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UNITED STATES
LOCKED AWAY:
IMMIGRATION DETAINEES IN JAILS IN THE UNITED STATES

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LETTERS FROM DETAINEES

During our research, Human Rights Watch received hundreds of letters from people detained by the U.S. Immigration and Naturalization Service and held in local jails. Most wrote because they had no family, friends, or legal counsel to turn to and needed to express their desperation, frustration, and fears to someone.

Dear Human Rights Watch:

June 11, 1998
"Since the day I came to America [September 28, 1997], I have not committed any crime. I have never been in any type of prison system but when I came here they locked me up like I'm some kind of criminal...they locked me up along with inmates, people that have committed crimes...that's why I fear for my life....The situation here is no good for me, because they don't offer the basic needs in which to live. The food they give us is not enough to live on. When I request something from the officers they either deny me or tell me to write a request form, which they deny afterwards anyways. I don't have an attorney for I cannot afford one. I escaped from my country's army to come to America, but if I go back now to Iran, the consequences will be deadly."
—P.H. from Iran, Nacogdoches County Jail, Nacogdoches, Texas

February 5, 1998
"Let me inform you that I was violently beaten today...at 10:30 this morning. It was time for my 'checkdown' and an officer told me to put my hands on the wall. It's because I asked him to be more gentle that he beat me up. He hit my head into the wall many times and threw me forcefully on the floor. To hold me down, an officer put his foot on my head. I let them do whatever they wanted. Here it is normal for officers to beat detainees without reason....I think your presence here would be indispensable."
—E.M. from Democratic Republic of the Congo, Virginia Beach Detention Center, Virginia Beach, Virginia

June 3, 1998
"Again I ask you to please help me...I don't know what to think, maybe they want me to die in this place....I already paid my time in state prison and now they put me again in prison far away where [my family] can't visit me because it is an eight hour journey. Also, they no longer let us send letters so I had to send this letter out with some county prisoners detained here...."
—F.T.G. from Cuba, Yuba County Jail, Marysville, California

March 1, 1998

"I was born in Hamburg, Germany on January 14, 1948 in a refugee camp...my parents came form the U.S.S.R. We were brought to the United States as legal permanent residents by Catholic Services. I'm fifty-years old now and have been in the United States for forty-eight years. In 1990 I went to jail...and when I was ready to go home the INS arrested me. Since September 6, 1996, I have been waiting to be deported. Germany has already told the INS that they will not accept me, have no records of me at all or of my parents either....I always showed up in court and never ran from [the INS]. I asked them to release me and I would go on my own, but they said no one would take me. Why still hold me then? "
—M.J. from Germany, Snyder County Jail, Selingsgrove, Pennsylvania

January 8, 1998
"In June of 1997 my application for immigrant status with the Immigration and Naturalization Service (INS) was rejected. Since then, my presence in the United States became illegal, and that is why I was arrested....After the ruling I was placed in solitary confinement, in a cell with no heat and no hot water. I was not allowed to use the telephone to talk to my lawyer. A Muslim prison employee was prevented from giving me a copy of the Quran. I was not allowed to perform Friday congregational prayers with other Muslim inmates, nor could I go to the gymnasium. To this day, jail management refuses to provide a vegetarian meal. I do not eat meat because of religious convictions. Since my arrest, I have lost 25 pounds...."
—N.S. from Egypt, Mercy County Detention Center, Trenton, New Jersey

November 17, 1997
"[I am] Vietnamese, 21 years old....Because I have no lawyer or legal representative I did not appeal the judge's decision in proper time and from the information from the United Nations High Commissioner for Refugees office I filed a motion to reopen or to reconsider my case along with my political asylum application. [It was] denied on August 1, 1997. Now I don't know what to do and who I can ask for help. Please, somebody help me on this matter. I've been in this detention center for over a year for nothing, we have no sunlight, no fresh air nor life necessity."
—T.N. from Vietnam, Carter County Detention Center, Ardmore, Oklahoma

I. SUMMARY AND RECOMMENDATIONS

The U.S. Immigration and Naturalization Service (INS) is currently housing more than 60 percent of its 15,000 detainees in local jails throughout the country. Faced with an overwhelming, immediate demand for detention space, the agency has handed over control of its detainees to local sheriffs and other jail officials without ensuring that basic international and national standards requiring humane treatment and adequate conditions are met. INS detainees—including asylum seekers—are being held in jails entirely inappropriate to their non-criminal status where they may be mixed with accused and convicted criminal inmates, and where they are sometimes subjected to physical mistreatment and grossly inadequate conditions of confinement.

INS detainees are in administrative detention; that is, they are not serving a criminal sentence or awaiting trial on criminal charges. But since the INS has decided to contract with local jails and has refused to insist on separate, special treatment of immigration detainees who are held in these jails, an INS detainee's experience in a local jail is no different from that of a local inmate.

Asylum seekers, in particular, are protected by international refugee law and deserving of special treatment. Asylum seekers should never be held in local jails. In fact, international standards urge governments to detain asylum seekers only in exceptional cases. Nevertheless, the INS does not differentiate between asylum seekers and other immigration detainees, and they are sent to jails around the country without regard to their particular legal and psychological needs.

Holding INS detainees in local jails is an expensive endeavor for the federal government, but INS detainees are a desirable source of profit to local jails. Jails charge the INS between $35 and $100 per day, per detainee. The INS estimated that in 1997, it paid an average of $58 a day per detainee to local jails; this means that in a six-month period, more than $10,000 federal dollars are spent to hold just one INS detainee. In some states, local taxes have been eliminated due to the profit made through housing the INS's detainees.

Over the past eighteen months, Human Rights Watch has interviewed more than 200 INS detainees in fourteen local jails in seven different states. We have also received hundreds of letters and telephone calls from detainees held in local jails scattered around the country describing poor conditions and mistreatment. Human Rights Watch researchers have interviewed INS officials, jail officials, immigration judges, immigrant rights advocates, and attorneys representing INS detainees in immigration proceedings. This report also relies upon documents obtained from the INS through Freedom of Information Act requests, legal documents, and press reports.

Among our findings:

- The INS has failed to provide oversight or to insist on humane conditions and treatment in the local jails with which it contracts to hold INS detainees. There are no laws, federal regulations, or national INS policy governing how local jails holding INS detainees should be inspected and monitored. Once detainees are placed in a jail, INS contact with detainees is usually infrequent, even though they remain the INS's ultimate responsibility.
- Jail officials state that INS detainees "are treated just the same as regular inmates" even though INS detainees are held for administrative, not criminal, purposes and should not be subjected to punitive or rehabilitative treatment.
- The INS has begun to institute detention standards in its Service Processing Centers (SPCs) and contract facilities, but the standards are not being implemented at local jails, where the majority of INS detainees are currently held and where future increases in detention will be absorbed.

- Medical and dental care are substandard in many of the jails holding detainees.
- Access for legal representatives, family, and friends is severely curtailed by strict jail rules that are inappropriate for immigration detainees. As a result, many detainees do not have legal representation which undermines their ability to present their cases and removes a critical element of monitoring treatment of INS detainees in the local jails.
- Jail staff are often unable to communicate with INS detainees due to language barriers.

Many INS detainees interviewed by Human Rights Watch who were held at local jails have been subjected to physical mistreatment at the hands of correctional officers. In a dramatic case now unfolding, INS detainees held in Jackson County Jail in Florida alleged that jail officials administered electric shocks on shackled detainees in July 1998. Nine guards pleaded guilty or were convicted in 1998 for physically abusing INS detainees held in Union County Jail in New Jersey. INS detainees in local jails in California, Louisiana, New Hampshire, and elsewhere have held hunger strikes during the past year following incidents of alleged mistreatment and to protest poor conditions.

The detainees described in this report are in INS custody for a variety of reasons. Some are individuals fleeing persecution in their home countries who are seeking asylum in the United States; they are usually detained after arriving at a port of entry without proper documentation. Others have been picked up by the U.S. Border Patrol on the street or during workplace raids. Some detainees have served criminal sentences in the United States and are awaiting deportation to their home countries. Still others were detained by the INS after the 1996 immigration laws required that individuals who were previously sentenced to a year or more for certain criminal offenses (whether or not their sentences were suspended) be identified, detained, and deported.

The INS makes decisions about where to hold detainees and how often to transfer them based primarily on availability and cost of bed space in local jails. It rarely considers detainees' family ties or legal representation. For example, individuals may be taken into INS custody at an airport or workplace in New York, sent to a jail in Pennsylvania and then find themselves in rural Louisiana to await a court hearing or appeal decision. Furthermore, INS detainees are frequently transferred from one jail to another without warning or justification. Some detainees have been held in as many as eight jails and facilities in a year's time: the detainees receive little, if any, prior warning of their moves no reason for the relocation, no opportunity to notify family members, and, if the detainee is represented by an attorney, the attorney is rarely notified of the transfer. The transfer may be to a nearby jail or to a jail in a state thousands of miles away.

Many detainees interviewed by Human Rights Watch were confused, frustrated, or scared by their situation. They did not know the status of their immigration cases or when they would have a hearing, why they were being held in jails, or how to get legal assistance. They believed they were forgotten by the INS, which rarely has staff on site at jails and is not responsive to detainees' requests for information about their cases. Frequent transfers only exacerbated their confusion.

In addition, long periods of incarceration with little to do and no knowledge of when they would released caused severe emotional distress in many detainees. Mental health needs of detainees are not adequately met, and distressed suicidal detainees are often treated by jail officials as disciplinary problems. Many expressed anxiety over being held with accused or convicted criminals; some detainees were so ashamed of being held in a prison-like situation that they did not contact their families.

Some immigration detainees cannot be deported because they are stateless, or because neither their own country nor any third country will accept them. Human Rights Watch believes that when immigration detainees are held indefinitely and do not know when, if ever, they will be released, their detention becomes arbitrary even if the initial detention was carried out in accordance with law. Most individuals indefinitely detained are citizens of countries with which the United States has limited or no diplomatic relations or which simply refuse to accept their citizens who have emigrated or fled. Other detainees are held indefinitely because they are "stateless" meaning that no legal state will recognize their nationality. Given the fact that jails are designed to be punitive and rehabilitative institutions, and considering the extremely poor conditions in many of the jails in which INS detainees are held, this form of detention differs very little from an open-ended criminal sentence.

Despite the shortage of detention space, and the frequently inhumane and costly "short-term" solutions now in place, the INS has been slow to develop release programs or to utilize alternatives to detention that already exist. For example, the INS's parole plan for asylum seekers, called the Asylum Pre-Screening Officer program (APSO), has suffered from insufficient funding and inconsistent application by INS district directors. The INS has also contracted with the Vera Institute of Justice to undertake a pilot program of supervised release of immigrants (not only asylum seekers) in removal proceedings in the New York City and Newark, New Jersey INS districts. The program allowed the Vera Institute to screen immigrants after they were apprehended by the INS, to choose those who meet certain criteria, and to assist and supervise them during immigration hearings. Initial results indicate that the project is an effective alternative to detention; more than 80 percent of the participants are complying with all court appearances. Still, the INS has limited the program of the Vera Institute geographically and does not currently allow asylum seekers who have proven a credible fear of persecution in removal proceedings to be considered for release.

General Recommendations:

- Detention facilities used by the INS should reflect the non-accused, non-criminal status of all INS detainees. Therefore, the INS should not house its detainees in local jails, prisons, or any other facility intended to hold criminal populations.
- Asylum seekers, as a general rule, should not be detained. The right to seek and enjoy asylum is a basic human right; individuals must never be punished for seeking asylum in the United States.
- Until the INS ceases using jails to hold its detainees, those detainees should be held in sections of the jails separate from accused and criminally convicted inmates.

- Given the shortage of detention space readily available to the INS and the tremendous human and financial costs of contracting with local jails, non-custodial alternatives to detention should be explored before any decision to detain an individual is final.
- The INS must implement detention standards immediately and must require that any jail with which it contracts meets the treatment and condition requirements.
- For reasons beyond their control, many INS detainees are held indefinitely because they are stateless or are nationals of a country with limited, or no, diplomatic relations with the United States. The INS must address the problem of indefinite detention and implement release programs for those with no hope of being returned to their countries of origin.
- The INS must participate in any jail disciplinary proceedings against INS detainees that would adversely affect the conditions or treatment for their detainees.

Detailed Recommendations

To the INS:

Detention of Immigrants

• All detention facilities used by the INS should reflect the non-accused, non-criminal status of all INS detainees. Therefore, the INS should never house its detainees in local jails, prisons, or any other facility intended to hold accused or convicted criminal populations.

• Given the shortage of detention space available to the INS and the tremendous human and financial costs of contracting with local jails, non-custodial alternatives to detention should be implemented before a decision to detain an individual is final. The INS should develop these alternatives in consultation with nongovernmental organizations with expertise in meeting the legal, cultural, and psychological needs of INS detainees. Non-custodial alternatives may include unconditional release or conditional release. Conditional release includes: supervised release to community organizations or family members; regular reporting requirements; or bail or bond options.

• All decisions to detain immigrants should be automatically and promptly referred for review to a judicial or other competent authority. A review should consider the legality of the decision to detain and the substantive need for detention; it should also require periodic review to prove a compelling need to prolong detention. Detainees and their legal representatives should have the right to attend all review hearings and to present evidence to demonstrate their case.

• All places of detention used by the INS must be specialized facilities intended to hold only INS administrative detainees. Detention conditions must reflect the non-criminal status of detainees and, at a minimum, must conform

with the international standards regarding individuals in administrative detention found in the United Nations Standard Minimum Rules for the Treatment of Prisoners and the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

• The INS should maintain current statistics about the number of people in detention; the number of asylum seekers in detention; length of detention of asylum seekers and other immigrants; and the number and location of all facilities, including local jails, used to hold detainees. All such statistics should be made publicly available.

Detention of Asylum Seekers

• Asylum seekers, as a general rule, should not be detained. The right to seek and enjoy asylum is a basic human right; individuals must never be punished for seeking asylum in the United States.

• Detention of asylum seekers is inherently undesirable. All decisions to detain asylum seekers must be made on a case-by-case basis. Detention is justified only when it is strictly necessary to: verify an asylum seeker's identity to a reasonable and practicable extent under the circumstances; determine whether an asylum seeker is asserting elements upon which a claim for asylum could be based; or protect national security, enforce criminal law, or protect public safety in the same circumstances and with the same legal protections afforded U.S. citizens. Detention may also be justified when an asylum seeker has a history of repeated or unjustified failures to comply with reporting requirements imposed by the INS or the immigration court, or has failed to leave the country following the exhaustion of all appeal procedures.

• Detention of asylum seekers should not be based on the unwitting or necessary use of false documents required in order to flee persecution and gain access to the United States where they are seeking protection.

• Asylum seekers may only be detained *after* meaningful opportunities for release have been utilized by the INS.

• The Asylum Pre-Screening Officer (APSO) program, allowing unsupervised parole of asylum seekers who illustrate a credible fear of persecution, should be fully and consistently employed in all thirty-three INS districts. INS headquarters must monitor implementation of the APSO program; INS districts with low release rates should be reviewed and misguided practices should be corrected.

• The INS should also continue to develop and implement alternative supervision or reporting systems. These alternatives could include secure shelter care, group homes, or individual sponsorship by nongovernmental organizations. Joint initiatives between the INS and other non-profit groups, such as the Appearance Assistance Program of the Vera Institute of Justice, should be supported and expanded in all INS districts.

• Asylum seekers in expedited removal proceedings who are found to have a credible fear of persecution in their countries of origin should not be detained unless specific security concerns, which individuals must have a right to know and rebut, can be proven.

• When detained, asylum seekers should never be held in jails, prisons, or prison-like situations and should never be commingled with accused or convicted criminal inmate populations. They should be held separately from other INS detainees.

Detention Conditions for All Detainees

• The INS should create comprehensive national standards applicable to all facilities in which INS detainees are held. These standards should be applicable to local jails for as long as they are used by the INS. All written detention standards already issued by the INS for Service Processing Centers and contract facilities should be immediately extended to all INS detainees held in local jails.

• All final detention standards should be promulgated as federal regulations and subjected to a public comment period.

• The INS should create a detention oversight office in its headquarters to create and implement detention standards, to monitor detention conditions and treatment of INS detainees, and to ensure compliance with minimum standards of treatment.

• All jails used by the INS should be inspected at least every six months. Additional unannounced inspections should take place in the interim. When a particular facility fails to meet any of the enumerated national detention standards, it should be given until the next inspection to remedy all shortcomings. If at the time of the subsequent inspection a jail continues to fail to meet the required standards, the INS should terminate its contract with the facility.

• Given the growing immigrant detainee population and the increasing concerns about their treatment, the INS should create an Advisory Commission on Immigration Detention. The commission should include representatives from the INS's Office of Field Operations and the proposed detention oversight office, as well as representatives from regionally diverse nongovernmental and legal organizations with demonstrated concern and knowledge about conditions and treatment in detention. The commission should have access to all detention-related records of the INS, including contracts with local jails and complaints filed by INS detainees regarding inadequate conditions and physical abuse in detention (see reporting requirements below) in order to monitor all places of INS detention, including Service Processing Centers, contract facilities, jails, prisons, or other facilities where INS detainees are held.

The commission should meet quarterly and should, among other duties: review the INS's facility inspection reports; identify patterns in types of complaints or recurring problems at certain facilities; investigate select complaints; share information with each other about emerging issues of concern and plans for addressing those concerns; and

monitor implementation of detention standards. When patterns of poor conditions or mistreatment of INS detainees emerge in a particular facility, the commission may recommend that a particular contract be terminated.

When serious allegations are brought to the commission's attention that may be criminally prosecutable, the commission should refer the information to local and federal prosecutors for possible action. When patterns of abuse or substandard conditions are detected, that information should be provided to the Civil Rights Division's Special Litigation Section.

Minimum Standards Required in All INS Contracts with Local Jails

Local jails are inappropriate places to hold asylum seekers and immigrants, but until their use by the INS is terminated, all new and existing contracts between the INS and local jails must require that each jail is capable of, and continues to meet, the following minimum conditions:

• INS detainees should never share cells or living areas with local inmate populations in the jail facility.

• Local facility handbooks that clearly outline detainees' rights and responsibilities should be given to all detainees upon entering a jail. Handbooks should be available in the languages of the detainees likely to be detained there. For detainees who speak a language for which no translation is available, as well as for those detainees who are illiterate, the handbook should be read to them and an acknowledgment form signed indicating that they have understood their rights and responsibilities. Handbooks should include instructions about how to file a complaint regarding conditions or treatment.

• Physical restraints (e.g. shackles, four-point restraints, handcuffs, restraint chairs) and solitary confinement should never be used to punish INS detainees.

• Physical restraints may be used only as strictly necessary to protect INS detainees who are a danger to themselves or others. Whenever restraints are used on INS detainees, the local INS district office must be notified within one hour and any continued use must be justified by jail officials and authorized by the INS.

• Complaint procedures should be in place to allow detainees to lodge complaints regarding conditions of detention or mistreatment by officials, inmates, or fellow detainees. Complaints received by jail staff should be immediately forwarded to the local INS district office. Jail staff should respond to complaints in a fair and timely manner and must fully explain their responses. All responses must also be forwarded to the local INS district office and the proposed detention oversight office in INS headquarters.

•Medical screening should be completed upon a detainee's arrival at a jail to detect mental and physical health needs. Special attention should be given to individuals who may have suffered trauma due to experiences in their countries of origin and should include detection of suicide risk. Medical staff should be trained on the special problems of asylum

seekers, including the risk of trauma-induced illnesses, and should be trained to screen for sexual and gender violence. Daily access to regular medical care and mental health counseling and 24-hour emergency care should be available. Interpreters should be available in person or by phone for all medical visits.

•Health and gynecological needs of female detainees should be met, including access to female health service providers and female interpreters, access to routine gynecological exams and obstetrical services, and provision of basic needs such as sanitary supplies.

•Full dental care should be provided and should include restorative surgery or fillings. Dental care should not be limited to extractions.

•A current and accurate list of local organizations that provide immigration advice and legal representation should be given to every detainee upon entering the facility. Additionally, an updated legal service provider list should be posted next to every pay telephone used by INS detainees.

• Law libraries with updated immigration legal materials should be created and maintained. Available materials should include the list of reference material in the INS detention standards on legal materials issued in January 1998. Photocopiers should be available to copy legal papers and other relevant jail paperwork.

• Detainees should have generous access to telephones in private, quiet areas that allow free local calls. Free calls, even if long-distance, should be allowed in special circumstances such as family emergencies, to contact out-of-state legal counsel, and to contact embassies and consulates. All telephones should also allow international collect calls and toll-free calls. Telephones should not be programmed with an automatic cut off after a certain period of time, and if they are, multiple consecutive calls must be allowed. Pre-arranged incoming calls from legal representatives of other detainee advocates must be allowed and facilitated by jail officials.

• A minimum of one hour daily outdoor exercise should be permitted.

• Religious practices should be allowed and facilitated and adequate space for religious services provided. Religious practices include: the right to be visited by a representative of a particular religious denomination; the right to have any special diets based on religious beliefs respected and accommodated; the right to wear religious apparel; and the right to receive religious materials.

• Detainees should be allowed to participate in all educational, vocational, and other programs available to criminal inmates, but jail officials should understand that criminal rehabilitation is not an appropriate goal of administrative detention.

• Detainees should be allowed, but not required, to work in the jail in the same circumstances and under the same conditions as local inmates.

• Jail officials should be specially trained on the needs of asylum seekers and immigration detainees. Some staff should be able to speak the languages of detainees, or detainees should be transferred to a facility where staff are able to communicate with them.

• Jails should create generous visitation policies for INS detainees. Contact visits should be allowed, minor children should be allowed to visit, and visits should be for a minimum of two hours and extensions should be allowed if circumstances warrant. INS detainees should not be required to place visitors on a visitation list. Restrictions on visitors should be limited to requirements of proof of identity and detainee consent.

• Legal representatives should be allowed to visit by producing only the name of a detainee; no proof of legal representation should be required. Certified representatives and paralegals should be allowed legal visits on the same terms as attorneys, along with interpreters, medical personnel, or others assisting in the legal visit.

• Representatives of nongovernmental organizations wishing to visit a detainee should be required only to present proper identification of organizational affiliation and the name of the detainee they wish to visit.

• Reasonable media access should be allowed and journalists should be permitted to interview INS detainees with detainees' consent. Freelance and independent journalists should be accorded the same access as members of major newspapers or television networks.

Monitoring Local Jails

• An INS officer should be placed at each local facility to assist detainees and monitor conditions of confinement, allegations of mistreatment, and the use of disciplinary sanctions.

• Copies of all complaints filed by INS detainees held in local jails must be immediately forwarded by jail officials to the INS. All responses by jail officials must be in writing and must be sent simultaneously to the detainee, a designated person in the local INS district office, and the proposed detention oversight office in INS headquarters. When jail officials consider a matter satisfactorily resolved (or when the detainee has exhausted all appeals procedures), the INS must contact the detainee to ensure that he or she agrees with and accepts the resolution, and continue to negotiate with jail officials until the detainee and the INS feel that the matter complained of has been satisfactorily resolved.

• Whenever a local facility decides to take disciplinary action against a detainee that will result in disciplinary segregation lasting more than twenty-four-hours, an INS officer must participate in the hearing, approve any sanctions

authorized, and participate in a written appeals process. When a pattern of arbitrary or excessive discipline of INS detainees emerges at a jail, the INS must terminate its contract with the facility.

• Local jails must be required to notify the INS and provide all relevant documentation every time a detainee is assaulted or injured, either by jail staff, criminal inmates, or other INS detainees.

• Local facilities should be required to provide the INS with copies of all complaints made against jail employees by the general public, attorneys, or other private or public interest groups.

• Before contracting with a local jail, the INS should be required to investigate any indictments, convictions, or administrative complaints brought against jail employees for misconduct during the previous five years. The INS should request from the Department of Justice's Civil Rights Division a list of all civil rights investigations and cases brought under Title 18 of the U.S. Code, sections 241 and 242, regarding local jails that house INS detainees. The INS should examine the physical facility and interview jail staff and local inmates. If there is credible evidence of jail misconduct, a contract should not be entered into.

To the U.S. Congress:

• The U.S. Congress should pass legislation requiring that all decisions to detain immigrants be automatically and promptly referred for review to a judicial or other competent authority.

• The U.S. Congress should also pass legislation requiring the INS to create federal regulations establishing minimum standards for all immigrants in INS detention. National standards should comply with international standards for administrative detainees. It should mandate time limits on detention and authorize parole for immigrants whose deportation cannot be secured once it is final (as in the case of Cubans and other non-removable immigrants). The legislation should require that asylum seekers be detained only as necessary to determine whether or not a claim for asylum has been asserted, or if they are proven to be a danger to national security. Further, the legislation should demand that asylum seekers are never held in local jails or other prison-like situations.

•Concerned Members of Congress should request that the General Accounting Office initiate a study into the use of local jails by the INS. The study should produce information on the number of detainees held in jails, including the number of asylum seekers; the number and location of all jails used; the per diem rates paid by the INS; the length of detention; transfer policies; language abilities of local jail staff; compliance with INS detention standards and American Correctional Association guidelines; and compliance with international and domestic standards on the treatment of administrative detainees. A study should also examine the cost-effectiveness of the current detention system's reliance on local jails.

To the Civil Rights Division of the Department of Justice:

• The Civil Rights Division's Special Litigation Section should investigate complaints of poor treatment and conditions of confinement of INS detainees in local jails. Given our findings, special attention and investigation should promptly be initiated in several local parish prisons in Louisiana.

To the Working Group on Arbitrary Detention of the U.N. Human Rights Commission:

• The Working Group on Arbitrary Detention should issue written guidelines, in consultation with nongovernmental organizations and detention experts, that delineate the minimum standards owed to administrative immigration detainees. The guidelines should be use to measure and monitor the United States's treatment of immigration detainees.

• The Working Group on Arbitrary Detention should investigate the use of local jails by the INS to assess whether the United States is meeting the standards of treatment owed to administrative immigration detainees. The findings should be presented to the Human Rights Commission by the annual assembly in 2000.

To the United Nations High Commissioner for Refugees (UNHCR):

•The United Nations High Commissioner for Refugees should continue to revise and strengthen its Guidelines on the Detention of Asylum Seekers. For example, exceptions to the general rule that asylum seekers should not be detained should be narrowed and limited to strict necessity on a case-by case basis.

• The UNHCR should be proactive in urging the U.S. government to bring detention policies in line with standards contained in the UNHCR guidelines and international standards on the detention of asylum seekers.

• The UNHCR should monitor, investigate, document, and make public any abuses committed against INS detainees in the United States.

To the Organization of American States (OAS):

•The Human Rights Commission of the Organization of American States should monitor the treatment and conditions of confinement of immigration detainees in the United States, especially asylum seekers and individuals detained indefinitely. The OAS should call on the United States to respond to any findings of inadequate conditions of confinement or instances of physical mistreatment including those identified in this report.

• The Annual Review of the OAS Human Rights Commission should contain a special section on the treatment of INS detainees.

II. INTRODUCTION

> *I'm from India...they will execute me if I were to be sent back, but nobody cares. Where do I go from here? I'm only twenty-four-years old, haven't committed any crime, never hurt anybody. Why am I still locked up in a place like a dungeon? I know that America is more than just what I've experienced, that there is more to it than jails and cruel punishment.*
>
> —Letter to Human Rights Watch from Indian asylum seeker held in Bay County Jail, Panama City, Florida, January 4, 1998

In New York Harbor stands the Statue of Liberty, an emblem of the best and most generous dreams of the United States and a symbol of hope for those seeking freedom, safety, and a better life. For many who arrive on U.S. shores today, the symbolism of the statue contains a cruel irony.

As the United States experiences the largest wave of immigrants since the early years of this century, it is also detaining and deporting people in record numbers.[1] Thousands who arrive in the U.S. to escape repression or build new lives end up behind bars—the majority in local jails scattered around the country—and may remain there for years.

The U.S. government's detention policy is motivated by several factors, such as ensuring deportation, preventing flight within the country or protecting the community, but its underlying message to all seeking admission to the United States, including asylum seekers, is one of deterrence: entering the country without proper permission leads to incarceration. Detention for the purposes of deterring illegal immigration became an integral part of U.S. immigration policy in the early 1980s, when thousands of Cuban and Haitian nationals began arriving in the country. The practice was extended to Central Americans throughout the decade.[2] More recently, in 1993, nearly 300 Chinese asylum seekers were detained by the Immigration and Naturalization Service (INS) when their ship, the *Golden*

[1]In the first three months of FY1998 (beginning October 1, 1997), the INS detained and deported 34,134 people, a seventy percent increase over the same period in 1997. In 1998, the agency plans to detain and deport 127, 300 people. Michelle Mittelstadt, "INS Removes 70 Percent More Aliens," Associated Press, February 19, 1998.

[2]While civil wars plagued Central America, the United States routinely locked up and sometimes deported Central Americans seeking asylum. Helsinki Watch, *Detained, Denied, Deported: Asylum Seekers in the United States,* (New York: Human Rights Watch, June 1989).

Venture, ran aground in the shallow waters of New York Harbor. In that case, the male and female asylum seekers were locked up in local jails in Louisiana, Mississippi, New York, Pennsylvania and Virginia and held for three and half years before they were deported to China or a third country, or paroled into the United States.[3]

[3]Ian Fisher, "Smuggled Chinese Immigrants Released From Prison," *New York Times,* February 27, 1997. *See also*, Women's Commission for Refugee Women and Children, *A Cry for Help: Chinese Women in Detention*, March 1995, which describes the experiences of thirteen women from the *Golden Venture* held in local jails in Mississippi and Louisiana.

By August 1998, the number of individuals detained by the INS reached approximately 15,000, roughly a 70 percent increase from just two years earlier.[4] By the year 2001, the INS estimates that more than 23,000 men, women, and children will be in immigration detention.[5]

Individuals end up in INS detention in several ways. They may be arrested by the INS in a workplace raid, picked up near the U.S. border, detained upon arrival at an airport, or turned over to INS custody after serving a criminal sentence. They include men and women working illegally in the United States as household help, farm laborers, or factory workers; refugees fleeing civil conflict and persecution; or legal permanent residents with U.S. citizen families who lived, worked, and paid taxes in the United States prior to serving criminal sentences.

The INS is scrambling for bed space to hold the growing number of detainees. Immigration detention centers owned and operated by the INS and detention centers run by private corrections companies contracted by the INS cannot accommodate the increase, so the INS has chosen to rely on county and city jails to handle the overflow. Currently, almost 60 percent of all INS detainees are held in local jails around the country.[6]

INS detainees languish in these criminal institutions where they may be held for years, sometimes commingled with accused or convicted criminal inmates, physically mistreated, subjected to excessive or inappropriate discipline, denied adequate medical care, deprived of outdoor exercise, and isolated from family and legal counsel. Individuals fleeing persecution and seeking asylum are not spared jail detention. Because the INS's computer tracking system was created for enforcement purposes, it does not indicate which detainees are asylum seekers. They are simply mixed with other INS detainees and local inmate populations.

The use of local jails to hold INS detainees is supported by high-level INS officials, the Department of Justice and U.S. immigration law. In its Detention Plan for 1997-2001, the Department of Justice states that reliance on local jails is "more cost effective than the construction and operation of Federal facilities."[7] In fact, the INS is directed by statutory law to explore the use of existing facilities before building additional bed space.[8]

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[4]Internal INS Detention and Deportation Daily Population Reports from the Western, Central, and Eastern INS Regional offices for August 7, 1998.

[5]Federal Detention Plan 1997-2001, submitted by the Department of Justice to the U.S. Congress in May 1997.

[6]INS Detention and Deportation Daily Population Reports, August 7, 1998.

[7]Federal Detention Plan 1997-2001.

[8]Immigration and Nationality Act (INA), Section 241(g)(2).

The INS may be ignoring problems faced by its detainees held in local jails, but it is not unaware of them. The Department of Justice, in its Detention Plan for 1997-2001, expressed its concern over the use of local jails and stated that "[t]he INS has been most vulnerable in conditions of confinement lawsuits and complaints when local jails are used."[9] Despite this troubling statement, which indicates INS knowledge of poor conditions and treatment of INS detainees in jails, the same detention plan calls for increases in the use of local facilities in the future.

Current Legislation

In 1996, the U.S. Congress passed immigration legislation ensuring that detention would increase dramatically. It has failed, however, to take into account the human costs of new laws or the tremendous burden placed on the INS in implementing the sweeping changes.

[9]Federal Detention Plan 1997-2001, p. 16.

The Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) created new mandatory detention obligations for certain categories of immigrants and greatly expanded the number of crimes for which non-citizens can lose their legal status and be deported. Prior to the 1996 legislation, crimes resulting in deportation were limited to murder, rape, and other serious felonies. With IIRIRA, minor drug offenses, some cases of drunk driving, shoplifting, and any conviction carrying a sentence of one year or longer, whether or not the sentence was suspended or actually served, require deportation.[10]

The new laws so drastically increased the demand for detention space that in 1996 the INS petitioned Congress to authorize temporary rules allowing postponement of some of the mandatory detention provisions.[11] INS Commissioner Doris Meissner warned in 1997 that "at some point in the near future, we expect that there will be insufficient detention space to meet the requirements of both mandatory detention and our other enforcement initiatives."[12] The temporary detention rules, which allow the release of certain classes of individual with prior criminal convictions, were extended in 1997, and again in 1998, but cannot legally be extended again, leaving the INS to devise a plan to address the detention space shortage in the very near future.

IIRIRA also created a new deportation process, called "expedited removal," the intent of which is to process and deport individuals who enter the United States without valid documents as quickly as possible. The accelerated process imperils *bona fide* refugees, who often enter illegally or with fraudulent documents, since critical decisions about deportation are delegated to low-level INS officials and access to counsel and judicial review is limited.[13]

Even when asylum seekers prevail in the initial summary procedures and successfully prove in a subsequent interview that they have a "credible fear" of persecution in their home country, they are still subject to detention at the discretion of the INS.[14] Immigrants' advocates report that discretion at the local INS district level has resulted in inconsistent and arbitrary decisions about who is released from detention, and claim that decisions are often more

[10]INA Sections 212(a), 237(a) and 238(a).

[11]The Transitional Period Custody Rules, 8 Code of Federal Regulations (C.F.R.), Section 235.3.

[12]Memorandum on Detention Policy, INS Office of the Commissioner, July 14, 1997.

[13]*See* Legal Standards.

[14]8 C.F.R. 235.3(c). Regulations provide that parole determinations be made on a case-by-case basis for urgent humanitarian reasons of significant public benefit where there is no security or flight risk. 8 C.F.R. 212.5(a). *See* Lawyers Committee for Human Rights, *Slamming 'The Golden Door:' A Year of Expedited Removal*, March 1998, describing how the INS unnecessarily imprisons *bona fide* asylum seekers by failing to comply with its own parole procedures.

influenced by where a person was originally detained than by the strength of his or her asylum claim.[15] For example, an Iraqi woman seeking asylum has been detained for almost a year in two Michigan county jails under the new expedited removal laws. The INS District Director for Detroit, who makes decisions about who is paroled in her district, explained the decision to detain the woman by saying, "Here, if we have the space, we'll hold you to complete the entire process."[16]

[15]Mirta Ojito, "Inconsistency at INS Complicates Refugees' Asylum Quest," *New York Times*, June 22, 1998.

[16]Tim Doran, "Jailed Woman Awaits Decision," *Detroit Free Press*, July 9, 1998.

The INS provides few public statistics regarding detention during the credible-fear process and has repeatedly refused requests by academic researchers and non-governmental organizations to monitor the process. A recent study on expedited removal found that even once individuals are recognized as asylum seekers in the INS system, detention at ports of entry lasted for an average of seventy-four days in Los Angeles, California, ninety-two days in New York, and seventy-one days in Brownsville, Texas.[17]

INS Detention System

The INS uses four types of facilities to hold detainees: INS owned-and-operated Service Processing Centers (SPCs);[18] contracted centers run by private corrections companies;[19] Bureau of Prisons facilities; and local jails scattered around the country.

As of February 1998, the INS held valid contracts with 1,041 local jails.[20] Because decisions about which detention facilities are used are made within each of the thirty-three INS districts, the INS headquarters in Washington D.C. does not know how many or which jails are being used on any particular day. In fact, INS headquarters may not even have a complete list of jails the agency uses. When Human Rights Watch made a Freedom of Information Act (FOIA) request for a complete list of all facilities used by the INS to hold its detainees, we were sent a stack of lists obviously obtained from various INS sources and district offices. After hours of sifting through the lists to discern where duplicate facilities were listed, Human Rights Watch counted 687 local jails in forty-three states, leaving roughly 400 jails unaccounted for. Some of the jails holding detainees with whom Human Rights Watch communicated were not included in the FOIA response, despite the fact that some detainees had been in those same local jails since 1996.[21]

[17]"Report on the First Year of Implementation of Expedited Removal," International Human Rights and Migration Project, Markkula Center for Applied Ethics, Santa Clara University, May 1998, p. 55.

[18]The nine SPCs are located in Aguadilla, Puerto Rico; Buffalo, New York; El Centro, California; El Paso, Texas; Florence, Arizona; Miami, Florida; Los Fresnos, Texas; San Pedro, California; and New York, New York.

[19]The INS contracts with Wackenhut and Corrections Corporation of America to hold only INS detainees in facilities in Aurora, Colorado; Houston, Texas; Seattle, Washington; Laredo, Texas; and Elizabeth, New Jersey. In addition, the Bureau of Prisons leases additional space to the INS in Oakdale, Louisiana and Eloy, Arizona.

[20]INS Detention and Deportation Statistics, February 25, 1998.

[21]For example, Human Rights Watch received letters from INS detainees held in St. Mary's County Detention Center in Leonardtown, Maryland, Nacogdoches County Jail in Nacogdoches, Texas, and Salem County Correctional Facility, in Woodstown, New Jersey, yet none of these facilities appeared on any list provided by the INS.

In the INS/jail arrangement, administrative immigration detainees are handed over to the care of local jails, which are paid daily fees by the INS that vary between $35 to $100 per detainee.[22] The influx of federal money has been a boon to local economies. In York County, Pennsylvania, revenue from the INS increased from $600,000 in 1992 to an expected $6 million in 1998 — $2 million of which is profit.[23] The windfall profit already reaped by the contract with the INS allowed the county to cut its personal property taxes in 1996.[24] In Manatee County, Florida, the INS paid one million dollars for the renovation of part of the Manatee County Jail, which included paying off a large pre-existing debt owed by the county.[25] According to jail officials, the INS guaranteed a total of 250 detainees per day and was obligated to pay the jails whether or not that number was met.[26]

INS detainees have become a desirable source of profit for local jails. Officials at Euless City Jail in Texas told Human Rights Watch that they had lowered their per diem rate from $68 to $55 in order to have a more "consistent" INS population and "to be more competitive."[27] (Nearby Denton County Jail had recently signed a contract with the INS charging only $35 per detainee.) The Corrections Corporation of America (CCA), which has long recognized the profit to be made in privatized detention, has also entered the INS detention/local jail arena.[28] The Chief of Security for CCA, which runs the Liberty County Jail in Texas, even asked Human Rights Watch researchers if they knew of ways to get more INS detainees.[29]

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[22]In 1998, the average per diem paid to local jails by the INS was $58.46. Federal Detention Plan 1997-2001.

[23]Myung Oak Kim, "York County, PA, Benefits From Tougher Immigration Laws," *Philadelphia Daily News*, May 14, 1998. To make space for the increased numbers of detainees, the jail's gymnasium has been converted into dormitory housing to hold between seventy and ninety detainees.

[24]Mike Zapler, "York Prison Program Awaits Congressional Action on Immigration," States News Service, May 7, 1996.

[25]Human Rights Watch interview with S. Kent Dodd, INS facility director, Manatee County Jail, Bradenton, Florida, February 25, 1997.

[26]Ibid.

[27]Human Rights Watch interview with Capt. Harlan Westmoreland, Euless City Jail, Euless, Texas, February 27, 1997.

[28]The Corrections Corporation of America is a for-profit business that contracts with federal, state, and local governmental agencies to run penal and detention institutions.

[29]Human Rights Watch interview with Chief Mike Holm, Jr., Liberty County Jail, Liberty, Texas, March 7, 1997.

Lack of Uniform Standards

The only laws or regulations regarding detention conditions for INS detainees are four minimal requirements contained in federal regulations: twenty-four-hour supervision; compliance with safety and emergency codes; food service; and emergency medical care.[30] There are no other laws or regulations binding on the INS regarding any other minimum standards that must be met in facilities holding INS detainees.

The INS has begun to recognize the importance of establishing minimum standards in its own detention centers and contracted facilities, but it has failed to extend the same standards to local jails, instead relying on whatever particular state or local standards are binding on jails. As this report illustrates, the result is inconsistent and inadequate treatment for detainees unlucky enough to be held in one of the hundreds of local jails used by the INS throughout the United States.

[30] 8 CFR 235.3(e).

In January 1998, the INS issued twelve detention standards applicable only to INS Service Processing Centers and privately contracted for-profit facilities.[31] The oversight of implementation and enforcement of the standards is called into question because the new standards do not have the force of regulations, but are merely internal INS policy. The first responsibility for implementation and enforcement falls on the officers-in-charge of each facility, and any unresolved issues are to be raised first to the INS district director and then the INS regional director. An INS headquarters facilitator was appointed by the INS commissioner to monitor the overall program, ensure training on the standards, and serve as the final arbiter when issues cannot be resolved locally. Nevertheless, the detention standards remain legally unenforceable, and thus the ultimate power lies with the dozens of officers-in-charge to apply the standards as they see fit in their own facilities.

The INS claims it requires its own facilities to meet American Correctional Association guidelines.[32] Six of the nine INS-run SPCs or contracted facilities have received accreditation under the ACA; the others reportedly are in the process of applying.[33] The INS requires its privately contracted facilities to develop and apply standards consistent with the ACA and to obtain ACA accreditation within eighteen months.[34] Not all ACA guidelines must be met, however, and the INS allows facilities to receive waivers for non-mandatory criteria if "overall agency programming compensates for lack of compliance."[35]

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[31]The detention standards issued in January 1998 are: Access to Legal Materials; Detainee Population Counts; Detainee Marriage Requests; Detainee Telephone Access; Detainee Visitation; Detainee Voluntary Work Program; Group Legal Rights Presentations; Issuance and Exchange of Clothing, Bedding, Linen and Towels; Detainee Access to Medical Care; Religious Practices; Suicide Prevention and Intervention; and Hunger Strikes. Four of the standards, dealing with visitation, legal materials, telephone access and legal rights presentations were circulated by the INS, with the help of the American Bar Association, to interested immigrants advocates for informal comment before being finalized.

[32]The American Correctional Association is a non-profit organization that administers the only national accreditation program for adult correctional institutions. The ACA has developed thirty-five mandatory and 386 non-mandatory standards covering such topics as health care, physical conditions, staff training, discipline, food service, capacity and location of facilities. American Correctional Association, Standards for Adult Local Detention Facilities (1991), Standards Supplement (1998).

[33]Donald Kerwin, "Detention: Our Sad National Symbol," *In Defense of the Alien*, (New York: Center for Migration Studies, 1997), p. 137.

[34]Ibid.

[35]Ibid., p. 138.

The fact that the INS considers the ACA guidelines as standards to be aspired to in their detention facilities speaks to the attitude of the agency toward the asylum seekers and other immigrants it detains. The ACA guidelines were created to govern the conditions and treatment in facilities designed to hold accused and convicted criminals. Nowhere do the guidelines mention administrative detainees or attempt to distinguish the special needs of, or treatment owed to, such a population. For example, the needs of immigration detainees, such as language requirements or specialized legal materials, are absent from the ACA guidelines. Even if an institution is fully ACA accredited, INS detainees' needs are not necessarily met. The ACA requirement, for example, that facilities be "geographically accessible to...inmates' lawyers, families and friends" seems only accidentally satisfied, if ever, for INS detainees who are routinely transferred from jail to jail and state to state with no apparent regard for location of family or legal counsel.

Contracting with Local Facilities

The INS claims that the local jails with which it contracts should meet ACA guidelines, but its minimum standards only. "It's not in the INS's interest to force the jails to meet certain standards because we need the space," the senior counsel for INS Field Operations told Human Rights Watch. "[C]ontractually, you cannot force the jails to do certain things. It's a dilemma."[36]

[36]Human Rights Watch interview with Kristine Marcy, Senior Counsel, INS Office of Field Operations, Washington D.C., May 29, 1998.

According to the INS, the agency prioritizes using jails that already have existing contracts with other Department of Justice agencies, such as the U.S. Marshals Service (USMS). When the INS decides to use a jail with a USMS contract, it simply adds a "rider" to the document. Such a rider is insufficient since USMS contracts were negotiated with federal criminal prisoners in mind, not immigration detainees, and definitely not asylum seekers. Even when contracts are negotiated directly with the INS, they usually only require services for INS detainees that are "consistent with the types and levels of services routinely afforded its own [jail] population" with no distinction made between INS detainees and local inmates.[37]

Human Rights Watch submitted a Freedom of Information Act (FOIA) request in September 1996 to obtain copies of all guidelines and standards used by the INS in all non-INS detention facilities, including jails. In response, we received copies of sixty-three different ACA standards covering topics such as evacuation plans, special diets, and control of vermin. The INS also responded by providing their internal form called the G-324(a) ─ the Service Contract Facility Inspection Report ─ which contains thirty-eight different detention standards based on ACA guidelines. According to the INS, a jail need not meet all thirty-eight standards in order to enter into a contract or pass annual inspections carried out in some INS districts.[38] Significantly, the enumerated standards do not require that any INS detainee be held separately from the general inmate population. If jails do not meet all of the standards, they are given a written explanation about problem areas and asked what plans they have to make changes.

Our 1996 FOIA request also included a request for copies of all inter-governmental service agreements (IGSAs) signed between local jails and the INS. Copies of the IGSAs were never sent to Human Rights Watch. Human Rights Watch was able to obtain copies of several contracts directly from jail administrators or county sheriffs. No INS/jail contract we reviewed made any specific reference to ACA standards or the INS's inspection form G 324(a).[39] No warden Human Rights Watch interviewed was even aware that the INS's form, the G324(a), even existed. The fact that compliance with the INS's enumerated standards is not required by law, combined with the INS's desperate need for jail space, results in the agency's using facilities that fail to meet even basic health or safety requirements. As increasing numbers of detainees overwhelm INS detention capacity, jails that are not appropriate places to house detainees will continue to be used. The jails used by the INS may not even be secure or safe places. For example, in June 1998, six Cuban detainees escaped from East Feliciana Parish Prison in Louisiana ─ the fifth time

[37]This is the language used in the INS contract with Berks County Prison and York County Prison in Pennsylvania.

[38]Human Rights Watch telephone interview with Terry Valentine, INS Detention Inspector, Oakdale, Louisiana, July 1, 1998.

[39]Some jail officials told Human Rights Watch that the INS made diet and exercise requirements or that the contract stated that INS detainees cannot work and must be fed 2,400 calories per day.

INS detainees had escaped from the jail since 1988. Despite this substandard detention history, the INS was paying the jail more than twice what the state pays per day to house a local inmate.[40]

Given the financial benefits to be gained by local counties and jails in contracts with the INS, the agency's explanation that it is at the mercy of the local facilities is suspect. If local jails were asked to meet specific requirements or lose their lucrative contracts with the INS, local officials would have to consider the demands very carefully. As it stands now, the INS is allowing local officials to treat detained immigrants however they see fit.

Monitoring Local Jails

[40]James Minton, "Six Cubans Flee E. Feliciana Prison," *The Advocate*, Baton Rouge, Louisiana, June 24, 1998.

There are no laws or regulations governing how the INS should monitor detention conditions or treatment of INS detainees held in local jails. There is no national INS policy regarding monitoring local jails, nor are monitoring provisions routinely incorporated into INS/jail contracts. Some INS districts, such as New Orleans, claim to monitor and inspect jails on a regular basis, but whether or not inspection of local jails takes place is a local district decision, carried out without guidance from INS headquarters.[41] Under the current system, the INS is essentially contracting away its responsibility for the treatment of its detainees to the discretion of local jail officials.

State jail standards and monitoring requirements vary and may even be non-existent. Neither the rigor nor results of state-mandated inspections are consistently monitored by the INS, and the agency has been silent in the face of wide variance in the frequency and quality of inspection systems used by the jails. In Florida, for example, where over thirty jails are used by the INS, a 1996 repeal of the pertinent section of the administrative code eliminated mandatory inspections by the Florida Department of Corrections (DOC) that formerly insured compliance with Florida's model jail standards. Now Florida jails have the option to contract with the DOC to inspect the jail, make reciprocal inspection arrangements among jails to inspect each other's facilities, or conduct their own inspections. The sheriff of Hillsborough County Jail in Tampa, Florida told Human Rights Watch that his jail had decided to carry out its own in-house self-inspection by hiring a retired DOC inspector.[42] Manatee County Jail, which houses roughly 300 INS detainees, arranged to conduct reciprocal inspections with five other counties.[43]

At most local jails used by the INS, the agency has only sporadic, unpredictable contact with their detainees. INS detainees report that their written requests to the INS for information about their cases or requests for transfers or special assistance often go unanswered. Detainees often do not know what is happening in their immigration cases, why they are being transferred, or when, if ever, they can expect to be released from detention.

Some jails do have frequent, even daily, contact with INS officers, but interactions are usually limited to an exchange of paperwork during transport of detainees and rarely offer any opportunity for detainees to speak directly with its representatives. The warden at Hillsborough County Jail in Florida told Human Rights Watch that he had not talked to anyone at the INS for three years.[44] At a few local jails, like Berks County Prison in Pennsylvania, the INS

[41]In only one of the contracts obtained by Human Rights Watch was the subject of inspections explicitly mentioned. The IGSA between Fort Lauderdale City Jail and the INS states that the city "agrees to allow periodic inspections of the facility by [INS] jail inspectors," but does not specify frequency of the inspections or what standards would be used.

[42]Human Rights Watch interview with Col. David Parish, Hillsborough County Jail, Tampa, Florida, February 24, 1997.

[43]Human Rights Watch interview with Maj. Richard Ference, corrections bureau chief, Manatee County Jail, Bradenton, Florida, February 25, 1997.

[44]Human Rights Watch interview with Maj. Steve Saunders, Hillsborough County Jail, February 24, 1997.

maintains an on-site representative to deal with the needs of the detainee population. In other jails, such as DuPage County Jail in Illinois, the jail designates someone from its own staff to serve as a liaison with the INS.

Tension in the System

Not surprisingly, the tension created by such an inconsistent detention policy lacking effective monitoring mechanisms, has made the facilities ripe for outbursts by INS detainees frustrated and angered by long periods of incarceration, inadequate conditions of confinement and frequent mistreatment.

In 1995, those frustrations exploded in violence at a contracted immigration center holding mostly asylum seekers in Elizabeth, New Jersey, managed by Esmor Correctional Services, Inc., a private, for-profit company. On the night of June 18, a group of INS detainees took over the facility; Esmor correctional officers fled the buildings or hid as property was destroyed.[45] To end the melee, a police SWAT team surrounded the facility, used tear gas, and rounded up and handcuffed detainees.[46]

Later that night, about two dozen detainees were brought to Union County Jail, also in Elizabeth, New Jersey. For three days, detainees from Albania, India, Ghana, and elsewhere were beaten, held naked, made to crawl on their hands and knees through a gauntlet of jail officers, and forced to chant "America is Number One."[47] One Indian detainee claimed that between beatings, correctional officers used pliers to pinch the skin on his genitals and squeeze his tongue.[48]

On March 6, 1998, after a nine-week trial in which fourteen INS detainees testified, three correctional of

[45]David Gonzales, "Jail Uprising Leaves Many Sad and Bitter," *New York Times*, June 25, 1995. U.S. Immigration and Naturalization Service, *The Elizabeth, New Jersey, Contract Detention Facility Operated by Esmor, Inc.: Interim Report*, July 20, 1995.

[46]Ibid. For months before the uprising, detainees and their advocates had been complaining to the INS about the food, medical care, sleeping conditions and abusive treatment by guards in the Esmor facility. Carl Frick, who served as the facility's first warden, told the *New York Times* that a riot was predictable, since everything from the food to medical care was "done as cheaply as possible;" for example, the food service contract was renegotiated because $1.12 per day was considered too expensive for detainees' meals. *See also*, Ashley Dunn, "Jail Official Blames Revolt on Agency," *New York Times*, June 21, 1995.

[47]Christine Gardner, "Defense Argues for U.S. Guards in Trial Over Illegal Immigrants," Reuters, March 3, 1998. "Detained Immigrant Recalls Rough Treatment at Union County Jail," Associated Press, February 2, 1998.

[48]Ronald Smothers, "Immigrants Tell of Mistreatment by New Jersey Jail Guards," *New York Times*, February 6, 1998.

officers from the Union County Jail were found guilty on counts of assault, misconduct, or conspiracy.[49] After these convictions, six other correctional officers pleaded guilty to official misconduct.[50]

An INS review and investigation of the Esmor facility ordered by INS Commissioner Doris Meissner was already underway when the June 18 incident took place. A seventy-two- page report released by the INS in July 1995 concluded that "detainees were subjected to harassment, verbal abuse, and other degrading actions perpetrated by some Esmor guards."[51] The report further stated that this type of abusive treatment "was part of a systematic methodology designed...to control the general detainee population and to intimidate and discipline obstreperous detainees through use of corporal punishment."[52]

[49]Ronald Smothers, "Three Jail Guards Guilty of Abusing Immigrants," *New York Times*, March 7, 1998.

[50]Ibid. On April 28, another officer was convicted for failing to report the beatings of the immigrants while the final officer standing prosecution was acquitted.

[51]U.S. Immigration and Naturalization Service, *The Elizabeth, New Jersey, Contract Detention Facility Operated by Esmor, Inc.: Interim Report*, July 20, 1995.

[52]Ibid.

The Elizabeth, New Jersey facility was reopened by the INS in 1997, this time under contract with the for-profit company, Corrections Corporation of America. Having been forced by the 1995 incident to face the problems that arise when facilities are not properly inspected or sufficiently monitored, the INS has instituted monitoring mechanisms and designated several INS staff members to deal with detainee complaints, which have again arisen under the new contractor.[53]

Unfortunately, the lessons learned by the INS in the Esmor case, such as the importance of carefully choosing detention facilities, creating comprehensive contracts and establishing rigorous monitoring procedures, have not been extended to local jails holding INS detainees. Since no national formal monitoring procedures have been established by the INS, the nearly 8,000 INS detainees held at local jails are at the mercy of the local jailers. Those placed in a safe and humane facility are the lucky ones.

Serious instances of mistreatment of INS detainees held in local jails continue to be exposed. In July 1998, INS detainees held in Jackson County Correctional Center in Florida alleged that jail officials shocked them with electrified batons and shields; one INS detainee claimed he was shackled to a concrete slab, shocked with an electric riot shield, and left for seventeen hours. Responding to the Jackson County incident, the INS assistant deputy director for detention and deportation for the INS Miami district aptly described the fundamental problems of the INS/jail arrangement: "We cannot dictate to the county or the state of Florida what standards they should have in their facilities. They're another government agency. We have to rely on their integrity."[54]

Protests and complaints by detainees in other parts of the country also continue. In February 1998, INS detainees held at a New Hampshire jail went on a hunger strike to protest overcrowding at the jail and the alleged beating of a Vietnamese detainee.[55] And INS detainees at Avoyelles Parish Prison in Louisiana went on a hunger strike when air conditioners broke down during a blistering Louisiana August last year.[56]

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[53]Human Rights Watch telephone interview with Andrea Quarantillo, INS Newark district director, Newark, New Jersey, July 29, 1998. Detainees and their advocates have complained of forcible sedation and improper use of restraints and the complaints have been investigated by the INS.

[54]Teresa Mears, "Detainees Held By INS Say Jails Rife With Abuse," *The Boston Globe*, August 2, 1998.

[55]Lois Shea, "Immigrant Detainees Continue Hunger Strike at N.H. Jail," *Globe Staff and Clare Kittredge Globe Correspondent*, February 2, 1998.

[56]Mabell Dieppa, "Cuban Refugees Held 17 Years in U.S. 'Detention' Camp Stage Hunger Strike," Reuters, August 20, 1997.

Alternatives to Detention

Detention is a costly immigration policy, in both human and financial terms. Alternatives to detention are not only more humane, they also allow the INS to make better financial choices regarding limited detention resources. For example, an asylum seeker detained by the INS for six months at a local jail charging $50 per day costs the INS $9,000; some jails end up costing the INS more than $20,000 per detainee per year. Despite the overwhelming need for detention space, the INS has been slow to develop release alternatives or to fully utilize alternatives to detention that already exist.

In 1990, the INS initiated a pilot parole program when advocates argued that the INS was unnecessarily detaining asylum seekers.[57] The program allowed local INS district directors to grant parole to asylum seekers, taking into consideration such criteria as the basis for the asylum claim, whether fear of persecution was credible, threat to public safety, and contacts in the United States. Asylum seekers paroled under the program needed to be represented by legal counsel and were to report periodically to the INS and appear at all immigration hearings.

[57]For a history of INS parole programs and suggestions about how they can be improved, see Arthur Helton, "A Rational Release Policy for Refugees: Reinvigorating the APSO Program," 75 *Interpreter Releases* 685 (May 18, 1998).

The INS's pilot parole program, now called the Asylum Pre-Screening Officer program (APSO), became permanent in 1992, but its implementation during the last several years has been sporadic and has suffered from insufficient funding and a lack of consistent and serious utilization by the district directors. When changes in the 1996 immigration law created the expedited removal process, the INS stated that it intended to consider parole for asylum seekers who successfully passed the credible fear interview.[58] But information generated in January 1998 by the INS's Asylum Office, which implements the parole program, indicated that the number of parole interviews for asylum seekers was relatively low and varied significantly among the local INS districts, some of which routinely denied parole to asylum seekers who met eligibility criteria.[59]

The INS is also exploring supervised release programs for other immigrants in detention. In 1996, the INS contracted with the Vera Institute of Justice to undertake a three-year demonstration program of supervised release of immigrants (not only asylum seekers) in removal proceedings in the New York City and Newark, New Jersey INS districts. In February 1997, the Appearance Assistance Project (AAP) of the Vera Institute began to screen immigrants after they were apprehended by the INS and to undertake their supervision until they are allowed to remain in the United States or are deported. Individuals recommended for supervision must meet criteria relating to their community ties (verified address and a sponsor), their record of compliance in previous proceedings, and their threat to public safety.[60] To remain in the program, immigrants must keep the AAP informed of their whereabouts, appear in court, and comply with final immigration court decisions. The project helps remove barriers to compliance by assisting participants to obtain free or low-cost legal representation and other social or educational services when needed.

The Appearance Assistance Project is an important step toward making the INS's detention policy more rational and humane by calling into question the automatic detention of immigrants. The initial results indicate that the project is an effective alternative to detention; more than 80 percent of the AAP's participants are complying with all court appearances.[61] The experience of the AAP illustrates that with the right combination of oversight, information, and community and legal support, immigrants will choose to comply with INS requirements, making detention unnecessary.

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[58]INS Memorandum titled "Implementation of Expedited Removal," from Chris Sale, INS deputy commissioner, March 31, 1997.

[59]Helton, "A Rational Release Policy...." *Interpreter Releases*, May 18, 1998, p. 689.

[60]"Attaining Compliance with Immigration Laws Through Community Supervision," The Appearance Assistance Project, Vera Institute of Justice, 1998.

[61]Ibid. From February 3 to December 31, 1997, 220 court appearances were required and 188 appearances were made.

III. LEGAL STANDARDS

Immigration detention is civil in nature, and should not be used as punishment. Deprivation of liberty is a serious matter, yet international and domestic legal standards have not adequately addressed the particular situation of asylum seekers and other immigrants in administrative detention. The United Nations Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of all Persons under Any Form of Imprisonment elaborate non-binding but authoritative minimum standards for treatment of all individuals in detention. The minimum standards contained in these documents require, among other things: that administrative detainees be held separately from criminal detainees; that detainees are advised of all relevant rights, such as the right to receive information in languages they understand; that detainees are allowed adequate opportunities to communicate with and receive visits by legal counsel and family members; and that detainees are given a daily opportunity to see a medical doctor when ill. In the case of immigration detainees, the United States has largely ignored these basic international standards.

International Standards

All persons in the United States possess basic human rights protections, regardless of their immigration status. Individuals in INS detention, whether asylum seekers, undocumented workers, or people who have served criminal sentences, have the right to be free from arbitrary detention and to be protected from cruel, inhuman or degrading treatment.[62]

International norms regarding the treatment of pre-trial detainees offer the best guidance on conditions for individuals in immigration detention. Like immigration detainees, pre-trial detainees are held to ensure their presence at trial, rather than for the purposes of punishment. Pre-trial detainees are presumed to be innocent, unless and until they are actually convicted of a crime.

International standards for pre-trial prisoners are embodied in several international documents, and they reflect, first, a basic concern that all detained individuals be held in decent and humane conditions, and, second, a concern that pre-trial detainees should not be treated punitively, since they must be considered innocent until proven otherwise. They

[62] Article 7 of the International Covenant on Civil and Political Rights establishes that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." G.A. Res. 2200A (XXI), December 16, 1966. Article 16(1) of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires that detainees must not be subjected to any form of torture or cruel, inhuman or degrading treatment while in detention. G. A. Res. 39/46, December 10, 1984. *See also*, the American Convention on Human Rights, O.A.S.T.S. No. 36, Nov. 22, 1969 and the Universal Declaration of Human Rights, G.A. Res. 46, December 10, 1948.

should be held in the least restrictive setting possible and given the maximum freedom consistent with their remaining in detention.

The U.N. Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules) further clarify what constitutes "humane" conditions of detention. The Standard Minimum Rules are not legally binding on states but provide authoritative guidance in interpreting the principles laid out in documents such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Standard Minimum Rules apply to all persons in detention, for whatever reason. Among other things, the rules note:

- different categories of prisoners shall be kept in separate institutions (or parts of institutions), taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment;
- women should be held separately from men;
- handcuffs, chains, irons and straitjackets should never be used as punishment;
- prisoners should be allowed at least one hour of outdoor exercise daily;
- people detained for civil or administrative reasons should be kept separately from people imprisoned for a criminal offense.[63]

In 1988, the U.N. General Assembly adopted the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment (Body of Principles). The relevant principles are too numerous to describe fully here, but most importantly, they state that detained individuals have the following basic rights:

- the right "not to be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority," the right "at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of their detention," and the right to do so through proceedings that are "simple and expeditious and at no cost for detained persons without adequate means;"
- the right to have the assistance of legal counsel, to receive reasonable help in obtaining counsel, and to have adequate time and facilities to communicate with legal counsel;
- the right to be given an explanation of all relevant rights, and the right to receive such information in a language the detainee understands and to have the assistance, free of charge if necessary, of an interpreter;

[63] Adopted by U.N. Economic and Social Council resolution 663C (XXIV), July 31, 1957. Although it has not yet come into force, Article 17 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families establishes that migrant workers and members of their families shall, save in exceptional circumstances, be separated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons, including cases where the migrant worker or family member is in detention for violation of provisions relating to migration. For the purposes of the Convention, migrant workers are considered to include both those workers who have permission to enter the state of employment and those who do not. GA Res. 45/158, December 18, 1990.

- the right to promptly notify family members of the place of detention, receive visits from family members and have an "adequate opportunity to communicate with the outside world;"
- the right to be informed of disciplinary rules prevailing in a given detention center, and to appeal any disciplinary action, and the right to make a request or complaint regarding treatment or detention conditions;
- the right to "treatment appropriate to their unconvicted status," for those who are awaiting trial or detained for non-criminal reasons.[64]

It is a also fundamental principle of human rights that no one should be arbitrarily placed in detention. The Universal Declaration of Human Rights states that "no one shall be subjected to arbitrary arrest, detention or exile," and the International Covenant on Civil and Political Rights declares similarly that "no one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law."[65] Detention is considered "arbitrary" if it is not authorized by law or in accordance with law. It is also arbitrary when it is random, capricious, or not accompanied by fair procedures for legal review.

The International Covenant on Civil and Political Rights provides that "anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."[66] This means that even if a person has been detained in accordance with a valid law, he or she is nonetheless entitled to a prompt and expeditious appeal procedure.

[64]U.N. GA Res., 43/173, U.N. Doc. a/43/49 (1988).

[65]Universal Declaration, Article 9; ICCPR, Article 9(1).

[66]ICCPR, Article 9(4).

Arbitrary detention has also been defined as not only contrary to law but as including elements of inappropriateness, injustice and lack of predictability.[67] Some immigration detainees cannot be deported because they are stateless,[68] or because their own country or any third country will not accept them. Human Rights Watch believes that when immigration detainees are held indefinitely and do not know when, if ever, they will be released, their detention becomes arbitrary even if the initial detention was carried out in accordance with the law.

The Special Situation of Asylum Seekers

International human rights standards recognize that some immigrants are in especially vulnerable circumstances and therefore should not be detained at all. In particular, international standards state clearly that those seeking asylum should generally not be detained.

The 1951 United Nations Convention Relating to the Status of Refugees (Refugee Convention) and the 1967 Protocol Relating to the Status of Refugees defines a "refugee" as a person who has fled his or her home country because of "a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion."[69] The Refugee Convention goes on to state that even if refugees are in a given country unlawfully, "[c]ontracting states shall not apply to the movements of such refugees restrictions other than those which are necessary."[70] The United Nations High Commissioner for Refugees' Guidelines on the Detention of Asylum Seekers (UNHCR Guidelines) clarifies this provision with regard to those who are seeking asylum by reaffirming the basic human right to seek and enjoy asylum and by stating as an explicit guideline that "[a]s a general rule, asylum seekers should not be detained."[71]

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[67] *Van Alphen v. Netherlands* (U.N. Human Rights Committee, Communication No. 305) 1988.

[68] "Under international law a *de jure* stateless person is one "who is not considered as a national by any state under the operation of its law." (Article 1, 1954 Convention relating to the Status of Stateless Persons). The term is also used to refer to those who are *de facto* stateless, namely, those persons who are unable to establish their nationality, whose nationality is disputed by one or more countries, or who lack an "effective nationality" and are thus unable to enjoy the rights associated with citizenship. For a fuller discussion, see UNHCR, *State of the World's Refugees* (Oxford: 1997), Chapter 6, and C. Batchelor "Stateless Persons: Some Gaps in International Protection" 7 *International Journal of Refugee Law* (1995).

[69] 1951 U.N. Convention Relating to the Status of Refugees, Article 1. The United States is a signatory to the 1967 U.N. Protocol Relating to the Status of Refugees, which expands the Convention.

[70] Refugee Convention, Article 31(2).

[71] The United Nations High Commissioner for Refugees (UNHCR) is the U.N. agency with the mandate helping to implement the Refugee Convention, and the official publications of the UNHCR have been recognized internationally as authoritative guides to interpreting the provisions of the Refugee Convention. In 1995, the UNHCR issued Guidelines on the

This general rule — that those seeking asylum should not be detained — arises out of the fundamental obligations all governments have to asylum seekers under international law. The most basic obligation of governments is to avoid forcing asylum seekers to return to their home country, if return would expose them to continued persecution. In international law, this is known as the principle of *non-refoulement*, which, translated from French, literally means "non-driving back." In practice, the principle of non-refoulement means that governments are obligated to develop fair procedures to determine whether a given immigrant is in need of protection and deserves asylum. They must permit asylum seekers to remain in the country to which they have fled, at least until such time as it is safe to return to their home country. The Universal Declaration of Human Rights articulates this principle clearly, stating that "everyone has the right to seek and enjoy in other countries asylum from persecution."[72]

The Refugee Convention also states explicitly that governments "shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened...enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."[73]

This notion is expanded and clarified in the UNHCR Guidelines, which note that detention should not be used as a punitive or disciplinary measure, and that detention should not be used as a means of discouraging refugees from applying for asylum. Indeed, even if detention is not explicitly used to discourage asylum applicants but merely to discourage future immigration altogether, such a use of detention may violate the Refugee Convention. As international refugee law scholar Arthur Helton argues:

Detention of Asylum Seekers which emphasize the undesirability of detaining asylum seekers, except in limited circumstances. UNHCR is currently in the process of revising the guidelines by improving procedural safeguards and suggesting alternatives to detention, among other revisions.

[72]Universal Declaration, Article 14.

[73]Refugee Convention, Article 31(1).

> Detention for purposes of deterrence is a form of punishment, in that it deprives a person of their liberty for no other reasons than their having been forced into exile. It is a practice that is legally questionable under Articles 31 and 33 of the United Nations Convention and protocols Relating to the Status of Refugees, which prohibit the imposition of penalties and restrictions on movement as well as refoulement.[74]

Many refugees have faced torture, imprisonment, and death threats at home, and many have had family members murdered by abusive governments or rebel forces. The very notion of asylum rests on the idea that people should not suffer as a result of their membership in particular political, religious, racial, ethnic or national groups. After fleeing abusive governments at home, asylum seekers should not succeed in reaching what appears to be a safe haven, only to find that they are promptly detained in prison-like conditions — that often evoke the very conditions they fled — for extended periods.

Limited Circumstances in which Refugees May Be Detained

Although it is an accepted premise of international law that asylum seekers should not, in general, be detained, the Refugee Convention does permit states to detain asylum seekers in certain limited circumstances. Thus, "[i]n time of war or other grave and exceptional circumstances," states may take "provision[al] measures" to detain asylum seekers, "pending the determination that the person is in fact a refugee and that the continuance of such measures is necessary in the interests of national security."[75]

The UNHCR Guidelines on the Detention of Asylum Seekers further elaborate the instances in which asylum seekers may be detained:

> (I) to verify identity;
> (ii) to determine the elements on which the claim for refugee status or asylum is based;
> (iii) in cases where refugees or asylum seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or
> (iv) to protect national security or public order.[76]

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[74]Arthur Helton, *Detention of Refugees and Asylum Seekers, in Loescher, Refugee Issues in International Relations,* (Oxford: Oxford University Press, 1989).

[75]Refugee Convention, Article 9.

[76]UNHCR Guidelines, Guideline 3. Detention of asylum seekers has been an area of concern for many countries that receive refugees. In 1996, the European Council of Refugees and Exiles (ECRE), a consortium of refugee organizations within the European Union, issued detailed recommendations on the detention of asylum seekers. The

recommendations emphasize that asylum seekers should only be detained when state authorities demonstrate a compelling need based on the personal history of each asylum seeker, and call for conditions of detention that meet minimum international standards that protect their rights to such things as legal counsel and adequate health care. Position Paper on the Detention of Asylum Seekers, European Council on Refugees and Exiles, April 1996.

According to the Guidelines, any other reason for detaining asylum seekers, such as part of a policy to deter future asylum seekers, is contrary to principles of international law. The guidelines emphasize that "detention [should] only be imposed where it is necessary and reasonable to do so and without discrimination. It should be proportional to the ends to be achieved and for a minimal period."[77]

The Guidelines also highlight the procedural rights of asylum seekers: the right to be informed of the reasons for their detention in a language and in terms they are able to understand; and the right to be heard promptly before an independent and impartial authority to challenge the lawfulness of their detention.[78]

At the time this report was written, the UNHCR Guidelines were in the process of being revised and strengthened. The revisions are a positive step by UNHCR and many of the proposed changes serve to better protect the rights of asylum seekers. For example, the revisions state that procedural safeguards should include free legal assistance to asylum seekers where possible and that regular periodic reviews of the need for continued detention should be undertaken whenever a decision to detain an asylum seeker is made. The revisions also create an additional section to the guidelines that underscores the importance of creating and utilizing alternatives to detention. The proposed section suggests different models of conditional release, such as monitoring requirements, open centers, and release on bail.

Human Rights Watch is concerned, however, that even the revised exceptions for allowing detention may still be too vague and poorly defined, and can thus be interpreted by states as justifying detention of many individuals seeking asylum. All decisions to detain asylum seekers must be allowed only as exceptional measures and only *after* alternatives to detention have been explored. Decisions to detain asylum seekers are valid only when a case-by-case review by an impartial adjudicator shows detention to be strictly necessary to determine whether the individual is asserting the basic elements of a claim for asylum.

Human Rights Watch also believes that the revised guidelines should explicitly state that jails and prisons, by definition, are not suitable places to detain individuals who are neither convicted nor accused of a criminal offense. Furthermore, all aspects of detention should be incorporated into a country's domestic law and should conform to international human rights standards.

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[77]Ibid., Guideline 4.

[78]The Guidelines for detaining asylum seekers who are under 18 are particularly strict: they state that children may be detained only as a measure of last resort, and for the shortest appropriate period of time. *See* Human Rights Watch, *Slipping Through the Cracks: Unaccompanied Children Detained by the U.S. Immigration and Naturalization Service* (New York: Human Rights Watch, 1997).

Additional Rights of Asylum Seekers in Detention

All people in INS detention have the right to be detained non-arbitrarily and in conditions that are humane. If detained, asylum seekers have an additional degree of protection regarding conditions of detention under international law. If they are detained, the UNHCR Guidelines state that:

- detention conditions must not be punitive;
- detained asylum seekers should be able to regularly contact and receive visits from friends, relatives and attorneys;
- detainees should have access to medical treatment, and psychological counseling where appropriate, be able to engage in physical exercise and have access to educational activities;
- men and women, and children and adults, should be segregated from each other (but not from their relatives);
- certain vulnerable categories of refugees, such as pregnant women, nursing mothers, children, the aged, the sick, and handicapped should benefit from special measures which take into account their particular needs;[79]
- detainees should be allowed to exercise their religion and receive a diet in keeping with their religion.

The Executive Committee of UNHCR, which advises the High Commissioner for Refugees on acceptable practices regarding refugees, has also issued recommendations regarding the detention of refugees and asylum seekers. The recommendations explicitly state that detention must be humane and that whenever possible, asylum seekers should "not be accommodated with persons detained as common criminals, and shall not be located in areas where their physical safety is endangered."[80]

[79]Women asylum seekers face particular problems in detention. The UNHCR's July 1991 Guidelines on the Protection of Refugee Women note that violence against women and girls does not necessarily abate when refugees reach an asylum country. In various official pronouncements, UNHCR has also made it clear that it is important to ensure that refugee women have ready access to female protection staff and female interpreters, as well as to reproductive health facilities including female medical staff and gynecologists.

We note also that unaccompanied minors are protected by a wide range of international standards. See *Slipping Through the Cracks: Unaccompanied Children Detained by the U.S. Immigration and Naturalization Service* (New York: Human Rights Watch, 1997).

[80]Conclusion No. 44, Detention of Asylum Seekers, United Nations High Commissioner for Refugees, Executive Committee, 37th Session, 1986.