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

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

Thank you for the opportunity to testify before you today.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# APPENDIX A

## ASYLUM SEEKERS IN EXPEDITED REMOVAL:

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

## EXCERPTED FINDINGS RELATED TO DETENTION

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

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

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

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

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

**Specific Findings**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# APPENDIX B

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

## EXCERPTED RECOMMENDATIONS RELATING TO DETENTION

### RECOMMENDATION ONE

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

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

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

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

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

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

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

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

**RECOMMENDATION THREE**

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

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

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

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

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

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

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

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

We have found that detained asylum seekers in Expedited Removal are subjected to conditions of confinement that are virtually identical to those in prisons or jails. These conditions create a serious risk of institutionalization and other forms of psychological harm. They are inappropriate, particularly for an already traumatized population of asylum seekers, and unnecessary. ICE's own "non-jail-like detention" model in Broward County, Florida has demonstrated that asylum seekers may be securely detained in an environment which does not

resemble a jail and which is no more expensive than more secure facilities. Broward is, however, the only such non-jail-like detention facility among the 185 jails, prisons, and detention centers where ICE detains asylum seekers.

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

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

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

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

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

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

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

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

**RECOMMENDATION SUMMARY**

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

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

# APPENDIX C

## STUDY ON ASYLUM SEEKERS IN EXPEDITED REMOVAL

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

(Hereafter, Commission Report)

## CONDITIONS OF CONFINEMENT FOR DETAINED ASYLUM SEEKERS SUBJECT TO EXPEDITED REMOVAL

SUBMITTED: FEBRUARY 2005

Craig Haney, Ph.D.

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# CONDITIONS OF CONFINEMENT FOR DETAINED ASYLUM SEEKERS SUBJECT TO EXPEDITED REMOVAL

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

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

## I. THE DETENTION OF ASYLUM SEEKERS SUBJECT TO EXPEDITED REMOVAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## II. ASSESSING CONDITIONS OF CONFINEMENT AT THE DETENTION FACILITIES IN WHICH ASYLUM SEEKERS SUBJECT TO EXPEDITED REMOVAL ARE HOUSED

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

[13] ibid.

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

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

### A. The Facility Survey

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

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

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

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

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

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

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

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

*1) Special Treatment of Alien Detainees*

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

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

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

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

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

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

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

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

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

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

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

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

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

*3) Restricted Movement and Segregated Confinement*

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

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

*4) Limitations on Privacy and Personal Freedom*

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

*5) Pursuit of Legal Claims*

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

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

*6) Access to Programming and Meaningful Activity*

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

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

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

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

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

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

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

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

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

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

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

*8) Contact with the Outside World*

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

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

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

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

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

*Summary*

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

**B. Interviews with Former Detainees**

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

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

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

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

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

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

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

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

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

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

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

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

C. Facility Tours

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

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

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

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

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

## III. THE PSYCHOLOGICAL IMPACT OF CONFINEMENT

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

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

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

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

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

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

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

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

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

### A. Dependence on Institutional Structure and Contingencies

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

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

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

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

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

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

**B. Hypervigilance, Interpersonal Distrust and Suspicion**

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

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

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

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

### C. Social Withdrawal and Self Isolation

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

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

### D. Diminished Sense of Self-Worth and Personal Value

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

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[33] For example, see: C. Jose-Kampfner, Coming to Terms with Existential Death: An Analysis of Women's Adaptation to Life in Prison, Social Justice, 17, 110-XXX (1990); R. Sapsford, Life Sentence Prisoners: Psychological Changes During Sentence, British Journal of Criminology, 18, 128-145 (1978).

[34] Hannah Levenson, Multidimensional Locus of Control in Prison Inmates, Journal of Applied Social Psychology, 5, 342-347 (1975).

[35] A. Taylor, Social Isolation and Imprisonment, Psychiatry, 24, 373-XXX (1961), at p. 373.

[36] C. Jose-Kampfner, Coming to Terms with Existential Death: An Analysis of Women's Adaptation to Life in Prison, Social Justice, 17, 110-XXX (1990), at p. 123.

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

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

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

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

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

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

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

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

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

## IV. SPECIAL PSYCHOLOGICAL ISSUES FOR ASYLUM SEEKERS SUBJECT TO EXPEDITED REMOVAL

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

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

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

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

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

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

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

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

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

## V. DISCUSSION, ALTERNATIVES, AND NEED FOR FURTHER STUDY

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

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

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

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

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

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

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

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

[41] Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers (2003), at p. 5.
[42] As stated in the UNHCR Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers (1999), "The detention of asylum-seekers is, in the view of UNHCR, inherently undesirable. This is even more so in the case of vulnerable groups such as single women, children, unaccompanied minors and those with special medical or psychological needs." *See* Appendix F to this Report, in Volume II of the Commission Report.
[43] INS Detention Standard: Detainee Classification System (p. 5) (2003).

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

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

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

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

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

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

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

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

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