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Ailing Justice: *New Jersey*

Inadequate Healthcare, Indifference, and Indefinite Confinement in Immigration Detention

February 2018

ON HUMAN RIGHTS, the United States must be a beacon. Activists fighting for freedom around the globe continue to look to us for inspiration and count on us for support. Upholding human rights is not only a moral obligation; it's a vital national interest. America is strongest when our policies and actions match our values.

Human Rights First is an independent advocacy and action organization that challenges America to live up to its ideals. We believe American leadership is essential in the struggle for human rights so we press the U.S. government and private companies to respect human rights and the rule of law. When they don't, we step in to demand reform, accountability, and justice. Around the world, we work where we can best harness American influence to secure core freedoms.

We know that it is not enough to expose and protest injustice, so we create the political environment and policy solutions necessary to ensure consistent respect for human rights. Whether we are protecting refugees, combating torture, or defending persecuted minorities, we focus not on making a point, but on making a difference. For over 30 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership.

Human Rights First is a nonprofit, nonpartisan international human rights organization based in New York and Washington D.C. To maintain our independence, we accept no government funding.

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ACKNOWLEDGEMENTS

This report was written by Eleni Bakst and Olga Byrne. Bakst was the principal researcher and author. Field research was conducted by Bakst, Byrne, Eleanor Acer, Ana Guzina, and Violeta Rivera. David Mizner edited and Emma Stein designed the report. We are grateful for the invaluable support of Equal Justice Works and fellowship sponsor The Ottinger Foundation. Human Rights First also thanks the Oak Foundation, the Libra Foundation, the Heising-Simons Foundation, the Open Society Policy Center, and the Simmons Sisters Fund of The Dallas Foundation for their support of the organization's research and advocacy on access to asylum. We are thankful to the following legal and health professionals for joining the detention tours and interviews of detained individuals: Dr. Allen Keller, Dr. Cristina Muñiz de la Peña, Dr. Joseph Shin, Dr. Evelyne Cumps, Dr. Michelle Fine, Dr. Joshua Clegg, Dr. Joanna Chapin, Brenda Punsky, Jennifer del Medico, Catherine Weiss, Natalie Kraner, Veyom Bahl, Angelo Mathay, Amanda Stern, and Serges Demefack. Particularly, we thank the numerous individuals held in immigration detention who bravely and selflessly shared their stories in the hopes of improving the system for all those who follow in their footsteps.

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Executive Summary

Every year, the U.S. government locks up hundreds of thousands of immigrants despite the existence of effective—and cost-effective—alternative-to-detention programs. Detention itself can be traumatizing, and the conditions in immigrant detention facilities are harsh and often inhumane.

Detained immigrants—held under civil, not criminal, authority—are forced to endure a range of hardships, from dirty drinking water to harassment to solitary confinement. Many also receive inadequate medical and mental health care. These conditions can cause severe suffering, long-term physical and emotional damage, and avoidable deaths.[1] They also compel some refugees to withdraw claims for protection.

While the unnecessary detention of immigrants is a longstanding problem in the United States, it has gotten worse in recent years. Under President Obama, the U.S. government put in place a policy of using detention to attempt to deter migrants—including asylum seekers fleeing persecution—from coming to the United States. The Trump Administration has adopted an even more aggressive and punitive approach, in line with the President's executive order calling for asylum seekers and migrants to be detained for the duration of their proceedings.[2]

In February 2018, Human Rights First researchers visited the three principal facilities that U.S. Immigration and Customs Enforcement (ICE) uses to detain noncitizens in New Jersey: Elizabeth Contract Detention Facility, the Essex County Correctional Facility, and the Hudson County Correctional Facility.

The Elizabeth Facility, operated by CoreCivic, has capacity to hold 304 people. The Essex and Hudson facilities each holds approximately 700 people in ICE custody, as well as people in criminal justice proceedings. The Elizabeth and Hudson facilities house women and men, while the Essex facility houses only men.

A team of legal and health professionals joined our staff on these visits, which included tours of the facilities, meetings with ICE and facility staff, and individual and group interviews with over one hundred detained immigrants. Based on these visits, the opinions of the legal and health professionals, in-depth research, and our twenty-plus years of experience providing pro bono legal representation to asylum seekers detained in New Jersey, we report the following:

- Many asylum seekers and immigrants remain in unnecessary, lengthy, and prolonged detention—some for over a year—due to a lack of access to viable release mechanisms, including parole.
- Detention harms their medical and mental health, creates barriers to access to counsel, and hurts their chances of securing relief from deportation.
- Asylum seekers and other immigrants languish under harsh and inhumane conditions, conditions essentially identical to those in many criminal correctional facilities. Many detained immigrants, particularly non-English speakers, endure frequent racist comments, harassment, and discrimination from medical and correctional staff.
- Many detained people report substandard or denial of medical care, long waits to be seen by a medical professional, and a lack of proper medication.
- Despite widespread interest in—and need for—mental health services, including supportive psychotherapy, insufficient availability at two of the facilities and fear of punitive treatment force many detained people to cope on their own.

- Additionally, even when mental health services are provided, they are often inadequate to address the serious mental health problems of some detained immigrants.
- The suicide watch program at the Hudson County Correctional Facility, despite recent reform, may actually discourage people from seeking mental health care and may contribute to suicidal inclinations.

Immigration Detention is Often Unnecessary and Prolonged

Human Rights First has documented the often lengthy, inconsistent, unnecessary, and costly detention of asylum seekers and other immigrants in the United States.[3] Those eligible for bond are often required—either by ICE or an immigration judge who reviews ICE's custody determination—to pay amounts that are unaffordable, causing them to remain in detention.[4]

Some asylum seekers, who entered the United States at an airport or other port of entry, are not provided access to an immigration court custody hearing, leaving ICE as their judge and jailor. The standards for releasing "arriving asylum seekers," outlined in ICE's 2009 Asylum Parole Directive, says they must have a credible fear of persecution or torture and not present a security or flight risk.[5] ICE has often failed to follow its own parole directive.

On January 25, 2017, President Trump issued an executive order calling for immigrants to be detained "pending the outcome of their removal proceedings or their removal from the country."[6] Implementation of this objective is evident in the administration's efforts to open at least five new immigration detention centers and their request to increase the budget for detaining immigrants.[7]

In a February 2017 memorandum implementing President Trump's January 25 executive order, the Department of Homeland Security (DHS) called for parole authority to be used "sparingly" and indicated that additional review and guidance would be issued on assessing parole eligibility.[8]

In New Jersey, ICE has essentially adopted a policy of blanket denials of parole (with a few exceptions), which has continued in the wake of the President's executive order. Pro bono attorneys assisting arriving asylum seekers report that those who meet the parole directive's criteria continue to be held in jails and detention facilities for many months instead of being released on parole.[9] This—combined with other release failures, such as bonds set at unaffordable amounts—has led to lengthy, unnecessary, and disproportionate detentions.

Human Rights First has met with or learned of many asylum seekers and migrants held in detention for six months or longer, in some cases for well over one year. At the Elizabeth and Essex facilities, for example, we met with immigrants who had been detained for 16 and 18 months, respectively.

U.S. legal commitments under human rights and refugee protection treaties prohibit the unnecessary, disproportionate, or otherwise arbitrary detention of migrants and asylum seekers. These laws also prohibit their detention when alternative measures could be employed to assure compliance.[10] Community-based management or other alternative to detention programs have proven highly effective in assuring appearance for immigration appointments.[11]

Moreover, as detailed below, detention in and of itself causes increased mental health difficulties, including post-traumatic stress.[12]

Detained immigrants also face heightened difficulties in securing legal counsel. Only 14 percent of detained immigrants nationwide have counsel, as compared with two-thirds of non-detained immigrants.[13] The simple fact that they

are detained means that they must rely on phone calls to legal representatives, rather than visits to attorney offices. Moreover, while New Jersey detention facilities are located relatively close to urban centers (unlike many large immigrant detention centers that are located in highly desolate corners of the country), complicated procedures for gaining physical access to clients, combined with lack of sufficient attorney-client meeting areas, such as at Essex, hinder attorney-client communications. Ability to pay is also a major obstacle as those who are detained are unable to work and support themselves—and pay legal fees.

While some pro bono attorneys and non-profit organizations offer free or reduced fee legal services, the demand far outstrips the need. In 2015, through funding from a private foundation, American Friends Service Committee (AFSC) has piloted a "universal representation" model of legal services at Elizabeth, which aims to provide free legal representation to all indigent immigrants detained at the facility who are not already represented by counsel. In the first two years of the program, AFSC represented over 400 individuals and had a 77 percent success rate in cases that reached their merits hearing in court.

Additionally, the Hudson County Board of Chosen Freeholders (the county legislature) provided a small grant of $54,000 to AFSC and Legal Services of New Jersey to provide legal representation to people held at the Hudson facility.

Conditions of Detention are Harsh and Inhumane

The Elizabeth Contract Detention Facility is run by CoreCivic (formerly known as Corrections Corporation of America, the largest prison contractor in the country), and the Essex and Hudson facilities are county jails that rent bed space to ICE. All three facilities claim to adhere to different versions of ICE's Performance-Based National Detention Standards (PBNDS). Unfortunately, these standards are neither enforceable nor legally binding, but only provide suggested guidelines. The Elizabeth and Essex facilities follow the 2011 PBNDS, while the Hudson facility follows the 2008 PBNDS.[14] At the Hudson facility, however, we were informed that the correctional staff, who oversee individuals held in both county and ICE custody, are only trained on the New Jersey Department of Corrections Administrative Code Title 10A, governing adult county correctional facilities, and not on ICE detention standards.[15]

Despite the fact that ICE is holding civil immigration detainees in custody, its detention standards are based on criminal correctional standards. Hence the use of color-coded prison uniforms and the housing of large number of detainees at Essex and Hudson in cells, as opposed to dorms. As detention experts, the American Bar Association and Human Rights First have all emphasized that such standards (which have come under fierce criticism in criminal justice system reform efforts as well) are inappropriate for civil immigration detainees.[16]

Legal professionals who participated in the tours were surprised to note that the conditions of detention were as poor or worse than those they had previously observed in criminal correctional facilities. In recent years, steps have been taken to improve conditions and treatment of individuals in penal institutions, but these reforms have largely failed to benefit people held in immigration detention. Some of the conditions in the immigrant detention facilities—such as the approach to "outdoor" recreation—do not even reflect best practices in the correctional field.

Researchers noted the following concerning conditions in the three facilities we toured:

Availability of meaningful outdoor recreation. At the Elizabeth and Essex facilities, so-called "outdoor recreation" is an indoor room with a barred-over skylight that allows some fresh air into the otherwise dark and enclosed space. At the Hudson Facility, outdoor recreation takes place in an enclosed area with, but has one wall open to the outside, which provides both fresh air and sunlight.

Lack of bathroom privacy. In the Elizabeth facility, toilets are separated only by "privacy walls"—roughly three-foot-tall barriers—that easily allow others to observe while individuals are using the bathroom. Similarly, while showers are surrounded by plastic curtains, the top half of these curtains are see through.

Unhygienic and unsanitary conditions. Detained individuals reported a range of conditions that raised sanitary and hygiene concerns.[17] For instance:

- Almost every detainee at Elizabeth reported that insufficient ventilation has caused years of dust buildup near the ceilings and on the walls of the transformed warehouse, which causes many to suffer from allergies or asthma.
- Several individuals at Elizabeth said they found worms or maggots in the shower area on multiple occasions. One person who complained about these conditions reports that he was placed in disciplinary segregation.
- At Hudson, several detained individuals who work in the kitchens complained that the food carts, trays, and dishes are frequently left unwashed, and that when they are cleaned, dirty water is used to wash them. As a result, garbage and food waste often remain on the plates and trays.
- Detainees at all three facilities reported receiving insufficient or damaged clothing and hygiene products. For example, women at the Elizabeth facility expressed shame over being given only two or three pairs of underwear for the week, which made them feel dirty, particularly when they have their period. Women at Elizabeth and Hudson also reported receiving an insufficient number of sanitary pads, leaving them no other choice but to purchase them at the commissary for high prices.

Inadequate and unsafe food and water. Almost every individual interviewed at the three facilities complained about the inadequate food and/or water and noted that they often had to supplement their provisions by purchasing food or drinks from the commissary, which is quite costly. When one group of four female detainees at Elizabeth was asked to estimate how much money they need to survive in the facility, accounting for both commissary and phone charges, they stated that they need more than one hundred dollars per week. Given that the work programs at the facilities only pay between one dollar and one dollar and fifty cents per day, detained individuals must rely on family and friends—who may already be suffering economic hardship because of their family member's detention—to fill their accounts and give them some small measure of human dignity and comfort. Unfortunately, if an individual is indigent and cannot afford to supplement their provisions from the commissary, they must rely solely on the facility staff. Complaints about food and water included:

- Several detainees at the Elizabeth facility reported that the water from the drinking fountain has an obvious white coloration, with two people describing it as "pure bleach."
- Detainees at the Essex facility stated that they often run out of water in the units and that the water from the bathroom tap is undrinkable.
- Individuals at all three facilities reported that food, particularly meat and rice, is often raw,

spoiled, or expired. One individual at Elizabeth reported that he has received food with worms or maggots in it.

- Individuals at all three facilities reported significant weight loss due to poor food quality. One individual at Hudson claimed to have lost 15 pounds during only three weeks of detention.
- Detainees at all three facilities also reported that they experienced significant time pressure to eat. Any food or drink remaining after the granted time expired was thrown away.

Maltreatment and discrimination from guards. Numerous individuals also described repeated instances of racism, discrimination, and harassment from detention facility officers. Detainees reported that staff routinely verbally label them and treat them like "animals," "dogs," "criminals," and "hoes." For example:

- Staff in the medical clinic at Elizabeth reportedly call certain detainees "criminals" and mock patients who are returning to the medical clinic. According to two detainees, one nurse discriminates against non-English speakers, allegedly telling them, "If you want to be in this country, you have to learn to speak English." This same nurse also threatened one individual after he asked for medication, stating, "I will give you pills until you explode."
- Detainees at the Hudson facility said that certain officers allow only English programs on the television, that most work positions are offered to English speakers, and that officers may restrict phone usage depending on the race of the detainee.
- Women at the Hudson facility complained about one officer who verbally assaults certain women and even restricts certain women from using the phone to call their attorneys, something that all detainees should have unrestricted access to. The 2008 PBNDS prohibits a facility from "restrict[ing] the number of calls a detainee places to his/her legal representatives" and requires the implementation of procedures that "foster legal access."[18]
- At the Essex facility, detainees expressed concern over certain family members visiting, stating that some officers threaten detainees with harm to their family. One individual stated that an officer told him, "I'll go to your mom, and get her pregnant, and then get your daughter pregnant."
- One individual at the Essex facility reported than an officer said, "You are immigrants. You don't belong here. I'll be glad when Trump deports you."

Use of disciplinary and protective segregation. All three facilities have units for protective custody and disciplinary segregation (solitary confinement). In these units, freedom of movement is severely limited, with people confined to their cell for at least 23 hours per day for disciplinary segregation and 22 hours for protective custody, and detainees are permitted fewer personal items. At the Essex and Hudson facilities, those on disciplinary segregation are not permitted to make personal phone calls.

Several people we interviewed had been placed in segregation and complained about not only the conditions, but also the unjust process by which they were placed there. While facility staff stated that the most common reason for segregation is violence towards other detainees or staff, detainees reported being placed in segregation for filing grievances or requesting medical assistance, participating in hunger strikes, or not standing during count. Many people said they feared that they would be placed in segregation in retaliation for speaking to our group.

According to facility staff at all three detention centers, when a detainee is placed in segregation,

he must receive a hearing within 24 hours to review the misconduct and violation of facility rules.[19] All detainees must also have an opportunity to appeal their punishment.

Concerns were raised regarding the use of segregation and the conditions of segregation at the three facilities. Detainees also claimed that their rights are often violated while in segregation. For example:

- "Marco" was placed in segregation for several days after a fight in his dorm. While in segregation, he reported that he was not permitted to have attorney visits, recreation time, or access to the commissary. Additionally, he stated that he did not receive a hearing on his placement in segregation for nearly five days.
- "John" was originally sentenced to 30 days in segregation for merely failing to follow an order to immediately return to his pod so that he could finish reading the list of legal service providers. He never received a hearing, but was moved to medical isolation after a few days in segregation due to a mental health problem.
- Health professionals expressed serious concern that detainees are often placed two per cell while in protective custody at the Hudson facility. The small size of the cell, combined with the fact that they are locked in for almost the entire day, leads to an inhumane living situation.

Asylum seekers and immigrants held in these detention facilities are civil detainees, and often express their surprise to be subjected to such harsh and dehumanizing conditions. As one detained asylum seeker stated:

"I came to the United States because I considered it to be a fortress of human rights, but now I know the opposite."

Medical Care is Often Inadequate and Delayed

At the three New Jersey detention facilities, ICE, the facilities, and respective subcontractors often fail to provide adequate medical care. The problems include inadequate health screenings at intake, inadequate or outright denial of medical and dental care, delays in receiving treatment or medication, lack of privacy during health appointments, and language access concerns.

Medical care at the Elizabeth Contract Detention Facility is provided by the ICE Health Service Corps (IHSC), while independent contractors provide care at the Essex County and Hudson County facilities.[20] However, the challenges are largely the same at all three.

Medical and dental needs are left unmet. Detainees at all three facilities reported serious medical needs left unaddressed.[21] These claims were supported by the statement of an ICE officer at one of the facilities, who said the decision to provide medical care is a "cost-benefit analysis." Many detained individuals reported that pain killers, mainly ibuprofen, are provided for symptoms ranging from stomachaches, chest pain, and in one instance, severe back pain after a fall by an elderly man.

It appears that ibuprofen is offered not as a complement to, but rather as a substitute for, physical exams, x-rays, or other testing. Some individuals reported that while the facility medical staff had referred them to an outside specialist, ICE refused to follow its recommendations. Moreover, several individuals who require special diets to accommodate their health conditions reported that these diets often were not followed.

Examples of unmet or neglected health needs include:

- "Eric," detained for over seven months, suffers from a genetic disorder that affects the body's

connective tissue. Due to a history of cardiac problems and surgery, he was referred to an outside cardiologist, who ordered further testing and scans. According to Eric, however, the facility doctor said that while his health condition made him a "ticking time bomb," ICE would not approve these additional recommended procedures.

- "Jaime" is an asylum seeker suffering from a severe gastrointestinal condition since entering detention about five months ago. According to Jaime, the medical staff are not performing adequate tests or treating his condition. Instead, he feels they neglect his condition and place him in segregation as a form of punishment for speaking out about the inadequate care. He told us that one officer at the facility even said, "Fuck your problems. Fuck your bleeding. Don't make problems for me." James described the attitude in the facility as, "If you get sick here . . . we will torture you. I was tortured."
- Several individuals who have been detained long-term at Elizabeth and Hudson reported that they avoid seeking dental care as the dentist only performs extractions, rather than providing treatment for basic dental issues, including cavities.
- At the Hudson facility, we observed one woman using a bra as a sling for a clavicle fracture after being told that proper arm slings were a "suicide risk."
- "Angela," an epileptic woman, reported that she was denied her medication upon entering detention. It wasn't until after she had a seizure that she was given medication, and it was only a fraction of her usual dosage.
- "Elena" is an older woman suffering from several diagnosed medical conditions, including high blood pressure and glaucoma. She reported that upon entering detention, facility medical staff took away her blood pressure medication and she was not given a substitute. Medical staff also informed her that they do not believe she has glaucoma, and as a result have not provided her medication or prescription lenses.
- "Luis" reported having an asthmatic reaction to the generic inhaler the facility pharmacist offered him after his medication was taken away at intake. The facility medical staff refused to provide him with a different inhaler after he reported the negative reaction. As a result, he suffers through asthma attacks without relief.
- "Maria" suffers from severe migraines, which have been worsening and increasing in frequency since being detained. The medication prescribed to her by facility medical staff gives her severe stomach pain, and once resulted in a medical emergency code being called as she could not stop throwing up. The medical staff responded by giving her an alternate medication—which she had previously requested—but for only one week, and then returned her to the original medication, which she cannot take due to its serious side effects.

Delays in receiving medical care. Many individuals also report significant delays in accessing regular care from the medical professionals. If they miss sick call or feel ill after sick call—a scheduled time when detainees may request medical assistance—they often have to wait until the next morning. Some individuals also reported that it takes medical staff up to one hour to respond to emergency situations, such as a seizure and an asthma attack. As a result, many feel that they no longer have the "right" to medical treatment. For example:

- Oscar is blind in one eye and has a condition that creates visible swelling and requires him to use medicated eye drops. Despite requesting medical assistance multiple times over several

months, he claims that he was denied his eye drops and visits with the doctor. When inquiring about the status of his visits to medical, he was told, "When they are ready, they will see you." As a result, Oscar is suffering from ongoing pain and swelling in his eye.

- Angelo has a clearly visible and obviously painful skin condition. He has been waiting for four months to see a dermatologist.
- Upon arrival at the New Jersey facility, Ali's blood pressure medication was taken from him and he was told he would receive a substitute shortly as his medication was "too expensive." It took the facility one week to procure medication, and during this time, Ali's very elevated blood pressure was left untreated.

Intake screenings. Minimal requirements for intake screenings are provided in the 2008 and 2011 PBNDS. The 2011 standards, for example, require the health examiner to inquire into an individual's history of physical and mental illness, current and past medications, surgical procedures, suicide attempts, physical or sexual victimization, and dietary needs, and to conduct a pain assessment and observe behavior, mental status, and pain level.[22] Reports from detained individuals, however, indicated that intake screenings were far less thorough and may not meet the ICE detention standards. For example:

- Two individuals at the Hudson facility with medical problems reported that the intake screening was "superficial" and that the staff's only concerns were whether they were suicidal or wanted to hurt others.

Lack of privacy during health appointments. In violation of the PBNDS, which state that "[m]edical and mental health interviews, screenings, appraisals, examinations, procedures and administration of medication shall be conducted in settings that respect detainees' privacy," detainees told us that that questioning by medical staff is often conducted in the presence of other detainees.[23] For example, at the Elizabeth facility, nurses reportedly ask medical questions in a group setting during "sick call"—when all detained individuals who requested medical attention are brought to the clinic.

Language access concerns. There is also concern that appropriate interpretation services are not utilized in the Hudson facility. For example, one nurse practitioner at the medical clinic informed our group that despite having a phone in her exam room equipped with Language Line, a professional and paid interpretation service, she often used Google Translate when dealing with "simple cases." When asked why she chooses to use Google Translate over Language Line, she did not have a clear answer.

Adequate Mental Health Care is Often Unavailable or Difficult to Access, or Leads to Worsened Conditions

It is widely recognized by medical and mental health experts that many detained asylum seekers and other immigrants suffer from mental health problems, including anxiety, depression, and PTSD. These issues generally worsen with prolonged detention.[24] A psychiatrist at the Elizabeth facility agreed with these experts, stating that "any sort of involuntary confinement is a stressor and it will exacerbate symptoms."[25] The negative impact of detention was clear from our interviews. Several individuals reported thinking about suicide and others described their living situations as "worse than hell."

Almost everyone we interviewed reported high levels of stress and anxiety. This stress and anxiety stem from a variety of factors, including lack of sleep, poor nutrition, unhygienic conditions, uncomfortable sleeping arrangements, isolation, boredom, untreated medical and mental

health problems, and the uncertainty regarding their legal cases.

One individual at Hudson said:

"I'd rather be in a federal prison with double the sentence than be here. It's the anxiety of not knowing. There's no end date."

Many of the women and men we spoke with cried as they expressed great sadness and anxiety over being separated from their small children, who are often left with relatives or placed in foster care. Many have not seen their children since entering detention.

One woman at Elizabeth stated:

"There are no days that I don't cry here."

Psychiatric medications are denied; in other cases, individuals may be over-medicated. Several individuals reported difficulty receiving medications for diagnosed mental health conditions. Both the legal and mental health professionals conducting the interviews also expressed concern about potential over-medication of some female detainees. For example:

- "Alexander," a U.S. veteran diagnosed with Post-Traumatic Stress Disorder (PTSD) after his military service—something he reported during intake—says he was denied access to the medications he was previously receiving. Since entering detention, his PTSD symptoms have worsened. He reports experiencing flashbacks due to the loud noises, yelling, and violence shown on television.
- "Miriam," a domestic violence survivor diagnosed with PTSD prior to entering detention, fears seeking treatment. She explained that medical staff provide sedatives to many of the women and, as a result, many move around the facility like "zombies."

Insufficient mental health services at Elizabeth and Essex. At the Elizabeth detention center, supportive psychotherapy is reportedly available to those who present at intake with a mental health problem or who request services. At intake, however, no established screening module is used. While medical staff reportedly ascertain if people have histories of mental health disorders and their current emotional state, the failure to use an established module may allow for too many to slip through the cracks.

An administrative staff member at the Elizabeth medical clinic stated that a commonly offered tool is "bibliotherapy," which involves providing individuals with motivational books and the opportunity to meet to discuss their reading. The staff member stated that this service is offered to those seeking mental health services who may be "just bored."

Brenda Punsky, a social worker from Terra Firma, a medical-legal partnership through Montefiore Hospital, who works with unaccompanied children and families fleeing violence in their home countries, stated that while bibliotherapy can "be a good complement to psychotherapy, it should not be used as a substitute. Bibliotherapy does not provide the key elements of the therapeutic process, including exploring one's feelings, receiving reflective feedback from the therapist, and building a trusting relationship with the therapist. It's almost patronizing with this population." Detainees we spoke with at the Elizabeth facility agreed, stating that the mental health services were inadequate. For example:

- None of the people we asked believed that they had been screened for mental health problem at intake. Several also reported that their requests for visits with a mental health professional had been ignored.

- "Daniel" requested to see a mental health professional after reporting insomnia and anxious feelings. He was given a book to read and, according to Daniel, told to "look at the wall" in order to fall asleep.
- "Melissa" suffered through extensive abuse and violence in her home country, which forced her to flee to the United States. Due to her trauma, she feels very overwhelmed being constantly surrounded by so many people and has difficulty sleeping and concentrating. The psychologist recommended that she "put a blanket over [her] head" to isolate herself from the chaos around her.

At the Essex facility, a mental health counselor informed Human Rights First that there were insufficient resources to meet the demonstrated high demand for mental health assistance.

At the Hudson facility, supportive psychotherapy is reportedly available. One positive aspect of their programing is the "Keeping It Real" outreach program offered to female immigration detainees to promote self-awareness and expression. Several women who participated in this program found it to be a helpful distraction. However, some of the women interviewed who had tried supportive psychotherapy found it to be unhelpful, stating that the mental health professional minimized their problems and made jokes about their situation.

Suicide Watch Measures are Inadequate and May Heighten Risks

The Hudson facility has a high number of individuals with serious mental health concerns, as demonstrated by the three suicides that have occurred at the facility since January 2016 and the twelve mental health hospitalizations that have occurred in the last six months.[26]

The Hudson facility utilizes medical isolation rooms to house detained individuals placed on suicide watch. While on suicide watch, a detainee remains in his or her cell for 23 hours per day and is not permitted to have personal items, books, or magazines in the cell. The facility implemented new policies in an effort to respond to the three suicides since 2016.

These policies include leaving cell doors open, tracking food and utensils brought into the cell, and using heavy-duty sheets. The facility is also constructing a new medical wing where the suicide watch cells will have full glass doors.[27]

These new measures, however, do not address the question of whether the general living conditions in the facility, as well as the conditions those under suicide watch endure lead to suicide. Out of the three suicides, two of them even occurred in the same suicide watch cell.[28]

Dr. Cristina Muñiz de la Peña, a psychologist at Terra Firma, a medical-legal partnership through Montefiore Hospital, toured the Hudson facility with Human Rights Fist and interviewed several detained individuals.[29] Dr. Muñiz stated that the suicide watch system at Hudson appears to act as a contributor to suicide, with one woman even stating, "If they put me in the suicide room, I'll kill myself."

According to Dr. Muñiz, "Most men and woman interviewed report not seeking mental health services to avoid being placed in the 'suicide room.' The room is perceived as torturous and is described as a completely empty room, cold, dirty, and with no basic comforts. The room acts as a barrier to accessing mental health services. It is the people who do not discuss their depressed feelings and whose suicidal feelings are not addressed who are more likely to commit suicide."

Recommendations

- **Ensure Fair Release Processes:** To combat the increasing over-incarceration of immigrants in detention centers, DHS and ICE should ensure fair and consistent release processes. To that end, it should effectively implement the 2009 parole directive and offer affordable bonds to immigrants and asylum seekers who meet release criteria. Initial and subsequent custody reviews should take into account the medical and mental health of each individual, and if additional appearance support is needed, alternative to detention programs can be used for those with diagnosed conditions who do not present any danger or flight risk. Community-based case management programs, which report high appearance rates, should be used rather than programs that resort to punitive and intrusive ankle shackles. Congress should also provide oversight to ensure fair bond and parole implementation, as well as oversight of detention conditions.
- **Ensure Adequate and Timely Medical and Mental Health Care:** ICE, detention facility operators, and their relevant health subcontractors should implement reforms and policies to provide adequate and timely medical and mental health care. This includes qualified and professional interpretation services during all medical and mental health visits, regardless of the complexity of the condition, and special diets to accommodate medical needs. Additionally, the suicide watch programs at Hudson and all other facilities should be reviewed by independent mental health professionals with relevant expertise to ensure effective and humane intervention.
- **Implement an Independent Medical Oversight Board:** ICE and detention facility operators should work with communities to implement an Independent Medical Oversight Board (IMOB) to increase public transparency and accountability toward the delivery of quality medical care for immigrant detainees. The IMOB could have several functions, including regulation, auditing, accreditation, reporting, investigating, and monitoring. The IMOB should also have the authority to review individual cases and medical files brought before them by attorneys or advocates to ensure adequate care. IMOB members could include county leaders, representatives of advocacy or community-based groups, attorneys familiar with correctional settings, and medical and mental health professionals.
- **Adoption of Civil Detention Standards:** Immigrants should not be held in facilities with penal conditions. Instead ICE should adopt standards that ensure conditions for detention centers that provide a more normalized environment, consistent with the ABA Civil Immigration Standards, which call for the least restrictive form of custody.[30] This includes permitting people to wear their own clothing, move freely among various areas within a secure facility, access true outdoor recreation for extended periods of time, and have privacy in toilets and showers. All correctional staff at facilities housing immigration detainees should be trained on civil detention standards, rather than only on the state law governing adult correctional facilities.
- **Ensure Food and Water Quality:** Food quality should be improved and inspected regularly to ensure that unspoiled or uncooked food is never provided. Water quality at the Elizabeth facility must also be improved so that unlimited clean water is provided free of charge. Sufficient water must also be provided in the Essex facility so that detained individuals are not forced to drink the water from the bathroom tap.

- **Increased Oversight of Facility Staff:** ICE and detention facility operators should increase oversight of detention facility staff to prevent maltreatment and discrimination of detainees. Additionally, detained immigrants should not face retaliation from officers for filing grievances against them or for requesting assistance.
- **Fund Legal Representation and Improve Access to Counsel and Communications**: New Jersey should follow the lead of other states—such as New York—by providing funding to expand legal services for immigrants facing removal proceedings—particularly those who are held in immigration detention in New Jersey. In addition, phone numbers for consulates, legal service providers, and other community groups should be placed in a more easily accessible location at the Hudson facility. Additional attorney-client visiting rooms should be made available at the Essex facility.

Endnotes

[1] American Immigration Lawyers Association, Deaths at Adult Detention Centers (Jan. 31, 2018) listing all deaths in immigration detention, including the 12 that occurred during Fiscal Year 2017 and the three that have occurred so far in Fiscal Year 2018).

[2] Exec. Order No. 13767, 82 Fed. Reg. 8793 (Jan. 25, 2017).

[3] Human Rights First, Judge and Jailer: Asylum Seekers Denied Parole in Wake of Trump Executive Order (Sept. 2017) [hereinafter Judge and Jailer]; Human Rights First, Immigration Court Appearance Rates (Feb. 2018) ("The overall appearance rate for individuals released from ICE custody in FY 2015 was 77 percent.").

[4] *See e.g.*, *Hernandez v. Sessions*, 2017 WL 4341748 (9th Cir. 2017) ("[D]ue process likely requires consideration of financial circumstances and alternative conditions of release.").

[5] ICE Policy Directive No. 11002.1, "Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture," (Dec. 8, 2009) [hereinafter Asylum Parole Directive].

[6] Exec. Order No. 13767, *supra* note 2.

[7] Jessica Kwong, *ICE Seeks 5 More Detention Centers as Immigration Arrests Rise*, Newsweek, Oct. 26, 2017, http://www.newsweek.com/ice-seeks-5-more-detention-centers-immigration-arrests-rise-694296; U.S. Department of Homeland Security, FY 2018 Budget in Brief ("$2.7 billion to fund both direct and indirect costs for 51,379 detention beds, which are comprised of 48,879 adult beds and 2,500 family beds); Office of Management and Budget, Fiscal Year 2019 Efficient, Effective, Accountable: An American Budget ("The Budget request more than $2.5 billion for . . . funding an average daily detention capacity of 47,000 illegal aliens in facilities across the United States.").

[8] U.S. Dep't of Homeland Security, Implementing the President's Border Security and Immigration Enforcement Improvements Policies (Feb. 20, 2017).

[9] Judge and Jailer, *supra* note 3.

[10] Convention Relating to the Status of Refugees, arts. 31, opened for signature July 28, 1951, 189 U.N.T.S. 150; International Covenant on Civil and Political Rights art. 9, Dec. 16, 1966, S. TREATY DOC. NO. 95-20, 999 U.N.T.S. 171; United Nations High Commissioner for Refugees, Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012).

[11] Vera Institute of Justice, Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program (2000) (noting that 84 percent of asylum seekers who participated in the lower-level Appearance Assistance Program appeared in court); U.S. Government Accountability Office, Alternatives to Detention: Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness (2014) ("[O]ver 99 percent of aliens with a scheduled court hearing appeared at their scheduled court hearings while participating in this component of the [Alternative to Detention] program, with the appearance rate dropping slightly to over 95 percent of aliens with a scheduled final hearing appearing at their final removal hearing.").

[12] Physicians for Human Rights & The Bellevue/NYU Program for Survivors of Torture, From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers (June 2003) https://s3.amazonaws.com/PHR_Reports/persecution-to-prison-US-2003.pdf ("Study physicians . . . found extremely high symptom levels of anxiety, depression and post-traumatic stress disorder (PTSD) among detained asylum seekers.") [hereinafter *From Persecution to Prison*].

[13] Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Penn. L. Rev. 1, 30–31 (2015).

[14] U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2011 [hereinafter PBNDS 2011]; U.S. Immigrations and Customs Enforcement, Performance-Based National Detention Standards 2008 [hereinafter PBNDS 2008].

[15] New Jersey Department of Corrections Administrative Code Title 10A, *available at* http://www.state.nj.us/corrections/pdf/OCS/.J.A.C%2010A%2031-Adult%20County%20Correctional%20Facilities.pdf.

[16] American Bar Association, ABA Civil Immigration Detention Standards (Aug. 2014) *available at* https://www.americanbar.org/content/dam/aba/administrative/immigration/abaimmdetstds.authcheckdam.pdf [hereinafter ABA Detention Standards]; Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System—A Two-Year Review* (2011).

[17] The information included in this section was gathered by Human Rights First researchers through interviews and communications conducted in February 2018 with detainees and facility personnel at the Elizabeth, Essex, and Hudson detention facilities.

[18] PBNDS 2008, *supra* note 14.

[19] U.S. Immigration and Customs Enforcement, Review of the Use of Segregation for ICE Detainees, Sept. 4, 2013, *available at* https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

[20] U.S. Government Accountability Office, Immigration Detention: Additional Actions Needed to Strengthen Management and Oversight of Detainee Medical Care, Feb. 2016 (noting that IHSC is directly responsible for providing health care in 19 immigration detention facilities, which include roughly 40 percent of the detained population).

[21] The information included in this section was gathered by Human Rights First researchers through interviews and communications conducted in February 2018 with detainees and facility personnel at the Elizabeth, Essex, and Hudson detention facilities.

[22] PBNDS 2011, *supra* note 14.

[23] *Id.*

[24] From Persecution to Prison, *supra* note 12.

[25] The information included in this section was gathered by Human Rights First researchers through interviews and communications conducted in February 2018 with detainees and facility personnel at the Elizabeth, Essex, and Hudson detention facilities.

[26] Caitlin Mota, *Inmate dies two days after attempting suicide at Hudson County jail*, The Jersey Jorunal, Jan. 18, 2018, http://www.nj.com/hudson/index.ssf/2018/01/inmate_dies_two_days_after_attempting_suicide_at_h.html; Data obtained from the medical administrative staff at the Hudson facility medical clinic.

[27] The information included in this section was gathered by Human Rights First researchers through interviews and communications conducted in February 2018 with detainees and facility personnel at the Hudson detention facility.

[28] Caitlin Mota, *2 suicides in Hudson jail were in same infirmary cell: records*, The Jersey Journal, Jan. 20, 2018, http://www.nj.com/jjournal-news/index.ssf/2018/01/2_suicides_in_hudson_jail_were.html

[29] For more information on Terra Firma, see http://www.terrafirma.nyc/.

[30] ABA Detention Standards, *supra* note 16.