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Contemporary Immigration Detention Practices in the United States: A Study in Sociology and Human Rights

Robert D. Goodis
Bard College, robert@thegoodiscenter.org

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by

Robert D. Goodis

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I plan to keep working on this senior project past graduation, assembling more research and completing a more thorough and thoughtful analysis and conclusion. Updates will be posted to my website at http://www.robertgoodis.org as I make progress on refining, expanding, and revising this project.

-Robert Goodis

This senior project is dedicated to
Marilyn Goodis and Evie & Joe Buscaino.

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This exploration of the social and legal implications of contemporary immigration detention practices in the United States is a study in sociology and human rights. The discussion contained herein is based upon an extensive review of literature drawn from sources including the United States government, state and local governments, international bodies, Non-Governmental Organizations (NGOs), and media, as well as books, reports, and articles written by experts in relevant fields. Through an analysis of the laws and policies currently in place, a look at the agencies and facilities charged with the enforcement of immigration laws, and an exploration of the real "human" effects of these laws, this study will evaluate evidence to determine whether contemporary detention practices are in accordance with human rights standards set by laws, jurisprudence, policies, and principles (LJPPs). Furthermore, this study will apply observations from case-studies to deduce sociological theories which may work to explain any systematic trends—positive or negative—in contemporary detention practices. The combination and synthesis of human rights and sociological analyses will allow this study to go further in the direction of determining the actual *roots* of phenomena triggering human rights debates in the immigration detention system, rather than simply determining whether violations occur and possibly suggesting reactive measures to address any violations. By exploring the systematic and structural causes behind the phenomena observed in case-studies of two significant, contemporary detention centers, the goal of this study is to explore potential options for implementing proactive reforms to prevent future violations.

Focusing on Asylum-Seekers, Asylees, and Refugees

This study is based on laws, jurisprudence, policies, principles, and evidentiary case-studies that affect a broad spectrum of immigrants, including asylum-seekers, asylees, and refugees, among others. While the case-studies of the Northwest Detention Center and of the T.

Don Hutto facility include information collected from detainees other than asylum-seekers, the reports and data used to compile this study include testimony from a number of asylum-seekers held at these detention centers. Furthermore, studies suggest that asylum-seekers, asylees, and refugees—many of whom have fled persecution and violence including torture and imprisonment—are more susceptible to negative effects of detention such as depression, anxiety, intensified PTSD, and a variety of other medical and mental health issues (Physicians for Human Rights and The Bellevue/NYU Program for Survivors of Torture, 2003). Also, the risks for these negative effects are known to increase in tandem with the duration of detention (*ibid.*), which further illustrates the point that asylum-seekers, asylees, and refugees—whose stays in detention are often significantly longer than those of other immigrants due to an over-saturated asylum processing system and the often protracted legal battles fought to receive asylum[1]—are more affected by the detention system than are other immigrants. The combination of these factors, and the fact that asylum-seekers, asylees, and refugees earn special protections in international law, merit the theoretical focus on these categories of immigrants. Still, any violation which constitutes a violation of human rights is of concern, regardless of whether those affected are asylum-seekers. In effect, the negative implications and repercussions of the current detention system are more apparent in relation to asylum-seekers, asylees, and refugees than in relation to other immigrants, but the violation of any detainee's rights is a problem which must be addressed.

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[1] In 2005, immigrants awaiting deportation spent an average of 31 days in detention while asylum seekers awaiting a "credible fear determination" spent an average of 64 days in detention. Nearly a third of detained asylum seekers were detained for more than 90 days. (Global Detention Project of the Programme for the Study of Global Migration, 2009)

CHAPTER ONE

Before conducting an examination of the trends in and effects of refugee and asylum-seeker detention in the United States, it is first necessary to examine the laws and policies governing refugees, asylum-seekers, and their detention. Because of the nature of refugees and asylum-seekers, any legal context must include a discussion both domestic and international laws. This chapter will examine the legal and extralegal definitions of *refugee* and *asylum-seeker* and then will provide a brief illustration of the relevant laws governing the detention of these special classes of immigrants. While a more complete study would also explain the historical-social context of each law – to give some sociological explanation behind the changes made to the laws through history – for the purposes of this project, this section will aim only to identify key concepts in the laws and to show their relations to each other. While some of the problematic shortcomings and conflicts of these laws and policies will necessarily enter the discussion, a proper exploration of these conflicts is reserved for Chapter Four of this study.

A Short Introduction to Refugee Policy and the Definitions of *Refugee & Asylum-Seeker*

While refugees and asylum-seekers[2] in the United States are subject to the same laws as all other immigrants, they are also granted *extra* protections under international and U.S. law and

[2] For the purposes of this study, 'refugees and asylum-seekers' shall include refugees, asylum-seekers, and asylees. Immigrants granted Temporary Protected Status (TPS); however, as of 1 April 1997 TPS recipients are exempt from DHS detention under *Immigration and Nationality Act (INA) §244*, 8 U.S.C. 1254a, and in the regulations at 8 CFR Part 244. Additionally, victims of torture may be eligible for relief from removal under U.S. policy implemented in response to the U.N. Convention against Torture (including the 1998 Presidential Decision Directive PDD

jurisprudence. Refugees and asylum-seekers qualify for special assistance in the form of a variety of welfare and social service programs from the Department of Health and Human Services' Office of Refugee Resettlement under 8 U.S.C. 1521, as well as special assistance in the immigration process. Also, unlike other immigrants in the U.S., refugees and asylum-seekers are governed by the concurrent jurisdictions of both the United States government and the United Nations' Office of the High Commissioner for Refugees (UNHCR). This means that U.S. responsibilities and accountability are greater when dealing with refugees and asylum-seekers than when dealing with other immigrants, due in-part to the United States government's own commitment to refugee protection and in-part to the international standards and monitoring systems established to protect refugees and asylum-seekers worldwide.

The definition of refugees and asylum-seekers is what sets them apart from all the millions of other immigrants moving around the world, and it is based on the individual's definability as a refugee or asylum-seeker that they may be granted these certain extra rights, provisions, and protections under the law. This definitional question can be answered sociologically, anthropologically, politically, or legally, and it may be determined on a regional, national, or international level. In the United States, a mixture of all these definitions drives the many forces behind and against the detention of refugees and asylum-seekers. As such, all definitions must be considered of equal import when considering the system of detention employed in the United States.

65, Section 2340a of the U.S. Criminal Code, and a variety of other federal regulations); however, this procedure does not *necessarily* utilize asylum policy, so not all victims of torture are included in data on refugees, asylees, and asylum-seekers.

A refugee, according to expert Astri Suhrke, can be defined sociologically "as reflecting an empirical reality" in the study of refugees and human migration (1984, p. 158). In many sociological studies of refugees, the definitional question used to distinguish refugees from regular immigrants was simply whether the migration was *voluntary* or *involuntary* – the latter term sometimes interchangeable with *forced*. Given that natural disasters or economic calamities may result in mass human migration, and that the migrants themselves may declare their predicament as involuntary, this sociological definition required further refinement to distinguish refugees from other immigrants. While some experts advocate usage of the term "environmental refugee" (Asad, 2010) (Kakissis, 2010), this qualifier still implies an inherent distinction between environmental and political pressures in migration, and the case for any sort of economic refugee is even weaker than that for environmental refugee. As such, sociological studies of refugees limit their scope to involuntary migration that is politically influenced. This approach ultimately yields a model close to that of the U.N.'s concept of refugees, such that "a refugee is seen as a person who moves involuntarily, under great duress, and typically for political reasons" (Suhrke, 1984, p. 162). Some sociologists have observed that voluntary migration and involuntary migration present some level of ambiguity, so they have refined the definition by examining *proactive* and *reactive* migration (Richmond, 1993). Unfortunately, increasing human migration and increasing complexity in the causes behind migration have proven that even newer classifications such as proactive migration and reactive migration still suffer from definitional and circumstantial ambiguity.

Though anthropologists have similarly struggled to define refugees, some have taken an approach of avoiding legal and political definitions in order to posit definitions that do not rely upon the same restrictions or ambiguities. One example of this tactic is using violence as a

definitional component: “In anthropological terms, refugees are people who have undergone a violent ‘rite’ of separation and unless or until they are ‘incorporated’ as citizens into their host state (or returned to their state of origin) find themselves in ‘transition’, or in a state of ‘liminality’” (Harrell-Bond & Voutira, 1992, p. 7). While ambiguities remain with the inciting incident, this anthropological definition addresses characteristics of refugees following the initial migration, thus suggesting a slightly different research-focus in the field of anthropology than what appears most often in sociological studies. While both of these academic iterations are important and aid in establishing the purview of the current study on refugee and asylum-seeker detention, the political and legal definitions are those which are actively utilized in the enforcement of detention laws and policies, and therefore the political and legal definitions are those which merit a more judicious exploration.

Between legal and political approaches, the political definition of refugee is the more nebulous. This is because the political definition is the definition used in political rhetoric “as interpreted to meet political exigencies” (Suhrke, 1984, p. 158), which most often relate to social and political pressures surrounding immigration and welfare policies. The political definition in any country is tied to the demand generated by refugees and asylees on social assistance programs (SAPs) and, as such, is subject to “pressures to adjust the definition of beneficiaries, particularly in view of the resource restraints evident in many industrialized countries” as a means to reduce any pressure – whether real, potential, or perceived – on SAPs (Suhrke, 1984, p. 157). While political definitions are most often established in the rhetoric of politicians and legislators—as compared to leaders of public opinion who may take no direct part in legislating—they do not *necessarily* equate to the legal definitions. Certainly some political definitions find their way into the law-books, but many do not. Whilst the majority of political

definitions are extralegal and not codified, they still have an immense capacity as popular rhetoric to affect policies over time. The political definition is not codified or canonized as any sort of *official* definition, but it may appear in political rhetoric and debate that persists in the consciousness of the populace or the pages of history. Popularly politicized uses of the term *refugee* often come with controversy, such as the widespread use of the term to describe survivors of Hurricane Katrina in 2005 (Associated Press, 2005), though they have little impact on the official use of the term or its meaning in the realm of public and social policy. To more accurately depict the phenomena of political definitions applied to the term *refugee*, consider any debate wherein a person or group of people attempted to gain refugee status and consequently became the center of debate, or any instance where a politician or community leader declared that so-and-so was or was not a refugee because of one reason or another.

Of these political definitions, the latter type is most related to the legalistic definition, and is often perceived to affect the laws surrounding refugees. Some of the most politically volatile incidents in recent discussion of refugee and asylum laws and definitions come from failed asylum applications. Many countries, including Australia, Denmark, the Netherlands, and the United States have recently received bad press as a result of the murder of deported asylum-seekers (*see* "Rejected Afghan asylum seeker beheaded after deportation from Australia," "Somali asylum seekers killed after deportation," *and* "Guatemalans in U.S. Face Deportation Threat") (Reuters, 2008) (Expatica News, 2004) (Del Barco, 2007). Under the stress caused by these controversies, political rhetoric surrounding the definitions of refugee and asylum-seeker has occasionally come under attack for being overly-restrictive. In other instances, public controversy surrounding government spending on SAPs for refugees and asylees has sparked political rhetoric in favor of a more restrictive definition (Dhillon, 2010).

On a similarly political note, political progress in the form of gender equality and sexuality equality has increasingly come to the forefront of political rhetoric, and has similarly given rise to a variety of legal reforms. While most legalistic definitions have some ambiguities such that sexuality and gender are not explicitly protected in most laws, and thus do not receive the same consideration as factors which are explicitly listed in legalistic definitions of refugees, the rhetoric of political progress is occasionally able to overcome legalistic ambiguities. These inseparable political and legal evolutions occasionally present as a chicken-or-the-egg scenario; however, this only goes to show the importance of recognizing both approaches to refugee studies as equally important. As an example of this importance, consider recent political debate surrounding the issues of gender and sexuality, which has flared up in various countries around the world as it becomes an increasingly common ground for seeking asylum. In the United Kingdom, sexuality as a ground for asylum took center-stage in mid-2010 when the issue came before the courts: two homosexual petitioners for asylum from Cameroon and Iran were denied their asylum claims in the UK on the grounds that sexuality was not protected and could be kept secret, as compared to traditionally protected matters such as race. Following this initial determination and the consequent politicized debates, the petitioners were ultimately granted asylum in appeals at the UK Supreme Court (HJ (Iran) (FC) (Appellant) v Secretary of State for the Home Department (Respondent) and one other action, 2010) (Meikle, 2010). Upon the UK Court's decision, "[t]he government accepted the ruling and said that policy on gay and lesbian asylum seekers would be changed with immediate effect" (Meikle, 2010). While it will take time to see the real results of this legal change, considerations for refugees around the world may soon begin to exhibit a ripple-effect of the UK Court's decision due to the resulting political pressure on other governments and to the *distant* potential of this decision to result in sexuality

receiving protection under customary international law (CIL). Around the same time this decision was under review in the UK judicial system, U.S. Secretary of State Hillary Rodham Clinton was receiving some publicity for her leadership in promoting the protection of persecuted lesbian, gay, bi-sexual, trans-sexual, queer, and inter-sex individuals, and U.S.-based NGOs (Non-Governmental Organizations) increased pressure on Secretary Clinton and other U.S. officials to incorporate sexual orientation and gender identity into the list of qualifying categories of persecutory targets protected under refugee legislation (American Jewish World Service, 2010).

Having established the core components of the political definition and how the political definition interrelates to the legalistic definition, it now seems appropriate to consider the legalistic definition itself. The legalistic definition "as stipulated in national or international law" (Suhrke, 1984, p. 158) may reflect the political exigencies of a jurisdiction and serve the political purpose of limiting access to SAPs; however, the international legalistic definition serves "to facilitate, and to justify, aid and protection" (Goodwin-Gill & McAdam, 2007, p. 2). Essentially, it plays both a conservative and a liberal role.

While the roots of contemporary refugee law—and thus the roots of a legalistic definition of the term *refugee*—stretch back to ancient practices, current domestic and international laws applicable in the United States were not codified until the mid-20th Century. Beginning with international law, in 1946 the United Nations created the International Refugee Organization (IRO) in response to refugee flows caused by WWII. The *Constitution of the International Refugee Organization* was adopted by the UN General Assembly on 15 December 1946 and contained, in Annex I, a protracted legal definition of a *refugee*, including a special provision for children and exclusionary rules against war criminals, traitors, and other undesirable persons

(United Nations General Assembly, 1946). In 1948, soon after the formation of the IRO, the United Nations issued the *Universal Declaration of Human Rights* (UDHR), which stated in Article 14 that:

> (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
> (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

While the *Declaration* is not binding international law, it does set a strong precedent to which the United States ought to adhere even if for nothing other than its own political considerations, such as maintaining a positive image on the international sphere and maintaining positive relations—including political and economic—with other nations. Additionally, most of the components of the UDHR have been incorporated into binding international conventions and have become accepted as principles of Customary International Law (CIL), further suggesting why the United States *ought* to adhere to the UDHR—because it is the legally responsible thing to do. This precedent was further expanded with the United Nations' 1951 *Convention Relating to the Status of Refugees* and its 1967 *Protocol Relation to the Status of Refugees*. The *Convention* and *Protocol*, binding international law for any States Parties, establish a set of general conditions which a person must meet in order to qualify as a refugee. The definition formed in the *Convention* and *Protocol* is currently the authoritative international legal definition. Article 1 §A(2) of the *Convention*, as amended by the *Protocol*, states that a refugee is one who:

> ….
>
> ~~As a result of events occurring before 1 January 1951 and~~ owing to wellfounded [*sic*] fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear,

> is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence ~~as a result of such events~~, is unable or, owing to such fear, is unwilling to return to it.
> In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national….

In addition to the definition of refugee from which comes the above excerpt, the Protocol sustained Articles 2 through 34 inclusive of the Convention, which contain a variety of provisions for juridical status, employment, welfare, administration, enforcement, expulsion, and other matters. The President of the General Assembly of the United Nations and by the Secretary-General of the United Nations signed the Protocol on 31 January 1967, thereby enabling States to accede to the Protocol. Though the United States never ratified or acceded to the Convention, it did accede to the Protocol on 1 November 1968, marking the beginning of a new era in U.S. refugee politics.

Though the United States adopted the U.N. definition of refugee in 1968 and attempted to initiate policy reforms to better comply with the *Protocol*, it was not until 1980 that the U.S. federal government undertook to codify and define the term itself and to establish a system of laws and agencies dealing with refugees. The United States has historically adopted varying definitions of *refugee*, early-on applying the definition only to specific groups and, on occasion, excluding certain other groups. The definition was not codified until the United States Refugee Act of 1980 (8 U.S.C. § 1101) – henceforth the Refugee Act – and even since its codification in 1980, the definition has been persistently subjected to debate and revision.

The Refugee Act was the first U.S. law that actually attempted to define *refugee*, and it mirrored the language of the United Nations' definition very closely. After subsequent amendments and addendums, the most current version of the United States Immigration and Nationality Act (INA)—of which the Refugee Act and Illegal Immigration Reform and Immigrant Responsibility Act are both components—defines refugee in Section 101(a)(42) as:

> (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or
>
> (B) in such circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this Act, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

Based on this definition and those of political rhetoric, sociology, and anthropology, a fuller picture of the concept of *refugee* has emerged: individuals unable or unwilling to avail themselves to the protections of their countries of nationality or last residence due to persecution or a well-founded, credible, and reasonable fear of persecution on account of race, religion, nationality, political opinion, membership in a particular social group, or on account of a coercive population control program, so long as they are not current or former aggressors or

terrorists. Asylum-seekers hold the same essential definition as refugees as people fleeing persecution; however, their legal status is slightly different from that of refugees. In fact, some studies, such as the one conducted recently by Philip G. Schrag and Jaya Ramji-Nogales and documented in their book *Refugee Roulette* (Schrag & Ramji-Nogales, 2009), show that asylum-seekers are often held to a higher standard of fear and persecution than refugees, due in-part to their different status and circumstances of review.

Asylum-seekers are granted rights and protections by the same international laws and guiding principles as refugees, with special provisions for asylum-seekers in the UDHR, the *Convention* and *Protocol*, and a variety of other legal codifications. The essential difference between refugees and asylum-seekers is that, while refugees are displaced abroad and gain their refugee-status overseas *prior to* entering the United States, asylum-seekers show up at or in the United States without having established their refugee status. Such special protections and rights as those granted to refugees do not yet apply to asylum-seekers, and, though international law provides for certain rights reserved for asylum-seekers—such as the right to travel and seek asylum without proper documentation (passports and visas)—these special rights are most often overlooked or outright denied until an asylum claim is initially substantiated (Mateen & Tittemore, 1995). In order to initially substantiate their claims, asylum-seekers must demonstrate their well-founded fear of persecution on account of race, religion, nationality, political opinion, or membership in a particular social group (INA §208; 8 U.S.C. §1158) in an interview with an immigration officer after or upon arrival in the country. The United States holds a policy wherein asylum-seekers must present themselves to the proper authorities to seek asylum within a *reasonable* period of time—one year, barring exceptional circumstances—following their entrance into the country. In effect, this establishes the circumstantial definition

of an asylum-seeker as anyone who presents themselves to the United States Citizenship and Immigration Services (USCIS) authorities within one year of arriving in the United States and requests asylum on the grounds of persecution or a reasonable fear of persecution.

While the definitions are essentially the same, the circumstantial corollaries to these definitions—such as rights granted to members of these groups, procedures each refugee and asylum-seeker must follow, etc.—are different, as the final section of this chapter will illustrate. Before jumping to the specific laws surrounding asylum-seeker and refugee detention, a little context is necessary to illustrate the propensity of immigration and refugee law to act as an evolving, *living* or *social*, field of law and to further develop the aforementioned notion of the back-and-forth effects of the laws, definitions, and social contexts on one another.

A Brief Historical Survey of the Role of Refugees and Asylum-Seekers in U.S. Legislation

In the 29 years that elapsed between the U.N. codification in the *Convention* and the U.S. codification in the Refugee Act – and even before the U.N. had established its definition – the United States government did not completely *ignore* the existence of refugees. Though the term was not explicitly used, there are a number of historical examples of U.S. sentiments towards those most vulnerable of communities including notable quotes from figures such as Emma Lazarus and George Washington. These historical expressions, ideological and political at best, suggest the American commitment to the world's needy; however, it is almost conspicuous that, while the first known use of the term *refugee* in the English language dates back to 1685 (Merriam-Webster, Inc., an Encyclopædia Britannica Company, 2010), the term was not evoked in any such ideological or political rhetoric through most of American history and was not explicitly used in legislation until after WWII.

In 1939, a bill was proposed in Congress to allow the immigration of 20,000 German children seeking refuge from the early onslaught of the Holocaust and WWII. The bill did not pass, but its proposal does show early recognitions of refugee crises by U.S. policymakers. The 1949 Displaced Persons Act reflected the first convergence of U.S. law to the topic of refugees and displacement. The first significant evocation of the term *refugee* in U.S. legislation, however, was not until the 1953 Refugee Relief Act (Pub.L. 83-203), which was followed in 1957 by the Refugee-Escapee Act (and even at that point, the United States had not yet attempted to impose a legal definition on the term). These predecessors to the 1980 Refugee Act, and even to the 1968 accession to the *Protocol*, illustrate part of the troubled history of U.S.-refugee relations.

Historically, the United States imposed exclusionary and quota-controlled immigration rules, such as those implemented by the 1882 immigration law which prohibited the entrance of Chinese nationals into U.S. territory. Rules such as these determined the course of early refugee legislation in the U.S., such as the 1939 bill to allow the immigration of 20,000 German children – which was denied because it would have violated the established quota for the number of Germans permitted to immigrate to the United States. When U.S. refugee laws began to split-off from immigration laws, they were established with a slightly different approach. Rather than prohibiting select groups from receiving refugee status, early U.S. policy first did not explicitly address refugees as separate from other immigrants, so a refugee simply had to meet the requirements of immigration. Refugee legislation then went through periods such as the Cold War, where refugee policy aimed only to recognize select groups as refugees, namely those from communist nations. According to the *Encyclopedia of American Foreign Policy*, the individual states controlled immigration policy essentially until 1875, and they admitted refugees without

using the actual term *refugee*, and from "1875 until the 1940s the federal government continued this policy [of not defining or specially dealing with refugees]. [Then, d]uring the early years of the Cold War, refugees were generally defined as persons fleeing communism" (Reimers, 2002).

While policies such as these clearly violated international standards for nondiscrimination, refugee law has always held a volatile role in the U.S. political playing-field as a component of immigration law which is routinely subjected to politicization and debate. That is to say, refugee policy is commonly seen as a matter of economic concern and of political ideology – not as a matter of human rights. The 1968 U.S. accession to the U.N. *Protocol* was the first major recognition of refugee matters by the U.S. government; however, while the accession made the *Protocol* binding law for the U.S., it was not enforceable by any agency within the United States until Congress passed federal legislation designed to implement the articles of the *Protocol*. Members of Congress pressed unsuccessfully for compliance with the provisions of the *Protocol* immediately following accession, but it wasn't until after the Carter Administration in the 1970s stressed the need for a comprehensive refugee policy to "replace 'the existing hodgepodge of antiquated legislative provisions for different groups of refugees'" (Amnesty International USA, 1990, p. 8). The Immigration and Naturalization Service (INS) issued, as part of 8 C.F.R. §108, its first asylum regulations in 1974. After several years of hearings and bureaucratic stalls, the 1980 Refugee Act repealed and replaced 8 C.F.R. §108 and ultimately entered part of the *Protocol* into force, though even the 1980 Refugee Act did not provide as many protections as did its foundational international prompter and counterpart.

Ultimately, this historical context demonstrates how, as a long-undefined and debated concept, the refugee in U.S. law is susceptible to economic and political pressures of the time. Furthermore, this vulnerability will later in this paper help to explain how the application of U.S.

and international refugee law has even been shown to vary across the nation. This susceptibility to economic and political pressures helps to illustrate the difference and the tension between the political definition of refugee and the legalistic definition of refugee. From this abbreviated illustration of the relation between the definitions of key terms and the early history and evolution of the laws themselves, it is now appropriate to consider the contemporary laws affecting refugee and asylum-seeker detention.

A Survey and Summary of Select Laws, Doctrines, and Jurisprudence Affecting Refugee and Asylum-Seeker Detention in the United States

As was the case with the definitions of refugee and asylum-seeker, the laws affecting their detention in the United States are also divisible into domestic and international laws and jurisprudence. Furthermore, laws regarding detention are also affected by non-codified regulations and policies and, potentially, by non-binding declarations and RUDs (reservations, understandings, and declarations imposed domestically by the United States government on international laws). While a picture of the historical laws and lack-thereof regarding refugees was discussed in the previous section, the details established therein only offer some historical context to the current laws and the difficulties these laws have faced. The following are abbreviated explanations of provisions of laws, in roughly chronological order, that deal more explicitly with refugee and asylum-seeker detention and which are currently in-force within or binding upon the United States of America.

The Constitution of the United States of America (USA, 1787)

The *Bill of Rights* (1791) in the U.S. Constitution established in the Fifth Amendment that no person could be deprived of liberty without due process of law in criminal proceedings, while the Sixth and Seventh Amendments established the right to trial by jury in criminal and civil cases, respectively. Additionally, the Eighth Amendment prohibits excessive bail,

excessive fines, and cruel and unusual punishment. The Fourteenth Amendment (1868) states in §1 that "….No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." These Amendments, particularly the latter, have all arisen in controversies surrounding the rights of refugees and asylum-seekers in the United States. The exact language of these Amendments is crucial, as most Constitutional arguments regarding refugees and asylum-seekers boil down to semantics.

Customary International Law

Customary international law (CIL) results from a general and consistent practice of States maintained under a sense of legal obligation, according to the Restatement (Third) of the Foreign Relations Law (FRL) of the United States §102(2). CIL is binding international law on all States, save any State which has consistently, persistently, and publicly objected to a principle before said principle was adopted as CIL (FRL §102 cmt b *et seq.*). According to a report prepared by the Seattle University School of Law:

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

(2008, p. 22) [*citations removed*]. Given this legal perspective, it is apparent that some international legal concepts have influenced U.S. law and jurisprudence as long as has the Constitution. As was mentioned in the first section of this chapter, the movement to recognize sexual orientation and gender identity as grounds protected against persecution and eligible for relief under refugee and asylum law has taken root in the U.K. and is rapidly showing potential

to become a part of CIL. Similarly, while human rights declarations and similar doctrines and principles are not typically considered binding international law, some such establishments fit into the broad range of customary international laws.

American Declaration of the Rights and Duties of Man (1948)

The United States, which was an original member of the predecessor to the Organization of American States (OAS) as far back as 1889, and an original member of the OAS in 1948, signed the American Declaration of the Rights and Duties of Man, but never ratified or acceded to it. Now ratified by a significant number of countries, the Declaration is often considered CIL, and the United States has been held accountable to the Declaration's standards in international human rights reviews. (*See Wayne Smith v. United States below*)

Universal Declaration of Human Rights (United Nations, 1948)

As previously mentioned, the UDHR establishes in Article 14 the right to seek asylum. Though the United States is a signatory to the UDHR, the declaration is not binding as international law. Additionally, the UDHR does not suggest that a state must grant asylum or refugee applications; rather, it only states that individuals have the right to seek asylum. Other relevant points include: Article 5, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment," Article 7, "All are equal before the law and are entitled without any discrimination to equal protection of the law…." and Article 9, "No one shall be subjected to arbitrary arrest, detention or exile." Despite the weak legal relation between the U.S. and the UDHR, some fundamental human rights are recognized customary international law, and there is an increasing consensus among international lawyers that the UDHR itself has become CIL (Bailey, 2010) (Office of the High Commissioner for Human Rights, 2010).

(*See http://www.un.org/en/documents/udhr/index.shtml for the full text of the UDHR.)*

United States Immigration and Nationality Act – INA – (1952)

The INA is a self-contained body of law dealing with immigration. The INA is also contained within the United States Code (U.S.C.) as Title 8, *Aliens and Nationality*, and the U.S. Statutes at Large. The 1952 Act (Pub.L. 82-66) collected and codified previously existing immigration laws, superseding the Immigration Act of 1917 and the National Origins Act of 1924, and now serves as the basic collection of all immigration laws for the United States. It has been amended many times since 1952, and is still applied in conjunction with the Immigration and Nationality Act of 1965 (Pub.L. 89-236). The earlier versions of the INA established a preferential system for approving immigrants, discriminating based on ideological and political preferences, moral character, race, and national origin, and utilizing a system of annual immigration quotas set by national origin. Title II Chapter 2 §212(b)(2) of the 1952 INA provided for relief from exclusion for aliens seeking admission to avoid religious persecution and Title II Chapter 2 §243(h) stated "The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to physical persecution and for such period of time as he deems to be necessary for such reason." Later addendums and amendments to the INA, including the 1980 Refugee Act, shall be addressed separately from the INA itself to illustrate the chronological spread of the legislation. One of the changes reflected in the 1965 Act was the notion of aliens who had "fled" their former countries, though it was restricted to those fleeing Communist or Middle-Eastern countries. Under the 1952/1965 INA, refugees had to apply for immigration in the same way as all other immigration candidates and were subject to the same quotas and discriminatory barriers that were applied to all immigration candidates. Additionally, refugee applicants only qualified to enter the United States conditionally, under a 2-year probationary period, after which they may still have been denied legal permanent residence (LPR). The 1952 INA abolished detention

except in cases in which an individual was considered a flight risk or a serious risk to society (8 U.S.C. 1101, *et seq.*).

Convention & Protocol Relating to the Status of Refugees (1951/1967)

By acceding to the *Protocol* in 1968 (19 U.S.T. 6223), Congress voluntarily subjected the United States to binding international law designed to protect refugees. In addition to a variety of rights such as the rights to non-refoulement, gainful employment, housing, non-discrimination, identity papers, religion, public education, public relief, and others, these international laws establish:

> *Article 16: Access to courts*
> 1. A refugee shall have free access to the courts of law on the territory of all Contracting States.
> 2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from *cautio judicatum solvi*.
> 3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.
>
> *Article 31: Refugees unlawfully in the country of refugee*
> 1. The Contracting States 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 in the sense of article 1, 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.
> 2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

(*See http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf for the full text of the Convention and Protocol.*)

American Convention on Human Rights (Organization of American States, 1969/1978)

This major international document, now generally considered part of Customary International Law, was signed by the United States in 1978, but was never ratified or implemented.

United States Refugee Act of 1980 (Pub.L. 96-212)

The Refugee Act of 1980 was the official federal codification of the *Protocol*. The Act was integrated into the INA, essentially serving as a series of addendums, amendments, and repeals. The Act established, in accordance with the *Protocol*, means by which refugees and asylees could receive legal permanent resident (LPR) status and specified a quota system for refugee admissions, to be determined on annual review by the President in consultation with Congress. The Attorney General was authorized to give LPR status to asylees in accordance with a special quota and various restrictions. Adjustment to LPR status is a civil immigration procedure governed by Title 8 of the U.S. Code and, while international law calls for extra assistance to refugee and asylee residents than normal immigrants receive, the United States has only offered minimal support for refugees and asylees requesting LPR (see chapter 4 of this study for more information). In effect, because all immigrants who fail to adjust to LPR within a designated time-frame are subject to immigration detention, refugees and asylees also face detention under immigration law for failing to file for LPR.

The Refugee Act also authorized in Title IV Chapter 2 the establishment of special refugee resettlement and assistance programs, now mostly maintained by the Department of Health and Human Services. The Act made the official distinction between, and laid out the procedures for, refugees, whose refugee claims and admissions processes are completed with U.S. officials abroad, and asylum-seekers, whose asylum claims and admissions processes are completed when the applicant is already present in the United States (including U.S. territory or

waters and, in some cases, international waters). The Act did not spell-out processing procedures for applicants, but guided the relevant agencies to establish administrative regulations for such purposes.

Plyler v. Doe (457 U.S. 202), 1982

In this Supreme Court case regarding the education of undocumented immigrant children in Texas public schools, the Supreme Court evaluated the equal protection clause, the due process clause, and the subject of *jurisdiction* contained in the Fourteenth Amendment of the United States Constitution. The Court held that "no plausible distinction with respect to Fourteenth Amendment 'jurisdiction' can be drawn between resident aliens whose entry into the United States was lawful, [*sic*] and resident aliens whose entry was unlawful." The Court also held that immigrants in violation of immigration law were still *people* "in any ordinary sense of the term," and thus were subject to the equal protection clause and the due process clause. While this case addresses resident aliens, regardless of the lawfulness of their entry, it does not explicitly address entering aliens, as would be the case of most asylum-seekers. Nonetheless, this ruling suggests a strong case for the application of the due process and equal protection clauses to asylum-seekers who are oftentimes classified as undocumented alien immigrants.

INS v. Cardoza-Fonseca (480 U.S. 421), 1987

This Supreme Court decision held that an applicant may demonstrate a well-founded fear of persecution if his or her asylum claim is supported by objective evidence and indicates circumstances in which a reasonable person would fear persecution. This is where the concept of *well-founded fear* was met with the concepts of *credible fear* and *reasonable fear*. In its decision, the Court ruled that the INS had applied excessively restrictive standards of reviewing asylum cases and declared: "Our analysis of the plain language of the [1980 Refugee] Act, its symmetry with the United Nations Protocol, and its legislative history, lead inexorably to the

conclusion that to show a 'well-founded fear of persecution,' an alien need not prove that it is more likely than not that he or she will be persecuted in his or her home country," which was the standard used by the INS prior to this decision and its use of *reasonable fear*.

Immigration Act of 1990 (Pub.L. 101-649)

The Immigration Act of 1990 dealt, in large part, with a major backlog of asylee applications for LPR caused by the low annual-limit set by the 1980 Refugee Act by raising the annual limit of adjustments and implementing procedural exemptions to qualified asylees who had qualified or applied for LPR by set dates in 1990. The backlog triggering the 1990 Act was the result of unforeseen flows of refugees and asylum-seekers from Eastern Europe, Haiti, Cuba, and Central America in the late 1980s, which had also triggered a shift in immigration and asylum policy towards the increasing use of detention (Wasem, Congressional Research Service Report for Congress: U.S. Immigration Policy on Asylum Seekers, 5 May 2005) (Wasem, 27 January 2006) (Wasem, 25 January 2007) (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica (formerly Hate Free Zone), 2008, p. 14).

International Covenant on Civil and Political Rights - ICCPR (United Nations, 1992)

The United States acceded in to the ICCPR in 1992, making it binding international law for the United States. The Covenant prohibits arbitrary detention, discrimination, and a punitive model of prison and detention. The Covenant requires that prison and detention be based upon reform and rehabilitation models. ICCPR further prohibits torture, cruel, inhuman, and degrading punishment, and recognizes the right to *habeas corpus*. Additionally, ICCPR requires that detainees and inmates have a prompt opportunity to be seen before a judge upon being detained or imprisoned.

Convention against Torture, and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1984 / 1994)

The CAT was adopted by resolution of the U.N. General Assembly in 1984 and entered into force in 1987. The United States ratified the CAT in 1994 with significant RUDs promulgated by the Senate. The RUDs included a variety of stipulations such as reservation and understanding II(2) "That the United States understands the phrase, 'where there are substantial grounds for believing that he would be in danger of being subjected to torture,' as used in article 3 of the Convention, to mean 'if it is more likely than not that he would be tortured.'" This terminology very closely resembles the standard of a likelihood of future persecution which was earlier thrown out as excessive by the Supreme Court in *INS v. Cardoza-Fonseca* in 1987. This Convention ultimately establishes the prohibition against torture, cruel, inhuman, and degrading treatment and punishment as illegal and reprehensible, essentially turning Article 5 of the UDHR into binding international law. As a State Party to the CAT, the United States is not only obliged to establish a program for the protection of aliens fleeing torture, but it is also mandated to cease and desist all forms of torture and cruel, inhuman, and degrading treatment and punishment and to enact legislation which would prevent future abuses and make recompense for past abuses. Considering the similarity between this Convention and the prohibition against cruel and unusual punishment contained within the Constitution, these matters carry some extra weight in U.S. politics. As later chapters of this study will show, however, the U.S. practice of detaining refugees and asylum-seekers often itself constitutes and results in cruel, inhuman, and degrading treatment and punishment against a class of persons who are supposed to be afforded the greatest protections of the receiving society.

Anti-terrorism and Effective Death Penalty Act of 1996 – AEDPA (Pub.L. 104-132)

The AEDPA was the first major U.S. federal act or policy which conflated terrorism and immigration. The Act expanded deportation and exclusion procedures, limited judicial *habeas corpus* reviews, and broadly enabled deportation of individuals whom AEDPA newly defined as threats to national security.

United States Illegal Immigration Reform and Immigrant Responsibility Act of 1996 – IIRIRA (Pub.L. 104-208)

The IIRIRA constituted perhaps the most dramatic shift towards the criminalization of immigration-related violations in U.S. history. Matters which were previously considered civil infractions and called-for civil reparations have become increasingly punitive since the enactment of the IIRIRA. This Act, which was passed during a period of strong anti-immigration sentiment, included a number of provisions designed to crack-down on "illegal immigration" through a variety of approaches.

IIRIRA invalidated the immigration status of immigrants who had been convicted of certain crimes since their arrival in the United States and penalized these immigrants by deportation. The Act further criminalized and penalized immigrants who had been in the country without proper documentation by authorizing their detention and expedited removal (deportation) from the country, and prohibiting their return to the United States for a given period of time. While these provisions affected refugees and asylum-seekers alongside all other immigrants, the specific provisions of the law which had the greatest adverse affects on refugees and asylum-seekers are those which 1) authorized the detention of immigrants (including refugees) who failed to adjust to Permanent Resident status at the end of 1 year of residing in the U.S. as a criminal immigration violation and 2) authorized the detention and expedited removal of aliens who arrived in the U.S. without proper documentation (including asylum-seekers).

Flores v. Meese (1997)

This stipulated settlement agreement established standards for the detention of children, and determined that detention should only be used as a last-resort for children.

UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, 1999

As their title suggests, these criteria and standards are only guidelines, and do not constitute binding law; however, the substance of this document is still important in considering U.S. policy. These guidelines include the general principle that asylum-seekers should not be detained, as well as special provisions for circumstances where detention is acceptable, and emphasizes circumstances when detention is strongly discouraged, such as in the case of youth and the elderly, victims of torture, pregnant and nursing mothers, and the physically and mentally ill, among others. Additionally, the document offers an outline of suggested standards for conditions of detention, such as the use of special detention facilities which are not criminal prisons, the segregation of men, women, and children except in the case of families, opportunities for medical and psychological treatment, opportunities for education, etc.

Detention Operations Standards of the INS, 2000 (adopted by BBS in 2001, which became ICE in 2003)

These standards issued by the INS and eventually adopted by ICE are nothing more than guidelines for detention practices. They are unenforceable and non-binding.

Zadvydas v. Davis, et al. (533 U.S. 678), 2001

While Kestutis Zadvydas was not an asylum-seeker, asylee, or refugee, the Supreme Court decision regarding his detention under immigration statutes set a precedent which applies to almost all immigrants, including asylum-seekers, asylees, and refugees. In this landmark decision, which also considered the detention case of Kim Ho Ma, the Court held in §V:

> The Fifth Circuit held Zadvydas' continued detention lawful as long as "good faith efforts to effectuate . . . deportation continue" and Zadvydas failed to show that deportation will prove "impossible." 185 F. 3d, at 294, 297. But this standard would seem to require an alien seeking release to show the absence of *any* prospect of removal—no matter how unlikely or unforeseeable—which demands more than our reading of the statute can bear. The Ninth Circuit held that the Government was required to release Ma from detention because there was no reasonable likelihood of his removal in the foreseeable future. 208 F. 3d, at 831. But its conclusion may have rested solely upon the "absence" of an "extant or pending" repatriation agreement without giving due weight to the likelihood of successful future negotiations. See *id.,* at 831, and n. 30. Consequently, we vacate the judgments below and remand both cases for further proceedings consistent with this opinion.

Ultimately, the decision of *Zadvydas v. Davis* established that any immigration detention lasting longer than six months must be justified by removal in the foreseeable future or by special circumstances requiring said immigrant's detention, such as direct matters of national security.

> *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 – USA PATRIOT Act (Pub.L. 107-56)*

Among a number of other immigration provisions contained in Title IV, Subtitles B and C, the Patriot Act established bars on immigration and asylum for aliens found to have provided material support for terrorist activities or to terrorist organizations, broadly defined. The Act further mandated detention for all such aliens and restricted *habeas corpus*. As the 97-page report *Denial and Delay: The Impact of the Immigration Law's "Terrorism Bars" on Asylum Seekers and Refugees in the United States* prepared by Human Rights First in November, 2009, documents, the immigration amendments passed in the Patriot Act have manifest as expansive human rights violations in the forms of unnecessary and prolonged detention, higher rates of detention, higher rates of denied cases, increased bureaucratic barriers, and countless other problems which will be addressed later in chapter 4 of this study.

Homeland Security Presidential Directive 2 – HSPD-2, 2001

While the entire series of HSPD executive orders is relevant, the HSPD-2 had the subject "Combating Terrorism through Immigration Policies" and expanded all anti-terrorism campaigns associated with immigration policies, meaning stricter immigration rules, more exclusions, more deportations, etc.

Homeland Security Act – HSA (Pub.L. 107-296), 2001

The Homeland Security Act established the DHS, and abolished the INS, separating its functions into two separate entities: the Bureau of Border Security and the Bureau of Citizenship and Immigration Services (USCIS).

Department of Homeland Security Internal Restructuring, 2003

Through a January 30, 2003 press release, DHS reorganized Border and Transportation Security, creating the Bureau of Customs and Border Protection (CBP). The same announcement of internal reorganization also changed the name of the Bureau of Border Security to Immigration and Customs Enforcement (ICE), thus establishing the current organizational framework for immigration enforcement.

Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 – REAL ID Act (Pub.L. 109-13)

The REAL ID Act removed the previous limit established by the 1980 Refugee Act on the number of asylees eligible to adjust to permanent residents annually. Terms and provisions of the terrorist bar in the Patriot Act were expanded and refined by the Real ID Act. Under 8 U.S.C. §1229(a)(c)(4)(b), the Act authorizes immigration judges to require corroborating evidence for asylum claims and, if the judge believes such corroborating evidence is unavailable, the government may further demand corroborating evidence under §1252(b)(4).

Woods, et al. v. Myers, et al. 2007

This class-action lawsuit dealt with medical care in detention at a contract facility operated by the Corrections Corporation of America. The plaintiffs, all detainees at an immigration detention facility in California, alleged that the medical, mental health, dental, and vision care provided to detainees at the facility were "grossly deficient, causing them great physical suffering and mental anguish, that amount[ed] to punishment in violation of the Fifth Amendment to the United States Constitution." The United States District Court for the Southern District of California found that "[a]lthough [the] plaintiffs, as civil immigration detainees rather than convicted prisoners, need not prove deliberate indifference to establish a violation of their substantive due process rights, defendants' policies, practices, acts, and omissions with respect to the provision of medical care at [the detention facility] nevertheless constitute deliberate indifference to plaintiffs' serious medical needs."

In re Hutto Family Detention Center, 2007

As will be contextualized in Chapter Three, this consolidated settlement agreement—stemming from 10 lawsuits filed on behalf of 26 immigrant children detained at the T. Don Hutto Family Residential Facility (TDHFRF)—forced ICE and facility administrators to implement over 100 reforms at Hutto, partly based upon requirements set forth in the *Flores* settlement. The consolidated settlement agreement *In re Hutto Family Detention Center* resulted in a number of standards to which the facility was mandated to work towards, under supervision of judicial oversight. Some of the major provisions included: that the private corporation responsible for daily operations could no longer inspect incoming and outgoing mail, that education had to be increased from 1 hour daily to 4-5 hours daily, that the razor wire around the exterior of the facility had to be removed, that guard and detainee uniforms must be less prison-

like, that guards must stop calling detainees "prisoners," that food and medical care had to be improved, that privacy curtains had to be installed around toilets, that children over the age of 12 had to be granted more freedom of movement, that more toys and age-appropriate books had to be provided to detainees, and a variety of changes that had to be made at the facility.

ICE Family and Residential Detention Standards, December 2007

The ICE family and residential detention standards resulted, in large part, from litigation over conditions at the Hutto detention facility.

ICE Performance Based Detention Standards of 2008 and Detention Reforms of 2009

The 2008/2009 ICE reforms and adoption of standards, constituted efforts to make standards binding and enforceable, as well as efforts to improve oversight, and address a variety of other concerns that had been raised in litigation and the public sphere.

Negusie v. Holder (500 U.S. ___ [Docket 07-499])[3]*, 2009*

This ruling addressed two key matters involving the persecutor bar to asylum that was established in the Patriot Act. The matter of *coercive* persecution, wherein a person is forced to take on the role of a persecutor (in this specific case, an armed prison guard holding prisoners who would be eligible for asylum), was previously considered immaterial in a decision by the Board of Immigration Appeals (BIA), citing *Fedorenko v. United States* (1981), in which the Supreme Court upheld the exclusion of Nazis and those who assisted Nazis, whether voluntarily or involuntarily, from obtaining visas and citizenship based on their participation in war crimes (which had been an excludable offense since early immigration legislation). However, the Supreme Court held that coerced participation in acts of persecution merited special

[3] Case-number not yet assigned.

consideration in asylum petitions. The second matter addressed by the Court's decision was whether the persecutor bar to asylum applied to individuals who have refused to further participate in acts of persecution and consequently became the targets of credible threats of harm or torture. On these matters, the Court ruled that the persecutor bar was a guideline – not a mandate – of which the BIA and appellate courts ought to take consideration on a case-by-case basis.

Comprehensive Immigration Reform for America's Security and Prosperity Act of 2009 (CIR ASAP) – Proposed Bill

While this federal bill, which is not currently law, deals with much more than just immigration detention, the most relevant points include: setting strong medical and other standards for handling immigrants held in detention; barring the separation of families in detention, except in exceptional cases; and requiring alternatives to detention for certain vulnerable groups such as refugees, asylum-seekers, asylees, children, and the elderly. CIR ASAP would also set up oversight over DHS through courts and a new ICE Ombudsman.

Refugee Protection Act of 2010 – Proposed Bill

Another federal bill, based upon a similar bill that was proposed in 2001 but died in the wake of 9/11, would attempt to address a wide variety of human rights criticisms surrounding the contemporary refugee processing and detention system. The bill would eliminate the time-constraints on adjustment of status, simplifying paperwork for refugees and reducing the likelihood of a refugee being detained for failing to adjust her/his legal status. The bill would also reform the expedited removal process and promote the parole of asylum-seekers, along with other related goals.

Castillo v. Swarski, 2010

This lawsuit over the detention of U.S. citizen at Northwest Detention Center found that ICE had violated the plaintiff's due process rights by detaining him illegally, as ICE does not have jurisdiction over U.S. citizens.

Kucana v. Holder (130 S.Ct. 827 – 2010)

This Supreme Court case determined that discretionary decisions such as whether to reopen administrative proceedings in an immigration case could not be statutorily shielded from judicial review.

Wayne Smith v. United States (Inter-American Commission on Human Rights, 2010)

In this human rights case, the Inter-American Commission on Human Rights declared that U.S. immigration policy—specifically IIRIRA criminal alien policy and expedited removal procedures—violated the human rights of petitioners who had been detained and deported without opportunity to appeal. As an extremely rare example of the United States being held accountable to international human rights law, this case is particularly interesting given that the United States did recognize the legitimacy of the Commission's jurisdiction and attempted to defend its policies and actions before the Commission.

Additional Concepts worth Mentioning

A simple example of a legal concept applied internationally, but not in the United States, is the concept of *prima facie* refugee status. Tim Irwin, Senior Media Officer at the United National High Commission on Refugees (UNHCR), explained that "*prima facie* refugees" are ones where "We know the situation they fled was one of violence and persecution," (DiNovella, 2009) so they are, at face value, refugees and should be accepted as such without having to *prove* their worthiness of refugee status as many refugees fleeing small-scale or less documented

incidents must. This international standard for recognizing refugees en masse makes perfect sense for the UNHCR; however, its likelihood of ever being employed by an agency whose jurisdiction is less than that of the UNHCR is slim-to-none, due to the State interests in security and reducing costs.

The Response-Time of the United States in Changing Laws to Abide by International Standards

The previous sections of this chapter have established the legal and contextual definitions or refugees and asylum-seekers and provided an overview of some relevant laws and court cases which affect the detention of these special classes of immigrants in the United States today. A reflection on the above laws is likely to raise a number of questions and conjectures. The fact, for example, that it took the United States 29 years to establish any law resembling the 1951 Convention Relating to the Status of Refugees strongly evidences a history of the United States government's negligence and complacency with regard to progressive international law; the fact that the United States still – in 2010 – has not established laws which actually offer the rights and protections mandated by international law only further illustrates this point. What is more, Chapter Three of this report will present information regarding the U.S. government's relationship with international oversight and audits, which supports the hypothesis that this history of negligence and complacency is an ongoing trend and, further, that it may go beyond negligence and complacency to the point of contempt. Also, it is curious that the 1952 INA abolished the detention of immigrants, only to have detention practices reinstated shortly thereafter in the next series of immigration laws adopted by the U.S. Of particular relevance to this study on refugee and asylum-seeker detention is the post-1968, and especially post-1980, sociopolitical and legal climate for refugees and asylum-seekers. The information provided in this chapter ultimately establishes the purview and parameters of the rest of this study, beginning

with the next chapter's analysis of the detainee's experience of the overall system of detention. Furthermore, the above information sets the ultimate standards against which problems in detention practice are to be measured.

While the laws and regulations place ICE in charge of immigrant detention – including the detention of refugees, asylees, and asylum-seekers – most detention facilities are run under contract with different agencies (ICE currently runs 8 detention facilities called Service Processing Centers (SPCs), contracts with 7 privately-run detention facilities, and operates Intergovernmental Service Agreements (ISGAs) with over 500 federal, state, and local jails and prisons (National Immigration Forum, 2009, p. 2)). Two of the largest contract-holders are The GEO Group, Inc. (GEO) and the Corrections Corporation of America, Inc. (CCA). While these are not the only contractors operating immigration detention facilities (ICE also contracts with municipalities and state governments, as well as a few other private corporations such as LCS Corrections Services, Inc. and Management and Training Corporation), GEO and CCA are the industry pioneers and leaders. In addition to their operational and management responsibilities, GEO and CCA have heavily involved themselves in the policymaking aspects of immigrant detention by lobbying Congress, DHS, BOP, and even the U.S. Attorney General's Office. The following case-studies on GEO (Chapter Two) and CCA (Chapter Three) facilities will illustrate the dangerous disconnect between the ideals – the laws and regulations of immigrant, and particularly refugee/asylee and asylum-seeker, detention – and the realities of detention, as well as the organizational dangers of the current detention system.

CHAPTER TWO – CASE STUDY: NORTHWEST DETENTION CENTER

The History and Purpose of the Northwest Detention Center and The GEO Group, Inc.

On 23 April 2004, the Northwest Detention Center (NWDC) opened on the tidal flats of Commencement Bay in Tacoma, Washington – a former toxic waste dump and Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) Superfund cleanup site. NWDC was constructed on an "aggressive" schedule, taking just over ten months to complete. Because NWDC is one of a few facilities purpose-built for immigration detention, ICE has flaunted NWDC in the past as a success story of detention reform in the move away from prisons and jails. The original building plans for NWDC provided for the 150,000 square-foot facility to "[contain] a processing area, medical and dental facilities, courtrooms, interview and visitation areas and food prep and laundry facilities…" and, when fully operational, to "…host 800 beds in four housing pods and a fifth area dedicated to Administration and Support Services," (Lydig Construction, Inc., 2006). The facility was originally controlled by a private corrections company, Correctional Services Corporation (CSC), under a contract with the Department of Homeland Security's (DHS) Bureau of Immigration and Customs Enforcement (ICE). The GEO Group, Incorporated, (GEO) acquired CSC, and with it NWDC and the ICE contract, in 2005. GEO, a publicly-traded (NYSE: GEO) and privately-run for-profit corporation with prison facilities across the globe, continues to own and operate NWDC in cooperation and under contract with ICE in 2010.

The official purpose of NWDC, according to ICE, is to "temporarily [house adult] individuals who are waiting for their immigration status to be determined or who are awaiting repatriation," (Immigration and Customs Enforcement, n.d. b, p. 1). The facility holds immigration detainees of various statuses, including undocumented immigrants going through "removal"

(deportation) proceedings, documented immigrants and permanent residents going through proceedings pursuant to IIRIRA, refugees/asylees and other authorized immigrants who failed to adjust their legal statuses during the permitted time-frame, and asylum-seekers subject to mandatory detention. The corporate mission of The GEO Group, Inc., reads:

> All levels of government (federal, state and local) are being pressured to relieve prison overcrowding and by public opinion to impose longer sentences and resist early release programs based on insufficient bed space. Limited financial resources and resistance to tax increases compound this dilemma. The GEO Group, Inc. (GEO) and GEO Care offers privatized detention/correctional facilities as well as mental health and healthcare facilities as a viable solution.
> As a contractor in a competitive arena, GEO's cadre of corrections professionals is motivated to find cost effective and innovative approaches and also provide the highest quality service possible. GEO provides all levels of secured facilities.
> As an integral part of correctional and mental health programs, GEO has developed an expanding reputation as a provider of quality basic education programs, vocational training, substance abuse counseling, mental health counseling and job seeking skills. Its operation of detention/correctional and mental health facilities also includes food services, medical care, building and grounds maintenance, transportation and full logistical support.
> As public administrators become increasingly supportive of efforts by the private sector to assume tasks traditionally performed by government entities, GEO is in the forefront, providing leadership and innovation to this expanding service industry.
> GEO brings to the marketplace an extraordinary reservoir of knowledge and expertise, unparalleled in the industry and well prepared for the challenges of the future.

(The GEO Group, Inc., 2010). Specifically in relation to NWDC, GEO advertises that:

> The GEO Group offers academic and vocational education, program activities, and counseling services to the detainee population. Programs in adult basic education and General Equivalency Diploma curriculum and vocational training are taught. Substance Abuse Counselors work with individual detainees and groups using volunteer services from Alcoholics Anonymous and Narcotics Anonymous to assist those who wish to remain alcohol and drug-free upon release.

(The GEO Group, Inc.). While these descriptions highlight GEO's efforts to provide innovative and productive services to their inmate population, the mission statement does mention cost-effectiveness and sets up the corporation's services as a "viable solution" to overcrowded prisons

and public financial constraints, suggesting the corporation's efforts to find a balance between providing quality care to the inmates and providing low-cost services to the contracting clients. This economical aspect of GEO's services, in combination with the fact that it is a publicly-traded corporation, highlights the capitalist motives running behind the corporation's administration and operations.

Facility Design, Daily Living, and Detainee Demographics

NWDC utilizes dormitory-style housing and a combination of minimum, medium, and maximum security (The GEO Group, Inc.). According to an ABA review of the facility, housing at NWDC is organized into four units, which are each sub-divided into three pods (except for one unit, which contains only two pods). Two of the pods are double-bunked open rooms, while the third contains double-occupancy cells. Within each pod, there are two floors: detainee beds on the first floor open directly into a common area with one or two televisions, a general seating area, payphones, a dining area, and toilets; cells on the second floor open onto a balcony, overlooking the common area. The facility also contains eight holding rooms and a Special Management Unit (SMU) used for segregation and solitary confinement. (American Bar Association Delgation to the Northwest Detention Center, 2007)

During waking hours, an officer sits on the first-floor of each pod to supervise the detainees. Other officers move throughout the facility, using a telecom system to communicate with an officer in the pod's control-room to open secured doors. The facility is designed for keyless operation, so security doors in each pod are controlled electronically by an officer in a control-room. These control rooms, protected by electronic doors and shatter-proof glass, overlook each pod in a Panopticon-like fashion. (American Civil Liberties Union, Detention and Deportation Working Group, 2007)

The first-floor common area, which is also the dining area for each pod, is accessible to detainees from 5:30 a.m. to 11:30 p.m. daily. Cells and the common area are, according to official reports, cleaned weekly. Detainees are permitted to shower daily, and meals are supposed to be served at approximately 5:30 a.m., 12 p.m., and 5 p.m.; actual mealtimes vary, though, as will be discussed further in the next section. Visitation by family members and friends is permitted Thursday through Monday including Holidays, 8 a.m. - 11 a.m. and 1 p.m. - 3:30 p.m. Visitors must have made it to the front of the visitation line and checked in 45 minutes prior to the close of visitation. Attorneys are authorized to visit detainees 6 a.m. – 6 p.m. daily, though they must generally wait in line for access and deal with other obstacles which will be addressed later. ICE may not interfere with consular officials who meet with their detained nationals; thus, so long as the official has proper credentials, consular visits may occur at any time.

NWDC contains one large recreational yard, which is available to detainees "every other day for one hour," (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 60). Each pod or housing unit also has a small "partially enclosed quarter basketball court," which is available daily from 8 a.m. until 8 p.m. (*ibid*.). Even though free weights are "readily offered to inmates in the recreational yards of many federal penitentiaries," the NWDC Administration refuses to offer such equipment, citing security concerns (*ibid*.).

As previously mentioned, the facility is used to house immigrants detained under a variety of legal circumstances – criminal aliens, non-criminal aliens, asylum-seekers, unadjusted immigrants, etc. – all awaiting immigration status determinations or deportation. NWDC was designed for short-term detention and was originally equipped to hold up to 500 detainees

(Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 5); GEO currently lists the facility's capacity at 1,030 detainees (The GEO Group, Inc.) (Business Wire, 2008), while conflicting media reports list it the capacity at 1,069 (Immigration and Customs Enforcement, 2008b). Media reports from 2009 indicated that the company had filed building plans to expand the facility's capacity to 1,500-1,545 by September, 2009 (Hagey, 2009), in order to accommodate the long-term national trend of an increasing immigration-detainee population. ICE explains that many of the detainees held in the facility "were taken into custody at one of the area's surrounding airports, seaports / land ports or by other ICE or DHS Components," and that "some detainees have been transferred in from other states," (Immigration and Customs Enforcement, n.d. b).

Despite the facility's short-term designation, "the reality is that there are a significant number of detainees held for periods of time that average 35-60 days, with some held for as long as four years," (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 6). While an average of 35-60 days is relatively short compared to the 2003 average for all immigration detainees in ICE custody of 64 days (while 32 percent of detainees in 2003 were held for 90 days or longer) (Frelick, 2005), this average is reduced by the number of criminal aliens undergoing Expedited Removal Proceedings. With respect specifically to asylum-seekers in all of U.S. immigration detention, the average duration of detention documented by a 2003 report was 10 months (Physicians for Human Rights and The Bellevue/NYU Program for Survivors of Torture, 2003, p. 5). Because NWDC processes criminal aliens in Expedited Removal alongside the detained asylum-seekers, it is reasonable to expect a similar trend in the duration of asylum-seeker detention.

In mid-2008, the average daily population of NWDC was 985 detainees, of which 90% were male; in early 2008, the detention population at NWDC represented about 80 countries, primarily including Mexico (approximately 85% of the detainees), Guatemala, El Salvador, Honduras, China, Vietnam, and India (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 6). In May, 2010, the average daily population of NWDC was 1,223 (Immigration and Customs Enforcement, 2010c). The facility holds only adult detainees in ICE custody for immigration proceedings. According to the 2006 ABA audit of NWDC, approximately 70 to 80 percent of the detainees at NWDC had criminal records (American Bar Association Delegation to the Northwest Detention Center, 2006, p. 2). According to a document released in mid-2008 by ABC News, ICE reported that only about 31% of detainees had criminal records (Immigration and Customs Enforcement, 2008b).

Issues Facing Detainees at NWDC

Due process and grievances at NWDC

Detainees at NWDC face a wide variety of issues which may affect the duration of their detention, the outcome of their immigration proceedings, and their physical or mental health. Besides these potential negative effects, many of the conditions described by detainees constitute violations of international law, and even of domestic law and policies. Perhaps more significantly, studies suggest that, "[a]lthough certain of the conditions [reported by detainees at NWDC] might not be problematic for those in detention for a short period of time, they certainly become problematic the longer a detainee is in detention," (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 35). Due to this time-correlated intensity of the negative effects of detention and the aforementioned fact that asylum-seekers are held in detention at NWDC for periods significantly longer than Criminal

Aliens, the logical implication is that asylum-seekers at NWDC are most affected by the issues to be described in this section. A general study on the health consequences of detention for asylum-seekers in the United States supports this notion (Physicians for Human Rights and The Bellevue/NYU Program for Survivors of Torture, 2003).

One of the most commonly reported issues facing detainees at NWDC is a lack of legal due process. While U.S. law explicitly states that the government is not responsible for providing counsel to immigration defendants, who are civil – not criminal – parties, this policy is often called into question, particularly when dealing with asylum-seekers who may suffer more from a deportation than a criminal defendant would from a conviction. Beyond this general due process issue, attorneys representing NWDC detainees commonly "expressed concerns" regarding a "lack of adequate meeting rooms, insufficient training of officers …, long waits to see detainees, and the unexpected transfer of detainees to other locations," away from their counselors (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 35). Shortly following the NWDC report, ICE denied the latter part of this allegation, stating that "[o]nly very rarely are detainees transferred from the Facility," (Immigration and Customs Enforcement, 2008b).

Detainees, on the other hand, raised concerns regarding privacy and confidentiality when communicating with their attorneys, whether in-person, by phone, or by mail, and access to legal materials for *pro se* detainees (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 35). Despite the fact that the detention center was modified to fit more than double its original intended population, the number of attorney-client meeting rooms has not changed since the facility was originally constructed: four attorney-client meeting rooms and 15 no-contact rooms. While studies such as the NWDC report cite this

shrinking ratio of attorney-client rooms as detrimental to the due process rights of detainees, a rebuttal from ICE proudly cited the exact same numbers as evidence of its "sufficient rooms and means to accommodate any reasonable request for attorney/client meetings," including consideration for attorney-client meetings outside of regular business hours (Immigration and Customs Enforcement, 2008b, p. 4).

Also on the subject of due-process, attorneys reported inconsistent treatment by officers, including officers sometimes interrupting attorney-client meetings without warning and detainee headcounts that result in significant delay when a detainee is scheduled to meet with his/her attorney. This is even more problematic given that most attorneys representing NWDC detainees commute from Seattle – a 45 minute drive – for their meetings. This commute creates an expense generally incurred by the detainees, regardless of the actual duration of time they are permitted to meet with their attorneys, and, when combined with the wait time, can make it "not worthwhile for attorneys to take detained clients," (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 36). The difficulties of arranging attorney-client meetings are also apparent in the posted attorney visitation hours at the entrance to the facility: "One sign states that attorney visiting hours are from 6:00 a.m. until 11:00 p.m. seven days per week. A second sign (immediately next to previous sign) states that attorney visiting hours are from 9:00 a.m. until 8:00 p.m. on Mondays, Thursdays, and Fridays; from 9:00 a.m. until 5:00 p.m. on Tuesdays and Wednesdays; and from 8:00 a.m. until 3:00 p.m. on Saturdays, Sundays, and holidays," (American Bar Association Delgation to the Northwest Detention Center, 2007, p. 5). Even more frustrating for the attorneys and problematic for the detainees, attorneys reported a practice which they described as "completely unfair" whereby their clients had been unexpectedly transferred to different locations without ICE fulfilling its obligation to notify the detainee's attorney (*ibid*.).

Further due process concerns, largely over confidentiality, arise with the detainee population. Various interviews with detainees at NWDC showed that outgoing legal correspondence was inspected, delayed, "not delivered, not sent, or tampered with en route" in direct violation of ICE detention standards (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 37) (American Bar Association Delegation to the Northwest Detention Center, 2006, p. 44) (American Bar Association Delgation to the Northwest Detention Center, 2007). Reports also document that the residential areas of NWDC offer payphones on which all calls are recorded and monitored. In order to access a private phone, detainees must submit a special request, after which it takes "at least three days to get access to the confidential telephone;" additionally, "[s]ome detainees did not … know how to access the private telephone," (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 38). The private telephones at NWDC are located in the intake area of the facility, meaning there are constantly facility officials within earshot of the *confidential* phones.

A more fundamental concern of due process, which was partially raised in the previous chapter, has been raised by former Northwest Detention Center detainees: the right to counsel. Current U.S. immigration laws permit detained immigrants to retain counsel *at no expense to the government*, meaning that detainees must appear *pro se*, find a *pro bono* attorney, or hire an attorney with their own capital. Again, the justification for this policy is twofold: detained immigrants are not citizens and they are not lawfully present in the U.S., so some parties argue that they do not qualify for the protections of constitutional due process rights, and detained immigrants are held under *civil* – not criminal – law, so they do not qualify for appointed counsel under the 6th Amendment of the Constitution. The American Bar Association has passed a

resolution calling for an equal right to counsel in civil proceedings (American Bar Association, 2006) in the interest of justice; however, no law yet mandates the appointment of counsel in any civil proceedings.

According to the Northwest Immigrant Rights Project (NWIRP), a non-profit group that provides legal counsel – often *pro bono* – to 10,000 immigrants and refugees annually at NWDC and in the Seattle area, over 85% of immigrants facing deportation have no legal counsel (Northwest Immigrant Rights Project, 2010b). To immigrants, asylum-seekers, and refugees whose English language skills and ability to understand legal documents, the lack of a lawyer is an insurmountable obstacle, as illustrated by the *Refugee Roulette* study that was described in Chapter One. Despite the grave implications of *pro se* immigration court hearings, particularly when dealing with asylum-seekers whose lives may be jeopardized by the court's decision, one of the strongest pressures to adjust the right to counsel for civil cases is coming from the mistaken detention of *citizens*. From July 2006 until early 2008, NWIRP identified nine detainees at NWDC who were U.S. citizens, and an Associated Press investigation of the trend found dozens of similar cases of U.S. citizens detained by ICE between 2001 and 2009 (Shapiro, Detainees Refute Northwest ICE's Denials of Abuse, 2008) (Associated Press, 2009a).

Before NWIRP's investigation, Belize native Rennison Castillo, who became a naturalized U.S. citizen in 1998 while serving as a Specialist in the U.S. Army, was held at NWDC for 7 and a half months in 2005. According to allegations in his ongoing lawsuit – *Castillo v. Swarski, et al.* – against the officers who detained him, Castillo continually declared his citizenship, but immigration authorities "didn't believe him" and thus kept him in detention until NWIRP was able to secure proof of his citizenship on his behalf. Because he was held in detention, Castillo was unable to secure the documents – which were in the trunk of his car –

himself, and instead had to wait until he was able to find legal representation (Shapiro, Ninth Circuit to Hear Case Against Officers Who Detained a U.S. Citizen, Veteran for Seven Months, 2010) (*Rennison V. Castillo, Plaintiff, v. Officer Linda M. Swarski, Et Al., Defendants*, 2009). The fact that a U.S. citizen, fluent in English and familiar with the legal system, had such difficulty in proving his citizenship has significant implications for asylum-seekers, who hold the burden of evidence in proving their eligibility for asylum. Castillo simply needed lawyers to retrieve documents from his car and present them to the court; for an asylum-seeker needing documentation of abuse or threats from whatever country they are fleeing, the task is even more daunting.

In an area of concern related to due process, "[one] of the most commonly heard complaints [of] the detainees was the fact that they are often pressured to sign papers, or are asked to sign papers whether they understand them or not," (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 39). According to some of the detainees at NWDC, officers physically intimidated and verbally threatened detainees who refused to sign the papers, and attorneys representing NWDC detainees report that ICE advises newly arriving detainees to take voluntary departure or removal without fully informing the detainees of the ramifications of such documents. [4] Adding to the confusion, the documents "use generic language that the detainees cannot understand and which is never explained to them," and, while documents used to be available in multiple languages, NWDC

[4] Testimony of detainees held at other detention facilities supports this reported trend: controversial political asylum seeker, DREAM Act student, and longtime Texas resident Saad Nabeel has consistently evidenced that ICE officials pressured him into signing a removal order under threat of criminal charges if he refused (LatinaLista.net, 2010).

now only offers official paperwork in English (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 40).

Detainee Service Standard 5 establishes guidelines for detention grievance procedures. In one report, 41 detainees were interviewed, of which 17 had filed formal grievances with NWDC; twelve of those 17 reported problems including: "1) unanswered grievances; 2) a slow response time; 3) inconsistent decisions by the NWDC administration; 4) claims by officers that they had not received the grievances; 5) grievances being thrown away; 6) that grievances could only be filed in English as a practical matter; and 7) officials returning grievances because they are not 'specific enough'" or deal with a matter such as 'stolen property,' which the NWDC administration views as "not an appropriate issue for a grievance," (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 41). Two separate surveys of detainees raised questions regarding the grievance process: while NWDC officers reported that grievances are typically resolved in 3 to 5 days, one detainee told interviewers that he had filed a grievance two weeks prior to the interview and still had received no response (American Bar Association Delegation to the Northwest Detention Center, 2006, p. 44); another detainee filed a grievance regarding "what he perceived to be an unwarranted strip search … [and had] received no formal response," (American Bar Association Delgation to the Northwest Detention Center, 2007, p. 40). In August of 2009, ICE announced an internal restructuring and the creation of the Office of Detention Oversight (ODO), which was charged with inspecting facilities and investigating detainee grievances; however, because of the relative youth of this Office, little information is yet available on its activities or effectiveness.

Food, living conditions, medical care, and visitation at NWDC

Beyond the issues of a lack of due process and an historically questionable grievance process, detainees at NWDC commonly complained of problems with the food, living conditions, medical care, and access to visitors. When interviewed about living conditions in the facility, "[p]roblems with quality and quantity of food constituted the most common complaint," (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 50). Approximately 80% of the detainees interviewed for the NWDC report had complaints about the quantity of food – that they were hungry after meals (*ibid*.) (American Bar Association Delegation to the Northwest Detention Center, 2006). Many detainees – about 37 percent in one group interviewed – reported supplementing their meals with food purchased from the NWDC commissary, despite its lack of nutritious food and "inflated prices" (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 50) the prices are controlled by The GEO Group, Inc. (Tacoma Students for a Democratic Society, 2009). Visitors are not permitted to bring food to detainees, and any food shipped to the facility is "confiscated and destroyed," (Immigration and Customs Enforcement, n.d. b, p. 10).

About 70% of detainees interviewed for the NWDC report said that the quality of the food was "poor and inadequate," lacking any healthy and nutritious food options, and often served cold or lukewarm (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 50). Detainees who had previously been incarcerated said that the "the food they received was better and more plentiful in prison," (*ibid*.). Even with a note from a religious cleric or doctor, detainees at NWDC and other facilities report being denied vegetarian meals, as well as Kosher, Halal, and other special meals for religious adherents, and "[o]ne detainee who was diagnosed with severe diabetes while in detention was

[even] told that there is no special meal for diabetics," (American Civil Liberties Union, Detention and Deportation Working Group, 2007, p. 72) (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 50).

Detainees also reported that the food "occasionally smells bad, appears rotten, has been served on dirty trays, and has even contained bugs," and many complained that the food "resulted in stomach and digestive problems," (*ibid*.). In one particular incident at NWDC in August, 2007, a type of food poisoning associated with cold food was blamed for an outbreak that made at least 300 detainees ill (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, pp. 52-53) (Turnbull, 2007). According to the NWDC report, facility officials handed out surveys after the incident to gauge the extent of the outbreak, but "many detainees had already left the area and had no opportunity to fill out the paperwork," and detainees interviewed about the incident later reported that only a fraction of those who experienced symptoms actually reported so on the forms (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 53). This incident occurred less than two months after the 2007 annual review of NWDC, which advised the facility to improve its food services. Following the food poisoning outbreak, the Tacoma-Pierce County Health Department was brought-in to investigate and identified several problems with food preparation at NWDC, including "the [facility]'s practice of cooking certain foods too far in advance, cooking them improperly, and not reheating them properly," (*ibid*.).

The NWDC report found that roughly 60% of detainees complained about the lack of privacy, while "about 80% complained of overcrowding in their pods," (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 55). The simple fact that some of the previous increases in detainee capacity have been accomplished without construction (Smith, 2006) logically implies that GEO has managed to

increase the detainee population and number of beds without increasing space. Many detainees reported having extra beds moved into their pods and in hallways to accommodate the growing detainee population (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, pp. 55-56). ICE and GEO deny these claims, stating that:

> The Northwest Detention Center has a rated capacity of 1,069 detainees. Since October 1, 2007, the average daily population in the facility has been 965, and the population on July 15, 2008 is 989. No detainee has been housed without a bed or required to sleep on the floor. This allegation is baseless.

(Immigration and Customs Enforcement, 2008b, p. 2). The NWDC report to which ICE and GEO addressed this rebuttal never suggests that detainees were housed without beds, but instead states that beds are added without adequate square-footage to accommodate more furniture and additional detainees; thus, while it is true that NWDC has a rated capacity above their average daily detention population, their rated capacity is based on ill-conceived figures.

As further evidence of overcrowding, detainees reported that they were commonly mixed with other detainees of different security levels, raising security and personal safety concerns among detainees. Perhaps more disturbingly, detainees reported significant sanitation issues, where some pods report having to share 6 or 7 toilets among the 80 people in the pod. According to the 2007 ABA audit, NWDC also contains 8 hold rooms with capacities ranging from 1 to 100 detainees; the smaller hold rooms contain one toilet each, while the larger hold rooms with maximum occupancies of fifty-seven and one hundred only contain two toilets each (American Bar Association Delgation to the Northwest Detention Center, 2007, p. 35). Beyond the fact that bathroom stalls have no doors, and thus no sense of privacy, some pods have dining tables situated so close to the toilets that detainees reported serious sanitation issues where "[t]oilet water can spray onto food at these tables," (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 56). More

common was the complaint that, though the toilets are cleaned twice daily, their communal use by dozens of detainees means that the bathrooms are constantly "unsanitary" (*ibid*.). In one case, a detainee reported that a toilet in his pod was unusable for two days because a dead rat was left to rot in the bowl (*ibid*.).

The issues of food quality – and particularly food poisoning – and sanitary living conditions raise another truly significant area of concern: medical treatment. As a federally contracted detention center, NWDC has a medical clinic administered by the United States Public Health Service (USPHS), Division of Immigration Health Services (DIHS). Approximately 75% of the detainees interviewed for the NWDC report had experienced medical problems while in detention at NWDC that required medical attention at the facility's clinic. Of those detainees who had sought medical attention, "about 80 percent were dissatisfied with either the treatment they received or the procedure for sick call," (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 45). Many detainees also complained of inadequate access to emergency medical care and to medical care for preexisting conditions. In one case at NWDC, a detainee called for emergency medical help when he saw blood on another detainee's wall. The detainee had "slit his wrists and appeared to be in grave danger," but the medical staff was slow to respond and "lacked urgency," (American Bar Association Delegation to the Northwest Detention Center, 2006, p. 45). During the aforementioned food poisoning outbreak, many detainees reported that they were "unable to be seen at the medical clinic due to the long lines that formed when the staff finally arrived" in the morning for their regular work hours (*ibid*., pp. 45-46). Detainees also reported having to wait up to two weeks to be seen by medical staff, and those who are extremely sick "may not pursue

medical attention because the long periods of standing [in line] may aggravate their medical condition" and most feel the treatment received at the clinic is ineffective anyways (*ibid*., p. 46).

These reports of substandard medical care are further substantiated by the case of El Salvador native Juan Carlos Martinez-Mendez, who was detained at NWDC from late 2005 until he was released on January 4, 2007. In mid-2003, Martinez-Mendez was shot in the head in a parking lot outside a friend's apartment. He lost his right eye and an eyelid, and his nose was almost completely destroyed. By the time he was put in detention at NWDC, a year and a half after the attack, he had already undergone multiple reconstructive surgeries, but still had many more to go. His nose was still significantly destroyed, and he suffered frequent infections, which doctors agreed were potentially fatal. Six months into his detainment at NWDC, his primary doctor at the facility wrote that Martinez-Mendez needed outside consultation to complete his facial reconstruction, but the doctor's request for surgical consultation was denied, "presumably by ICE headquarters," (Shapiro, Detainees Refute Northwest ICE's Denials of Abuse, 2008) (Northwest Immigrant Rights Project, 2010a). Repeated requests by the facility doctor, noting that Martinez-Mendez "has been treated for sinus infections with antibiotics 9 times in past 10 months and [is now] responding less readily," were also denied (*ibid*.). Throughout the course of his stay at NWDC, Martinez-Mendez fought a legal battle to gain access to proper medical care and to be released from detention; he was granted neither until, after two years of detention at NWDC, he received a U-visa, given to victims of violent crimes and completed his surgical reconstruction after his release (*ibid*.)

Mental health conditions are also of concern in any detention facility. The identification and treatment of the mentally ill at NWDC has been called into question by detainees who report untreated, disturbed individuals mixed with the general detention population. The above

example of a suicide attempt highlights this issue: staff did not appear to be concerned. Many of the aforementioned U.S. citizens who were detained at NWDC may have suffered from mental illness, according to NWIRP attorneys (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 49), and approximately 20 percent of detainees interviewed for the NWDC report stated that they suffered mental health problems that required attention at the NWDC medical clinic (NWDC report, p. 48). The NWDC report interviewers also noted that, while many interviewees did not report depression, anxiety or "other mental health issues," the interviewers felt that "their speech and body language suggested otherwise," (*ibid*.). Also, of the detainees interviewed for the NWDC report, some 37 percent were asylum-seekers, refugees, and asylees, which "by definition means they likely suffered from some form of persecution," and, along with many others in detention, have "suffered traumatic events that likely contribute to mental health problems," (*ibid*.).

Many detainees indicated that they "are hesitant to share mental health problems with [NWDC] staff, in fear that they might be deported on that basis," (*ibid*.). For those who do seek mental health care, the potential effectiveness of treatment is significantly handicapped by the fact that NWDC has just *one* staff psychologist for the entire facility (*ibid*.). While the National Detention Standards state that all staff working with immigration detainees must be "'trained to recognize signs and situations potentially indicating a suicide risk,'" (qtd. in NWDC report, p. 48) (Immigration and Customs Enforcement, 2008c), the NWDC report found that officers lacked proper training on how to deal with mental illness and often "exhibit a misunderstanding of or an indifference to mental health issues," (NWDC report, p. 48). Additionally, some detainees report that officers will often send mentally ill detainees exhibiting symptoms of a psychiatric episode into segregation – solitary confinement, which is documented as contributing

to mental health issues and potentially "retraumatizing" for detainees suffering PTSD and similar conditions (Physicians for Human Rights and The Bellevue/NYU Program for Survivors of Torture, 2003, pp. 115-119) – as "punishment for their 'disruptive behavior,'" rather than recognize the symptoms and provide mental health treatment accordingly (NWDC report, p. 49).

Solitary confinement, also called *segregation*, *the hole*, or *isolation*, is an intensified experience of the isolation already felt by most detainees. The visitation policy at NWDC is described by detainees as "depressing, sad, and intolerable," (NWDC report, p. 57). No contact is permitted between detainees and their visitors, who are typically not permitted to visit more than 30 minutes anyways (*ibid*.) (Immigration and Customs Enforcement, n.d. b), despite the fact that the Detainee Handbook provided by GEO to NWDC detainees states that visitation sessions are normally for one hour with a 30-minute minimum, most detainees interviewed reported that their sessions only last 15 to 30 minutes (NWDC report, p. 57) (American Bar Association Delegation to the Northwest Detention Center, 2006). Furthermore, a 2007 audit revealed conflicting schedules for visitation hours posted at the facility, and hours not available by telephone (American Bar Association Delgation to the Northwest Detention Center, 2007). This, in combination with problematic telephone systems and inconsistent mailing policies, creates an intense sense of isolation among detainees, some of whom have even "requested that their family and friends do not visit because the short and no-contact visits only make them more depressed," (NWDC report, p. 57) (American Bar Association Delegation to the Northwest Detention Center, 2006) (American Bar Association Delgation to the Northwest Detention Center, 2007) (United States Government Accountability Office, 2007).

Punishment and treatment by guards

In addition to the alleged misuse and overuse of solitary confinement by officers, as well as their interference with visitation, attorney-client meetings, and failure to properly handle medical emergencies or identify mental illness, detention officers at NWDC and federal officials dealing with NWDC detainees have been criticized for more direct violations of detainees' rights. Approximately a third of detainees interviewed for the NWDC report noted "instances of verbal abuse and degrading comments" from officers (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 42). One officer reportedly refers to Mexican detainees as "cucarachas" (cockroaches), while another officer openly expresses her hope that the detainees get deported (NWDC report, p. 43). Of these detainees who reported abuse, most cited one particular officer as being "exceptionally belligerent and arrogant toward detainees," providing consistent stories of how this officer would turn off the pod's television "for no apparent reason except as a show of power," (NWDC report, p. 42). Even more problematic, "[s]everal detainees independently described how this officer tore down shower curtains and threw them open before the detainee's shower had ended, leaving the detainee naked and exposed before the entire pod," (*ibid*.). Detainees consistently reported observing officers who "yell in a menacing tone, threaten physical violence, and push or shove detainees," (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, pp. 42-43).

Several NWDC detainees also reported that, on occasion, "officers have inappropriately grabbed detainees by the arm and have also pushed or shoved detainees," in violation of ICE use-of-force policy (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 42). One officer sprayed cleaning chemicals on detainees' food during mealtime, and, "[a]lthough the officer eventually apologized, the

detainees did not get additional food," to make up for the food that had been contaminated (NWDC report, p. 43). In one incident documented via interview with a detainee during the 2006 ABA audit of NWDC, a detainee reported observing staff enter a pod with a camera to "remove and subdue" a detainee; however, "[b]efore using force against the detainee, the staff placed the camera on a shelf such that the camera could not visually record the incident," (American Bar Association Delegation to the Northwest Detention Center, 2006, p. 45). In another incident, in mid-2009, GEO guards allegedly used pepper-spray to "control" detainees who were not responding to the guards' orders to go to bed (Associated Press, 2009b). While ICE standards require the videotaping of all calculated use of force and state that "disciplinary action may not be capricious or retaliatory" (American Bar Association Delegation to the Northwest Detention Center, 2006, p. 45), detainees commonly report that they are intimidated by officers and "fear retaliation from the officers and believe that certain officers will lie about a detainee in order to put them in segregation," (NWDC report, p. 43). The 2008 NWDC report found an "excessive" use of solitary confinement at the facility, which itself is a violation of the National Detention Standards (p. 49), and the 2007 ABA audit of NWDC noted a questionable practice at the facility to utilize segregation "prior to order from the Institutional Disciplinary Committee, as a preliminary measure" not to last more than 24 hours until a disciplinary decision is made (American Bar Association Delgation to the Northwest Detention Center, 2007, p. 40). As reported above, many detainees report that detainees who are mentally ill or exhibit symptoms of a psychiatric condition are often placed in segregation; the 2006 ABA audit of NWDC also revealed an instance where a homosexual detainee was placed in segregation because the officers "didn't know what to do with him," (2006, p. 31).

Further evidence of the abuse faced by NWDC detainees, several of those interviewed for the NWDC report uniformly evidenced abuse and neglect on a transfer flight. In the summer of 2007, a group of detainees was transferred on two flights to Alabama "in anticipation of overcrowding [at NWDC] pending an ICE workplace raid in Portland, OR," (NWDC report, p. 44). The flights were run through the Justice Prisoner & Alien Transportation System (JPATS), a cooperative program formed in 1995 with the merger of the U.S. Marshals and U.S. ICE air fleets (U.S. Marshals, 2010). Six of the detainees interviewed for the NWDC report were subjected to this transfer, and they "uniformly told the same story of abuse and neglect at the hands of United States Marshals," (NWDC report, p. 44). Though ICE denies these allegations (Immigration and Customs Enforcement, 2008b), these detainees independently corroborated each other's story of the incident in which a mentally ill detainee, who had been in segregation at NWDC for an extended period of time, "yelled something at the [marshals] that provoked them… [and four] marshals began to hit and punch the detainee, mostly in the face," (NWDC report, p. 44). Detainees who witnessed this reported that the mentally-ill detainee was bleeding, and that his face was black and blue. The marshals allegedly put a hood over this detainee's head for the duration of the 7-hour flight, despite the fact that he "at one point fell down some steps because he lost his balance and that it was apparent that the detainee had trouble breathing the entire time the hood was on during the flight," (*ibid*.). Also, on this same flight, detainees reported that the marshals did not allow them to use the bathrooms. These detainees "had not been informed about not being able to use the bathrooms prior to the seven hour flight, and their requests were ignored by the officers," to the point that "at least three detainees on one of the planes defecated in their seats" – at least one of whom was "not able to clean up the feces and remained sitting in it for the entire trip," (*ibid*.). With regard to this latter description of abuse

and neglect on the flight, a court found in *Mitchell v. Newryder*, 245 F.Supp.2d 200 (D.Me., 2003), that a similar situation constituted cruel and unusual punishment.

Detainees at NWDC have also reported sexual harassment by officers, "ranging from sexual innuendos and predatory grooming to overt and inappropriate touching," (NWDC report, p. 43). Detainees have reported fearing for their safety as a result of this behavior by the officers. While the ICE Detention Operations Manual instructs that, "[in] contract detention facilities such as NWDC, detainees receiving legal visitation should only be pat-searched after the visit, unless the detainee is suspected of concealing contraband, in which case a strip search may be used," (American Bar Association Delgation to the Northwest Detention Center, 2007, p. 4) detainees regularly complain of excessive, invasive, and unjustified strip-searches. Because of visitation policy at NWDC, detainees have no means of receiving contraband from visitors; however, attorneys and consular officers are granted non-segregated contact with their clients/nationals. Additionally, detainees are routinely searched upon initial admittance to the facility. One detainee estimated that he was strip-searched 5-10 times over a period of 2-3 months following meetings with his attorney. After this detainee informed his lawyer of the continual strip-searches, the pattern stopped (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 43). While facility "staff stated that detainees are subject to a pat-down search before and after a legal visit in the attorney visitation rooms, and that detainees are not subject to a strip search... one detainee reported that he was subject to a strip search after a visit with a United States Attorney," during an interview for the 2007 ABA audit (American Civil Liberties Union of Southern California and the National Immigration Law Center, 2007, p. 5). Detainees have filed grievances about this practice and have reported feeling shame and humiliation as a result of each incident (American Bar Association Delgation to the Northwest Detention Center, 2007, p. 26) (NWDC report, p. 43).

A variety of other issues commonly face detainees at NWDC which may compound the effects of the more serious concerns above. While detainees at NWDC are native to all parts of the world, interpreters are rarely accessible and "language often creates barriers" among detainees and between detainees and staff – including officers, intake personnel, medical staff, and others (NWDC report, p. 59). The Detainee Handbook, which detainees are supposed to be given upon arrival at the facility and in tandem with a facility and legal orientation, is available only in English. Even though officers "are aware that detainees do not understand," some officers "ridicule detainees by repeatedly yelling orders at them in English," (*ibid*.). Additionally, approximately 50 percent of the detainees interviewed for the NWDC report "felt that they received inadequate time to exercise or that the conditions for exercise are insufficient," (NWDC report, p. 60). Free weights, as mentioned before, are not offered for security reasons, and "a significant percentage of detainees abstain from participating in outdoor recreational activities because they worry that they will be forced to remain outside in bad weather" and to remain in wet clothes upon returning to their pod (*ibid*.).

Administration and Oversight Issues at NWDC

NWDC has its own administrative staff, in addition to GEO Group corporate administration, ICE administration, DHS administration, and higher-up and lateral[5] levels of governmental administration, along with international agencies. Each level of administration

[5] Higher-up levels of governmental administration include the legislative and executive branches, as well as broad administrative and oversight agencies such as the U.S. Government Accountability Office. The term "lateral" here is intended to describe governmental agencies which are not hierarchically *higher-up* than DHS administration, but rather are separate from the direct hierarchy of ICE and DHS administration and oversight, such as the Department of Health and Human Services and the Department of Justice.

sets its own policies, generally in accordance with the policies established by its overarching administrations, and comes along with its own level of oversight.

NWDC, like all detention centers, is subject to review by the United States Government Accountability Office (USGAO), as well as third-party organizations such as the International Human Rights Clinic at the Seattle University School of Law, the American Bar Association, the Inter-American Commission on Human Rights and the United Nations High Commissioner for Refugees. Though advocates and NGOs called on the Inter-American Commission and the UNHCR to audit NWDC, neither international mechanism has yet attempted to review the facility.[6] While the preceding chapter described some administrative and oversight issues rooted in the laws and regulations of asylum and refugee detention, the discussion herein focuses on administrative and oversight issues specific to NWDC. These issues speak to the bureaucratic pitfalls and failings of the current system, as apparent in the "ineffective oversight, lack of accountability, and lack of transparency" (American Civil Liberties Union of Southern California and the National Immigration Law Center, 2007, p. 1) among the levels of NWDC bureaucracy and administration.

Internally, NWDC oversight "consists of two annual internal reviews, one by GEO, the other by ICE," (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 6). GEO does not make their internal audits of NWDC publicly available; NWDC administrators reportedly hired a third-party consulting firm to conduct monthly audits of the facility in 2008, but there is no indication these audits will ever be released. According to media-released documents from 2008, ICE has "multiple layers of

[6] Though NWDC is not among them, some U.S. facilities have been reviewed by these international agencies. See Chapter Three for more information.

accountability at NWDC and all its facilities," including an ICE-contracted independent auditor—The Nakamoto Group—which is permanently assigned to NWDC (Immigration and Customs Enforcement, 2008b, p. 3). The same statement from ICE noted that NWDC and all its facilities are subject to "audits and inspections necessary to receive accreditation from ACA, the Joint Commission, and the NCCHC [National Commission on Correctional Healthcare]," (*ibid*.). Opponents to NWDC and the general immigration detention system in the United States argued that accreditation, particularly in a system which completely lacked binding and enforceable national standards, was meaningless (American Civil Liberties Union of Southern California and the National Immigration Law Center, 2007) (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008).

In August of 2009 ICE announced a slew of detention reforms, including notably changes to the T. Don Hutto detention facility (*see* Chapter Three) and an internal restructuring which incorporated the creation of the Office of Detention Oversight (ODO) within the Office of Professional Responsibility (OPR). The ODO was charged with inspecting detention facilities and investigating detainee grievances (Bernstein, U.S. to Reform Policy on Detention for Immigrants, 2009) (Hsu, 2009) (Immigration and Customs Enforcement, 2009b). The formation of the ODO was part of a string of structural reforms which also included the formation of the Detention Monitoring Unit (DMU) and a strengthening of the Detention Standards and Compliance Unit (DSCU). Both Units operate within the umbrella of ICE's Enforcement and Removal Operations branch (ERO). The ERO and OPR work cooperatively on some programs, but are administratively independent of one another. Similarly, these offices and units cooperate with the ICE Office of Investigations and the ICE Office of Detention Policy and Planning to ensure better oversight than ICE had managed prior to the 2008 and 2009 reforms. (Immigration and Customs Enforcement, 2009a) (Immigration and Customs Enforcement, 2008a) (Immigration and Customs Enforcement, 2009b) (Immigration

and Customs Enforcement, 2010a) (Immigration and Customs Enforcement, Office of Public Affairs, 2010)

While the 2006 and 2007 ICE audits of NWDC, which were prepared by American Bar Association Delegation to the Northwest Detention Center, are publicly available online, there is no indication on the official ICE website that any subsequent audits have been prepared. The NWDC report evaluated the ICE audits, concluding that "[a]lthough ICE gave ratings of 'Good' and 'Superior' to the NWDC on compliance to detention standards, ICE's own reviews noted numerous violations of detention standards each year," (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 6). For example, ICE documented that detainee request forms—"kites"—and grievances were not receiving proper attention from facility staff, that "high level offenders [were] mixed with people with no criminal record," that staff-detainee communications were deficient, and that food service was an area of concern (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008, p. 35). This information shows an interesting relation to a 2007 general USGAO detention review, which stated that, other than a pervasive lack of access to telephones, "deficiencies [at detention facilities] did not show a pattern of noncompliance" to ICE standards (United States Government Accountability Office, 2007).[7] Essentially, while the

[7] In its 2006 review of NWDC, ICE noted systematic problems with detainee access to telephones (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica (formerly Hate Free Zone), 2008, p. 35). The 2006 and 2007 ABA audits of NWDC reported consistent issues with telephone access, including the fact that, while ICE detention policies require that facilities allow indigent detainees to place phone calls free of charge, NWDC had no such access available for its indigent detainees. However, a 2006

various levels of oversight have acknowledged the existence of violations and deficiencies, these reviews were conducted without consideration for international law, from a narrow and hierarchical perspective. Attempts by outside agencies to conduct audits of NWDC have been repeatedly denied.

Further problems with the audit-based oversight at NWDC – as well as the general administration both of NWDC and ICE in general – are apparent in stories that surfaced in November, 2008, surrounding the facility's hiring practices. According to reports, a GEO administrator at NWDC plead guilty in federal court for lying to investigators when she was questioned on the compliance of the facility's hiring practices to ICE standards, which call for background checks for staff at detention centers. According to The Associated Press, "When guards are hired at the detention center, they are supposed to undergo a preliminary background check. If they pass, they are given 'entry on duty' forms allowing them to begin work pending a more thorough check, which can take several months to more than a year," (Johnson G. , 2008). The investigation revealed that, beginning almost 3 years prior to the guilty-plea, the administrator in charge of hiring at NWDC had hired 92 guards without first conducting the preliminary background checks (Johnson G. , 2008). Some of those 92 guards were eventually fired following proper background checks, but GEO has refused to disclose any further information, such as the number of guards fired or the duration they worked before termination. As a result of this incident, ICE "implemented a multitiered vetting process ... so that no

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UNHCR report noted that NWDC was one of a minority of detention centers where the telephone system was in good working-order (United Nations High Commissioner for Refugees, 2006, p. 79), despite these systematic and systemic problems.

contractor or federal employee has sole responsibility to process and approve employment documents," according to an ICE spokesperson (quoted in Johnson, 2008).

While accountability for the hiring violations was assigned to an individual employee of The Geo Group, larger questions of accountability are perpetually raised with audits of detention facilities including NWDC and, as the next chapter will show, the T. Don Hutto Residential Center. In general, individual employees are held accountable for their own actions or inactions (neglecting to conduct background checks when it is a responsibility of the hiring administrator, a guard abusing his/her power to sexually violate a detainee, etc.) and the accountability fails to move up the chain-of-command (even in cases such as the hiring scandal at NWDC where the administrator blamed her failure to implement preliminary vetting on pressure from her superiors). In the case of systematic violations and failures, accountability is more of a question. Partly because of the extensive levels of administration described at the introduction to this section, and partly for the reasons described in the preceding section, accountability for systematic problems such as inadequate food, medical care, and access to counsel can easily enter a cycle of buck passing, such that each level of administration assigns the blame – and the responsibility for change – to a different level of administration.

In addition to issues of accountability, administration and bureaucracy also affect transparency. One example of this is the lack of publicly-available copies of the aforementioned ICE and GEO audits of NWDC. Other transparency issues have occasionally been documented in the media, such as ICE's reluctance to release figures and details on deaths in-custody – including the 19 November 2006 death of NWDC detainee Jesus Cervantes-Corona (Bernstein, Officials Hid Truth of Immigrant Deaths in Jail , 2010) (Immigration and Customs Enforcement,

2010e, p. 8) – and GEO's efforts to block the release of NWDC building plans "and other public records" to a civil rights activist (Hagey, 2009).

CHAPTER THREE – CASE STUDY: T. DON HUTTO FAMILY RESIDENTIAL FACILITY, WILLIAMSON COUNTY, TX, AND THE CORRECTIONS CORPORATION OF AMERICA

> What happened at Hutto cannot be excused. It serves as a reminder of the responsibility we assume when we decide to detain people, and highlights, once again, the need to drastically reduce the use of detention in all but the most extreme cases. What DHS learns from this terrible occurrence and how these learnings shape future decisions about detention policy will serve as a benchmark of our progress towards detention reform.
> -Emily Butera, Women's Refugee Commission, 2010 (Butera, 2010)

The History and Purpose of the T. Don Hutto Family Residential Facility[8] and the Corrections Corporation of America

In May of 2006, ICE opened the T. Don Hutto Family Residential Facility (TDHFRF) in Taylor, Texas, at a retro-fitted medium-security county prison formerly known as the T. Don Hutto Correctional Center. In late 2009, ICE renamed the facility T. Don Hutto Residential Center (TDHRC). The center is owned by Williamson County, Texas, (WilCo) and operates under an Intergovernmental Service Agreement (IGSA) between ICE and the County. Day-to-day operations at TDHRC are sub-contracted to the publicly-traded (NYSE: CXW) and privately-run for-profit Corrections Corporation of America (CCA) (Immigration and Customs Enforcement, 2010b) – the "largest owner and operator of privatized correctional and detention facilities and one of the largest prison operators in the United States, behind only the federal government and three states," (Corrections Corporation of America, 2009). Because of the IGSA, all funding passes through the County before reaching the CCA. This organizational

[8] TDHFRF, or *the facility*, refers to the May 2006 to September 2009 period during which families were detained at the facility. TDHRC, or *the center*, refers to the September 2009 to present period during which the center has been used to house only women. Any reference to *Hutto* refers to the entire May 2006 to present period at the facility/center.

structure continues to operate the center today, with the most recent IGSA and contract negotiations having become effective as of February 1, 2010 (*ibid*.).

From May, 2006, until September 17, 2009, the official purpose of the T. Don Hutto Family Residential Facility was to maintain the family unity of detained immigrants, to provide special detention programs for children, and generally to accommodate non-Mexican "alien families in ICE custody…. who [had] been placed in administrative immigration proceedings" including all those proceedings listed in Chapter Two (Immigration and Customs Enforcement, 2008a). This purpose was necessitated by a number of factors, including ICE's effort to comply with the stipulated court settlement *Flores v. Meese* (1997), which set "minimum standards and conditions for the housing and release of all minors in federal immigration custody" (American Civil Liberties Union, 2007a), as well as the immediate and indirect effects of dramatic immigration enforcement policy changes enacted by the Bush Administration in 2006.

Historically, the Immigration and Naturalization Service released a majority of apprehended alien families on their own recognizance (ROR) in a program that became known colloquially as "catch and release," (The Least of These, 2009a). By early 2006, the Bush Administration announced plans to end catch-and-release immigration enforcement practices in border-states by October of that year (Gelatt, 2006) (Strohm, 2006). The immediate strain on immigration detention facilities, which was caused by the increased detention population, pressured ICE to detain only adults and to turn any children over to the Department of Health and Human Services' Office of Refugee Resettlement, Division of Children's Services (The Least of These, 2009a) for the sake of conserving detention beds. While the Berks County Family Residential Center in Leesport, PA, had been operational since 2001 for alien family detention, its capacity is capped at 85-beds (Department of Homeland Security, 2007), thus ICE

turned to Hutto and its 470 (now 512) bed capacity to alleviate some of the public pressure for family unity and humane detention practices. ICE has touted both facilities – Berks and TDHFRF – as "an effective and humane alternative to maintain the unity of alien families as they await the outcome of their immigration hearings or return to their home countries," (Immigration and Customs Enforcement, 2008a). DHS credited TDHFRF as one of the major reasons they were able to end "catch and release" along the southern border (*ibid*.).

While "[t]he Bush administration highlighted the family detention facility as a symbol of its immigration crackdown efforts, … it became a lightning rod for litigation over the government's treatment of children," (Hsu, 2009). A sampling of media coverage of TDHFRF between 2006 and 2010 revealed nicknames for Hutto including "a maximum-security day care"[9] (Meyer, 2007), an "internment camp" (Watson & Watson, 2008), "America's Family Prison" (Trevino, 2010), and "America's li'l kiddy prison" (Lloyd, 2007), and a long list of others, as well as general descriptions of the facility as "family unfriendly" (Del Bosque, Family Unfriendly, 2009) and "Draconian" (Blumenthal, 2007).[10] ICE officials defended family detention at Hutto, claiming that TDHFRF was a "model facility 'primarily focused on the safety of the children,'" and that, once superficial changes to the center were completed—such as

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[9] This nickname, in particular, is interesting because TDHFRF has been criticized for failing to ever be licensed under Texas state-law to provide childcare services.

[10] On the other side of the spectrum, a November, 2010, story covered by an local news station in Atlanta reported on detention reforms and upgrades—including those that were partially influenced by litigation and public-pressure sparked by conditions at Hutto—at facilities in Arizona, calling them "*luxury* detention centers for illegal immigrants" (WSB-TV Channel 2 Action News Atlanta, 2010) *[emphasis added]*.

removing the controversial concertina razor-wire—TDHFRF would "'look more like a community college with a very high chain-link fence,'" (Blumenthal, 2007). Under the Bush Administration in late 2008, ICE began preparing to expand its self-declared "effective and humane" family detention network, and started accepting bids for three new family detention centers to be located on both coasts and along the Southwestern border; however, the Obama Administration scrapped these plans, leaving only the Berks facility to house detained families (Gorman, 2008) (Keber, 2009).

As a result of criticism and reforms which the following sections of this chapter will address, ICE took a step back from family detention and released the last family from TDHFRF on September 17, 2009. No new family detention facility has been established to absorb the families which would have been detained by TDHFRF, essentially setting the alien family detention procedures back to where they were before TDHFRF opened in 2006 – family ROR or forcible separation of families. As family detention was transitioned-out at Hutto, the facility was re-purposed as TDHRC with the objective of detaining "only females… and [consolidating] the female populations from three disparate facilities[11]… allowing ICE to better monitor the needs of and develop programs specific to this population," (Department of Homeland Security Press Office, 2009). In addition to the basic ICE immigration-enforcement purposes shared

[11] ICE decided to consolidate the female populations from three detention facilities at Hutto, in part, because of fallout from the September, 2009, conviction of a Port Isabel Detention Center guard for sexually abusing female detainees. Since the conviction, Port Isabel has housed only male detainees, and the entire female population was transferred to TDHRC. (Del Bosque, Point of No Return, 2010)

between TDHFRF and TDHRC (as well as NWDC), since its transition, the center is intended to provide effective, humane, and specialized residential services for detained women.

Beyond the immigration enforcement purposes of Hutto, the facility is controlled by Williamson County, TX, and run by CCA under a sub-contract with the County. Both WilCo and CCA financially benefit from detaining immigrants at Hutto; however, such capitalist financial motives purportedly play only a small role in the corporate structure of CCA, which succinctly states as its mission: "In partnership with government, we provide a meaningful public service by operating the highest quality adult corrections company in the United States," (Corrections Corporation of America, 2008a). Of course, CCA does mention its economical considerations in its guiding principles, which, in close parallel to the mission of The Geo Group, Inc., the Corrections Corporation of America lists alongside its mission statement:

> ...As corrections professionals:
> 1. Integrity – Be honest and highly ethical. Always do the right thing, with honorable intentions.
> 2. Respect – Treat each other and inmates as we want to be treated. Appreciate the authority given to us and always use it appropriately.
> 3. Trust – Be competent and reliable. Build positive relationships.
> 4. Loyalty – Dedicate ourselves to our profession, our responsibilities and each other.
>
> ...As a company:
> - Safety and Security – Dedicate every action to safe and secure correctional facilities – our highest priority. Through training, skill and courage, protect our communities, individuals in our care and each other.
> - Quality – Provide excellent correctional services every day. Offer positive programs to help offenders.
> - Accountability – Hold ourselves responsible for every action – accountability to our partners in government, to the taxpayers and to our inmates.
> - Service-Driven – Serve our government partners and communities with pride and dedication. Be flexible. Be great problem-solvers. Deliver on our promises.
> - *Cost Effectiveness* – Provide honest, fair and competitive pricing to our partners. Deliver value to taxpayers.
> - Teamwork – Share, inspire and help one another daily. Don't let others down, because together we make greater contributions.
> - Communication – Listen well. Share information. Speak honestly and openly with intent to always improve our efforts.

- Innovation – Think creatively and boldly. Value resourcefulness. Embrace our heritage as the partnership corrections founder and leader.

(*ibid*., emphasis added). Just as GEO sets itself up, CCA also highlights its efforts to provide innovative and productive services, while still mentioning cost-effectiveness and raising economical considerations.

Facility Design, Daily Living, and Detainee Demographics

Unlike NWDC, which was purpose-built for immigration detention, Hutto was originally designed as a medium-security prison facility. The original signs for TDHFRF, which CCA and ICE have since replaced, were the T. Don Hutto Correctional Facility signs, from which the lettering had been scraped-off and replaced—though the sun-stains left the old lettering plainly visible. After ICE hurriedly opened TDHFRF in May of 2006, the tall fences and concertina razor wire used for prison security were still in place, despite the apparent contradiction to the human-rights-driven immigration detention reform goals such as moving away from prison-like facilities. In a 2006 interview on the University of Texas at Austin radio station, KUT Austin, regional ICE spokesperson Nina Pruneda explained the reason why ICE had kept the razor-wire surrounding Hutto—because the residents are not native English speakers:

> People are… are under the impression that this is a prison. This is not a prison; this is not a jail; it's a family facility where they're being detained. This barbed wire that you see out here is for the safety of those that we have housed inside of the facility. We have to protect them because English is not their first language—it's their second language—and so we have to make sure that they're secure and that they're safe and then, uh, we return them safely back to their home country.

(Lyda & Lyda, 2009) (Kahn, 2010, p. 157). One ICE enforcement agent indicated to NGO-representatives on a facility tour that the agency planned to take down the wire, but "noted that the cost of such refurbishment is prohibitive," (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 12). The outside of the

facility is also routinely patrolled by guards in vehicles, and all entrances to the grounds have security checkpoints. Following negative publicity brought-on by media and advocacy-group exposés, and particularly as a result of high-profile lawsuits[12] brought-on primarily by the American Civil Liberties Union on behalf of Hutto residents, the concertina razor wire was slowly removed—though the chain-link fence remains up—beginning in early 2007 while other conditions at the facility slowly changed, as well: "The center underwent more than 100 changes. ICE said those changes came about more as a result of trial and error, rather than neglect," (Robuck, 2008).

ICE advertises that residents have freedom of movement within the facility for twelve hours daily, and that "[s]ecure doors are never used within residential areas" (Immigration and Customs Enforcement, 2010b), though doors between residential areas—separating the pods from each other—and to other parts of the facility are kept secured and monitored by a guard (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, pp. 12-13). DHS Secretary Michael Chertoff bragged on a television interview that doors inside Hutto are kept unlocked (Lyda & Lyda, 2009); however, he left out the facts that the locks on the cell doors were completely disabled and, more importantly, that "there is a laser beam that shoots across the line of cells so that if a door is opened [more than 4 inches], an alarm would go off," (Democracy Now! News, 2007) (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 17).

[12] A series of ten lawsuits representing 26 detained children at Hutto was filed in the U.S. District Court for the Western District of Texas over early- and mid- 2007. The lawsuits resulted in a consolidated settlement agreement titled *In re Hutto Family Detention Center*.

Inside Hutto, residents are housed in eleven residential pods—called "dormitories" by ICE—with two levels of adjoining cells that open into a communal area to which residents have access between the hours of 8 a.m. and 8 p.m. daily (Immigration and Customs Enforcement, 2010b). For the remaining portion of the day, including lock-downs during routine head-counts—summing approximately 13 hours a day—residents are confined to their cells (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 16). Coinciding with the 12 hours of daily freedom of movement, friends, family, and attorneys of detainees are permitted to visit residents in the facility's legal and family visitation room, which "includes rooms and cubicles for private attorney-client meetings," and allows for full-contact visitation (Immigration and Customs Enforcement, 2010b); however, until litigation in mid-2007 forced changes, the original visitation policy at Hutto, documented by a 2007 report, restricted non-attorney visiting hours to 8 a.m. through 5 p.m. on weekends, and restricted non-attorney visiting arrangements to a no-contact room with a Plexiglas® wall separating detainees from visitors for the purpose of reducing the need for strip-searches (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 34). It is unclear whether any changes were made to the facility's design for the allowance of full-contact visits.

ICE has not publicized official standards on bathing and mealtimes for Hutto residents as it has done with NWDC; however, former residents of TDHFRF reported that adults were permitted to shower daily in the mornings, and that child residents were permitted to shower daily in the afternoons. Detainee showers, regardless of age, are limited to five minutes. Though mealtimes are not specified, residents are provided food three-times daily in communal cafeteria on a routine schedule of morning, midday, and evening. While operating as TDHFRF,

detainees were required to wear prison scrubs; however, resident clothing policy changed following litigation, such that "[r]esidents at the center have the option of retaining their personal clothing," or, "[i]f the resident prefers, the center can provide jeans, polo shirts, t-shirts, jackets, gym shorts, underwear, tennis shoes, and sweat suits," (Immigration and Customs Enforcement, 2010b). These clothing changes have not entirely gone into effect as of late 2010, though, due to opposition and security concerns from unionized detention guards and staff (WSB-TV Channel 2 Action News Atlanta, 2010).

Because the facility was originally a prison, the corridors, access-points, and other parts of Hutto are equipped with wrought iron prison-bar doorways. While the purpose-built, high-security electronic cell doors offer more privacy than prison-bar doors would, the facility still maintains some of its prison-bar features. When representatives of the ACLU and the Immigration Clinic of the University of Texas at Austin's School of Law began visiting the facility in 2006, they documented that CCA was using the two-stage prison-bar doors at the entrance as though the facility were still a medium-security prison—such that a person being admitted to the facility would have to pass through one prison door and wait for that door to be secured before another door would be opened and access granted (Lyda & Lyda, 2009). Electronic doors in the facility are operated from a central control room, similar to that in NWDC; however, this remote-control functionality raised serious concerns while the facility was used for family detention, as the doors did not feature any sort of safety sensors to prevent injury if a person or object is caught in the door's path (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, pp. 12-13).

Hutto, like NWDC, does not utilize the actual architectural design of Bentham's Panopticon; however, it does have a central control room, which serves the same observational

purpose. The central control room at Hutto not only overlooks the pods, it is also directly linked to over 100 closed-circuit television (CCTV) pan/tilt/zoom cameras that allow facility staff to monitor all detainees in communal areas and even to zoom-in and view, for example, a piece of paper on which a detainee is writing (Lyda & Lyda, 2009) (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 13). These cameras record footage round-the-clock and videotapes are archived and can be accessed to review incidents.

The facility also houses a legal visitation room and six video-teleconference courtrooms, which are used to enable court proceedings without having to transport detainees to the actual court. Other technology at Hutto includes radio and cable television in the dormitories' common areas and a communal computer room, "equipped with 20 computers, all with internet access to… free e-mail services," and "online GED, ESL, and parenting programs, in both English and Spanish," (Immigration and Customs Enforcement, 2010b). Additionally, the facility has a law library and a general library with "approximately 6,000 books… in English, Spanish, and other languages, and a selection of popular magazines and newspapers," (*ibid*.). Though Hutto has no commissary, it does have a cafeteria, medical ward, and interior and exterior recreational space for residents. While used for family detention, an outdoor playground was installed on-site and walls inside the facility were painted with murals.

Since its conversion to a facility used exclusively for detaining adult females, ICE advertises that Hutto residents "are provided with daily recreational opportunities," including access to "dance and aerobic classes, workout equipment including cardio exercise machines, two soccer fields and a volleyball court," at which residents may participate in organized "basketball, volleyball, kickball, soccer and flag football," (Immigration and Customs

Enforcement, 2010b). Also since becoming a women-only detention facility, Hutto hosts a "Resident Advisory Committee," which organizes "monthly birthday parties and holiday celebrations…. [and] movie nights," (*ibid*.). One other new feature at Hutto since the population change is the on-site presence of a local cosmetologist twice a week (Immigration and Customs Enforcement, 2010b) to accommodate the "uniquely female and residential character" of the center (Immigration and Customs Enforcement, n.d. a).

As previously mentioned, Hutto was used to house immigrant families with children up to 17 years of age, and it is now used to house immigrant women. During both of these periods, detainees at Hutto have been held under a variety of legal circumstances, as is the case with all immigration detention facilities. It is important to note, however, that *no* criminal aliens—detainees with criminal records that directly qualify them for deportation—have been detained at Hutto since its 2006 inauguration as a Family Residential Facility;[13] in fact, human rights advocates who toured the facility in early 2007 reported that

> Everybody who's there is in some sort of immigration proceeding. Either they've been apprehended at the border crossing illegally, or… some of them have been apprehended inside the country… So there's people in all sorts of proceedings, but what is interesting is that none of the people held at these facilities have any criminal charges pending against them, nor do they have any criminal backgrounds.

(Democracy Now! News, 2007). While some detainees at Hutto have gone through expedited removal, the facility has historically had relatively lower rates of expedited removal proceedings—as compared to other ICE detention facilities—and relatively higher rates of asylum-seekers, including a particularly high rate of domestic-violence related asylum claims since mid-2009 domestic violence policy changes (Lyda & Lyda, 2009) (Women's Commission

[13] This information is accurate as of at least early 2009; however, no verification of this trend is yet available regarding the women-only population held at the facility since late 2009.

for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007) (Preston, 2009). ICE has historically failed to provide statistics on asylum-seekers detained at Hutto, despite Freedom of Information Act (FOIA) requests by various human rights agencies (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 11) (Democracy Now! News, 2007); however, independent estimates place the rate of asylum-seekers at Hutto in the vicinity of 90% (Geisler, 2009). In late July, 2009, ICE informed international inspectors that more than 90% of the families detained at Hutto were seeking asylum (Ruland, Judge and OAS Find T. Don Hutto Lacking, 2009).

As of 24 March 2010, the average duration of detention at Hutto is 31 days (Immigration and Customs Enforcement, 2010b), though advocacy groups have documented significantly longer stays, particularly among asylum-seekers (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 32) (Lyda & Lyda, 2009). As of at least March, 2010, the facility is staffed by 169 CCA employees, 43 ICE Health Service Corpsmen and women, and 30 ICE employees (Immigration and Customs Enforcement, 2010b). In May, 2010, the average daily detention population at Hutto was 505 (Immigration and Customs Enforcement, 2010c), yielding approximately a 2-to-1 detainee-to-staff ratio.

Because Hutto has only operated as a women's-only center since September, 2009, there is insufficient information to determine many demographic factors of the current population; however, when ICE used the facility to detain immigrant families, Hutto only housed "immigrant families classified by ICE as 'Other Than Mexican,' [OTM] the majority of whom [were] from Central America, but also includ[ed] immigrants from Africa, Asia, Europe, Australia, South America, and Canada. At any one time, there [were] typically about thirty countries represented by the detainees at Hutto," (The Least of These, 2009c). The current

population at TDHRC is 100% female above the age of 18; however, the population at TDHFRF included children as young as infants and a mix of genders, though the majority—roughly 80% during at least one documented visit to the facility (Moreno, 2007)—of adult detainees were female.

Issues Facing Detainees at Hutto

Due process and grievances at Hutto

While ICE now lists Hutto as being equipped with six video teleconference courtrooms, reports from 2007 indicate that the facility originally had only two such rooms (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 31). The availability of only two televideo courtrooms, which are used to videoconference with judges for master hearings[14] and credible fear hearings, for approximately 500 detainees at Hutto implies that proceedings for Hutto residents would necessarily take longer to schedule, effectively extending the duration of detention because of an inadequate capacity to process individuals through the immigration court system. Similarly, the ability of detainees to promptly and adequately deal with their immigration proceedings is hindered by the fact that they are required to schedule an appointment to access the facility's law library, rather than having free access to legal materials as-needed (*ibid*., p. 31). While these conditions seem like simple hindrances to speedy proceedings, their effects are compounded by the remainder of due process issues at Hutto.

For example, the Hutto administration requires three to seven daily headcounts of detainees. These headcounts, which may take up to an hour, are conducted throughout the day

[14] A master hearing, held before an immigration judge, is an initial hearing for those undergoing immigration proceedings.

and night, and require that all detainees be locked in their cells and remain completely silent until the headcount is complete and triple-checked (Lyda & Lyda, 2009). Implicitly in this rule is the notion that detainees are unable to access the courts, library, or attorney-client meeting room during headcount. A further hindrance to due process is the fact that the facility does not allow incoming phone calls, even from attorneys whose clients are detained at Hutto (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, pp. 31-32), though ICE policy states that facility staff will notify detainees of calls directed to them and relay the caller's name and telephone number (Immigration and Customs Enforcement, n.d. a). The headcount and telephone policies will both receive further attention in the following section on living conditions.

An area within Hutto, deemed the "legal and family visitation room" by ICE, includes "rooms and cubicles for private attorney-client meetings," (Immigration and Customs Enforcement, 2010b), apparently making no consideration for the lack of privacy afforded by a cubicle. Also relating to privacy and confidentiality, CCA routinely "inspected" incoming and outgoing mail, including legal correspondence, at TDHFRF until a court settlement forced the corporation to abandon this practice (Lyda & Lyda, 2009). More direct and disturbing issues with due process at Hutto, however, arise with the ability of detainees to retain and access counsel. For at least a brief period in 2007, and perhaps longer, the capacity of attorneys to meet with clients was also inhibited by a CCA staff at Hutto, who began enforcing a previously undisclosed policy wherein attorneys could only meet with a maximum of 10 detainees per day, including children; because Hutto policy required that children accompany their parents to attorney-client meetings, attorneys were effectively limited to visiting three clients or fewer per day (Women's Commission for Refugee Women and Children and Lutheran Immigration and

Refugee Service, 2007, p. 32). Attorneys representing detainees at TDHFRF complained that this policy "severely limit[ed] their ability to meet with their clients," (*ibid*.). Though Hutto has faced less criticism over the availability of attorney-client meeting space than has NWDC, independent reviews of TDHFRF highlighted a variety of due process criticisms unique to the family detention policies implemented by ICE and CCA at Hutto.

One of the most commonly-raised issues regarding access to counsel while Hutto detained families was the aforementioned facility policy that required children accompany their parents to all legal proceedings, including court and attorney-client meetings. Facility operation and licensing agreements required that families not be separated for "more than a short period of time…. [as] the facility can provide supervisory care for … children for [only] up to 72 hours," (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 21). While this policy was intended to promote family unity—one of the stated purposes of TDHFRF—the inflexibility of the policy was highly problematic in legal settings, as well as in medical and disciplinary settings. Particularly in asylum cases and any cases involving "rape and domestic violence" or other traumatic experiences, the presence of children at legal proceedings has posed significant problems for parents who do not want to discuss the details of their experiences in front of their children (Lyda & Lyda, 2009) (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 32). When parents are unable or unwilling to share the details of their applications for asylum, their attorneys are unable to obtain key information they need to effectively represent their clients, and judges may never hear the full story or merits of an asylum-seeker's appeal.

Detainees at Hutto also face the same systematic problems described above in Chapter Two, including pressure to sign legal papers, the lack of a guarantee to counsel for civil

proceedings, and the accompanying high rates of *pro se* representation.[15] As at NWDC, the lack of due process granted detainees at T. Don Hutto is partly responsible for the illegal detention of U.S. citizens at the ICE facility (McHenry, 2010). More so than NWDC, however, Hutto represents a key example of intentional and systemic abuse carried out by ICE: the planned isolation of detention facilities to keep out attorneys, media, NGOs, and other auditors. While various studies and reports of immigration detention practices in the United States have called attention to the remote location of the detention facilities and the strain that such isolation puts on attorneys—particularly *pro bono* attorneys—who must travel long distances to visit their clients (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008) (Human Rights Watch, 2009b) (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007), it was with respect to Hutto that the most incriminating evidence of this practice came to light:

> Recently, light was shed on how ICE decides where to detain immigrants awaiting trial and deportation. During an ACLU lawsuit opposing conditions at ICE's T. Don Hutto Residential [C]enter near Austin, attorney Barbara Hines, a clinical professor of law at [University of Texas at Austin], received an anonymous letter from an ICE whistleblower. The letter included an internal memo about the detention center in [Taylor, Texas], where ICE officials expressed concern about [using the former T. Don Hutto Correctional Center for immigration detention] because of its proximity to Austin and [the city's] broad base of NGOs and immigrant advocate groups.

(Nelson, 2010). In other words, documents released by the whistleblower revealed that the agency took considerations to reduce NGO and advocate—and implicitly lawyer—access to and reviews of the facility. Furthermore, access to counsel is hindered by an inadequate Legal

[15] Reliable statistics specific to Hutto representation rates are not readily available; however, Hutto does fit within the larger system of immigration detention, which reflects similar representation rates to those reported at NWDC.

Orientation Program, which did not exist in family detention facilities until lawsuit-induced reforms, and facility staff misinforming residents about the availability of *pro bono* lawyers[16] (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 32). This practice affects not only due process, but also grievances—because sometimes lawyers are able to raise grievances directly with facility administrators to whom the detainees would not have direct contact, and because some detainees have found that the only way to have their grievances resolved is to appeal to the public—and oversight, which will be addressed in a later section.

Information on grievances at Hutto is sparse, particularly since ICE and CCA have kept audits of the facility under-wraps, only releasing them under FOIA after lawsuits (Lyda & Lyda, 2009) forced their hands. The grievance procedure and, as of the 2009 organization of the Office of Detention Oversight, the grievance review mechanisms are Hutto are now standardized and

[16] Residents at Hutto reported that facility staff had told residents that *pro bono* lawyers were not available. While audits showed that the telephones at Hutto are generally in good working order, and that a list of law-firms, clinics, and consulates is provided at each phone, detainees still report being unaware of the options for retaining counsel, or simply being unable to locate and contact a lawyer (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007) (Lyda & Lyda, 2009). In addition to the ACLU and other major NGOs, University of Texas at Austin's Immigration Clinic, and a few area law firms, some residents at Hutto obtain counsel and legal advice through the Hutto Detention Representation Project, which has operated since September, 2008, as a program of the Austin-based American Gateways—formerly the Political Asylum Project of Austin (American Gateways, 2010).

parallel to those at NWDC, though the immigration detention grievance system as a whole—including Hutto and NWDC—still receives criticism for failing to protect complainants from reprisal and for failing to adequately respond to grievances. One extra measure intended to enforce grievance procedures is that the IGSA between CCA, Williamson County and ICE stipulates grievance procedures, making it enforceable as contract law. A variety of incidents at Hutto which likely would have resulted in grievances are addressed above and below this section where they otherwise logically belong—within the sections on due process, living conditions, punishment and treatment by guards, and so forth.

Food, living conditions, visitation, medical care, and education at Hutto[17]

Detainees at Hutto frequently reported similar problems with food as those reported at NWDC. Children at TDHFRF were "often unable to eat [the food], frequently had upset stomachs, and were losing weight," (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 19). While recently proposed reforms would address issues such as frequently repeating menus and culturally inappropriate food, much to the dismay of some critics (WSB-TV Channel 2 Action News Atlanta, 2010), human rights

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[17] For the purposes of this section, available information is largely drawn upon conditions while Hutto was used for family detention as TDHFRF. Because Hutto has only operated for women-only detention since September of 2009, insufficient information is yet available to adequately discuss food, living conditions, medical care, education, and visitation at TDHRC. Based upon recent reforms to national detention standards, as well as upon a comparison to NWDC and TDHFRF, some conditions at TDHRC are logically inferable. This section will attempt to clearly delineate between documented fact and inference; however, it is strongly advised that future research on TDHRC is necessary.

advocates indicated years ago that food at the facility was problematic for a variety of reasons, including that the food was unhealthy, unsafe and unappetizing, that it was not culturally appropriate, that detainees were too stressed or depressed to eat, and food service was overly restrictive and did not allow for dietary restrictions or food outside of the brief mealtimes (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 19).

Families ate breakfast, lunch, and dinner at TDHFRF in their pod's cafeteria during a mealtime of 20 to 25 minutes—though many detainees reported mealtimes as short as 5 to 15 minutes (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 19) (Lyda & Lyda, 2009). Particularly for families with young children, many parents reported great difficulty in feeding their kids and themselves during these short mealtimes. Parents also reported that some staff members "yell at them to get up and leave before they have finished eating or feeding their children," (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 19).

According to the CCA public information officer, each detainee at TDHFRF received meals totaling 3,200 calories daily for adults and 3,500 calories daily for children, with extra portions available to pregnant women and children as needed (*ibid*.) (Blumenthal, 2007); however, several pregnant detainees reported lacking sufficient food and, even after making special requests—either by themselves or through a facility doctor on their behalf—for extra portions, not receiving more than the standard calorie-count adult diet (*ibid*.) (Lyda & Lyda, 2009). Not only did pregnant women at TDHFRF report being dangerously undernourished and underweight during pregnancy, reports also came out of Hutto about young children losing weight in detention—a girl who was 18 pounds when she arrived at Hutto at 5-months of age, for

example, weighed 14 pounds after three months of detention (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 19) (Lyda & Lyda, 2009). In addition to the more obvious medical concerns raised by these conditions, pregnant detainees at Hutto have also reported a complete lack of prenatal care, going far beyond the lack of an appropriate prenatal diet (*ibid*.) (*see below for further discussion of medical concerns at Hutto*).

One basic concern with living conditions at TDHFRF was the strict shower schedule and 5-minute time limit on showers for detainees of all ages. According to one interviewee, guards would threaten detainees with disciplinary action and harm to their immigration cases if detainees showered at the wrong time—including if parents would go to the showers with their young children (Lyda & Lyda, 2009). Another interviewee reported that guards would pound on the shower doors if detainees took longer than 6 or 7 minutes to shower, regardless of age or whether a parent was helping their young child to bathe (*ibid*.). Also of concern until a lawsuit forced changes such as a privacy curtain, each cell in TDHFRF contained an unshrouded toilet for detainee use. In addition to raising sanitary concerns similar to those voiced at NWDC, toilets at TDHFRF lacked any semblance of privacy, particularly given that cell doors remain open for 12 hours daily. Under CCA administrative practice, all adult detainees at TDHFRF were "assigned daily chores from a rotating list, and [completed] their chores during either a morning or afternoon rotation," and, "[a]s such, they [were] responsible for cleaning and upkeep of the pods and their cells, including bathroom areas," (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 17). Since at least the facility's conversion to TDHRC, residents also help serve meals in the cafeteria, which ICE claims "foster[s] a more home-like atmosphere," (Immigration and Customs Enforcement,

2010b). This policy sparked controversy when a Palestinian family who had been detained for 3 months at Hutto—and who were released pending a determination on their amnesty application—shared their story with the media:

> Hamzeh Ibrahim, 15, said his father was sent to a facility in West Texas while his pregnant mother shared a cell-like room with the family's 5-year-old girl; two other girls, 7 and 13, shared another room. He said they had to clean their rooms and the communal shower. "I cleaned for me and my mom because she is pregnant and her back hurt," he said.

(Blumenthal, 2007). While residents perform these tasks and are even referred-to as "resident workers" by ICE, it is unclear whether residents receive any form of compensation for their labor.

Returning to the previously mentioned living conditions—the playground and recreational opportunities, hallway and common-area murals, an on-site cosmetologist, a computer lab and library—a few other additional details are worth mentioning before continuing with a further discussion of problems faced in living conditions. To first back-track a moment, it is important to note conflicting reports on access to Hutto's libraries. In contrast to the above-mentioned appointment-based access to the library, a major 2007 report on Hutto indicated that detainees were "only allowed in the library during their orientation to the facility," and that the only way detainees could actually access library books was off of library carts which circulated the pods on five-day cycles (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 27). Additionally, with respect to recreational opportunities, residents reported similar concerns regarding weather conditions as were reported at NWDC. Furthermore, facility staff stated that families were allowed to go outside for recreational activities for a minimum of one hour daily; however, residents shared various conflicting reports, some reporting that children were allowed outside for a maximum of

10 minutes, during which time they were made to sit in silence before lining up to re-enter their pod (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, pp. 26-27) (Lyda & Lyda, 2009).

Moving past these major components of living conditions, a first point worth consideration is that TDHFRF policy forbade children from having toys, except for communal toys which could not be removed from the common area of the pods, despite public toy-drives for detained children (Zhou, 2007). Another point is that, until the ACLU lawsuits, children at TDHFRF were forced to sleep on metal cots without padding, including top-bunks which did not have safety railings (Hover, 2007) (Democracy Now! News, 2007). Also following the lawsuits, walls were painted and murals were added, potted plants were installed, and the facility's concertina razor wire was removed (Lyda & Lyda, 2009). While all children and adult detainees were previously required to wear prison scrubs, this policy changed following litigation, and detainees are now to be permitted to wear casual clothing, as described above; however, detention officers' unions come out against the new clothing policies and impeded reforms, alleging that the proposed clothing options would pose a threat to officer safety (WSB-TV Channel 2 Action News Atlanta, 2010). CCA guard uniforms at Hutto also changed following litigation, in an effort to reduce the prison-like feel of the facility. Also as a result of the same litigation, new provisions in facility policy include "limiting strip searches of young children and not waking them for nighttime head counts," (News 8 Austin Staff, 2008), because these practices had drawn criticism from rights advocates including the ACLU.

As was previously mentioned, Hutto policy made early efforts to reduce the "need" for strip-searches by restricting non-attorney visits to no-contact visits. While this is theoretically an acceptable reason to use maintain such visitation policies, even medium-security federal

penitentiaries allow at least minimal contact during regular visits—though they do randomly conduct visual strip-searches on inmates following contact visits (U.S. Department of Justice, Bureau of Prisons, 2007). Additionally, detainees at Hutto consistently reported headcounts interfering with visitation time—including attorney-client meetings—and guards reportedly prevented children from attending visitations as a punishment (*see the following section on punishment and treatment for further information on this practice*) (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007) (Lyda & Lyda, 2009) (American Civil Liberties Union, 2007a).

Relating to visitation policy, the telephone policy at Hutto also merits mention. As was mentioned in prior sections of this chapter, as well as in footnote 16 above, Hutto's telephones have provided questionable access to the outside world—friends, family, lawyers, and others. Additional points of concern include a lack of affordable telephone options—the payphones charge 50¢ a minute—and the fact that none of the phones at Hutto have privacy shrouds (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 34). Furthermore, ICE renegotiated the IGSA with Williamson County to reduce telephone costs, making the decision to block outgoing 9-1-1 calls from all phones accessible to detainees (Jankowski, 2010). Detainees at other ICE facilities have reportedly been punished—in one instance with *one month* of solitary confinement—for calling 9-1-1 to request emergency medical or police assistance (The Human Rights Immigrant Community Action Network, 2009, p. 12). While Hutto administrators hold that residents do not need to place emergency phone calls due to the presence of security guards and medical staff, a

number of incidents at other jails, prisons, and detention facilities, including facilities operated by CCA, suggest otherwise.[18]

The prevention of 9-1-1 calls also raises concerns in light of Hutto's questionable quality of medical care, despite TDHRC's current employ of 43 ICE Health Service Corps medical staff.[19] While the facility faces similar medical care problems to those reported at NWDC—such

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[18]Incidents where detainees and inmates at facilities other than Hutto have at least attempted to contact outside authorities via 9-1-1 include more than one incident involving the death of an ICE detainee, as well as multiple incidents wherein police and emergency medical care providers were called to facilities to investigate allegations of neglect or of guards assaulting inmates and detainees (American Civil Liberties Union, Detention and Deportation Working Group, 2007) (Lee, 2007) (Bernstein, Few Details on Immigrants Who Died in Custody, 2008) (Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law of the Committee on the Judiciary of the Second Session of the 110th House of Representatives, 2008).

[19]Conflicting reports of the numbers and composition of medical staff at TDHFRF appear in various reports, most noting something along the lines of "We received conflicting information about the composition of the medical staff and are therefore unable to say with any certainty the degree to which the facility has full-time staffing," (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 20). One report stated that TDHFRF had a medical staff of 20 in early 2007 (Blumenthal, 2007). The figure of 43 medical staff comes from a March, 2010, document, and thus only earns consideration for conditions at TDHRC. The same document indicates that medical staff, including doctors, nurses, and a dentist, is on-site 24/7, while mental health staff, including a psychiatrist, a psychologist, and several social workers, is on-site every day.

as poor communication and misunderstandings caused by language and cultural barriers, a fear of sharing concerns or medical histories because it may negatively affect immigration proceedings, and the compounding of mental health problems caused by detention—Hutto has also evidenced a variety of unique medical care concerns through its history. Unlike NWDC's sick-call procedure, detainees at TDHFRF who required medical attention had to fill out a medical call-slip and either place it in a box in the hallway or hand it directly to facility staff. According to Health Service Corps staff, the slips were checked twice daily, and detainees were called to the facility's medical clinic for care; however, families reported "delays of several days between submitting a request and receiving treatment," (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 21).

While ICE has boasted that the consolidation of families and of women at Hutto has allowed the agency to provide higher-quality medical care, various complaints of inadequate care have arisen since the facility opened in 2006. Nutritional concerns at Hutto have historically raised more concern than at other facilities because of Hutto's population of women and children. Also, both as a family residential facility and as a women's residential center, residents have accused Hutto of failing to provide adequate prenatal care; as a response to this criticism, TDHFRF contracted with a local clinic to provide additional prenatal care (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 21). In transport to and from the clinic, women are shackled (*ibid*.). In one instance, a pregnant detainee reported that facility doctors X-rayed her during a tuberculosis screening without providing a lead screen or vest to protect the fetus from radiation, despite the fact she notified the radiologist of her pregnancy (Johnson J. , 2007). Additionally, TDHFRF failed to retain a full-time, on-site pediatrician until the facility's administration was forced to do so by

civil litigation (American Civil Liberties Union, 2007d). Detainees reported that staff nurses were inexperienced with medical needs of infants and young children, and that their go-to solution for any medical or mental concerns of children was to drink more water.

Further concerns regarding medical care at Hutto include the guards' threats of and use of separating families as discipline, which many detainees report as traumatic to their children, and which is about as close to the use of solitary confinement—as reported above in Chapter Two—as TDHFRF ever made it. Additionally, the high rate of asylum-seekers at the facility represents a concentration of a population with specific medical concerns, particularly including mental healthcare, but also in the special needs of survivors of torture, domestic violence, and other lasting physical trauma (Lyda & Lyda, 2009) (Physicians for Human Rights and The Bellevue/NYU Program for Survivors of Torture, 2003). Early reports criticized therapeutic mental health care at Hutto for being "insufficient or culturally inappropriate," (Moreno, 2007), and the facility staff made no exception to the rule about keeping family members together, such that entire families would have to be present at a counseling session if just one member of the family requested counseling (Lyda & Lyda, 2009) (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, pp. 23-24, 29). While some teenage detainees at Hutto stated that the mental counseling services were "enjoyable and helpful," others complained that counselors "just try to make [them] laugh and then 'pretend like everything is okay,'" (Ruland, Judge and OAS Find T. Don Hutto Lacking, 2009). Detainees even reported that facility staff discouraged them from seeking psychological counseling, telling residents that therapy implied they were "crazy" and, as a result, their children would be taken away (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 23). Various reports of early conditions at TDHFRF indicated

widespread depression and anxiety among residents, further problematized by the tendency of guards to discipline residents for depressive behavior, as well as "symptoms of psychological distress that have been previously linked to the trauma of detention, including visible fear, crying and expressing a desire for medication to alleviate their depression and anxiety," (*ibid.*) (Lyda & Lyda, 2009).

While the center now employs a psychiatrist, a psychologist, and several social workers, mental health professionals at the facility during at least the first few months of operation included only one licensed mental health counselor and one mental health coordinator, who was still working towards his license while employed in the Health Service Corps (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 23). Furthermore, for medical care and all other purposes normally required by Texas state law, facilities caring for children must normally be licensed; however, TDHFRF was exempted and never attempted to attain childcare licensure (American Civil Liberties Union, 2007b).

On a similar note, TDHFRF never received proper licensure or certification as an educational facility, since Texas exempted the facility from this requirement, as well. In fact, partly due to the aforementioned licensing requirement that mandated families not be separated, and partly due to a staff shortage, classroom instruction for children in at Hutto during the first few months of the facility's operation was limited to one-hour per day, and was generally on topics irrelevant to the young students, such as curriculum about childcare (Lyda & Lyda, 2009) (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 25) (Blumenthal, 2007). By February of 2007, almost a year after opening, classroom instruction was expanded to four hours daily and curriculum was compliant

with Texas state standards, according to ICE officials (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 25) (Lyda & Lyda, 2009). Following the end of family detention at Hutto, the center offers adult educational programs, including English language classes, arts and crafts, and computer literacy, and the center promotes online GED, ESL, and parenting programs at its computer lab (Immigration and Customs Enforcement, 2010b) (WSB-TV Channel 2 Action News Atlanta, 2010).

Punishment and treatment by guards

As described above, guard behavior at Hutto has been problematic since the facility opened. Hutto detainees raised similar concerns of personal privacy and legal confidentiality as those which were raised at NWDC; however, guards at Hutto are also accused of yelling at detainees, including young children, and demeaning them, as well as disciplining detainees for depressive behavior. In fact, one provision of the *In re Hutto Family Detention Center* consolidated agreement was that guards and staff could no longer refer to detainees as "prisoners" because of the penal-like implications of the term and the stress it caused, particularly among children and adolescents at the facility.

Beyond these basic complaints, however, the guards' threats to separate families as discipline constituted one of the most reported problems at TDHFRF (Lyda & Lyda, 2009). In some cases, guards even threatened *permanently* separating children from their families (Gupta & Graybill, 2008, pp. 23-28) and some residents reported being disciplined with separation lasting "days or months," (The Least of These, 2009b). Residents also complained that guards were overly strict with rules and routinely disciplined children for age-appropriate behavior, such as "running around, making noise and climbing on couches," and staff reported that disciplinary problems were routinely handled by "sending the entire family to the [facility's] counselor," (Women's Commission for Refugee Women and Children and Lutheran Immigration and

Refugee Service, 2007, p. 29). In addition to being separated from their families for discipline, children were commonly placed in "time-out" for 30 minutes (*ibid*.). Parents and children were also disciplined with write-ups, which "could result in loss of television privileges or recreation time, or in children being sent to their cells," (*ibid*.). Detainees also reported that guards would turn off hot water, forcing residents to shower in cold water, and would chill the rooms with air-conditioning to discipline and control children (*ibid*.) (The Least of These, 2009b). These practices, which are just a portion of the broader variety of ways in which guards clashed with children, are taken as evidence of a fundamental and insurmountable flaw in detaining children at a facility staffed by guards who are trained in adult corrections (Hawkes, 2008).

In addition to the above issues of discipline, punishment and treatment, another pair of scandals at Hutto fits under the category of treatment by guards, and highlights the "systemic failures that continue to plague our nation's broken immigration detention system," (Vanita Gupta, Deputy Legal Director of the ACLU, qtd. in (American Civil Liberties Union, 2010)). The first scandal, which occurred on 19 May 2007, involved allegations of "inappropriate contact" between a CCA guard and a detained mother. Local and county police were called to TDHFRF by an ICE official at the facility to investigate a "possible assault on an inmate" (Ruland, Cover-up at Hutto?, 2007b) caught on video surveillance while both CCA and ICE conducted their own investigations. The mother was with her young son, who was sleeping in his crib in their cell, when video cameras caught the guard crawling out of the cell in an "apparent failed attempt to evade security cameras," (Human Rights Watch, 2010b, pp. 8-9). CCA fired the guard, and ICE officials assured the public that the guard—whose name was never released—would never be able to work for the government again; however, according to public-relations officials for ICE and CCA, the police investigation, which found evidence of sexual

contact, determined that the contact was consensual and charges were never filed against the guard (*ibid*.) (Lloyd, 2007) (News 8 Austin Staff, 2007a) (Ruland, Cover-up at Hutto?, 2007b). According to some reports, county police never determined whether the contact was consensual, but actually turned the investigation over to ICE after determining that the incident was beyond their jurisdiction and they could not charge the guard under local or state laws (Ruland, Cover-up at Hutto?, 2007b). Because of a loophole in federal laws at the time, a privately sub-contracted guard working at an IGSA facility was not within the scope of federal laws such as 18 U.S.C.A. §2243(b), which criminalizes sexual contact between guards and those in their custody at federal facilities under the Department of Justice (DOJ).[20] Though the loophole was later fixed, the guard was never brought up on charges. The incident, which also resulted in ICE issuing reprimands to Williamson County and CCA, caused Williamson County to prepare documents for terminating their IGSA due to liability concerns, but the Commissioners decided against filing the documents and instead chose to renew the IGSA after relevant court decisions and assurances from the federal government and CCA—which offered the county "free legal protection and $250,000 should it ever face litigation"—assuaged their concerns (Mixon, 2007) (News 8 Austin Staff, 2007b) (Falkenberg, 2007).

The second scandal surfaced on 11 May 2010 when a detainee reported to an Austin Bergstorm International Airport employee that she had been inappropriately touched outside her clothing by the guard who had transported her to the airport. During the ensuing police

[20] In fact, because the law only applied to facilities controlled by the DOJ until a legislative amendment in late 2007, all ICE facilities—which are under the DHS, rather than the DOJ as immigration detention had been during the days of the INS—were outside the legal jurisdiction from 2003 until the amendment went into force.

investigation, CCA transport officer Donald Charles Dunn admitted to detectives that "he frisked the women – touching their breasts, crotch and buttocks areas over their clothing – not 'for safety concerns but as self gratification,'" (Rosetty, Man arrested in relation to T. Don Hutto assaults, 2010a). Authorities found Dunn had transported 72 detainees, 30 of them women, to the airport or bus stations upon being released on bond while he was employed at Hutto—from April, 2009, through his termination in May, 2010—of whom investigators only interviewed 19 by the time charges were filed relating to the 11 May 2010 incident and incidents involving 7 other women who reported that had groped them, unlawfully restrained them and taken them to locations against their wills, and solicited sex from at least one of his victims. Dunn was charged in August with 5 misdemeanors relating to the incidents of sexual assault that took place in Williamson County; he took a plea deal in November, 2010, and was sentenced to one year in county jail, a $2,000 fine, and 2 years probation. As of November, 2010, charges have not yet been filed against Dunn for confirmed incidents that occurred outside of Williamson County; however, the Williamson County Attorney's Office and the County Sheriff's Office stated that they were in contact with Travis County and federal officials to discuss options for additional charges. In addition to his November plea deal, Dunn pleaded guilty in September, 2010, on three counts of official oppression and two counts of unlawful restraint. The investigation also revealed that CCA had failed to comply with ICE standards, allowing Dunn to transport female detainees alone.[21] After the scandal was picked-up by the media, CCA fired their Hutto warden. As a result of CCA's violation of ICE policy, ICE officials ordered CCA changes in procedure and administration and placed CCA on probation, such that any further violation of ICE policies,

[21] Relevant standards appear in the ICE/DRO Residential Standard for Transportation (by Land) available at http://www.aclu.org/files/assets/hutto_transport.pdf

standards, and protocols would result in the termination of CCA's contract with ICE, not only at Hutto, but at all CCA-ICE contract and IGSA facilities. ICE also publicly promised to support any of Dunn's victims in immigration matters, including by providing them U-visas. (Gamboa, 2010) (Associated Press, 2010) (Aguilar, 2010) (McHenry, 2010) (Vail, 2010) (Holland, 2010) (Trevino, 2010) (Wise & Vega, 2010) (Woflson & Cargile, 2010) (Rosetty, Former T. Don Hutto worker faces five charges, 2010c) (Rosetty, Man arrested in relation to T. Don Hutto assaults, 2010a) (Rosetty, ICE remains quiet about CCA investigation, 2010b) (Rosetty, Former T. Don Hutto worker sentenced, 2010d)

While these scandals, which involved different guards and occurred at Hutto more than once over the course of a few years, do not represent the *norm* for treatment of detainees by guards, the simple fact that such abuses have happened more than once at Hutto supports the ACLU's determination that these incidents represent a systemic failure. Furthermore, while a common minimum threshold for establishing a *trend* is often three isolated incidents, the occurrence of these two isolated incidents at Hutto—particularly in relation to the short overall history of the facility—necessarily represents something more significant than simply *coincidental anomalies*. Whether or not a trend is substantiated by these incidents, it is clear that Hutto faces serious systemic problems with regard to the treatment of detainees.

Administration and Oversight Issues at Hutto

Hutto, like NWDC, has its own administrative staff, in addition to CCA corporate administration, ICE—including ODO and OPR—and DHS administration, and higher-up and lateral levels of governmental administration.[22] While NWDC is a contract detention facility run by GEO under direct contract with ICE, Hutto operates under an IGSA between ICE and

[22] *See footnote* 5.

Williamson County, Texas, which sub-contracts daily operations to CCA. As such, Hutto theoretically has another layer of administration and oversight embedded in its structure. While Williamson County has occasionally pushed for reforms at Hutto, it appears the driving force behind the County's interest in reform has been a combination of liability concerns, particularly in terms of potential financial impact, and public-relations image control in response to advocate groups' critiques and ICE reprimands (*see above*). Additionally, when the facility operated for family detention, Hutto maintained a long-term questionable practice of avoiding lateral oversight by receiving exemptions from the Texas State Board of Education and the Texas State Department of Family and Protective Services, rather than attempting to satisfy licensing requirements as an educational and child-care facility.

CCA auditing policies specific to Hutto are established by the IGSA, meaning the auditing policies can change every time the contract is renegotiated, but CCA maintains general auditing policies for all its facilities. Basic oversight and administrative policies, including auditing, are similar to those described above with respect to NWDC and GEO. Though the CCA site does not specifically list Hutto as holding NCCHC *accreditation*, all IGSAs between ICE, WilCo and CCA have included a stipulation that the facility must perform in accordance with NCCHC standards (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 9) (Immigration and Customs Enforcement, 2010d), and CCA also advertises their compliance with and audits by the Joint Commission on Accreditation of Healthcare Organizations. CCA further conducts internal audits with its Quality Assurance department, which is also charged with "formal assessment of the accreditation process" for general facility operations, as well as specifically for medical operations (Corrections Corporation of America, 2008b).

Hutto is accredited by the American Correctional Association (ACA); however, the historical relation of CCA to the ACA is enough to raise some doubts over the objectivity of any ACA review of CCA facilities.[23] Also, TDHFRF's IGSAs included problematic phrases such as "to the extent applicable in a family detention facility," and left ICE employees with the responsibility of conducting inspections to see whether the ICE facilities complied with ICE policy, which raises serious questions over impartiality in oversight (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007, p. 9).

As a provision of the consolidated settlement agreement *In re Hutto Family Detention Center*, Hutto was subject to judicial oversight to monitor progress on the court-ordered improvements stipulated in the settlement agreement. The court-ordered judicial oversight ended, per an extension to the initial agreement, on 29 August 2009, just days before the facility waved goodbye to its last family residents and finalized its conversion to a women's only detention center. In the last judicial review of TDHFRF on 1 June 2009, the auditing United States Magistrate Judge reported "'if it looks like a duck, walks like a duck, and quacks like a duck, it's probably a duck.' The pods at Hutto look, walk, and quack 'jail,'" (Ruland, Judge and OAS Find T. Don Hutto Lacking, 2009). With the expiration of the court-order for judicial

[23] Terrell Don Hutto, after whom the detention center in Taylor, Texas, was named, was one of the founders of the CCA and was president of the ACA for many years. Interestingly, Terrell Don Hutto was a corrections commissioner in Virginia and Arkansas before he ventured into the private sector and used his position with the ACA to promote the privatization of prisons (Wray, 1986). Also worth noting, the prison system under Terrell Don Hutto's administration was called cruel and unusual in a number of lawsuits, including, *inter alia*, the famous Supreme Court case *Hutto v. Finney* (437 US 678 - 1978).

oversight and the end of family detention at Hutto, this additional level of oversight and accountability was lost in the transition to TDHRC. The settlement agreement itself, along with a variety of NGO and media reports on Hutto, represents a powerful layer of external public oversight. One co-counselor representing detainees in the *In re Hutto Family Detention Center* series of cases made the following statement on the influence of NGO, media, and public oversight in relation to Hutto: "None of the changes that [ICE and CCA are] making are voluntary. They're making these in response to a public outcry of people who say that it is wrong to imprison children," (Lyda & Lyda, 2009) (Falkenberg, 2007). Following *In re Hutto Family Detention Center*, ICE adopted official standards for family detention in December, 2007—eighteen months after Hutto began holding detained families (6 years and 9 months after Berks Family Residential Center began holding detained families).

On a different echelon of oversight, Hutto presents an exceptional history of international oversight, and lack thereof. While advocates and rights groups have unsuccessfully called on the OAS and UN to audit NWDC, Hutto was one facility where both the OAS and UN attempted to obtain access. Under the Bush Administration, a special delegation from the Rapporteurship on the Rights of Migrant Workers and Their Families of the Inter-American Commission on Human Rights—under the authority of the OAS—was perpetually denied access to Hutto (Ruland, Judge and OAS Find T. Don Hutto Lacking, 2009). In July, 2009, however, the Obama Administration opened Hutto to the IACHR delegation, which voiced concerns that conditions in Hutto would deteriorate once the mandate for judicial oversight expired. The delegation's preliminary report following their audit of TDHFRF stated that the facility was "not in compliance with the principle of the 'best interest of the child' to be in the least restrictive environment or with the principles applicable ... under international law," (*qtd. in ibid.*).

The United Nations Special Rapporteur on the Human Rights of Migrants was scheduled and approved to visit TDHFRF on 7 May 2007, according to the U.N. human rights office in Geneva; however, DHS announced just days before the visit that a tour of Hutto had not been approved for the Special Rapporteur, and that he would not be granted access to the facility. During the same visit to the U.S., the Special Rapporteur was also denied access to a county jail in New Jersey that was used to house immigration detainees. Initially, U.S. authorities did not offer any explanation as to why the U.N. official had been denied access to Hutto, though they later simply said that the tour was not approved and the U.N. human rights office had been mistaken in believing so. Another explanation offered by ICE for the last-minute denial of access was that ongoing litigation—the ACLU lawsuits—prevented the agency from allowing outside investigators into the facility. In an interview on the day he was supposedly scheduled to tour Hutto, the Special Rapporteur stated that his plan to tour Hutto was the result of a special invitation by DHS officials. United Nations officials were never able to tour the Hutto facility while it was used to detain families and, as of November, 2010, no attempts to audit the TDHRC have yet been publicized. (American Civil Liberties Union, 2007c) (Ruland, T. Don Hutto: Homeland Security Bars U.N. Inspector, 2007a) (Associated Press, 2007c) (Associated Press, 2007a) (Associated Press, 2007b) (Bustamante, 2007) (Mychalejko, 2008) The U.S. government's stumbling and fumbling for an excuse for having blocked international audits of Hutto would almost be comedic, if not for the very serious implications on oversight, accountability and transparency.

CHAPTER FOUR – ANALYSIS, CONCLUSIONS, AND RECOMMENDATIONS

While the preceding chapters of this report have included some limited analysis, interpretation, and commentary, the purpose of this final chapter is to synthesize and analyze all of the above information in order to come to some better understanding of the relation of the current system of immigration detention employed by the United States government to human rights laws, standards, and principles. The synthesis and analysis hereafter is rooted in two distinct, yet interrelated disciplines: human rights and sociology. The determinations and understandings pursued by this chapter are multiple, including: 1) whether, and to what degree, the current system of detention is in accord with applicable domestic and international laws, jurisprudence, policies, and principles (LJPPs), 2) whether, how, and to what degree recent reforms have affected, or could potentially affect, the detention system and conditions within detention, as well as whether, how, and to what degree proposed reforms have the potential to affect the detention system and conditions of detention in the future, 3) whether the findings of this human rights analysis offer sufficient evidence to deductively theorize structural social causes of the reported problems, which could then be interpreted through sociological theories including social pathology or social problems and issues, and 4) whether, and to what degree, any sociological theories can help to explain the phenomena reported in the above case-studies and their structural roots. Additionally, this chapter will illustrate how the further exploration and application of sociological analysis to the questions surrounding immigration detention can address issues which are not generally confronted in human rights analyses.

The Human Rights, Social, and Legal Implications of Contemporary Detention Practices

When a violation of human rights is alleged, the ensuing review can take any of a number of approaches. The European Court of Human Rights, the Inter-American Court of Human

Rights, the Inter-American Commission of Human Rights, the United Nations High Commissioner for Human Rights, the United Nations-mandated Universal Periodic Review, the Supreme Court of the United States, the New York State Division of Human Rights, and various other agencies charged with investigating, reviewing, and rectifying human rights violations operate on their own independent standards of review, and the evolving academic discipline of human rights currently lacks any singular methodology. In framing and analyzing the human rights concerns raised by the preceding case-studies, this human rights and legal review will apply a series of considerations based upon common and core standards of review pulled from various theoretical and legal systems domestically and internationally.

A simplified run-down of the methodology applied herein for the human rights and legal review is as follows:

1) Conditions of detention must comply with all applicable legal standards and principles, including U.S. laws, jurisprudence, principles, and policies, as well as international laws, jurisprudence, principles, and policies.
2) Compliance with applicable LJPPs is measurable in two ways:
    - Compliance with *general* LJPPs of civil detention on matters which generally are not raised as questions of human rights—such as the standard requiring that detainees have access to telephones—are measurable on a scale of degrees of compliance: Compliant, Mostly Compliant, Somewhat Compliant, and Non-compliant. In this case, the *standard* of review is simple comparison to the relevant LJPPs. The categories of Mostly Compliant and Somewhat Compliant should only be used when

necessary to differentiate anomalies and rarities from widespread and systematic trends.

- Compliance with LJPPs of civil detention on matters which raise direct questions of human rights—such as the right to *habeas corpus* or the right to non-refoulement—or on matters which indirectly raise questions of human rights, as supported by evidence meeting a minimum standard of probable cause—such as any certain matters relating to medical care or punishment which may impede on the right to life or on the prohibition of torture and other cruel, inhuman, and degrading punishment—are measurable only as Compliant or Non-compliant. In this case, the *standard* of review is still relevant LJPPs.

3) When LJPPs are inconsistent or conflicting—such as the non-binding principles set forth in the UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, which are conflicting with the principles behind, and actual rules established by, the Comprehensive Immigration Reform for America's Security and Prosperity Act of 2009—a review must determine against which standard the questions will be measured. Determination of which standards to apply should be based upon an intermediate scrutiny review of constitutionality and compliance with binding, ratified international treaties and conventions relevant to the LJPP(s) in question. Consideration should also be given to the balance of human dignity

relayed in the LJPPs whenever possible, while factors such as state interest (including national security and sovereignty, for example) are included within the aforementioned intermediate scrutiny rule.

4) Whereas grave violations of human rights—such as, for example, torture or arbitrary execution—are more easily acknowledged as such even in the case of isolated incidents, whereas violations of human rights—such as, for example, arbitrary detention—may be acknowledged as such in the case of isolated incidents, though the gravity of these such violations may be correlated to the degree to which these violations are widespread and systematic, and whereas violations of other human rights—such as, for example, the use of sexual violence as a weapon of war—are only acknowledged as such with proven intent or widespread and systematic occurrence, therefore the determination of whether human right has been violated will depend upon a combination of factors including the gravity of the alleged violation, the extent to which it occurs, and whether, in the case of rare occurrences, a trend or the likelihood of a trend can be established.

Based on these standards of review, the conditions of detention presented in the case-studies on NWDC and Hutto can be compared to the LJPPs presented in Chapter One for an analysis of compliance. Furthermore, these standards enable an analysis to determine not only the compliance of practice to principle, but also the validity of the relevant LJPPs and, therefore, the larger structure established by the LJPPs. In other words, this system of analysis leads to the determination of whether, and to what degree, the current system of detention is in accord with

applicable domestic and international laws, jurisprudence, policies, and principles, as well as whether those LJPPs have established standards which survive human rights and constitutional critique. This system of analysis will also lead to a determination of whether, how, and to what degree recent reforms have affected, or could potentially affect, the detention system and conditions within detention, as well as whether, how, and to what degree proposed reforms have the potential to affect the detention system and conditions of detention in the future.

The compliance of the current detention system to LJPPs can be evaluated on a number of levels. Though the case-studies presented in this report were unable to address the full spectrum of compliance-related critiques, it is important to note a few "big picture" concerns which necessarily come into play before any of the concerns raised within these case-studies. The first example of such concerns is that the overall immigration detention system in the U.S. is arbitrary with respect to who is detained, how, where, why, and for how long (Human Rights Watch, 2009a). For example, while some refugees who failed to adjust to permanent residence status may be placed in immigration detention, others are released on ISAP or on electronically-monitored parole, or are simply not detained or paroled at all, and there is no consistency in who is detained and who is otherwise handled. This arbitrariness is apparent not only among refugees who fail to adjust their status, but also among other immigrants and asylum-seekers caught in the detention system (Human Rights Watch, 2010a) (Amnesty International, 2009). Because the binding International Covenant on Civil and Political Rights, an international human rights covenant to which the United States acceded in 1992, prohibits arbitrary detention, these aforementioned findings of arbitrariness mean that the human rights of each person arbitrarily detained have been violated. Another example of a "big picture" concern is the immigration system's use of expedited removal proceedings, which the Inter-American Commission on

Human Rights found to violate the human rights of some deportees (*Wayne Smith and Hugo Armendariz, et al. v. United States*, 2010). Further "big picture" concerns are more integrated into the actual practice of detention, meaning they are also apparent within the case-studies of NWDC and Hutto.

On the whole, NWDC is Mostly Compliant with applicable general LJPPs. Examples of compliance include the facility's law library, which complies with minimum resource, equipment, and space requirements and mostly complies with access requirements set forth in ICE detention standards, as well as the facility's provision of recreational programs and activities, which also complies with ICE detention standards. Issues such as quality and quantity of food, along with mealtimes, are addressed in ICE detention standards, and thus can be evaluated in terms of compliance with general LJPPs. Due to the widespread reports of problems with food at NWDC, including the high rate of complaints and matters such as the food-poisoning outbreak, and due to the inclusion of the right to food in the International Covenant on Economic, Social, and Cultural Rights—an international treaty which the United States signed in 1979 but never ratified, though its ratification by 160 nations arguable forces its inclusion under CIL, and thus would make it binding on even the U.S.—the issues regarding food quality, quantity, and mealtimes at NWDC arguably go beyond general concerns and enter into the realm of human rights concerns. Given the stricter standard of review for human rights concerns, as laid out in the above list of review standards, the necessary conclusion with respect to the conformity of food provisions at NWDC to LJPPs is non-compliant.

In terms of more explicit human rights and legal concerns, the compliance of NWDC appears questionable at first. Because detainees are fully in the custody of the detaining authority (ICE and NWDC officials), standards of human rights review are different from what

they might be in other settings. For example, while there is some precedent for medical care as a human right, this right is most often phrased in terms of *access* to medical care, such that a person could not be *denied* medical care, not that a person must be *provided* medical care. When a person is in the custody of a detaining authority—particularly with respect to long-term or potentially long-term detention, where a detainee's financial means may be compromised by their being detained—it becomes the responsibility of that authority to ensure that the person receives adequate medical care. The case of Juan Carlos Martinez-Mendez clearly illustrates a failure of ICE and NWDC officials to ensure adequate medical care for an NWDC detainee, and the fact that at least one detainee has died and many detainees have reported lacking medical care at NWDC underscores the significance of this point. Additionally, the case of Rennison V. Castillo and at least 9 other U.S. citizens who were illegally detained at NWDC illustrates the severe lack of due process at the facility and in the general immigration system. Additional issues identified by the NWDC case-study such as visitation, procedural due process and access to lawyers, privacy, abusive treatment by guards, inappropriate punishment by guards, and an ineffective and faulty grievance process all constitute examples of non-compliance to applicable standards. Overall, this review shows that, while NWDC is mostly compliant with general LJPP standards, the facility violates principles and standards of human rights in various areas.

A question raised at NWDC and at Hutto is that of sexual abuse, assault, and harassment. Because a degree of accountability is often leveled against the individual offender—i.e. the guard who commits the assault is often charged with a crime—it is common for such violations to be attributed to anomalies, isolated incidents, and "bad apples" who do not represent the true nature of the system. It seems that, once blame can be assigned, the questions stop. This trend raises serious concerns not only over accountability, but over the question of whether these acts

can be considered violations of human rights which merit human rights investigations, or whether these violations fall solely within the jurisdiction of criminal law—except, of course, in the cases which were not covered by criminal law due to a federal loophole that was open from 2003 to 2007. While the sexual assaults documented in the above case-studies were not used as weapons of war, which would automatically make them acts punishable under international law, it is possible that some theoreticians would argue that the sexual assaults were weapons of oppression and control employed against defenseless individuals of a class seen by many in American society as inferior—immigrants, and specifically immigrants who are in detention. Though intent cannot be determined in any of these cases, there is an apparent trend, particularly at Hutto, of sexual violations. This trend is further corroborated by studies at other facilities and across the immigration detention system in-general (Human Rights Watch, 2010b). Even given the trend, a declaration that these incidents constitute human rights abuses, and a further attribution of the abuses to the immigration detention system, rather than to the individual guards who committed the acts, is a contentious and controversial move. While it appears further study and further legislation and jurisprudence are necessary to determine the full extent to which these acts constitute violations of human rights and, particularly, structural violations of human rights, the preliminary findings of this study suggest that these crimes are systematic and structural human rights violations which are sustained by a flawed system of immigration detention and which necessitate major reforms beyond simply closing loopholes in criminal law and attributing blame to an individual.

With respect to Hutto, the questions of compliance show similar results. While NWDC's library was compliant with ICE standards, despite its lack of legal resources in languages other than English, the library at Hutto was originally similarly equipped to the NWDC library. The

compliance of TDHFRF's library early-on is still questionable, but was at least somewhat compliant. After years of gradual improvement, the current library at TDHRC exceeds the standards set by ICE and even surpasses the NWDC library, clearly indicating its current compliance with the standards. Similarly, the compliance of TDHFRF to recreational standards was questionable, but theoretically surpassed the minimum requirements set by ICE, while the recreational programs and activities at TDHRC currently comply with, and exceed, the requirements set by ICE. As previously discussed in Chapter Three, however, the compliance of an ICE-contracted facility to ICE-established standards, as determined by ICE employees at the facility, is unimpressive and unconvincing, to say the least.

A comparison of conditions at Hutto to standards other than those set by ICE reveals that the facility failed to comply with a congressional directive and a similar court-ordered provision of the *Flores* settlement to find the "least restrictive" means for detaining or paroling children in the immigration system. Various LJPPs which called for non-penal, homelike detention for families and children were similarly violated by TDHFRF. Hutto has similarly not complied with minimum standards for the right to education and the right to medical care. Furthermore, standards calling for the least restrictive means of detaining or paroling asylum-seekers were violated by TDHFRF, which held over 90% asylum-seekers by some accounts. While TDHRC faces similar due process problems as those at NWDC, TDHFRF faced those same problems and the added problems caused by keeping families together for all legal procedures. Like NWDC, Hutto is at least somewhat compliant with some LJPPs; however, Hutto is non-compliant with a wide and troubling array of human rights principles and standards. This fact raises a few considerations: 1) in human rights and legal terms, it appears that reform of both legal standards and practices is necessary in order to bring these detention facilities to compliance with the

applicable LJPPs, and 2) in human rights and sociological terms, it appears that the LJPPs and the detention system as a whole require a complete restructuring and refocusing because the LJPPs are in conflict with one another and do not pursue the similar goals, as shown by the way one set of standards—ICE detention standards—can be fulfilled while another set of standards—such as those in the ICCPR—can be wholly unsatisfied. These considerations will be addressed below.

Reforms to the detention system have been imposed for purposes chosen by the legislative and executive branches, including those imposed internally by ICE, as well as for purposes determined by litigation, as reflected in judicial order, or in response to public pressure. While the governmental reforms generally relate to national security and sovereignty concerns, the reforms influenced by litigation and public pressure often generally relate to human rights concerns. Reforms to the detention system have been multiple since the beginning of U.S. immigration policy, and even in more recent history since various landmark dates, most easily broken-down into two groupings: the 1980 refugee reform to the 1996 immigration reforms, and the 1996 immigration reforms to the post-9/11 reactionary immigration reforms, which are still coming out today, despite slow changes in favor of human rights.

Each of these many reforms can be reviewed according to the various rules set out in this chapter. In determining whether, how, and to what degree these reforms—as well as proposed reforms, in terms of future potential—affect the conditions and practices of immigration detention, the standards against which reforms ought to be measured are those same standards outlined above for human rights and legal review. Essentially, this means that some reforms, such as the rules set-forth in the *Flores* settlement, as well as the more insulated rules set-forth in the *In re Hutto Residential Detention Center* settlement, have a positive effect on detention

practices and conditions, as shown by the positive changes reported above in Chapter Three. Not all reforms have had such effects, however, and the family-oriented reform imposed by President Bush in early 2006 is a prime example. In 2006, President Bush declared that, in keeping with the American ideal of family unity, detained immigrant families would be held together in detention instead of separated at various facilities or, in some cases, with the parents in detention and the children in government-administered childcare programs. The family-oriented reforms were intended to protect families by prohibiting the separation in detention of families with children. While these reforms were well-intentioned and potentially supportive of human rights and human dignity, the Hutto case-study shows that these reforms in-practice actually worsened the practices and conditions of detention. As such, the family-oriented reforms of 2006 and 2009 had negative effects on immigration detention. The variety of reforms implemented in recent history have had a variety of effects on the system of immigration detention, but there is insufficient evidence at this point to accurately determine whether these reforms were at all effective at stemming human rights violations, particularly since the intention of many of the reforms was focused on preventing terrorism and never touched on the human rights implications.

The immigration detention system commonly receives proposed human rights reforms, which logically follow from the above case-studies, including codifying formal detention standards and making them legally enforceable—which is a process that began with the Performance Based National Detention Standards of 2010 and continues to evolve with additional proposed changes scheduled into coming years—as well as providing legal representation in civil cases involving deportation and asylum claims, training guards to better deal with various issues of mental health and communication, ending abusive treatment by

guards, expanding visitation hours, improving medical care, and others. Some proposed reforms, such as the CIR ASAP prohibition against unnecessary detention of refugees have a strong potential to positively affect detention practices and rectify problems highlighted by the above case-studies. A variety of proposals to improve living conditions by providing better meals, more recreational opportunities, and other such basic services have drawn heavy fire from critics, usually over opposition to the potential cost of providing such services, and coming from a perspective that civil immigration detention needs to be punitive and a deterrent, rather than a means to rectify a civil violation in accordance with ICCPR regulations (Carroll, 2010) (WSB-TV Channel 2 Action News Atlanta, 2010). In terms of a human rights critique over potential effectiveness—and bearing in mind that human rights analyses include considerations for state interests, which would include national sovereignty and security—most of these proposed reforms appear to be reactive ways to address problems. Rather than addressing why facilities provide barely-edible food and lousy healthcare, the reforms simply tell facilities that they need to change their practices. Rather than addressing why immigration detention standards are violated, the reforms promote codifying the detention standards to make them enforceable so that action can be taken against violators after a violation has occurred. The fact that these reforms receive opposition only helps to illustrate the point that there is a larger force at-play than just a concern for human rights and a concern for national security and sovereignty. After all, there is no fundamental reason why national security and national sovereignty must be in opposition to human rights (Burke-White, 2004). While these proposed reforms still have the potential to effectively and efficiently rectify unacceptable conditions of detention nationwide, their overall potential is compromised by a number of factors to be discussed in the following sociological foray into the social pathologies and sociological theories behind the current detention system.

The Human Rights, Social, and Legal Implications of Contemporary Detention Practices as Analyzed through a Sociological Approach

As compared to the academic field of human rights, the methodology of the discipline of sociology is relatively well-defined. While various sociological theoreticians have employed various methodologies, this report will undertake an analysis by synthesis of two broad and overarching themes of sociology: the common theme in empirical-based approaches that investigations must find some widespread and systematic trend, and the common theme in more theoretical- and qualitative-based approaches that investigations must find some incident, trend, phenomenon, or other such item which can be attributed to, and explained by, a sociological theory. Because of the strict rules applied to empirical data-collection in the field of sociology, much of the evidence reported in the above case-studies cannot be unquestionably construed as widespread and systematic. The sources used to compile the above case-studies were conducted in accordance with legal and human rights standards, but were not conducted as sociological experiments accounting for sampling and other concerns of the social sciences. While the case-studies do point at incidents which may constitute trends—potentially even widespread and systematic trends—such a conclusion cannot be based solely on the evidence used herein. Because of this empirical limitation, a general rule of sociological analysis suggests that the findings of this study not be taken to apply to the whole population detained within NWDC and Hutto, let alone the whole population and system of immigration detention in the United States. However, while this report was not based upon sociologically-selected sources, other more narrowly-focused and expansive studies, along with additional extensive research conducted for, but not included in, this report, suggests that the incidents and trends observed at NWDC and Hutto are representative of widespread and systematic trends nationwide (Amnesty International USA, 1990) (Physicians for Human Rights and The Bellevue/NYU Program for Survivors of

Torture, 2003) (Tumlin, 2007) (Amnesty International, 2009) (Schrag & Ramji-Nogales, 2009). Given the apparent validity of viewing these phenomena as systematic trends, this study will purport to address issues which may, in fact, be extrapolated to the system-at-large, but further research in accordance with sociological standards is necessary to verify the validity of this conclusion. As this relates to theoretical and qualitative approaches, the theories also cannot be tested according to sociological procedure based on any currently-existing studies; however, every theory discussed hereafter is a logical deduction of the findings of the case studies and the above human rights and legal analysis, and also incorporating facts verified by other studies. As these logical theories relate to NWDC and Hutto, they potentially also apply to the larger system of immigration detention.

A variety of sociological paradigms and theories can be used to interpret the information compiled in the above case-studies. Drawing on theories of functionalism, including social pathology theory, as well as on social conflict, critical, interpretive, social systems, organizational, deviance and social control, bureaucracy, and synthesized theories, a few non-exclusive theories can be formulated to explain the phenomena at NWDC and Hutto (practice), as well as trends in the LJPPs (ideals). The findings of the above human rights analysis offer a reasonable basis for a deductive theorization of sociological roots to the phenomena at NWDC and Hutto, as well as in the larger system of immigration detention. These sociological roots (i.e. structural causes) behind the problems documented in the above case-studies are the logical deductions based upon the variety and extent of violations of LJPPs observed at both facilities, as well as upon the variety and extent of violations of LJPPs reported on a widespread and systematic level throughout the immigration detention system.

Evidence used towards the formulation of these theories includes largely all issues which directly related to accountability, oversight, and transparency at the facilities and in the larger system, such as the NWDC/GEO failure to vet 92 guards, the NWDC/GEO refusal to provide public-record documents to advocates, the ICE practice of not publicly releasing information about deaths-in-custody,[24] the ICE practice—most strongly shown in relation to Hutto—of blocking investigations and human rights audits, the failure of authorities to deal with an instance of sexual assault at Hutto in 2007,[25] and a variety of other such examples. Additionally, evidence is drawn from a logical analysis of the bureaucracies involved at each facility and the theoretical systems—the ideal purposes, conditions, and practices of detention—arranged by these bureaucracies. Further evidence is rooted in the fact that ICE has undergone a continuous series of changes in structure and policy since its organization, as well as the fact that both NWDC and Hutto represent changes from past detention norms, and, furthermore, that Hutto itself has undergone major structural changes; the significance of these changes in terms of sociological theory is partly validated by the relation of the changes to social pressure—protests, bad media, lawsuits, et cetera—indicative of the presence of a social problem or pathology.

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[24] This enduring problem of transparency was corrected after various lawsuits and an eventual ICE Directive on the Notification and Reporting of Detainee Deaths (1 October 2009) after a congressional bill—the Death in Custody Reporting Act—failed to pass.

[25] While the individual guard was fired from his job, he was never brought up on criminal charges, and there is no evidence CCA or ICE made any efforts to address the problem by way of providing sexual harassment training, implementing stricter standards of monitoring within facilities, or any number of other steps which could have been taken to prevent the eventual reoccurrence of sexual assaults at the same facility.

One theoretical argument to be made is whether the nature of detention itself is the root of the social problems observed at NWDC and Hutto. It is not uncommon for sociologists and others to claim that incarceration rates are symptoms of social problems, just as it is not uncommon for incarceration itself to be cyclically blamed for other social problems, or to be seen as a social problem in and of itself. Sociologically speaking, and particularly given the above evidence that immigration detention is penal, despite its ideal aim to be civil, detention is hardly differentiable from incarceration. If, simply, detention is the problem—the violation of rights and cause of other social problems—then the simple solution is to abolish detention. In fact, many human rights advocates push for strong Alternative to Detention programs, including ISAP and others. While there is certainly merit in the aim of reducing detention by promoting alternatives to detention—not to mention economic incentives (National Immigration Forum, 2009) (Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica, 2008) (Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service, 2007)—this does not begin to get at the true roots of the problems. In light of the fact that the United States has historically violated many groups' rights in the form of immigration detention—such as the 1929-1939 Mexican Repatriation program, which resulted in the detention and coerced deportation of hundreds-of-thousands of immigrants, and the WWII internment camps for Japanese and other groups—and of the fact that no realistic agenda would forecast the complete cessation of immigration detention, it is necessary to explore theories which may explain *why* these violations occur in detention centers.

Some select theories rooted in the aforementioned evidence and aimed at explaining *why* these violations occur include:

1) a capitalist profit-motive, which uses cost-benefit analysis in determining operational practices and standards, rather than means-ends, utilitarian, or humanitarian approaches,
2) a lack of social solidarity, as characterized by scapegoating and xenophobia—social deviance theory—and particularly stressed by certain factors such as the economy and terrorism, and as synthesized with social control, penalization, and criminalization,
3) organizational change as a sign of pressure for reform and an indication of problems and tensions within the current system, and
4) a bureaucratic and structural failure—as illustrated by the above-mentioned issues of accountability, oversight, and transparency—caused by layer-upon-layer of bureaucracy, which creates its own systems and standards, resulting in inconsistent and conflicting policies and ideal system goals.

While the scope of the current study did not permit a proper analysis of the financial and economical concerns related to detention, alternatives to detention, privatization, and specifically NWDC/GEO and Hutto/CCA, a number of studies and reports illustrate that GEO and CCA have been heavily involved in lobbying federal and state legislatures to increase the use of prisons and detention centers, and to move towards the privatization of these institutions (Wray, 1986) (Kolodner, 2006) (Cervantes-Gautschi, 2010) (Hodai, 2010). Even without a formal presentation of the research, the simple fact that these facilities are operated by for-profit corporations is a strong suggestion that operations are dictated by profit-motives. While alternatives to detention would be more economical, these corporations are in the prison industry, so their concern about saving money focuses on minimizing expense inside the facilities. This has even led to some instances where prison facilities were understaffed to the extent that officer safety was compromised (Jennings, 2010). If these corporations will cut corners to the point that their own

employees are put at risk, there is little to suggest they wouldn't do the same for detainees inside their facilities, and conditions reported in the above case-studies on NWDC and Hutto support this theory. Based on this, it seems a fair conclusion—though one that, certainly, necessitates further study—that addressing the privatization and capitalist profit-motives of immigration detention could result in a decrease in the number and extent of human rights violations and failures to adhere to LJPPs.

The theory of scapegoating and xenophobia as issues of social solidarity is also represented in major super-structural influences that could not be addressed within the individual case-studies of NWDC and Hutto. Historical trends do support the initial theory, however, with the correlation of immigration crack-downs to economic downturns and to terrorist attacks or scares. The theories synthesized into this context suggest that immigrants are social deviants who are dehumanized to the point that their harsh criminalization, penalization, and oppression is seen as unproblematic, or even positive and beneficial, to society. This theory is substantiated by the line of thinking employed not only by those who view immigrants in this light because of unadulterated xenophobia, but also by those who view immigration violations as criminal offenses, rather than civil offenses.[26] The testimony of numerous detainees interviewed at NWDC and Hutto reflects prison-like conditions of detention and harsh punitive policies at both facilities. While further sociological study would be necessary to determine the best ways to address these issues of social scapegoating and xenophobia, the basic preliminary conclusion of

[26] For a prime example of these substantiations, consider the debate surrounding Arizona's controversial SB-1070 anti-immigration law, as well as the detention practices employed by Maricopa County, AZ, Sherriff Joe Arpaio (WSB-TV Channel 2 Action News Atlanta, 2010) (Hodai, 2010) (Lacey, 2010).

this theoretical avenue of approach suggests that some human rights violations in immigration detention could be stemmed by working to increase social solidarity and empathy with immigrants among the broader spectrum of society-at-large.

Organizational change, as evidenced in the numerous ICE reforms in recent years and in the complete structural overhaul of Hutto, represents a structure responding to pressures applied, in these cases, by society. While the structural shifts to the criminalization of immigration policies and to the privatization of immigration detention also represent organizational change, the key aspects of this theory draw upon the motives behind the pressure to change. The pressures promoting criminalization and privatization, as exemplified by the lobbying powers of GEO and CCA, are backed by profit-motive, which does not comprise any change of the organizations' goals—the goal of making money is still the goal of making money. On the other hand, the pressures applied by society to promote the reform of detention towards more humane and civil conditions represent a motive of humanitarian reform, which at least potentially comprises a change of the organization's goals—or at least an addendum to the goals—apparent in acknowledging that the chief goals of national security and sovereignty must now also incorporate the goals of compliance with domestic and international human rights norms. Further, as far as the organizational-change theory goes, profit-motive does not inherently suggest any social problems necessitating change; however, humanitarian motives indicate the presence of social problems significant enough to raise humanitarian concern. Through this sociological theory, the continued changes in the ICE system of detention are indicative of an unstable structure, and an analysis applying this finding to the above case studies suggests that this instability promoting organizational change may be rooted in the perceived conflict between state interests and human rights interests. Bringing the various structures into alignment in terms

of goals could potentially help reduce organizational change, but further study would be necessary to determine if this is the appropriate course of action, because promoting organizational stability does not necessarily mean that the underlying problems will be resolved.

The bureaucratic and structural failures of the current detention system are illustrated by the inability of NWDC and Hutto, as well as the detention system in general, to satisfy all relevant standards and goals. The bureaucracy and structure surrounding the immigration detention system was shown to be problematic in the above case-studies, which highlighted examples of ineffective oversight and a lack of accountability and transparency. Additional bureaucratic and systemic failures are apparent in the aforementioned arbitrariness of detention, as well as in instances where individuals and bureaucracies attempted to pass-the-buck to other individuals and bureaucracies, such as the blame-throwing following the failure of NWDC administrators to vet 92 guards in the hiring process. While bureaucracies are, in theory, "liberal" institutions intended to streamline administration and improve efficiency, the cases of NWDC and Hutto illustrate how layers-upon-layers of bureaucracy can get to the point where they work against each other, or at least slow each other from making progress in one direction or another.

One explanation of this bureaucratic theory is a spin on the organizational Swiss-cheese model of accident causation, such that this explanation equates each layer of bureaucracy to a slice of Swiss-cheese. When there is just one layer, the holes in the system are somewhat obvious, but not much can be done to address or define them. When a second layer is added, some of the holes will likely block each other, each bureaucracy working to correct the problems of its counterpart, and other holes will remain open the whole way through. When layer is stacked upon layer, the holes underneath can be covered-up and the problems potentially

corrected, but no matter how many layers are added, there is still the potential for a hole to appear the entire way through the stack. These holes in the cheese can represent individual errors, which have the potential to compound and yield disastrous results, or bureaucratic shortcomings, which are similarly positioned for disaster. When someone slips through the holes in a system that has this many layers, it's a much longer way to fall, and the tangles of the bureaucratic process of immigration and asylum adjudication and detention illustrate this point quite well.

NWDC and Hutto each have multiple layers of bureaucracy and accountability designed to protect the interests of the corporations, the enforcement agencies, the state, the public, the international community, and NGOs and advocates. Still, when each of these bureaucracies and overseers has different goals, there is no guarantee they will adequately address the problems left by other bureaucracies. Having the same goals as one another could also be problematic, for example, if every bureaucracy and accountability layer was focused only on the human rights of the detained and made no consideration of national security and potential terrorist threats, it would arguably be easier for the holes of the Swiss-cheese to line up. The most effective way to ensure that this doesn't happen is to make sure that each layer is aware of the other layers and is thorough not only in pursuing its own goals, but also in compromising with the goals of other layers in order to build a stronger network of layers.

While the primary goals of ICE, as a bureau of DHS, are to protect the United States from criminals and terrorists and—thanks to the political nature of U.S. bureaucracy—to maintain a positive public image, the motives applied by ICE in its own oversight will be limited to these matters. In comparison to the primary goal of an NGO like Human Rights Watch—to promote and protect the human rights of individuals, which may or may not coincide with state

interests—it is easy to see how the goals of these bureaucracies might not align. When the primary policy goals of the United States bureaucracies behind detention are, in a nutshell, national security, national sovereignty, public approval, and positive international relations, the direction in which those U.S. bureaucracies aim detention policy and standards are not likely to align with the aims of international human rights agencies whose primary concern is the protection of human rights. Because ICE is more concerned about keeping terrorists at-bay, the bureau is generally unburdened by complaints of human rights advocates that certain anti-terrorism policies of ICE are violations of international human rights standards. While instances such as the *Smith v. United States* case, decided by the Inter-American Commission on Human Rights, may work to help align the various bureaucracies overseeing U.S. immigration policy, the fact remains that most of the bureaucratic layers in charge of detention at facilities like NWDC and Hutto are more concerned with profit and terrorists than with justice and human rights. Given bureaucratic policymaking and oversight from ideologically-opposing perspectives, it is not hard to see why human rights reforms have been compromised: there is no clear way for detention centers, in practice, to achieve the goals of both opposing factions. Evidence of this claim is apparent in the way that ICE, GEO, and CCA have only implemented reforms in response to public pressure and litigation, rather than proactively pursuing an immigration processing system which would be more conducive to and accordant with human rights LJPPs.

This ideological discrepancy between the bureaucracies is not insurmountable. In fact, there is strong evidence supporting the compatibility of human rights with national security and national sovereignty measures (Burke-White, 2004) (Lyda & Lyda, 2009) (National Immigration Forum, 2009). While human rights reformists may not have considered or anticipated a deeper-

entrenched social problem, the combination of the above theories and evidence suggests that one possible solution may simply be promoting an understanding for immigration detention which is more informed by international, constitutional, and human rights law, and particularly of the facts that immigration detention is meant to be civil—not punitive—and is largely in violation of human rights LJPPs. With the additional consideration of how improved human rights practices can improve international relations, including international trade (Powell, 2008), particularly with respect to an already-internationalized field of immigration politics, there seems adequate incentive to move in this direction. Ultimately, though, realism suggests the difficulty of convincing the American People of anything, so, while more research is necessary to determine the best options, perhaps more rudimentary approaches such as pushing the United States to ratify and implement all international human rights treaties, as was recently proposed and abandoned in Congress,[27] could be more direct paths to immediate, effective, and lasting reforms.

[27] Resolutions proposed by Congressman John Lewis (D-GA) for a U.S. Recommitment to International Human and Civil Rights, introduced in 2008 and reintroduced in 2009, have promoted the ratification and implementation of international human and civil rights conventions, but have not gained enough support from other legislators to make any progress.

BIBLIOGRAPHY

2000 Detention Operations Manual. (2000). Retrieved May 2, 2010, from Immigration and Customs Enforcement: http://www.ice.gov/detention-standards/2000/

Aguilar, J. (2010, June 1). *A Private-prison Employee Is Accused of Assault.* Retrieved October 28, 2010, from The Texas Tribune: http://www.texastribune.org/immigration-in-texas/immigration/a-private-prison-employee-is-accused-of-assault/

American Bar Association. (2006, August 7). *American Bar Association 2006 Resolution 112A.* Retrieved August 8, 2010, from American Bar Association: http://www.abanet.org/legalservices/sclaid/downloads/06A112A.pdf

American Bar Association Delegation to the Northwest Detention Center. (2006, July 26). *Report on Obersvational Tour of the Northwest Detention Center, Tacoma, Washington - July 26, 2006.* Retrieved August 20, 2010, from Immigration and Customs Enforcement: http://www.ice.gov/doclib/foia/dfra/2006/northwestdetentioncentertacomawajuly262006.pdf

American Bar Association Delgation to the Northwest Detention Center. (2007, July 19). *Report on Observational Tour of the Northwest Detention Center, Tacoma, Washington - July 19, 2007.* Retrieved August 20, 2010, from Immigration and Customs Enforcement: http://www.ice.gov/doclib/foia/dfra/2007/northwestdetentioncentertacomawajuly192007.pdf

American Civil Liberties Union. (2007a, March 6). *ACLU Challenges Prison-Like Conditions at Hutto Detention Center.* Retrieved October 21, 2010, from American Civil Liberties Union: http://www.aclu.org/immigrants-rights-racial-justice/aclu-challenges-prison-conditions-hutto-detention-center

——. (2007b, April 10). *Court Says ACLU Likely to Prevail on Claims Regarding Immigrant Children Detained at Hutto Facility in Texas.* Retrieved September 20, 2010, from American Civil Liberties Union: http://www.aclu.org/immigrants-rights/court-says-aclu-likely-prevail-claims-regarding-immigrant-children-detained-hutto-

——. (2007d, August 27). *Landmark Settlement Announced in Federal Lawsuit Challenging Conditions at Immigrant Detention Center in Texas.* Retrieved September 20, 2010, from American Civil Liberties Union: http://www.aclu.org/immigrants-rights/landmark-settlement-announced-federal-lawsuit-challenging-conditions-immigrant-det

——. (2010, August 20). *Sexual Abuse of Female Detainees at Hutto Highlights Ongoing Failure of Immigration Detention System, Says ACLU.* Retrieved September 2, 2010, from American Civil Liberties Union: http://www.aclu.org/immigrants-rights-prisoners-rights/sexual-abuse-female-detainees-hutto-highlights-ongoing-failure-im

——. (2007c, May 4). *U.N. Independent Expert Denied Access to Hutto Detention Center: ACLU Calls for Answers from U.S. Government.* Retrieved October 12, 2010, from American Civil Liberties Union: http://www.aclu.org/immigrants-rights/un-independent-expert-denied-access-hutto-detention-center

American Civil Liberties Union, Detention and Deportation Working Group. (2007). *Briefing Materials Submitted to the United Nations Special Rapporteur on the Human Rights of Migrants.* Retrieved August 12, 2010, from American Civil Liberties Union: http://www.aclu.org/pdfs/humanrights/detention_deportation_briefing.pdf

American Civil Liberties Union of Southern California and the National Immigration Law Center. (2007, May 3). *U.S. Immigration Detention System: Sub-standard Conditions of Confinement and Ineffective Oversight.* Retrieved August 8, 2010, from National

Immigration Law Center: http://www.nilc.org/immlawpolicy/arrestdet/UNspecialrapporteur_presentation_2007-05-03.pdf

American Declaration of the Rights and Duties of Man. (n.d.).

American Gateways. (2010). *The Hutto Detention Representation Project.* Retrieved October 23, 2010, from American Gateways: Legal Services for New Americans: http://www.americangateways.org/hutto/

American Jewish World Service. (2010, March 31). *NGO Letter to Secretary Clinton regarding LGBTI Refugee Protection.* Retrieved March 31, 2010, from Human Rights First: http://www.humanrightsfirst.org/asylum/pdf/20100331-NGO-letter-LGBTI-refugees.pdf

Amnesty International. (2009, March 25). *Jailed Without Justice: Immigration Detention in the USA.* Retrieved November 23, 2010, from Amnesty International USA: http://www.amnestyusa.org/uploads/JailedWithoutJustice.pdf

Amnesty International USA. (1990). *Reasonable Fear: Human Rights and United States Refugee Policy.* New York: Amnesty International USA.

Anti-terrorism and Effective Death Penalty Act of 1996, Pub.L. 104-132. (1996).

Asad, A. L. (2010). We're Not in Hollywood Anymore: The Effects of Climate Change on Migration. (R. D. Goodis, & A. L. Thompson, Eds.) *Journal for Human Advancement: Independent Projects for Progress and Human Rights , 1* (1), 61-77.

Associated Press. (2005, September 7). *Calling Katrina survivors 'refugees' stirs debate: Jesse Jackson, other critics say word carries racist implications.* Retrieved August 12, 2010, from MSNBC: http://www.msnbc.msn.com/id/9232071/

——. (2009b, August 14). *GEO pepper-sprays NWDC detainees for 'not responding to orders to go to bed'.* Retrieved November 2, 2010, from United for Peace of Pierce County: http://www.ufppc.org/local-news-mainmenu-34/8924-local-news-geo-pepper-sprays-nwdc-detainees-for-not-responding-to-orders-to-go-to-bed.html

——. (2010, May 28). *ICE investigating detainee sex assault: ICE looking into allegations at Taylor facility.* Retrieved October 22, 2010, from KXAN.com Austin News: http://www.kxan.com/dpp/news/local/ice-investigating-detainee-sex-assault

——. (2009a, April 13). *Some citizens being held as illegal immigrants: Dozens of Americans have been locked up or thrown out over past 8 years.* Retrieved November 21, 2010, from MSNBC: http://www.msnbc.msn.com/id/30180729/ns/us_news-life/

——. (2007b, May 7). *U.N. official's Hutto tour cancelled.* Retrieved October 12, 2010, from News 8 Austin: http://www.news8austin.com/content/183791/u-n--official-s-hutto-tour-cancelled

——. (2007a, May 4). *UN representative visit to immigration center rejected.* Retrieved October 12, 2010, from News 8 Austin: http://www.news8austin.com/content/top_stories/183595/un-representative-visit-to-immigration-center-rejected/

——. (2007c, May 27). *UN rights expert to visit immigrant detention center.* Retrieved October 12, 2010, from News 8 Austin: http://www.news8austin.com/content/top_stories/183191/un-rights-expert-to-visit-immigrant-detention-center/

Bailey, P. (2010, September 11). *The Creation of The Universal Declaration of Human Rights.* Retrieved September 11, 2010, from Universal Rights: http://www.universalrights.net/main/creation.htm

Bernstein, N. (2008, May 5). *Few Details on Immigrants Who Died in Custody.* Retrieved July 2, 2010, from The New York Times: http://www.nytimes.com/2008/05/05/nyregion/05detain.html?_r=2

——. (2010, January 9). *Officials Hid Truth of Immigrant Deaths in Jail* . Retrieved January 27, 2010, from The New York Times: http://www.nytimes.com/2010/01/10/us/10detain.html?_r=1

——. (2009, August 5). *U.S. to Reform Policy on Detention for Immigrants.* Retrieved August 21, 2010, from The New York Times: http://www.nytimes.com/2009/08/06/us/politics/06detain.html

Blumenthal, R. (2007, February 10). *U.S. Gives Tour of Family Detention Center That Critics Liken to a Prison.* Retrieved August 12, 2010, from The New York Times: http://www.nytimes.com/2007/02/10/us/10detain.html

Burke-White, W. W. (2004). *Human Rights and National Security: The Strategic Correlation.* Retrieved November 12, 2010, from University of Pennsylvania School of Law: http://www.law.upenn.edu/cf/faculty/wburkewh/workingpapers/17HarvHumRtsJ249(2004).pdf

Business Wire. (2008, August 7). *The GEO Group Announces 545-Bed Expansion of the 1,030-Bed Northwest Detention Center in Tacoma, Washington.* Retrieved August 22, 2010, from HighBeam Research: http://www.highbeam.com/doc/1G1-182385768.html

Bustamante, J. (2007, May 21). *Special Rapporteur on Human Rights of Migrants Ends Visit to United States.* Retrieved October 12, 2010, from The United Nations Office at Geneva: http://www.unog.ch/80257631003154D9/(httpNewsByYear_en)/80257631003154D9C12572E2002E7C5A?OpenDocument

Butera, E. (2010, June 2). *We Must Safeguard Women Detainees against Sexual Assault.* Retrieved October 22, 2010, from Women's Refugee Commission: http://womensrefugeecommission.org/blog/984-we-must-safeguard-women-prisoners-against-sexual-assault

Carroll, S. (2010, June 8). *ICE to make detention centers more humane.* Retrieved November 26, 2010, from The Houston Chronicle: http://www.chron.com/disp/story.mpl/special/immigration/7043040.html

Castillo v. Swarski, 10-35041 (United States Court of Appeals, Ninth Circuit January 12, 2010).

Cervantes-Gautschi, P. (2010, June 10). *Wall Street and the Criminalization of Immigrants.* Retrieved September 2, 2010, from The CIP Americas Program: http://www.cipamericas.org/archives/3304

Convention against Torture, and Other Cruel, Inhuman, or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984). (1987, 1994).

Convention Relating to the Status of Refugees. (n.d.). *1951* .

Corrections Corporation of America. (2008b). *Facility Operations: Quality Assurance.* Retrieved November 1, 2010, from Corrections Corporation of America: http://www.correctionscorp.com/facility-operations/quality-assurance/

——. (2009). *Investor Relations: Corporate Profile.* Retrieved October 27, 2010, from Corrections Corporation of America: http://ir.correctionscorp.com/phoenix.zhtml?c=117983&p=irol-irhome

——. (2008a). *The CCA Way.* Retrieved October 22, 2010, from Corrections Corporation of America: http://www.correctionscorp.com/about/cca-way/

Del Barco, M. (2007, January 21). *Guatemalans in U.S. Face Deportation Threat.* Retrieved April 24, 2010, from NPR: http://www.npr.org/templates/story/story.php?storyId=6933775

Del Bosque, M. (2009, August 18). *Family Unfriendly.* Retrieved November 2, 2010, from The Texas Observer: http://www.texasobserver.org/archives/item/15764-family-unfriendly

——. (2010, March 18). *Point of No Return.* Retrieved November 22, 2010, from The Texas Observer: http://www.texasobserver.org/cover-story/point-of-no-return

Democracy Now! News. (2007, February 23). *Human Rights Groups Call for Closure of Texas Jail Holding Undocumented Immigrants.* Retrieved November 18, 2010, from Democracy Now! - The War and Peace Report: http://www.democracynow.org/2007/2/23/human_rights_groups_call_for_closure

Department of Homeland Security. (2007). *Berks County Family Residential Center.* Retrieved September 12, 2010, from Department of Homeland Security: Division of Immigration Health Services: http://www.inshealth.org/Facilities/Berks.shtm

Department of Homeland Security Press Office. (2009, October 6). *Fact Sheet: ICE Detention Reform: Principles and Next Steps: Secretary Napolitano Announces New Immigration Detention Reform Initiatives.* Retrieved October 1, 2010, from Immigration and Customs

Enforcement: http://www.dhs.gov/xlibrary/assets/press_ice_detention_reform_fact_sheet.pdf

Dhillon, S. (2010, August 13). *Minister hints at tougher laws as Tamil migrant ship docks in B.C.* Retrieved August 13, 2010, from CP24: http://www.cp24.com/servlet/an/local/CTVNews/20100813/100813_migrant_ship_tamil/20100813/?hub=CP24Home

DiNovella, E. (2009, May 18). *Prima Facie Refugees.* Retrieved July 22, 2010, from The Progressive: http://www.progressive.org/node/130515

Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 – REAL ID Act, Pub.L. 109-13. (2005).

Expatica News. (2004, July 29). *Somali asylum seekers killed after deportation.* Retrieved April 24, 2010, from Expatica: http://www.expatica.com/nl/news/local_news/somali-asylum-seekers-killed-after-deportation-10034.html

Falkenberg, L. (2007, October 4). *Door remains open at Hutto.* Retrieved October 24, 2010, from The Houston Chronicle: http://www.chron.com/disp/story.mpl/metropolitan/5186408.html

Flores v. Meese, CV 85-4544-RJK(Px) (United States District Court for the Central District of California January 17, 1997).

Frelick, B. (2005, March). *U.S. Detention of Asylum Seekers and Human Rights.* Retrieved February 3, 2010, from Migration Information Source: http://www.migrationinformation.org/usfocus/display.cfm?ID=296

Gamboa, S. (2010, May 28). *ICE investigating reports of sex abuse at T. Don Hutto: Several women at Taylor facility were groped while being patted down, officials say.* Retrieved

October 12, 2010, from Statesman.com: http://www.statesman.com/news/local/ice-investigating-reports-of-sex-abuse-at-t-715817.html

Geisler, H. (2009, August 12). *Preliminary Review of the Potential Feasibility of Constructing an Immigrant Family Shelter in Weslaco, Texas.* Retrieved October 22, 2010, from The Texas Observer: www.texasobserver.org/primary-sources/item/download/50

Gelatt, J. (2006, March 1). *Bush calls for Worksite Enforcement Funding in 2007, Senate Poised to Debate Immigration Reform.* Retrieved August 27, 2010, from Migration Information Source: http://www.migrationinformation.org/USFocus/display.cfm?ID=380

Global Detention Project of the Programme for the Study of Global Migration. (2009, March). *United States Detention Profile.* Retrieved February 10, 2010, from Global Detention Project: http://www.globaldetentionproject.org/de/countries/americas/united-states/introduction.html

Goodwin-Gill, G. S., & McAdam, J. (2007). *The Refugee in International Law* (Third Edition ed.). New York, NY: Oxford University Press, USA.

Gorman, A. (2008, May 18). *Family detention sites in works.* Retrieved November 12, 2010, from Los Angeles Times: http://articles.latimes.com/2008/may/18/nation/na-detention18

Griggs, E., & Schaeffer, B. (2009, May). *The Cost of ICE's Policies and Practices.* (D. M. Weissman, Ed.) Retrieved November 12, 2010, from University of North Carolina at Chapel Hill: School of Law: Immigration and Human Rights Policy Clinic: http://www.law.unc.edu/documents/clinicalprograms/thecostoficespoliciesandpractices.pdf

Gupta, V., & Graybill, L. (2008, December 10). *Human Rights Begin at Home: Justice Denied: Immigrant Families Detained at Hutto.* Retrieved November 22, 2010, from American Civil Liberties Union: http://www.udhr60.org/human_rights_full.pdf

Hagey, J. (2009, March 12). *Northwest Detention Center owner files suit to block records release.* Retrieved September 29, 2010, from The News Tribune: http://www.thenewstribune.com/2009/03/12/661100/northwest-detention-center-owner.html

Harrell-Bond, B. E., & Voutira, E. (1992). Anthropology and the Study of Refugees. *Anthropology Today , 8* (4), 6-10.

Hawkes, D. (2008). Locking Up Children: Lessons from the T. Don Hutto Family Detention Center. *Journal of Law & Family Studies* , 171-181.

HJ (Iran) (FC) (Appellant) v Secretary of State for the Home Department (Respondent) and one other action, [2010] UKSC 31 (United Kingdom Supreme Court July 7, 2010).

Hodai, B. (2010, June 21). *Ties that Bind: Arizona Politicians and the Private Prison Industry.* Retrieved October 2, 2010, from In These Times: http://www.inthesetimes.com/article/6085/ties_that_bind_arizona_politicians_and_the_private_prison_industry/

Holland, J. (2010, August 20). *Immigrant Detainees Sexually Assaulted: The American Civil Liberties Union is highlighting ongoing abuses at a private immigration prison in Texas.* Retrieved October 20, 2010, from AlterNet: http://www.alternet.org/immigration/147913/immigrant_detainees_sexually_assaulted

Homeland Security Act, Pub.L. 107-296. (2001).

Homeland Security Presidential Directive 2 – HSPD-2. (2001).

Hover, C. (2007, March 31). *Treatment of immigrant children inconsistent.* Retrieved October 21, 2010, from News 8 Austin: http://www.news8austin.com/content/182706/treatment-of-immigrant-children-inconsistent

Hsu, S. S. (2009, August 7). *Agency Plans to Improve Oversight of Immigrant Detention.* Retrieved October 20, 2010, from The Washington Post: http://www.washingtonpost.com/wp-dyn/content/article/2009/08/06/AR2009080601543.html

Human Rights First. (2006). *Abandoning the Persecuted: Victims of Terrorism and Oppression Barred from Asylum.* New York: Human Rights First.

——. (November 2009). *Denial and Delay: The Impact of the Immigration Law's "Terrorism Bars" on Asylum Seekers and Refugees in the United States.* New York: Human Rights First.

——. (2004). *In Liberty's Shadow: U.S. Detention of Asylum Seekers in the Era of Homeland Security.* New York: Human Rights First.

——. (April 2009). *U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison.* New York: Human Rights First.

Human Rights Watch. (2010a). *United States: Costly and Unfair: Flaws in US Immigration Detention Policy.* New York: Human Rights Watch.

——. (2010b). *United States: Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention.* New York: Human Rights Watch.

——. (2009a). *United States: Jailing Refugees: Arbitrary Detention of Refugees in the US Who Fail to Adjust to Permanent Resident Status.* New York: Human Rights Watch.

——. (2009b). *United States: Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States.* New York: Human Rights Watch.

Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub.L. 104-208. (1996).

Immigration Act of 1990, Pub.L. 101-649. (1990).

Immigration and Customs Enforcement. (2009a). *Detention Management.* Retrieved June 2, 2010, from Immigration and Customs Enforcement: http://www.ice.gov/detention-management/

——. (2010a, October). *Detention Reform Accomplishments.* Retrieved November 1, 2010, from Immigration and Customs Enforcement: http://www.ice.gov/detention-reform/detention-reform.htm

——. (2009b, August 6). *Fact Sheet: 2009 Immigration Detention Reforms.* Retrieved April 19, 2010, from Immigration and Customs Enforcement: http://www.ice.gov/news/library/factsheets/reform-2009reform.htm

——. (2008a, January 15). *Fact Sheet: Residential Standards.* Retrieved September 12, 2010, from Immigration and Customs Enforcement: http://www.ice.gov/news/library/factsheets/facilities-residential-stds.htm

——. (2010b, March 24). *Fact Sheet: T. Don Hutto Residential Center.* Retrieved October 22, 2010, from Immigration and Customs Enforcement: http://www.ice.gov/news/library/factsheets/facilities-hutto.htm

——. (n.d. a). *HQ DRO Juvenile and Family Residential Management Unit or San Antonio Field Office: T. Don Hutto Residential Center.* Retrieved August 20, 2010, from Immigration and Customs Enforcement: http://www.ice.gov/doclib/dro/facilities/pdf/ccahutx.pdf

——. (2010c, June 4). *ICE detainee population for the month of May 2010.* Retrieved November 15, 2010, from Immigration and Customs Enforcement: http://www.ice.gov/doclib/foia/dfs/detentionfacilitystatsmay2010.pdf

——. (2008b, July 15). *ICE response to the OneAmerica/University of Seattle report on the Northwest Detention Center.* Retrieved October 10, 2010, from ABC News: http://abcnews.go.com/images/Blotter/ICE%20response.pdf

——. (2008c, September 12). *ICE/DRO Detention Standard: Suicide Prevention and Intervention.* Retrieved August 22, 2010, from Google Web Cache: http://webcache.googleusercontent.com/custom?q=cache:Kx6siqPlLSMJ:www.ice.gov/doclib/PBNDS/rtf/suicide_prevention_and_intervention.rtf+suicide+prevention&cd=1&hl=en&ct=clnk&gl=us&client=google-coop-np

——. (2010d, January 27). *Intergovernmental Service Agreement between the United States Department of Homeland Security Immigration and Customs Enforcement and Williamson County, Texas.* Retrieved October 28, 2010, from American Civil Liberties Union: http://www.aclu.org/files/assets/Attachment_A.PDF

——. (2010e, July 27). *List of Deaths in ICE Custody: October 2003 - July 27, 2010.* Retrieved August 7, 2010, from Immigration and Customs Enforcement: http://www.ice.gov/doclib/foia/reports/detaineedeaths2003-present.pdf

——. (n.d. b). *Seattle Field Office: Northwest Detention Center.* Retrieved August 20, 2010, from Immigration and Customs Enforcement: http://www.ice.gov/doclib/dro/facilities/pdf/cscnwwa.pdf

——, Office of Public Affairs. (2010, August 12). *Fact Sheet: Detention Compliance Oversight.* Retrieved August 22, 2010, from Immigration and Customs Enforcement: http://www.ice.gov/doclib/news/library/factsheets/pdf/detention-compliance.pdf

Immigration and Nationality Act, Pub.L. 82-66. (1952).

Immigration and Nationality Act, Pub.L. 89-236. (1965).

Immigration and Naturalization Service v. Cardoza-Fonseca, 480 U.S. 421 (United States Supreme Court March 9, 1987).

In re Hutto Family Detention Center, 1:2007cv00164 (United States District Court for the Western District of Texas March 6, 2007).

International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171. (1992).

Jankowski, P. (2010, May 24). *ICE blocks 9-1-1 calls from T. Don Hutto.* Retrieved November 2, 2010, from Taylor Daily Press: http://www.taylordailypress.net/news/article_31453547-acf6-573d-9970-965dcfa43972.html

Jennings, T. (2010, September 2). *No penalties for understaffed private prisons.* Retrieved September 4, 2010, from The New Mexico Independent: http://newmexicoindependent.com/62579/no-penalties-for-understaffed-private-prisons

Johnson, G. (2008, November 7). *Immigration lockup hired 92 guards without vetting.* Retrieved October 3, 2010, from The Seattle Times: http://seattletimes.nwsource.com/html/localnews/2008361859_immigration07.html

Johnson, J. (2007, May). *Families Say Detention Centers Feel Like Prison.* Retrieved November 3, 2010, from Banderas News: http://www.banderasnews.com/0705/hb-hutto.htm

Kahn, S. (2010). *Creative Community Organizing: A Guide for Rabble-Rousers, Activists, & Quiet Lovers of Justice.* San Francisco: Berrett-Koehler Publishers, Inc.

Kakissis, J. (2010, January 4). *Environmental Refugees Unable to Return Home.* Retrieved June 12, 2010, from The New York Times: http://www.nytimes.com/2010/01/04/world/asia/04migrants.html

Keber, L. (2009, November 22). *Family Detention: As hope for change in Obama immigration policy dwindles, activists speculate on the fate of family detention.* Retrieved November 23, 2010, from San Diego Immigrant Rights Consortium: http://immigrantsandiego.org/2010/01/11/hello-world/

Kennedy, J. F. (1964). *A Nation of Immigrants.* New York: Harper and Row.

Kolodner, M. (2006, July 19). *Immigration Enforcement Benefits Prison Firms - New York Times.* Retrieved October 22, 2010, from Truthout: http://www.truth-out.org/article/immigration-enforcement-benefits-prison-firms

Kucana v. Holder, 130 U.S. 827 (United States Supreme Court January 20, 2010).

Lacey, M. (2010, May 6). *Sheriff Joe Arpaio's Reign of Terror Becomes State Policy, Thanks to State Senator Russell Pearce and Governor Jan Brewer.* Retrieved May 8, 2010, from Phoenix New Times News: http://www.phoenixnewtimes.com/2010-05-06/news/sheriff-joe-arpaio-s-reign-of-terror-becomes-state-policy-thanks-to-state-senator-russell-pearce-and-governor-jan-brewer/

LatinaLista.net. (2010, April 5). *Deported DREAM Act student claims Dept. of Homeland forced him to sign paper barring him from returning to U.S. for 10 years.* Retrieved April 5, 2010, from Latina Lista:

http://www.latinalista.net/palabrafinal/2010/04/deported_dream_act_student_claims_dept_o.html

Lee, H. (2007, August 21). *Immigrant detainees dying in US custody.* Retrieved October 3, 2010, from World Socialist Web Site: http://www.wsws.org/articles/2007/aug2007/immi-a21.shtml

Lloyd, C. (2007, May 31). *Hanky-panky or sexual assault?: An investigation into an alleged assault of a detainee at Texas' Hutto prison turns into an "official misconduct" inquiry.* Retrieved November 1, 2010, from Salon.com: http://www.salon.com/life/broadsheet/2007/05/31/hutto

Lyda, C., & Lyda, J. (Directors). (2009). *The Least of These* [Motion Picture].

Lydig Construction, Inc. (2006). *Portfolio: Northwest Detention Center.* Retrieved November 10, 2010, from Lydig Construction, Inc.: http://www.lydig.com/portfolio/category/detention-justice/northwest-detention-center

Mateen, F., & Tittemore, B. (1995). The Right to Seek Asylum: A Dwindling Right? *Human Rights Brief* .

McHenry, C. (2010, July 2). *ACLU: More changes needed for detainees: Changes at detention center not enough.* Retrieved August 10, 2010, from KXAN Austin: http://www.kxan.com/dpp/news/texas/aclu:-more-changes-needed-in-hutto

Meikle, J. (2010, July 7). *Gay asylum seekers win protection from deportation: Supreme court rules that fear of persecution over sexuality in home country is valid grounds for claiming asylum.* Retrieved July 8, 2010, from The Guardian: http://www.guardian.co.uk/uk/2010/jul/07/gay-asylum-seekers-rights-deportation

Merriam-Webster, Inc., an Encyclopædia Britannica Company. (2010). *Refugee*. Retrieved June 1, 2010, from Merriam-Webster Online Dictionary: http://www.merriam-webster.com/dictionary/refugee

Meyer, P. (2007, February 10). *An inside look at where families are held: Federal officials defend immigrant facility, but critics see charade.* Retrieved October 30, 2010, from The Dallas Morning News: http://www.dallasnews.com/sharedcontent/dws/news/localnews/stories/DN-taylor_10met.ART.State.Edition2.2a1c718.html

Mitchell v. Newryder (United States District Court of Maine 2003).

Mixon, M. (2007, October 31). Williamson won't end relationship with Taylor detention center. *The Austin American-Statesman* , p. A01.

Moreno, S. (2007, February 22). *Detention Facility for Immigrants Criticized: Organizations Laud DHS Effort to Keep Families Together but Call Center a 'Prison-Like Institution'.* Retrieved October 27, 2010, from The Washington Post: http://www.washingtonpost.com/wp-dyn/content/article/2007/02/21/AR2007022101661.html

Mychalejko, C. (2008, March 20). *UN Scolds Washington for War on Migrants.* Retrieved October 12, 2010, from Upside Down World: http://upsidedownworld.org/main/content/view/1186/1/

National Immigration Forum. (2009, July 7). *The Math of Immigration Detention.* Retrieved July 14, 2010, from National Immigration Forum: http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf

Negusie v. Holder, 555 U.S. ___ (United States Supreme Court March 3, 2009).

Nelson, A. (2010, March 19). *Pleading with the Fifth.* Retrieved November 2, 2010, from The Texas Observer: http://www.texasobserver.org/archives/item/16380-pleading-with-the-fifth

News 8 Austin Staff. (2008, January 15). *New standards set for families detained at Hutto center.* Retrieved November 2, 2010, from News 8 Austin: http://www.news8austin.com/content/198194/new-standards-set-for-families-detained-at-hutto-center

——. (2007b, October 3). *Wilco wants to end contract at T. Don Hutto.* Retrieved October 17, 2010, from News 8 Austin: http://www.news8austin.com/content/192943/wilco-wants-to-end-contract-at-t--don-hutto

——. (2007a, May 24). *Worker fired from immigration detention center.* Retrieved October 24, 2010, from News 8 Austin: http://www.news8austin.com/content/184820/worker-fired-from-immigrant-detention-center

Northwest Immigrant Rights Project. (2010a). *NWIRP Client Story: Salvadorian Granted U Visa for Victims of Crime.* Retrieved August 27, 2010, from NWIRP: http://www.nwirp.org/NWIRPsImpact/ClientStory.aspx?ClientStoryID=2

——. (2010b). *NWIRP Quick Facts.* Retrieved October 7, 2010, from Northwest Immigrant Rights Project: http://nwirp.org/NWIRPsImpact/QuickFacts.aspx

Office of the High Commissioner for Human Rights. (2010). *What are human rights?* Retrieved April 2, 2010, from United Nations Office of the High Commissioner for Human Rights: http://www.ohchr.org/en/issues/Pages/WhatareHumanRights.aspx

Physicians for Human Rights and The Bellevue/NYU Program for Survivors of Torture. (2003). *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers.*

Boston and New York City: Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture.

Plyler v. Doe, 457 U.S. 202 (United States Supreme Court June 15, 1982).

Powell, C. (2008, October 30). *Human Rights At Home: A Domestic Policy Blueprint for the New Administration.* Retrieved December 3, 2008, from American Constitution Society for Law and Policy: http://www.acslaw.org/files/C%20Powell%20Blueprint.pdf

Preston, J. (2009, July 15). *New Policy Permits Asylum for Battered Women.* Retrieved November 8, 2010, from The New York Times: http://www.nytimes.com/2009/07/16/us/16asylum.html

Protocol Relating to the Status of Refugees, 1967, 19 U.S.T. 6223. (1968).

Refugee Act of 1980, Pub.L. 96-212. (1980).

Reimers, D. M. (2002). *Encyclopedia of American Foreign Policy: Refugee Policies*. Retrieved March 17, 2010, from Encyclopedia.com: http://www.encyclopedia.com/doc/1G2-3402300131.html

Rennison V. Castillo, Plaintiff, v. Officer Linda M. Swarski, Et Al., Defendants, 0002072 (United States District Court for the Western District of Washington at Tacoma December 10, 2009).

Restatement (Third) of the Foreign Relations Law (FRL) of the United States. (n.d.).

Reuters. (2008, October 31). *Rejected Afghan asylum seeker beheaded after deportation from Australia.* Retrieved April 28, 2010, from Canada.com: http://www.canada.com/vancouversun/news/story.html?id=a088ad07-cd73-4247-91c7-25fb920812dc

Richmond, A. H. (1993). Reactive Migration: Sociological Perspectives On Refugee Movements. *Journal of Refugee Studies , 6* (1), 7-24.

Robuck, B. (2008, April 22). *Detention center reveals much-needed changes.* Retrieved October 21, 2010, from News 8 Austin: http://www.news8austin.com/content/206537/detention-center-reveals-much-needed-changes

Rosetty, T. (2010c, November 9). *Former T. Don Hutto worker faces five charges.* Retrieved November 10, 2010, from Taylor Daily Press: http://www.taylordailypress.net/news/article_2d6a933c-ad5a-11df-ac83-001cc4c03286.html

——. (2010d, November 10). *Former T. Don Hutto worker sentenced.* Retrieved November 10, 2010, from Taylor Daily Press: http://www.taylordailypress.net/news/taylor/article_a6e6c6dc-ec65-11df-bbfa-001cc4c002e0.html

——. (2010b, November 9). *ICE remains quiet about CCA investigation.* Retrieved November 10, 2010, from Taylor Daily Press: http://www.taylordailypress.net/news/taylor/article_e0da7a00-7424-11df-a952-001cc4c002e0.html

——. (2010a, November 9). *Man arrested in relation to T. Don Hutto assaults.* Retrieved November 10, 2010, from Taylor Daily Press: http://www.taylordailypress.net/news/article_cc937918-abe5-11df-ad1d-001cc4c03286.html

Ruland, P. J. (2007b, June 1). *Cover-up at Hutto?* Retrieved October 18, 2010, from The Austin Chronicle: http://www.austinchronicle.com/gyrobase/Issue/story?oid=oid:479772

——. (2009, August 7). *Judge and OAS Find T. Don Hutto Lacking.* Retrieved October 12, 2010, from The Austin Chronicle: http://www.austinchronicle.com/gyrobase/Issue/story?oid=oid:819427

——. (2007a, May 11). *T. Don Hutto: Homeland Security Bars U.N. Inspector.* Retrieved October 12, 2010, from The Austin Chronicle: http://www.austinchronicle.com/gyrobase/Issue/story?oid=oid%3A473695

Schrag, P. G., & Ramji-Nogales, J. (2009). *Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform* . New York: NYU Press.

Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica (formerly Hate Free Zone). (2008). *Voices from Detention: A Report on Human Rights Violations at the Northwest Detention Center in Tacoma, Washington.* Seattle: Seattle University School of Law.

Seattle University School of Law International Human Rights Clinic in collaboration with OneAmerica. (2008). *Voices from Detention: A Report on Human Rights Violations at the Northwest Detention Center in Tacoma, Washington.* Seattle: Seattle University School of Law.

Shapiro, N. (2008, August 13). *Detainees Refute Northwest ICE's Denials of Abuse.* Retrieved August 27, 2010, from Seattle Weekly: http://www.seattleweekly.com/2008-08-13/news/detainees-refute-northwest-ice-s-denials-of-abuse/

——. (2010, January 14). *Ninth Circuit to Hear Case Against Officers Who Detained a U.S. Citizen, Veteran for Seven Months.* Retrieved October 7, 2010, from Seattle Weekly: http://blogs.seattleweekly.com/dailyweekly/2010/01/ninth_circuit_to_hear_case_aga.php

Smith, T. (2006, December 23). *Tacoma immigration jail capacity grows by 25% to 1000.* Retrieved October 27, 2010, from Immigrant Solidarity Network: http://www.immigrantsolidarity.org/cgi-bin/datacgi/database.cgi?file=Issues&report=SingleArticle&ArticleID=0673

Strohm, C. (2006, February 3). *DHS to end 'catch and release' of illegal aliens in October.* Retrieved August 27, 2010, from Government Executive: http://www.govexec.com/dailyfed/0206/020306c1.htm

Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law of the Committee on the Judiciary of the Second Session of the 110th House of Representatives. (2008, June 4). *Problems with Immigration Detainee Medical Care.* Retrieved November 22, 2010, from U.S. House of Representatives - Judiciary Committee: http://judiciary.house.gov/hearings/printers/110th/42722.PDF

Suhrke, A. (1984). Chapter 8: Global Refugee Movements and Strategies of Response. In M. M. Kritz (Ed.), *U.S. Immigration and Refugee Policy: Global and Domestic Issues* (pp. 157-173). United States of America: D.C. Heath and Company.

Tacoma Students for a Democratic Society. (2009, October 9). *The Pecos Insurrection.* Retrieved October 11, 2010, from Tacoma SDS: http://tacomasds.org/node/1174

The GEO Group, Inc. (2010, May 10). *Company Culture.* Retrieved August 20, 2010, from The GEO Group: http://www.geogroup.com/culture.asp

——. (n.d.). *Northwest Detention Center.* Retrieved October 1, 2010, from The GEO Group: http://www.thegeogroupinc.com/facility.asp?fid=105

The Human Rights Immigrant Community Action Network. (2009, September). *Guilty by Immigration Status: A report on U.S. violations of the rights of immigrant families,*

workers and communities in 2008. Retrieved October 27, 2010, from National Network for Immigrant and Refugee Rights: http://www.nnirr.org/hurricane/GuiltybyImmigrationStatus2008.pdf

The Least of These. (2009a). *Family Detention.* Retrieved October 27, 2010, from The Least of These: Family Detention in America: http://theleastofthese-film.com/familydetention/

——. (2009b). *What were the initial conditions like at Hutto?* Retrieved October 20, 2010, from The Least of These: Family Detention in America: http://theleastofthese-film.com/familydetention/conditions/

——. (2009c). *Who is detained at Hutto?* Retrieved October 20, 2010, from The Least of These: Family Detention in America: http://theleastofthese-film.com/familydetention/wh/

Trevino, J. (2010, August 19). *TX: Advocates argue for more reform of T. Don Hutto, other private detention centers: Federal authorities investigating another alleged sexual assault by private prison guard.* Retrieved August 20, 2010, from The American Independent: http://www.americanindependent.com/134388/tx-advocates-argue-for-more-reform-of-t-don-hutto-other-private-detention-centers

Tumlin, K. (2007, July 20). *Immigration Detention Centers under the Microscope: Recent Reports Reveal Widespread Violations of the National Detention Standards: Immigrants' Rights Update, Vol. 21, Issue 6, July 20, 2007.* Retrieved August 11, 2010, from National Immigration Law Center: Immigration Law & Policy: Arrest and Detention: http://www.nilc.org/immlawpolicy/arrestdet/ad090.htm

Turnbull, L. (2007, August 15). *300 detainees ill; tainted food suspected.* Retrieved October 22, 2010, from The Seattle Times: http://seattletimes.nwsource.com/html/localnews/2003836764_sickness15m.html

U.S. Department of Justice, Bureau of Prisons. (2007, December 28). *Visiting Regulations at the Federal Correctional Institution at Edgefield, South Carolina.* Retrieved November 23, 2010, from Federal Bureau of Prisons: http://www.bop.gov/locations/institutions/edg/EDG_visit_hours.pdf

U.S. Marshals. (2010). *Justice Prisoner & Alient Transportation System (JPATS).* Retrieved August 27, 2010, from U.S. Marshals: http://www.usmarshals.gov/jpats/

United Nations. (2007, August). *Convention and Protocol Relating to the Status of Refugees.* Retrieved January 12, 2010, from http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf

United Nations General Assembly. (1946). *Constitution of the International Refugee Organization.* Flushing Meadow: United Nations.

United Nations High Commissioner for Refugees. (1999). *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers.* Retrieved August 10, 2010, from United Nations High Commissioner for Refugees: http://www.unhcr.org.au/pdfs/detentionguidelines.pdf

——. (2006, June). *UNHCR Monitoring Report: Canada - United States "Safe Third Country" Agreement: 29 December 2004 - 28 December 2005.* Retrieved September 22, 2010, from Citizenship and Immigration Canada: http://www.cic.gc.ca/english/department/laws-policy/partnership/pdf/appendix-a.pdf

United States Constitution. (n.d.).

United States Government Accountability Office. (2007, July). *GAO 2007 Report 875.* Retrieved May 5, 2010, from Government Accountability Office: http://www.gao.gov/new.items/d07875.pdf

Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 – USA PATRIOT Act, Pub.L. 107-56. (2001).

Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71. (1948).

Vail, I. (2010, August 20). *Former worker charged in sexual assaults of detainees: Officials said Donald Dunn inappropriately touched detainees during transport.* Retrieved October 20, 2010, from Statesman.com: http://www.statesman.com/news/local/former-worker-charged-in-sexual-assaults-of-detainees-869333.html

Wasem, R. E. (25 January 2007). *Congressional Research Service Report for Congress: U.S. Immigration Policy on Asylum Seekers.* Congressional Research Service.

——. (27 January 2006). *Congressional Research Service Report for Congress: U.S. Immigration Policy on Asylum Seekers.* Congressional Research Service.

——. (5 May 2005). *Congressional Research Service Report for Congress: U.S. Immigration Policy on Asylum Seekers.* Congressional Research Service.

Watson, S., & Watson, P. (2008, May 19). *Federal Government Taking Bids On Construction Of Internment Camps: Under pretext of immigration control, government building "family detention centers".* Retrieved November 10, 2010, from Infowars.net: http://www.infowars.net/articles/may2008/190508Camps.htm

Wayne Smith and Hugo Armendariz, et al. v. United States, 12.562 (Inter-American Commission on Human Rights July 12, 2010).

Wise, J., & Vega, J. (2010, August 20). *Detention officer admits groping women: Hutto immigration facility employee faces charges.* Retrieved November 11, 2010, from KXAN.com Austin News: http://www.kxan.com/dpp/news/local/williamson/detention-officer-admits-groping-women

Woflson, S., & Cargile, E. (2010, November 9). *Former guard takes plea deal for abuse: T. Don Hutto case not closed in Williamson County.* Retrieved November 11, 2010, from KXAN.com Austin News: http://www.kxan.com/dpp/news/crime/Decision-day-in-T-Don-Hutto-abuse-case

Women's Commission for Refugee Women and Children and Lutheran Immigration and Refugee Service. (2007, February). *Locking Up Family Values: The Detention of Immigrant Families.* Retrieved September 22, 2010, from Women's Commission for Refugee Women and Children: http://www.womensrefugeecommission.org/docs/famdeten.pdf

Woods v. Myers, Complaint for Injunctive and Declaratory Relief - Class Action (United States District Court for the Southern District of California June 13, 2007).

Wray, H. L. (1986). *Cells for Sale, from "Southern Changes" Vol. 8, No. 3, 1986, pp. 3-6.* Retrieved November 7, 2010, from The Beck Center at Emory University Libraries: http://beck.library.emory.edu/southernchanges/article.php?id=sc08-3_011&mdid=sc08-3_001

WSB-TV Channel 2 Action News Atlanta. (2010, November 15). *Taxpayer Dollars Fund Luxury Detention Centers for Illegal Immigrants.* Retrieved November 16, 2010, from WSBTV.com: http://www.wsbtv.com/news/25674402/detail.html

Zadvydas v. Davis, 533 U.S. 678 (United States Supreme Court June 28, 2001).

Zhou, H. (2007, December 8). *UT law students deliver toys to detained children.* Retrieved October 17, 2010, from News 8 Austin: http://www.news8austin.com/content/196374/ut-law-students-deliver-toys-to-detained-children

ACRONYMS AND ABBREVIATIONS

ABA: American Bar Association
ACA: American Correctional Association
ACLU: American Civil Liberties Union
ATD: Alternative(s) to Detention
BBS: Bureau of Border Safety
BIA: Board of Immigration Appeals
BOP: Bureau of Prisons
C.F.R.: Codes of Federal Regulation
CAT: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBP: Customs and Border Protection Bureau
CCA: Corrections Corporation of America
CIL: Customary International Law
DHS: Department of Homeland Security
DoD: Department of Defense
DoJ: Department of Justice
DRO: Detention and Removal Operations
ECHR: European Court of Human Rights
ERO: Enforcement and Removal Operations
ESL: English as a Second Language
FRL: Foreign Relations Law
GED: General Education Diploma
GEO: The GEO Group, Inc.
IACHR: Inter-American Commission on Human Rights
ICC: International Criminal Court
ICE: Immigration and Customs Enforcement
ICHR: Inter-American Court of Human Rights
ICJ: International Court of Justice
IGSA: Inter-Governmental Service Agreement
IIRIRA: Illegal Immigration Reform and Immigrant Responsibility Act of 1996
INS: Immigration and Naturalization Services
IRO: International Refugee Organization
ISAP: Intensive Supervision Appearance Program
LJPP: Laws, Jurisprudence, Policies, and Principles
NCCHC: National Commission on Correctional Healthcare
NWDC: Northwest Detention Center
NWIRP: Northwest Immigrant Rights Project
OAS: Organization of American States
ODO: Office of Detention Oversight
OIG: Office of the Inspector General
OPR: Office of Professional Responsibility
Pub.L.: Public Law
ROR: Released on [his/her/their] Own Recognizance
RUD: Reservations, Understandings, and Declarations

SAP: Social Assistance Program
SCOTUS: Supreme Court of the United States
TDHFRF: T. Don Hutto Family Residential Facility
TDHRC: T. Don Hutto Residential Center
U.S.C.: United States Code
U.S.C.A.: United States Code Annotated
UNHCHR: United Nations High Commission[er] for Human Rights
UNHCR: United Nations High Commission[er] for Refugees
USCIS: United States Citizenship and Immigration Services
USGAO: United States Government Accountability Office
WilCo: Williamson County, Texas