However, let's not forget in all of our discussions about enforcement, that the U.S. has always been a beacon of hope and we must continue to guard the light of liberty for those who are oppressed or displaced, or are coming here to seek new opportunities for their families.
- The Committee's last two immigration hearings have focused on attacking immigrants and *not* the Republican Administration's failure to meet its promise to secure our borders.
- Providing funding for *only* 210 CBP agents when 2,000 agents were authorized. And funding *only* 137 new ICE investigators, which is 17% of the 800 additional investigators, *this just doesn't cut it!*
- Not only is this frustrating, but it undermines the term, "Homeland Security."
- There is no excuse for this! Time and time again, the Bush Administration guts funding to secure our borders and ports. Instead of providing resources, they use immigrants as a smoke-screen for our security and immigration problems.
- Attacking immigrants alone is not going to resolve the issue, since the majority of immigrants come to this country seeking a better life for themselves and their families.
- Let's remember who these immigrants are—they are my parents, they are people who do the jobs that Americans don't want, and they are those seeking refuge from blood-thirsty regimes.
- If we fix our broken immigration system and provide adequate, lawful access to the United States through an earned legalization and guestworker program, the population of undocumented immigrants will greatly decrease.
- This would also make it easier for us to deal with enforcement problems.
- I'd ask that we all remember our humanity as we discuss ways to improve our immigration system. These are real people—not just statistics—trying to achieve the American Dream.
- I look forward to hearing from the witnesses who are trying to protect our borders and ports everyday.
- I thank both the Ranking Member and Chairman for convening this hearing.
- I yield back.

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