

PRESS RELEASE

N° 53/09

IACHR VISITS U.S. IMMIGRATION DETENTION FACILITIES

Washington, D.C., July 28, 2009 - The Rapporteurship on the Rights of Migrant Workers and their Families of the Inter-American Commission on Human Rights completed a week of visits to various types of U.S. immigration detention facilities in Arizona and Texas. The purpose of the visit was to gather information from detention officials, detainees and civil society organizations regarding immigration enforcement, detention, and due process issues in the United States.

The IACHR Rapporteurship concludes that, notwithstanding some positive recent adjustments to the immigration detention system in the U.S., many men, women and children detained in those facilities are held in unacceptable conditions, and the right of these persons to due process remains, in many cases, compromised. The Rapporteurship issues today its preliminary observations on the visit, which identify a number of significant concerns regarding U.S. immigration policies and practices involving enforcement, detention, and due process.

From July 20th to the 24th, a delegation from the Rapporteurship visited two unaccompanied minor shelters, a family detention facility, three adult detention facilities, and met with various representatives from civil society organizations focused on U.S. immigration issues. The delegation, headed by the Rapporteur, Felipe González, visited the Southwest Key Unaccompanied Minor Shelter (Phoenix, Arizona), the Florence Service Processing Center (Florence, Arizona), Pinal County Jail (Florence, Arizona), the T. Don Hutto Family Residential Center (Taylor, Texas), the Willacy Detention Center (Raymondville, Texas), and International Education Services (IES) Unaccompanied Minor Shelter (Los Fresnos, Texas). The Rapporteurship's delegation also met with representatives of civil society organizations focused on immigration issues in Arizona and Texas.

The Rapporteurship looks forward to working with the U.S. Government and civil society organizations as it continues the development of its report and recommendations for improvements to the U.S. immigration system to ensure that migrants' human rights are protected throughout the process.

The Rapporteurship thanks the U.S. Mission to the OAS and the various government officials who facilitated the visits. In particular, the Rapporteurship thanks the government for providing the necessary access

to speak to immigrant detainees in private to gather their crucial input for the Commission's analysis, and notes that officials were very responsive to Commission's requests in this regard. While the Commission had ample access to all detention facilities, unfortunately, the delegation could not visit the Maricopa County Jail because the County Sheriff denied access. The Commission regrets that the federal government was unable to facilitate this visit.

A principal, autonomous body of the Organization of American States (OAS), the IACHR derives its mandate from the OAS Charter and the American Convention on Human Rights. The Commission is composed of seven independent members who act in a personal capacity, without representing a particular country, and who are elected by the OAS General Assembly.

PRELIMINARY OBSERVATIONS OF THE RAPORTEURSHIP ON THE RIGHTS OF MIGRANTS WORKERS ON VISITS TO U.S. IMMIGRATION DETENTION FACILITIES

The Rapporteurship on the Rights of Migrant Workers and their Families of the Inter-American Commission on Human Rights concluded a week of visits to U.S. immigration detention facilities at the government's invitation. At this time, the Rapporteurship offers its preliminary observations on the visit and plans to issue a full report on its investigation into U.S. immigration detention conditions and due process by the end of 2009.

Based on its detention visits and meetings in Arizona and Texas, the Rapporteurship offers preliminary observations on a variety of concerns regarding immigration enforcement, detention and due process.

Detention of Unaccompanied Minors and Due Process

The Rapporteurship received information that indicates important progress has been made in protecting the human rights of unaccompanied minors. In particular, the delegation received information from diverse sources that, in relationship to the transfer of custody for unaccompanied minors from the former Immigration and Nationalization Service (INS) to the Office of Refugee Resettlement (ORR), strides have been made in transforming the custody from a juvenile detention model to a more humane approach of shelters and foster care. The Rapporteurship would like to recognize the dedication of the staff members of the two shelters it visited and the ORR field supervisors it met with.

There are, however, still issues to be resolved, such as the lack of adequate access to counsel for unaccompanied minors. This reportedly has principally to do with the lack of government-funded attorneys to represent the minors and with the rural locations of many of the shelters. Unless a minor has access to pro bono assistance, unaccompanied minors, who range in age from newborns to 18 years old, are almost always unrepresented, so these children are left to defend their own interests. While the rural locations of the shelters create an additional challenge for hiring and retaining qualified medical, mental health, and social work staff, the Government should be

able to guarantee that the needs of the children be met.

The Rapporteurship recognizes positive changes made by the Trafficking Victims Protection Reauthorization Act of 2008. In particular, efforts are being made to identify Mexican and Canadian unaccompanied minors for claims of asylum, human trafficking, and other abuses. It was reported to the delegation that approximately 90,000 unaccompanied minors are apprehended each year by the United States but only 10,000 come into ORR custody. The majority of the other 80,000 are Mexican or Canadian minors who are immediately returned. The Rapporteurship, however, is concerned by reports that the methodology employed and questions used by the U.S. Border Patrol are not effective for identifying victims of trafficking and claims of asylum.

Family Detention

The delegation observed that the physical conditions and services at the T. Don Hutto Family Residential Center have improved since the initiation of a class action lawsuit in 2007. The Rapporteurship, however, is concerned that it required a lawsuit and ultimately a settlement agreement to bring the physical conditions and services to their current levels. The Rapporteurship took note that the judge's July 2009 monitoring report on the settlement agreement found the Government and the Correctional Corporation of America (CCA), the Government's privately-contracted service provider for the family detention center, only recently came into compliance on at least one of the requirements under the Settlement Agreement – nearly two years after it went into effect. It was reported to the delegation that the Settlement Agreement is set to expire at the end of August 2009. Given the slow compliance by the Government, the improvements gained under the Settlement Agreement, including more transparency in parole assessments, may deteriorate absent monitoring.

More importantly, the Rapporteurship is concerned by the Government's broad use of detention for asylum seekers and their accompanying minor children. The Government reported that over ninety percent of the families at the Hutto family detention facility are asylum seekers and their children. While the services at the Hutto facility have improved considerably, the detention of asylum seekers and their children in the manner observed is not in compliance with the principle of the "best interest of the child" to be in the least restrictive environment or with the principles applicable to the detention of asylum seekers under international law. Asylum seekers are fleeing persecution in their country of origin and the psychological impact of detention on the asylum seekers and their children is detrimental to their well being. The Rapporteurship observed an example of an alternative to detention in the Austin, Texas area that allows asylum seekers and their children to live in a home environment while their cases proceed. The Rapporteurship was troubled to receive reports that the Government was still considering the possibility of opening three more family detention facilities.

Adult Detention

The Rapporteurship noticed significant disparities in detention conditions

between the different adult immigration detention facilities it observed. The subcontracting to state and local prisons and the frequent sub-subcontracting of the staffing for the facilities to private correctional service companies create significant obstacles to providing immigrant detainees care that comports with their basic human rights. Moreover, as a structural matter, this does not provide accountability for human rights violations. It has also been reported to the Rapporteurship that DHS's National Performance-Based Standards that govern adult immigration detention conditions are not legally-enforceable if they are violated.

At the Willacy detention center, which consists of ten enclosed tents and one permanent structure, a broad majority of the detainees that the Rapporteurship spoke to complained that the amount of food was insufficient. The Rapporteurship received reports that a nurse who used to work at the facility resorted to providing detainees with antacid to quell their hunger. The delegation observed that the Willacy facility is seriously understaffed for the size of the detention population. The Willacy directors reported that the facility has a capacity of 3,000 detainees, but is currently capped at 1,700 detainees and was detaining over 1,300 the day of the Rapporteurship's visit. The director of medical services at the facility acknowledged that there are currently 12 vacancies for medical service providers and only 17 current providers. The rural locations of many of the adult detention facilities greatly impacts detainees' access to counsel (and ultimately their due process rights) and the ability of the detention facilities to hire and retain qualified staff.

The Rapporteurship is concerned about the significant use of state and local jails for immigration detention, where reportedly two-thirds of immigrant detainees are housed, given that ICE does not have direct control over these centers. The immigrant detainees the delegation observed were being detained on civil immigration violations, the vast majority without a criminal background. Yet, the Rapporteurship observed, particularly at the Pinal County Jail, that the detention conditions for immigrant detainees were no different than those for the criminal convicts, as reflected among other aspects in their cells, their living space, the intake area, and the solitary confinement cells.

The Rapporteurship noted the complete lack of an outdoor recreation area and the existence of only two attorney-client booths for a jail with a capacity for 1,500, including over 600 immigrant detainees. The psychological impact of the prison conditions on the immigrant detainees, including asylum seekers, at the Pinal County Jail was readily apparent to the delegation. Through the information it has received and its observations, the Rapporteurship is alarmed at the prevalence of a prison-based system for ensuring migrants' appearance at immigration proceedings for alleged civil immigration violations.

In contrast to the Willacy detention center and the Pinal County Jail, the Rapporteurship also visited the Florence Service Processing Center, an ICE-run facility, where the detention conditions were markedly better.

Finally, the Rapporteurship was distressed at the use of solitary confinement to ostensibly provide personal protection for vulnerable immigrant

detainees, including homosexuals, transgender detainees, detainees with mental illnesses, and other minority populations. The use of solitary confinement as a solution to safeguard threatened populations effectively punishes the victims. The Rapporteurship urges the U.S. Government to establish alternatives to protect vulnerable populations in detention and to provide the mentally-ill with appropriate treatment in a proper environment.

Local Enforcement of Federal Civil Immigration Laws

The Rapporteurship received testimonials regarding the practices of enforcement of federal civil immigration laws by local law enforcement agencies. Multiple individuals testified that local law enforcement has deployed coercive tactics to force individuals into signing various immigration documents without the assistance of counsel.

In addition, the Rapporteurship received information regarding Maricopa County law enforcement's utilization of its enhanced authorities to enforce federal civil immigration to conduct neighborhood immigration sweeps. Based on this information, the Rapporteurship fears these local law enforcement programs divert scarce resources away from protecting the community and invite racial-profiling. Moreover, the federal oversight of local law enforcement's practices in enforcing federal civil immigration laws is apparently insufficient. The IACHR requested permission to visit the Maricopa County facility but was denied access. The Rapporteurship is concerned that the federal government was unable to facilitate the Maricopa County visit, as it raises serious doubt about the control the federal authorities have over how local law authorities enforce federal civil immigration laws. The Rapporteurship is concerned that the federal government might be unable to hold local law enforcement properly accountable for enforcing immigration laws with respect for basic human rights. With this in mind, the Rapporteurship is concerned by reports that the Department of Homeland Security intends to expand local enforcement of federal immigration laws.

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