



**Report on the December 2008 Humanitarian Visit to the
Stewart Detention Center**

On December 20, 2008, Georgia Detention Watch organized a group of concerned Georgia residents from various social justice and faith-based groups to visit sixteen immigrant detainees at the Stewart Detention Center, a facility owned and operated by Corrections Corporation of America under contract with U.S. Immigration and Customs Enforcement (ICE). The primary reasons for the visit were to offer moral support to detainees, to educate volunteers on immigrant detention, to monitor conditions inside the Stewart Detention Center, and to communicate vital information between detainees and their loved ones.

This report outlines direct observations made by Georgia Detention Watch members and volunteers during the visit and some of the recurring concerns voiced by the detainees, which we believe may reflect violations of ICE's national detention standards and basic protections guaranteed by the federal constitution and international human rights standards. Our recommendations emphasize the importance of developing oversight mechanisms and detention standards that will adequately hold ICE and its contractors accountable for operation of their facilities and advance the protection of the basic human dignity and rights of detainees in their custody.

Many detainees interviewed expressed fears of retaliation; therefore, names of detainees in this report have been changed to protect their identity.

STEWART DETENTION CENTER FINDINGS

ICE is the agency of the Department of Homeland Security that oversees immigrant deportation and detention in the United States. According to ICE statistics, in fiscal year 2007, over 311,000 individuals were detained; ICE facilities had an average daily population of over 30,000.¹ ICE utilizes a network in excess of 300 facilities including county jails operating under intergovernmental agreements, contract detention facilities operated by private corporations, and eight Service Processing Centers directly operated by ICE to house detainees. The Stewart Detention Center, a contract detention facility, has the capacity to house over 1750 detainees on any given day.² All facilities housing detainees are required to comply with detention standards adopted by ICE. When ICE was formed in 2003, it followed a set of 38 national detention standards (NDS) which were originally issued in September 2000 by a predecessor agency, the Immigration and Naturalization Service (INS). ICE is currently in the process of transitioning from the NDS. In September 2008, ICE announced the creation of 41 performance based national detention standards (PBNDS) which are currently being implemented but are not yet binding on detention facilities.³ According to ICE, the new performance based standards are

¹ Statement of Richard M. Stana, Director, Homeland Security and Justice Issues, General Accounting Office, *Alien Detention Standards: Observations on the Adherence to ICE's Medical Standards in Detention Facilities*, June 4, 2008, p. 1. GAO-08-869T

² ICE *Detention Management* at http://www.ice.gov/pi/news/factsheets/detention_mgmt.htm. Last accessed 3/31/09; Stewart Detention Facility website: <http://www.correctionscorp.com/facility/60/>. Last accessed 3/31/09.

³ In this report, we will refer to the new performance based standard by its acronym, PBNDS; the currently existing standard will be referenced as the National Detention Standards (NDS). Both standards are available on the ICE website at: <http://www.ice.gov/partners/dro/dmp.htm>. See also ICE *Fact Sheet: ICE Performance Based National Detention Standards* released November 20, 2008 available at http://www.ice.gov/pi/news/factsheets/detention_standards.htm. Last accessed 4/1/09. Because ICE is currently

distinct from the NDS in that they “clearly state” and “focus on the results or outcomes the required procedures are expected to accomplish.”⁴ However, neither the NDS, nor the new PBNDS, constitute administrative regulations; they do not have the force of law. Furthermore, even under the new PBNDS, it remains unclear what types of sanctions, if any, will be imposed on facilities that fail to comply with the PBNDS.⁵ This report’s concerns and observations illustrate the need to develop enforcement mechanisms to maximize Stewart Detention Center compliance with all of the provisions of the PBNDS and promote accountability for preserving the rights of detainees in the custody of ICE.

ALLEGED VIOLATIONS OF MEDICAL CARE STANDARDS

The medical care goal expressed by the PBNDS is quite explicit, “detainees will have access to a continuum of health care services, including prevention, health education, diagnosis, and treatment... Health care needs will be met in a timely and efficient manner... Detainees will be able to initiate requests for health services on a daily basis... Detainees will receive timely follow-up to their health care requests.” (PBNDS, Medical Care, p. 1). We found many instances where the Stewart Detention Center fell short of this goal. “Jose”, an asthmatic, claims he has received no medication, despite requests, since arriving at the Stewart Detention Center over two months prior to our visit. Jose also showed his visitor a rash that had developed while he was detained at the Stewart Detention Center. He claimed that he had requested to receive medical attention but, as of the visit, no one had responded to his request. Another detainee, “Diego”, described being wheelchair-bound since his detention at this facility because of an infection he claims to have contracted inside the detention center. He said that he had white blisters and severe swelling of his leg. The infection also caused a fever for several days and rendered him unable to walk. Diego claimed that six other detainees in his unit have the same infection and that others complain of fungus on their skin, arms, head, and feet. This appears to undermine the goal of the PBNDS standard which states that “detainees diagnosed with a communicable disease shall be isolated according to national standards of medical practice and procedures.” (PBNDS, Medical Care, p. 13) Similar to Diego, “Baudilio” claims that men in his unit have begun to develop rashes that they believe to be from parasites or insects in their bedding.

ICE detention standards advise that detention center staff must aim to protect “detainees’ health and well-being by monitoring, counseling, and providing appropriate treatment to any detainee who is on a hunger strike.” (PBNDS, Hunger Strikes, p. 1; NDS, Hunger Strikes 1). Additionally, ICE detention standards require that “prescriptions and medications will be ordered, dispensed, and administered in a timely and sufficient manner as prescribed by a health care professional.” (PBNDS, Medical Care, p. 2; NDS, Medical Care, p. 6).⁶ “Bernardo” claims that he was threatened by non-medical staff at the detention center that if he participated in an ongoing hunger strike with other detainees, he would be denied his medication.

offering training and support to facilities to transition to the use of the PBNDS, our report evaluates detainees concerns from the PBNDS standard.

⁴ ICE *Performance Based National Detention Standards: Frequently Asked Questions*, available at: <http://www.ice.gov/PBNDS/faq.htm>. Last accessed 4/1/2009.

⁵ See ACLU, *Detention and Deportation in the Age of ICE: Immigrants and Human Rights in Massachusetts*, p. 62. Available online at: <http://www.aclum.org/ice/>. Last accessed April 1, 2009.

⁶ The analogous NDS requires that distribution of medication be done in accordance with specific instructions and procedures established by health care providers.

On mental health issues, the PBNDS states that “intake screening... for mental health problems will include... referral as needed for evaluation, diagnosis, treatment, and monitoring of mental illness.” (PBNDS, Medical Care, p. 13; see analogous NDS standard at NDS, Medical Care, p. 3). Since the detention of immigrants is a stressor that may impair social and mental functioning, we are concerned to learn that a detainee, “Ismael” expressed to a visitor that he received no treatment for depression, despite receiving a screening and disclosing his depression.

“Jose” stated that he had been considering “cutting himself.” The visitor did not interpret this action as suicidal intentions because he stated that other detainees do this as a desperate act to expedite their deportation. Other detainees also independently informed us that it is a common belief that cutting oneself is a way of expediting deportation in a center that now reportedly has an average stay of at least 45 days.

ICE detention standards stress that “language assistance may be provided by another staff member competent in the language or by a professional service, such as a telephone translation service.” (i.e., PBNDS, Medical Care, p. 12; NDS, Medical Care, p. 3-4). Unfortunately, most detainees we visited complained of the lack of bilingual staff at the detention center. The lack of bilingual staff adversely impacts opportunities for compliance with the grievance system. According to the PBNDS, the grievance system’s role is “to protect detainees’ rights and ensures that they are treated fairly by providing a procedure by which they may file formal grievances and timely responses relating to any aspect of his/her detention, including health care.” (PBDNS, Grievance System, p. 1). The grievance system under the PBNDS also encourages detainees to engage in an informal, oral grievance procedures in order to “mutually resolve most complaints and grievances orally and informally in daily interaction.” (PBNDS, Grievance System, p. 3).

ALLEGED VIOLATIONS OF FOOD SERVICE STANDARDS

The PBNDS expressly states that “food will never be used for reward or punishment.” (PBNDS, Food Service, p. 2; NDS, Disciplinary Policy, p. 1 “Staff may not impose or allow imposition of the following sanctions...deviations from normal food service”). Georgia Detention Watch received multiple reports from detainees that guards have denied meals as punitive measures, for example, when, in view of the staff, the serving line becomes “disruptive.”

ICE standards guarantee that “detainees with certain conditions – chronic or temporary; medical, dental or psychological – shall be prescribed special diets as appropriate.” (PBNDS, Food Service, p. 18; NDS, Food Service, 19). We noted during our December 2008 visit that “Bernardo” who had diabetes was receiving the same food as the general population rather than a therapeutic medical diet appropriate for his medical condition. Furthermore, Bernardo claimed that he and other detainees are only allowed one small cup of water per meal.

The PBNDS state that “detainees... will be protected from injury and illness by adequate food service training and the application of sound safety and sanitation practices in all aspects of food service and dining room operations.” (PBNDS, Food Service, p. 1). Additionally, it reads that “stored food goods will be maintained in accordance with required conditions and temperatures.” (PBNDS, Food Services, p. 1). However, many of the detainees we visited had serious

complaints about the poor quality of food being served. Complaints heard repeatedly included undercooked potatoes, rice, and beans. Some of the detainees who were on work detail to prepare the meals informed us of instances where they were required to serve meat, milk, and other foods that had already passed their expiration dates. While the PBNDS include provisions for detention staff to terminate the work detail of a detainee, it is unclear when a detainee may quit or seek reassignment from a particular work assignment. (PBNDS, Voluntary Work Program, p. 4).

ALLEGED VIOLATIONS OF DISCIPLINARY SYSTEM STANDARDS

According to ICE detention standards, during “the disciplinary and appeal process, the detainee will be advised of his or her rights in a language he or she understands, and translation or interpretation services will be provided as needed.” (PBNDS, Disciplinary Standards, p. 1). Furthermore, “the facility administrator shall... assign a staff representative to help prepare a defense. This help shall be automatically provided for detainees who are illiterate, have limited English-language skills, are without means of collecting and presenting essential evidence, or are in administrative or disciplinary segregation.” (PBNDS, Disciplinary System, p. 7; NDS, Disciplinary System, p. 6). The PBNDS expressly guarantees detainees with the right to “receive translation or interpretation services throughout the investigative, disciplinary, and appeal process.” (PBNDS, Disciplinary System, p. 2). “Luis” states that he has seen men in his unit placed in segregation (“solitary confinement”) for disciplinary matters without first convening a disciplinary hearing. This allegation has also been repeated to members of Georgia Detention Watch by an unnamed source with first-hand knowledge of the operations of the Stewart Detention Center who also claims that when hearings are held, they are often conducted without a bilingual hearing officer.

ALLEGED VIOLATIONS OF PERSONAL HYGIENE STANDARDS

The PBNDS require “that toilets be provided at a minimum ratio of one for every 12 male detainees.” (PBNDS, Personal Hygiene, p. 3). “Diego” stated that his housing unit contains about 66 detainees with only 2 out of 3 toilets functioning for all these men. This rate of one toilet for 33 male detainees falls far below minimum standards. Diego reported that requests had been made for repairs but nothing had been done as of the date of our visit.

The PBNDS clearly states in its “Personal Hygiene” standard that one expected outcome and goal is that “detainees, including those with disabilities, would be able to maintain acceptable hygiene practices.” Detention facilities should be provided with very specific guidelines on how to accomplish this goal under the PBNDS. During a separate visit with “Julio” that took place with a Georgia Detention Watch volunteer on February 21, 2009, “Julio” claimed that he had been detained for approximately three months and during that time had been unable to secure counsel for his deportation case. He told the volunteer that he had decided that it was “easier to give up” and had signed a stipulated order of removal. Julio claimed that when he arrived at Stewart, he told ICE agents about an existing back injury and had walked into the Stewart Detention Center using a cane. Julio claimed that the guards laughed at his requests for them not to handle him roughly. He claimed that he was injured by guards during his shower time, which

resulted in his confinement to a wheelchair. He claimed that he did not receive assistance from guards with showering and toilet use while disabled.

THE IMPORTANCE OF CULTURAL DIVERSITY TRAINING AND ENHANCED DETAINEE-STAFF COMMUNICATION

The NDS do not stress the importance of staff training in cultural diversity and ethics; we are, therefore, encouraged by ICE's initiative to incorporate a new "staff training" section in the PBNDS. This section emphasizes the need for facilities to train each employee, contractor, and volunteer in cultural diversity, the requirements of special-needs detainees, ethics, interpersonal communication, staff rules and regulations, among other training requirements. (PBNDS, 3-6). Many detainees reported to our volunteers that the staff verbally abuse them by yelling at them for no apparent reason. The fact that many of the detainees we spoke with also emphasized their fear of retaliation for speaking with Georgia Detention Watch members raises concerns about the need for detention center staff to improve communication with detainees, to inform detainees of their right to due process, and inform them of how they may exercise these rights through informal and formal mechanisms without reprisal.

SECURING HUMAN RIGHTS PROTECTIONS GUARANTEED BY FEDERAL AND INTERNATIONAL LAW

The International Covenant on Civil and Political Rights (ICCPR)⁷ specifically provides in Article 10(1) that all persons "deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." The Human Rights Committee (HRC), the United Nations body charged with promoting compliance of state parties with the ICCPR, interpreted Article 10 to impose a "positive obligation" on nation-states toward individuals "particularly vulnerable because of their status as persons deprived of liberty...." Such persons ought not to be "subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment."⁸ Of particular relevance to the situation of detainees is the requirement in ICCPR, Article 2, which specifically states that each state party to the ICCPR should "*ensure to all individuals within its territory and subject to its jurisdiction*" the rights recognized in the covenant without regard to distinctions such as language, race, color, sex, religion, national or social origin, birth or other status.⁹ Further it provides that each state party to the ICCPR, must undertake efforts to ensure that *any person* whose rights or freedoms under the ICCPR are violated "shall have an effective remedy."¹⁰ ICE's persistent refusal to implement legally enforceable regulations undermine the human rights protections available to detainees under the ICCPR.¹¹

⁷ International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, *entered into force*, March 23, 1976. The United States ratified the covenant on June 8, 1992.

⁸ UN Human Rights Committee (HRC), *General Comment No. 21*, U.N. Doc. HRI/GEN/1/Rev.6 at 153 (2003).

⁹ ICCPR, Article 2.

¹⁰ *Ibid.*

¹¹ There are analogous provisions in regional human rights conventions such as the American Convention on Human Rights (ACHR), 9 I.L.M. 673, *entered into force* July 18, 1978. For example, ACHR's Article 5 states that "every person has the right to have his physical, mental, and moral integrity respected," and Article 1 recognizes the

In addition, international human rights treaties recognize that detention itself cannot be arbitrary as this constitutes a violation of the fundamental rights of individuals to liberty and security of the person.¹²

The United States Supreme Court and federal courts have recognized the Eighth Amendment constitutional right of individuals convicted of crimes to be free from cruel and unusual punishment; federal jurisprudence has specifically recognized that the denial of health care to convicted prisoners constitutes cruel and unusual punishment.¹³ Individuals in civil detention are protected by the Due Process clause of the Fifth Amendment to the United States Constitution which provides that “no person shall be deprived of life, liberty or property without due process of law.”¹⁴ Individuals detained by ICE thus have a right to medical care that derives from the Fifth Amendment.

The right to non-discrimination is one that is well-recognized under U.S. constitutional and international human rights law. International Human Rights treaties specifically recognize obligations on the part of nation-states to not deny fundamental rights to persons on the basis of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹⁵ Therefore, detainees should not be subject to adverse treatment by virtue of their national origin, language, or disability.

RECOMMENDATIONS

MEDICAL CARE STANDARDS

Georgia Detention Watch strongly urges the Division of Immigration Health Services (DIHS) to improve response time to medical requests and to ensure that cost-saving measures are not compromising detainee health at the Stewart Detention Center. Further, we would recommend that the provisions of the DIHS Medical Dental Detainee Covered Services Package¹⁶ advance

obligation of states to “undertake to respect the rights and freedoms” recognized in the convention and ensure that “every human being” subject to a nation-state’s jurisdiction enjoy the full and free exercise of those rights. See ACHR, Articles 1 and 5. The United States as signed the ACHR on June 1, 1977, but has not ratified it.

¹² See, for example, ICCPR, Articles 9(1) and 13; ACHR, Articles 7 and 8.

¹³ See *Estelle v Gamble*, 429 U.S. 97 (1976); see also *Belcher v. City of Foley, Alabama*, 30 F.3d 1390, 1396 (11th Cir. 1994).

¹⁴ U.S. Const., Amend V. In addition, in *Jones v Blanas*, 393 F.3d 918, 931-934 (9th Cir. 2004), the court noted that civil detainees “retain greater liberty protections than individuals detained under criminal process” and that “... a civil detainee awaiting adjudication is entitled to conditions of confinement that are not punitive.” A restriction is considered “punitive” when it is intended to punish, or where it is “excessive in relation to [its non-punitive] purpose,” or is “employed to achieve objectives that could be accomplished in so many alternative and less harsh methods,” With respect to an individual confined awaiting adjudication under civil process, “a presumption of punitive conditions arises where the individual is detained under conditions identical to, similar to, or more restrictive than those under which pretrial criminal detainees are held, or where the individual is detained under conditions more restrictive than those he or she would face upon commitment.”

¹⁵ See ICCPR, Article 26, See also International Convention on the Elimination of All Forms of Racial Discrimination (CERD), *entered into force*, January 4, 1969, The United States has ratified the CERD.

¹⁶ This package lists all of the covered and non-covered services available to detainees, and describes which services must be authorized by filing a Treatment Authorization Request (TAR). A TAR is required for detainees who require non-emergency medical care which must be provided off-site. TARs are evaluated by the DIHS Managed

the goal of the PBNDS to provide a continuum of care that focuses on the comprehensive health needs of detainees. Since October 2003, there have been more than 90 reported deaths in immigration detention centers¹⁷ and Georgia Detention Watch is committed to ensuring that detainees held at the Stewart Detention Center receive all necessary medical attention.

In addition, we urge ICE and CCA to ensure that all living environments and especially beddings are properly sanitized so as to prevent the transmission of infections and illnesses in units.

To fully comply with detention standards on the dispensing of medication, responding to medical screenings, and treating mental illness.

To work to reduce the average length of stay for immigrants facing deportation so as to relieve a major stressor that contributes to impaired social functioning and the exacerbation of mental illness.

FOOD SERVICE STANDARDS

We urge ICE and CCA to ensure that denial of food is never used as a punishment.

To ensure that food served to detainees is fresh and properly prepared.

To ensure that all work detail for detainees, including food service work detail, is wholly voluntary and clarify the process by which a detainee may opt to terminate or seek a new work detail.

DISCIPLINARY SYSTEM STANDARDS

We urge ICE and CCA to encourage full compliance with the PBNDS standards regarding the disciplinary and appeal process. The imposition of sanctions that may restrict the liberty of an individual should adhere to the highest standards of due process protections and be administered in a non-discriminatory manner.

To assure that segregation or solitary confinement is not being imposed on detainees without them first being offered a disciplinary hearing in accordance with the standards and with access to competent, bilingual hearing officers and staff representatives assisting with the detainee's defense.

STAFF TRAINING AND DEVELOPMENT

Given the isolated location of the Stewart Detention Center, wages offered to staff must be raised so as to entice a more competent and bilingual staff. The lack of bilingual staff undermines PBNDS staff training goals and opportunities for staff to become aware of the health and other

Care Program. See Alison Siskin, *CRS Report for Congress: Health Care for Noncitizens in Immigration Detention*, June 27, 2008. Available at: <http://openocrs.com/getfile.php?rid=63948>. Last accessed April 3, 2009.

¹⁷ See <http://www.nytimes.com/2009/04/03/nyregion/03detain.html?pagewanted=all>

needs of detainees. We are displeased to learn from staff that they are not offered holiday pay for working on Christmas, New Year's Day and other national and religious holidays.

Georgia Detention Watch would like to review the center's staff development plan. Specifically we would encourage the center to enhance its staff training on cross-cultural communication, anger management and conflict transformation.

PERSONAL HYGIENE STANDARDS

We urge ICE and CCA to decrease the number of individuals detained at the Stewart Detention Center so as to be in full compliance with personal hygiene standards. There is no reason for the ratio of functioning toilets to men to be 33:1 in some units when standards mandate a 12:1 ratio.

To clarify and develop mandatory performance standards to evaluate a facility's compliance with standards that seek to promote the health and wellbeing of disabled detainees.

PROTECTION OF THE BASIC DIGNITY AND HUMAN RIGHTS OF DETAINEES

To fully comply with the basic human rights protections and principles that advance non-discrimination, due process, and the protection of the life, liberty and health of detainees in ICE custody.

ENHANCED TRANSPARENCY SURROUNDING DETAINEE DEATHS AT DETENTION CENTERS

Georgia Detention Watch expresses serious concern about the death of Roberto Martinez Medina, a 39-year-old immigrant held in detention at the Stewart Detention Center. Mr. Martinez Medina reportedly died at a Columbus hospital on March 11, 2009. The immediate cause of his death remains unclear. While his death occurred after our visit to the facility, we believe that enforceable standards are necessary to enhance accountability and transparency in all ICE detention facilities around maintenance of detainee health records and the circumstances surrounding the death of all detainees.

According to the ICE website, a new layer of oversight was adopted in February 2007 when ICE created a Detention Facilities Inspection Group (DFIG) within the ICE's Office of Professional Responsibility. "The ICE Office of Professional Responsibility (OPR) must notify the DHS Office of the Inspector General (OIG) of all detainee deaths. Upon declination for investigation by the OIG, OPR presently investigates the circumstances of detainee deaths."¹⁸ Nevertheless, according to the OIG in a June 2008 report:

"ICE's Office of Professional Responsibility (OPR) reviews detainee death cases. OPR's management directive does not require the reporting of deaths to the OIG, nor were we provided any ICE policy documents that require the reporting of immigration detainee deaths to our office. However, OPR can refer cases to the OIG when ICE determines that an outside review is

¹⁸ U.S. Immigration and Customs Enforcement, "Detention Management", http://www.ice.gov/pi/news/factsheets/detention_mgmt.htm (last accessed 3/31/09).

warranted. An OPR manager informed us that the Joint Intake Center may report detainee deaths to the OIG or the OPR. Likewise, the OIG's Office of Investigations may refer various detainee death incidents to OPR. The DHS Office for Civil Rights and Civil Liberties also has reviewed detainee deaths and compliance with ICE standards...OPR has helped improve detention practices after some detainee deaths. However, ICE should report all detainee deaths to OIG."¹⁹

In addition to detailed protocols in the event of a detainee's death, the PBNDS contains new provisions that require that the OIG be notified within 48 hours of the death of a detainee (PBNDS, Terminal Illness, Advance Directives and Death, p. 6). We urge ICE to promote full enforcement of transparent, independent, mandatory reporting mechanisms and investigations into the circumstances surrounding the death of any detainee in ICE custody.

CONCLUSION

Georgia Detention Watch will continue to monitor conditions inside the CCA-operated Stewart Detention Center. We are willing to work with representatives of CCA, ICE, or any other related agency or individual towards creating a more human and just environment inside this facility.

In addition, we support the efforts of entities and lawmakers that have urged ICE to make the detention standards enforceable through regulation.²⁰

¹⁹ Department of Homeland Security, Office of Inspector General, "ICE Policies Related to Detainee Deaths and the Oversight of Immigration Detention Facilities," June 2008, p. 5. OIG-08-52.

²⁰ For example, Representative Lucille Roybal-Allard (D-CA) recently introduced the Immigration Oversight and Fairness Act, H.R. 1215, to adopt humane and legally enforceable standards for immigration detention facilities. See February 26, 2009 press release, available at: <http://www.midwesthumanrights.org/new-legislation-will-help-restore-justice-u-s-immigration-system?mini=calendar/2009/05/all>. Last accessed, April 1, 2009.



Georgia Detention Watch is a coalition of organizations and individuals that advocates alongside immigrants to end the inhumane and unjust detention and law enforcement policies and practices directed against immigrant communities in our state. Our coalition includes activists, community organizers, persons of faith, lawyers, and many more.