Promises and Human Rights: The Obama Administration on Immigrant Detention Policy Reform

José D. Villalobos, University of Texas at El Paso

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PROMISES AND HUMAN RIGHTS: 
THE OBAMA ADMINISTRATION 
ON IMMIGRANT DETENTION 
POLICY REFORM

José D. Villalobos  
Political Science Department  
University of Texas at El Paso

Abstract: This article evaluates the Obama administration’s efforts towards reforming U.S. immigration detention policies. Over the past decade, immigrant rights advocates have increasingly criticized certain policies of the U.S. Immigration and Custom Enforcement (ICE) system of immigration detention, including the widespread use of private contractors, lack of proper oversight, grouping of violent criminals and non-violent undocumented immigrants (particularly minority women and children) in holding cells, and neglect of detained immigrants in need of medical attention. In reviewing these developments, I contend that the Obama administration must take substantive steps towards reforming the existing system, particularly by instituting legally enforceable standards with penalties for performance failures, moving away from privatization, and applying more effective rulemaking for better management and monitoring of U.S. detention facilities.

Keywords: immigration; detention policy; human rights; managerial performance

José D. Villalobos is an Assistant Professor of Political Science at the University of Texas, El Paso. His areas of interest are presidential management, presidential policy making, the public presidency, and studies on immigration and Latino/a politics. He has recently published his work in Presidential Studies Quarterly, Political Research Quarterly, Administration & Society, the International Journal of Public Administration, the International Journal of Conflict Management, and Review of Policy Research. 

Address: University of Texas at El Paso, Political Science Department, Benedict Hall 111, 500 W. University Avenue, El Paso, TX 79968. Ph.: (915) 747-7978, Email: jdvillalobos2@utep.edu
Shortly after his inauguration, President Barack Obama announced ambitious plans for overhauling the U.S. immigration detention system. According to Obama’s Secretary of Homeland Security, Janet Napolitano, one of the administration’s major goals has been to “make immigration detention more cohesive, accountable and relevant to the entire spectrum of detainees” (Bernstein, 2009a). However, critics have questioned whether the Obama administration is truly committed to instituting substantive reforms or if it will continue to follow or even expand upon the previous administration’s immigration policies and use of private contractors. Such skepticism and concern is reflective of the broader criticism President Obama has faced—much of it stemming from the Latino community—concerning the postponement of action on comprehensive immigration policy reform (see Nicholas, 2009; Vallejo, 2010).

Over the past decade, immigrant rights advocates have increasingly criticized certain policies of the U.S. Immigration and Custom Enforcement (ICE) system of immigration detention. In particular, management flaws in the past have led to the widespread use of private contractors with little oversight, grouping of violent criminals and non-violent undocumented immigrants (particularly minority women and children) in holding cells, and neglect of detained individuals requiring medical attention and other special needs. Many of these problems were detailed in a six-month review by the ICE (see Schriro, 2009). Although the Obama administration has begun to address these issues and moved towards developing a more civil detention system, it has yet to implement legally enforceable reforms. In reviewing these recent developments, I contend that the Obama administration must take more substantive steps towards reforming the existing system, particularly by instituting legally enforceable standards with penalties for performance failures, moving away from private contractors, and applying more effective rulemaking for better long-term management and monitoring of U.S. detention facilities.

**Human Rights of Undocumented Immigrant Detainees**

U.S. immigrant detention centers have been increasingly criticized for the “mistreatment of detainees and substandard, sometimes fatal medical care,” often occurring in private detention facilities (Bernstein, 2009b). Federal and state government employment of for-profit private contractors has created a major conflict of interest where social and moral objectives take a back seat to business motives (see Herivel & Wright, 2007; Havens, 1994). Therein, the detainment of undocumented individuals serves as a major source of business...
revenue for those in charge of the detention system, leaving little incentive for processing detainees in a timely and humane manner. As an example, in 2007, one detention camp set up in Raymondville, Texas reportedly produced “four hundred jobs and $2.25 per detainee to the county government” with about 2,000 undocumented immigrants being kept there at any given moment out of a total of 27,500 immigrants that were detained in such camps that year (Staudt, 2009:13-14; see also Hsu & Moreno, 2007; Democracy Now, 2007). Critics of such camps are left to wonder how many of those immigrants—many of them undocumented women and children—were treated more as commodities than as humans, how many were held longer than necessary, and to what extent the growth of such camps may be directly attributable to the profit incentives imposed through private contracting.

The U.S. government handover of undocumented immigrants to for-profit detainment centers has created an increasingly volatile environment where profit incentives often trump human conditions, leaving negligence and substandard treatment of detainees largely unaccounted for (see, for instance, Boven, 2010; Bernstein, 2009c, 2009d; New York Times, 2009; Talvi, 2007). Researchers have also observed that, along with the effects of privatization, the employment of militarization and criminalization strategies has deeply impacted policies related to border security, including the incarceration and detainment of undocumented immigrants (Staudt et al., 2009:186; see also Dunn, 1996, 2001, 2009; Nevins, 2010; Payan, 2006). As Staudt (2009:1-2) notes:

Officials declare “wars” on drug dealers, immigrants, and terrorists, blurring distinctions among them and proposing control solutions focused on a narrow set of “crimes” using “hard” tools: fences or walls and sophisticated technological surveillance. In bureaucratic space, immigration enforcement has moved from its initial birthplace in the Department of Labor (1925) to the Department of Justice (1940) and more recently, the Department of Homeland Security (2003)...with a private industrial and commercial sector eagerly seeking contracts to work in public-private partnerships to “control” the border.

As of 2008, there were about 64,000 individuals (3% of the total prison population) being held across approximately 140 private prisons and detainment centers in the U.S., with revenues nearing $1 billion (McShane, 2008:251). Many of these facilities are located across the states of Texas, Florida, Oklahoma, Louisiana, and Tennessee, and most are run under the purview of the Federal Bureau of Prisons. While some argue that privatization helps eliminate bureaucratic “red tape” and lower government costs, studies on the subject have not been able to verify significant cost savings (see Pratt et al., 1999), or debunk case claims concerning the inhumane treatment of detainees. Instead, it has become apparent that “some of the positive evaluations of private prison operations that have appeared in the literature have been conducted by persons
Regardless of the serious concerns raised by critics, prison privatization has maintained support in recent years from key political actors, including Texas Governor Rick Perry and former California Governor Arnold Schwarzenegger. In 2010, then-Governor Schwarzenegger suggested that further privatizing immigrant detention centers and locating them in Mexico would ease the problem of prison overcrowding and funding shortages in California (Harmon, 2010). This assertion stirred much controversy and skepticism about how the profit-motives of such firms would affect treatment of migrant detainees and how accountability measures could be enforced between officials on both sides of the border (Archibold, 2010b; Yamamura, 2010; see also Goldmacher, 2010).

With these developments in mind, I next review the more general historical context under which the U.S. prison system has expanded and been reformed over time. In doing so, I address the shift away from humane reform efforts and towards prison privatization, as well as the influence that detention center privatization has had on immigrant detainee policies over the last decade. I then move to discuss more recent developments and assess the Obama administration’s attempts at addressing some of the core issues at hand.

**HISTORICAL CONTEXT: U.S. PRISON REFORM AND THE TREATMENT OF IMMIGRANT DETAINEES**

Prison reform is a continuous struggle with “financial, political, administrative, psychological, and even biological pressures threatening to undermine conditions, practices, and programs” (Jacobs, 2004:179). Therein, the maintenance and oversight of safe, clean, hygienic, and humane conditions is an immense undertaking (Stern, 1998). Because prison reform claims no true political constituency, policy makers have little reason to go out of their way to institute major, often costly policy changes. Instead, faced with other more salient policy issues such as those relating to higher education, health care, and unemployment levels, policy makers are quick to turn a blind eye when it comes to prison reforms and funding needs (Jacobs, 2004:179).

Despite these obstacles and the recent foot-dragging that policy makers have exhibited, there have been some notable reform efforts for improving the U.S. prison system dating back to the late 1800s (see, for instance, Sellin & Lambert, 1954). In 1870, a group of reformist prison wardens founded the National Prison Association (NPA) as a means to encourage philanthropic efforts among those who saw necessary the “rehabilitation, religious redemption, and importance of treating prisoners like human beings” (Talvi, 2007:120). The NPA was later renamed the American Correctional Association (ACA) in 1952, the same year in which the organization formally adopted its current core
During the civil rights revolution of the 1960s, criminologists began to explore the merits of deinstitutionalization, due process, diversion, and decriminalization in concert with the passage of the Prisoner Rehabilitation Act in 1965 (see Jacobs, 2004, 1980; McShane, 2008). At that time, the Supreme Court ruling on Cooper v. Pate in 1964 upheld the call for more humane treatment in prisons, signaling that "prisoners could sue for violations of their constitutional rights" (McShane, 2008:32). According to Jacobs (2004:183; see also Jacobs, 1980), the height of the prisoners’ rights movement spanned between 1960 and 1980, with prisoners “challenging every aspect of the prison regime, from censorship to disciplinary confinement, from prohibitions on wearing jewelry…from denial of access to the Bible and Koran to racial discrimination in cell and work assignments, from lack of access to the courts to arbitrary disciplinary procedures.” Of most significant impact were class action lawsuits that, under the cruel and unusual punishment clause of the Eighth Amendment, challenged the constitutionality of the entire prison system while tackling a broad range of issues dealing with cell size, quality of lighting, ventilation, sanitation, nutrition, and medical care (see Feely & Rubin, 1998; Schlanger, 1999). Despite these advances, the movement eventually faded as studies by Martinson (1974) and others gained momentum in arguing that prison reforms, particularly those tending to prisoner rehabilitation, were ineffective (see also Martinson, 1972; Lipton et al., 1974; but see Wilson, 1999; Lin, 2000).

By the 1980s, prison reform efforts had diminished and were mostly limited to alternative punishment methods, including supervised probation and electronic monitoring. During that time, prison construction skyrocketed and the general populations of federal and state prisons ballooned from about 316,000 to around 740,000 in the 1980s and 1990s (Talvi, 2007:121). Since the turn of the millennium, those numbers have exceeded more than 1.3 million. Much of this growth has been commensurate with the emergence of new crime control strategies and legislative bills mandating longer prison sentences, including the shift towards the enforcement of minimum sentences, the “three strikes” rule, and statutes prohibiting parole (McShane, 2008:239).

Amid such growth, prison administrators, political figures, lobbyists, and corporate boards have successfully sought to create a “prison-industrial complex” wherein prison construction and increased detainment levels have led to “a bevy of contracts for construction and services” (Talvi, 2007:121). In fact, the annual American Correctional Association (ACA) conference has become a prime venue for negotiating contracts for various products and services. Exhibitors attending the ACA conference have showcased products aimed at expanding their profit margins, lowering their risks and liabilities, safeguarding against possible legal challenges, and providing new and improved techniques and technologies for “managing the most troublesome prisoners” (Talvi,
Prison phone contracts alone are estimated to generate $1 billion annually—a lucrative opportunity not lost on the major telecommunications companies. The financial support for the conference itself comes from large private prison corporate entities such as the Corrections Corporation of America (CCA), the GEO Group (formerly known as Wackenhut Corrections), and the Correctional Services Corporation (CSC) (see Talvi, 2007:121-2).

Thus, although the initial intent of the ACA had been to unite people with a common, humanitarian-driven goal of improving the justice system, the organization has instead become more concerned with modernizing and privatizing the prison industry (e.g., see Havens, 1994; Herivel & Wright, 2007; Jackson, 1975; McShane, 2008). The ACA as it stands today is driven largely by the promise of prison incarceration growth and the profits generated from expansion through privatization, pulling in revenues totaling more than $50 billion annually (Talvi, 2007:120-4). Given these developments, it comes as no surprise that overcrowding and inhumane treatment in prisons, particularly those run by private contractors, has had such an adverse effect on immigrant detainees, as well as the broader prison population.

Focusing on Policy Reforms for Immigrant Detainees

When it comes to immigrant detainees, their status as undocumented non-citizens makes it difficult for activists to form a strong coalition among the public that will sympathize with their plight and push policy makers to take notice and act. In addition, relatively little media attention has been paid to the numerous problems concerning the treatment of non-violent immigrant detainees. Nevertheless, the dedicated efforts of key activists, journalists, and other observers have more recently led to some new calls for reform that the current presidential administration has begun to address. It is in this time that serious reform efforts could help reverse the increasingly harsh conditions seen in U.S. detention centers, which some scholars view as “internment camps of the twenty-first century” (Staudt 2009:13).

To delve more deeply into the issues concerning immigrant detainees and how they relate to the general problems associated with the mismanagement and privatization of detainment centers, I next provide several accounts taken from a number of Associated Press and New York Times stories, as well as a United Nations special briefing paper presented by the National Immigrant Justice Center (NIJC), each of which helps to illustrate the kinds of trials, tribulations, and varying forms of injustice some immigrant detainees have experienced. These accounts serve as strong evidence of the assertions made in recent years by scholars, journalists, and many immigrant advocates concerning the urgent need for detention policy reforms. I then present an overview of the ICE’s recent report concerning the administration’s proposed reforms under the leadership of President Obama and his Secretary of Homeland Security, Janet
AN INSIDE VIEW: RECENT INCIDENTS DOCUMENTED IN IMMIGRANT DETENTION CENTERS

In 2009, federal immigration officials were forced to settle a lawsuit concerning the mistreatment of individuals—many of them undocumented Latino immigrants—being held under “barbaric” conditions in a downtown Los Angeles detention center known as B-18 (Associated Press, 2009b). Although detainees were not supposed to be held for more than 12 consecutive hours due to the lack of beds and access to food (barring an epidemic or natural disaster), the lawsuit filed by the American Civil Liberties Union (ACLU), the National Immigration Law Center (NILC), and a private law firm detailed the manner that certain detainees were “held for 20 hours or more, slept on the floor and drank from a sink because there was no other water source” (Associated Press, 2009b).

Elsewhere, reports from immigrant advocates such as Cheryl Little, director of the Florida Immigrant Advocacy Center (FIAC), have documented how the medical needs of certain detainees have been ignored or denied for months at a time, with requests for proper treatment from advocacy groups at the local, state, and federal level leading nowhere, ending instead with the filing of lawsuits (Bernstein, 2009a). In one report, Francisco Castaneda, a Salvadoran immigrant, was denied a biopsy for a lesion for eleven months while in prison, later diagnosed with cancer, and died thereafter (Associated Press, 2009a). Another report documented how a privately run detention center in Eloy, Arizona had failed on numerous occasions during 2007 to provide timely medical exams, which were required to be administered within 14 days of admission to the center (Bernstein, 2009d).

Another particularly troublesome example concerns the case of a mentally ill woman named Xiu Ping Jiang from New York’s Chinatown. Ms. Jiang caught the attention of the New York Times in December 2007 when it came to light that she had been kept in solitary confinement and on suicide watch with no access to mental health treatment in the Glades County Detention Center in West Palm Beach, Florida (see Bernstein, 2009c). Largely in response to the negative media coverage surrounding the case, Ms. Jiang was thereafter transferred in June of 2009 to a hospital detention center in Columbia, South Carolina for a reassessment of her mental state. Upon arriving to the new detention center and before any reassessment was administered, Ms. Jiang reportedly “jumped out of a second-floor window…only to enter an immigration agent’s vehicle and wait inside, apparently thinking it was a taxi” (Bernstein, 2009c). Later in July 2009, Theodore N. Cox, an immigration lawyer who took her case without legal fees, was able to free Ms. Jiang on $3,500 bail, “despite opposition from Immigration and Customs Enforcement
lawyers who argued that her leap from a window showed she was a flight risk” (Bernstein, 2009c). Thereafter, Ms. Jiang spent 17 days at Bellevue Hospital Center as a voluntary psychiatric inpatient for treatment (Bernstein, 2009c).

Unfortunately, the detention system as it currently stands provides “no rules for determining mental competency and no obligation to provide anyone with legal representation,” leaving detainees with mental health needs highly vulnerable to negligence, as well as other forms of mistreatment (Bernstein, 2009c; see also Myers, 2008). Absent serious reforms with enforced penalties for policy violations and acts of negligence, problems concerning detainee medical and mental health conditions are unlikely to be addressed in a truly effective manner. As David Shapiro, a lawyer with the ACLU’s National Prison Project, puts it, “the rampant problems of medical and mental health care aren’t just going to go away if there’s more oversight… There have to be consequences” (Bernstein, 2009d).

With respect to issues affecting women, an April 2007 United Nations special briefing paper presented by the National Immigrant Justice Center entitled, “The Situation of Immigrant Women Detained in the United States” (NIJC, 2007), documents how the risk of gender-based violence in U.S. detention centers is a serious problem that includes abuse committed by inmates and/or detention officials, as well as other unchecked crimes resulting from the mixing of violent and non-violent detainees. The report states that the “ICE detention standards that discourage mixing non-violent immigrant detainees with violent criminal inmates are rarely enforced…[and] that women immigrant detainees in that facility are held deep within the jail, mixed with criminal inmates, with no guards present and only one call box to use in an emergency” (NIJC, 2007:9).

Amid such troubling findings, the NIJC (2007) report brings light to a specific case concerning its own involvement in representing a female detainee in Wisconsin who was sexually assaulted by other inmates while in custody. According to their account of the events that transpired, although the woman reported the sexual assault to jail guards, they neglected to have her transferred, even after one assault “resulted in an overnight stay in the hospital” (NIJC, 2007:9). Additionally, because the jail facility failed to provide the woman an opportunity to have a private telephone conversation, she could not safely tell her lawyer of the incident until they met in person three months later. At that point, her attorney was finally able to intervene on her behalf and have her transferred to another local facility.

As a summary of the many abuses it uncovered, the NIJC (2007:1-2) report provides five major areas of concern, listed as follows:

1. Medical and mental health conditions for victims of violence. Many women who are detained are victims of violence or persecution, and
have critical medical and mental health needs. Stories from women who have suffered in immigration detention show that the system does not properly address these needs. Cultural and language barriers, compounded by ICE practices that effectively deny women access to outside social services, make it difficult for detained women to obtain the medical and mental health care they need.

2. **Medical conditions for pregnant and post-natal women.** Pregnant women and those who are nursing report problems with accessing proper health care and nutrition while they are detained.

3. **Sexual assault.** Guards and detention facility staff members hold considerable power over detainees. Any lack of accountability over jail staff leaves women vulnerable to the danger of sexual assault from jail staff or other inmates.

4. **Family separation.** Many women who immigrate to the United States come with their families and are their families’ primary caregivers. When mothers are detained, entire families suffer. In addition, researchers have found that mothers who are asylum seekers are more likely to give up on their claim if they are detained and separated from their children.

5. **Access to counsel.** Many immigrant detainees, male or female, face hurdles to securing legal counsel. However, women who have experienced violence in the past or who are vulnerable to abuse inside the jail have an acute need of legal advocates, and especially ones that are independent of the detention system. In addition to pursuing legal relief, attorneys who build trusting relationships with detained clients can also advocate for the client’s legal and human rights while in custody.

Given the accounts of abuse occurring within U.S. detention facilities and the findings of the NIJC (2007) report, I now turn to the Obama administration’s own report conducted through the ICE under the Department of Homeland Security and discuss its core findings.

**THE OBAMA ADMINISTRATION AND IMMIGRATION DETENTION REFORM: A NEW DIRECTION?**

On October 6, 2009, the Immigration and Customs Enforcement (ICE) agency under the Department of Homeland Security (DHS) released a report by Dr. Dora Schriro (2009) entitled “Immigration Detention Overview and Recommendations.” The report was based on information gathered by Dr. Schriro as she toured 25 facilities, held discussions with detainees and
employees, conducted meetings with over 100 non-governmental organizations, as well as federal, state, and local officials, and reviewed data and various other reports from numerous governmental agencies and human rights organizations. As she puts it, the report “identifies important distinctions between the characteristics of the Immigration Detention population in ICE custody and the administrative purpose of their detention—which is to hold, process, and prepare individuals for removal—as compared to the punitive purpose of the criminal incarceration system” (Schriro, 2009:2). The following is an outline of the core findings and key recommendations provided in the executive summary of the report (Schriro, 2009:2-3):

**Core Findings**

- ICE operates the largest detention and supervised release program in the country. A total of 378,582 aliens from 221 countries were in custody or supervised by ICE in FY 2008; activities in 2009 remain at a similar level. On September 1, 2009, ICE had 31,075 aliens in detention at more than 300 facilities throughout the United States and territories, with an additional 19,169 aliens in Alternative to Detention programs.

- Of the aliens in detention on September 1, 66 percent were subject to mandatory detention and 51 percent were felons, of which, 11 percent had committed violent crimes. The majority of the population is characterized as low custody, or having a low propensity for violence.

- With only a few exceptions, the facilities that ICE uses to detain aliens were built, and operate, as jails and prisons to confine pre-trial and sentenced felons. ICE relies primarily on correctional incarceration standards designed for pre-trial felons and on correctional principles of care, custody, and control. These standards impose more restrictions and carry more costs than are necessary to effectively manage the majority of the detained population.

- ICE is comprised primarily of law enforcement personnel with extensive expertise performing removal functions, but not in the design and delivery of detention facilities and community-based alternatives.

- ICE utilizes a number of disparate strategies to detain aliens in its custody, supervise aliens on community supervision, and provide medical care to the detained population.

**Key Recommendations**

- ICE should establish a system of Immigration Detention with the requisite management tools and informational systems to detain and
supervise aliens in a setting consistent with assessed risk. ICE should provide programs to the detained population commensurate with assessed need and create capacity within the organization to assess and improve detention operations.

- In coordination with stakeholders, ICE should develop a new set of standards, assessments, and classification tools to inform care, custody restrictions, privileges, programs, and delivery of services consistent with risk level and medical care needs of the population. ICE should expand access to legal materials and counsel, visitation, and religious practice. ICE should also develop unique provisions for serving special populations such as women, families, and asylum seekers.

- ICE should establish a well-managed medical care system, with comprehensive initial assessments to inform housing assignments and ongoing care management. ICE should establish clear standards of care for detainees and monitor conditions systematically.

- ICE should provide federal oversight of key detention operations and track performance and outcomes. It should place expert federal officials on-site to oversee detention operations, to intercede as necessary, and to ensure that there are appropriate grievance and disciplinary processes.

As the main findings and recommendations of the six-month review indicate, the claims of medical mistreatment, grouping of violent and non-violent detainees, negligence with respect to the oversight procedures, and lack of accountability for performance are fully substantiated and merit serious reform.

Initially, immigrant advocates across the country saw the release of the ICE (2009) report under Dr. Schriro as a crucial step forward. However, hope began to dwindle when it became apparent that Dr. Schriro would leave her position (for personal reasons) soon after the report’s release. Since then, Dr. Schriro’s departure has left some wondering whether the planned reforms will be significantly delayed or departed from. According to Mary McCarthy, director of the Heartland Alliance Immigrant Justice Center of Chicago, Schriro was the one guiding force with “the passion…and the creativity…required to do this” (Bernstein, 2009b). In the wake of Schriro’s exit, observers began speculating over whether the president would be able and willing to move forward with his administration’s promises for reforming the immigrant detention system (see Lee, 2010).
Are the Reforms Coming?

Despite the setbacks encountered since the release of Dr. Schriro’s report, President Obama has, on certain occasions, embarked on addressing at least some of the needs for immigrant detention reform. For instance, one of the president’s proposed reforms thus far involves converting hotels and nursing homes into new immigrant detention centers, as well as adding two completely new facilities for large non-criminal populations, with a particular emphasis on women and children detainees (Bernstein, 2009a). As such, the administration would be able to provide an alternative means of processing non-violent immigrants to make sure they are not mixed in with violent criminals.

In concert with President Obama’s proposed reforms, John Morton, Assistant Secretary of Homeland Security for ICE, pledged in August of 2009 that the administration would work to create a more centralized system that would increase government oversight and accountability. In a formal announcement, Morton indicated that such an overhaul would include converting residential facilities to house non-criminal and nonviolent detainees, such as asylum-seekers, which could be cheaper to operate and less restrictive for occupants (Bernstein, 2009a). DHS Secretary Janet Napolitano has also echoed that sentiment, stating that nonviolent individuals should be separated from violent ones and be supervised under a form of detainment that is commensurate with their level of danger to society and whether or not they are a flight risk (Bernstein, 2009a; Gaynor, 2009).

In addition to helping immigrant detainees, President Obama has also pledged that such reforms should lead to greater efficiency and lower costs for the detention and removal of immigration violators. To put it in perspective, rented jail space has “more than tripled in size since 1995, largely through Immigration and Customs Enforcement contracts for cells more restrictive, and expensive, than required for a population that is largely not dangerous” (Bernstein, 2009a). Currently, the total cost for the U.S. prison system stands at about $2.4 billion annually for operating and detaining between 380,000 and 400,000 people per year (Bernstein, 2009a).

The ICE report also proposed that key policy changes—particularly ones aimed at resolving the problems faced by immigrant detainees in need of medical attention—be instituted by the Department of Homeland Security within six months of the release of the report (i.e., by April 2010). In line with ICE’s recommendations, Assistant Secretary Morton made a second formal announcement on January 25, 2010 concerning the following policy changes (see Kelly, 2010):
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- Hiring 50 federal employees to oversee the largest detention facilities, which now are largely run by contractors without much government oversight.

- Assigning regional case managers to keep tabs on detainees with significant medical problems to ensure they are getting proper care. Detainees with major problems will be housed in facilities near hospitals and medical centers.

- In June, launching an online immigrant-detainee locator so family members can easily find their relatives when they are in custody awaiting possible deportation.

Observing such developments, it appears that the administration is sincere in its intentions to make certain changes that are largely overdue, with a significant portion of the proposed reforms to be delegated to and executed by the ICE. Nevertheless, there is also reason to believe (as observed in past delays) that broader changes may come later than expected, if at all, since Obama is sure to face an uphill battle when it comes to passing any related legislation through Congress in what has become an increasingly partisan and polarized political environment, particularly in the aftermath of the 2010 midterm elections.

Other Sides of the Story

In the same breath that the Obama administration has proposed substantial reforms, it has meanwhile expanded on various existing enforcement programs, sending thousands of non-violent immigrants to jails and private prisons (Bernstein, 2009a). Although the administration might argue that such actions are necessary as a matter of continuance of current policy until the new reforms are put in place, there is no reason why President Obama as chief executive cannot do away with some of the most highly criticized policies employed by previous administrations. Instead, evidence suggests that Obama has actually moved to further enforce some of George W. Bush’s more stringent immigration practices, a move that has left some immigration advocates reeling.

As a prime example, the Obama administration has continued employing law 287(g), which President George W. Bush adopted as a means for having deputized police officers capture and turn over suspects or criminals to ICE or other immigration authorities for their possible deportation. The law, which originally took effect in 1996 under the Clinton administration, has long been criticized for its tendency towards civil rights violations and racial profiling. Rather than do away with the practice, the Obama administration in July 2009 had Homeland Security Secretary Janet Napolitano announce its expansion. Since then, eleven police agencies have signed agreements to join
the program (Gorman, 2009). In line with such policies, the total number of deportations during Obama’s first couple of years in the White House has actually surpassed those recorded during the last two years of George W. Bush’s term in office (Allan, 2010; James, 2010). Such actions have not gone unnoticed by immigration advocacy groups and are sure to result in resentment, particularly within the affected communities.

Apart from the criticism concerning Obama’s handling of law 287(g) and the hike in deportation numbers, one should also note the administration’s progressive efforts to deal with the recent racial profiling controversy surrounding Arizona’s immigration Senate Bill 1070 (Archibold, 2010). With concerns similarly centered on racial profiling as well as federal versus state-level enforcement of immigration policies, Obama’s Attorney General, Eric Holder, argued that federal jurisdiction over immigration policy trumped the intention of S.B. 1070. As a major blow to the proponents of the bill, U.S. District Court Judge Susan Bolton struck down key portions of the law in late July 2010—a clear ruling against Arizona’s bid for expanded state level control over immigration policy, thereby reinforcing the interpretation of the Constitution’s Supremacy Clause that confers federal government dominance over the states (Archibold, 2010c; Curtis, 2010). As the issue heads for further debate and judicial appeal, immigrant advocates continue calling for more federal efforts to keep conservative Arizona Governor Jan Brewer and others from making stringent state-level reforms on immigration. From the side of conservatives, despite some of the setbacks, many are hoping that the Republican gains made in the House of Representatives during the 2010 midterm elections will encourage other states to enact similar bills and further challenge the administration.

Dealing with Problems at the Varick, Hudson, and Hutto Facilities

One of the more visible actions taken by the Obama administration has been the February 2010 closure of the Varick Federal Immigration Detention Facility in New York and the transfer of most of its detainees to the Hudson County Correctional Center in Kearney, New Jersey (see Bernstein, 2010). Prior to its closure, the NYCLU filed a Freedom of Information Act (FOIA) request in August of 2009, which allowed them to obtain 210 grievances filed by 176 different detainees at the Varick facility collected between August 2008 and August 2009. The NYCLU noted in its report that 34 percent of the grievances concerned inadequate health care, 25 percent were complaints of abusive treatment by staff, and 13 percent addressed dietary and food service deficiencies. Some of the more disconcerting grievances are detailed in the report as follows (see NYCLU, 2010):

- Varick officials waited 10 months to schedule a dental appointment for a detainee suffering an abscessed tooth. By the time the detainee had a
dental exam, the infection had spread to seven teeth. The dentist recommended pulling all seven teeth. At his own expense, the detainee visited a private dentist, who determined that a series of root canals would address the problem. The government refused to authorize this less invasive treatment. After 16 months, the detainee’s teeth still have not been treated, causing him extreme pain and compromising his health.

- A detainee in extreme pain from prostate cancer requested a doctor’s appointment. Three weeks later, Varick staff still had not scheduled an appointment even though the man complained of extreme pain and difficulty urinating. It is unclear whether the detainee ever received the requested appointment.

- A detainee complained that his prosthetic leg caused pain and bleeding when he attempted to wear it. Varick officials consulted a private vendor, who determined that the artificial leg should be replaced. They informed the detainee of their intentions to request a replacement for him, but three months later the detainee had yet to receive a new prosthetic limb.

In response to this report and many other complaints, ICE announced plans to close Varick on January 14, 2010 and then followed through on their proposal in February. As mentioned above, most of the detainees were then transferred to the Hudson County Correctional Center in Kearney, New Jersey, in an effort to provide them with a better environment. However, rather than praise these efforts, critics quickly raised new concerns about the Hudson County facility, including reports detailing “detainee abuse and a lack of standards governing detainees’ access to legal services, recreation or visitation” (NYCLU, 2010). Udi Ofer, the lead author of the NYCLU’s report on the Varick facility, warned that “closing Varick won’t solve the problems documented in our whitepaper because inhumane conditions exist in immigration detention facilities throughout the nation” (NYCLU, 2010).

At the time of the transfer, Obama administration officials had “stressed that the jail was only a short drive from the city” (Bernstein, 2010) and that detainees would be in a better environment and be able to have their needs met. However, the shift of detainees from Varick to the Hudson facility has resulted in similar grievances about living conditions, as well as additional problems concerning the change in location that have led to increased complaints about isolation. To make things worse, the Hudson facility’s contract with a private telephone company made detainee phone calls to New York count as long distance, raising the cost of a phone call by 800 percent and thus impeding the ability for detainees to fight legal battles over deportation or even contact their relatives as frequently as before (Bernstein, 2010). Some detainees have since
responded with hunger strikes while immigrant advocates continue to plea for changes in policy (Bernstein, 2010).

Amid these changes and complaints, critics remain adamant that any real improvements will remain elusive unless the administration sets legally enforceable standards to help insure that effective oversight and penalties can be instituted against any procedural violations. For instance, on the issue concerning phone call costs, the source of the problem—and the inability to overcome it—stems directly from a lack of enforceable standards. Karen T. Grisez, chairwoman of the bar association’s commission on immigration, has put the problem in perspective, noting that improved national standards for legal access (which would include phone calls provided at competitive rates) had already been adopted by the federal government as early as the year 2000, but such changes were set as mere recommendations rather than enforceable standards. Consequently, the continuing practice is that “phone companies compete not to provide more reasonable rates to inmates and their families, but to provide the highest commissions to the jail” (Bernstein, 2010).

Even worse than the problems of isolation and private contracting, reports of ongoing sexual abuse at some of the most prominent detention facilities continue to circulate. Confirming the concerns and warnings outlined in the NIJC’s (2007) report, the T. Don Hutto Residential Center has recently been investigated by the DHS after it was discovered that a male detention officer had been sexually assaulting women in his custody while having sole access to them during their transportation between facilities, a clear violation of DHS policies (Foley, 2010; Stannow, 2010). Having uncovered such abuse, the DHS soon placed the Corrections Corporation of America (CCA), the private company contracted to run the Hutto facility, on probation while continuing the investigation (Stannow, 2010). Administration officials then put forth a list of changes to be implemented at Hutto and eight other facilities run by the CCA, as well as new procedures to be applied across all facilities (Stannow, 2010). Such steps are promising but organizations such as Human Rights Watch argue that further reforms remain necessary, advocating for Congress to pass legislation that mandates improved conditions, better monitoring procedures, and, most importantly, enforceable standards at all facilities across the country and not just those under investigation (Foley, 2010).

Given these circumstances, it is apparent that the Obama administration must make a greater, more substantive effort at moving towards implementing its proposed reforms in order to uphold the rights and humane treatment of all immigrant detainees. Otherwise, immigrant detainees will remain vulnerable to continued acts of neglect and abuse into the foreseeable future. The recent acts of shutting down the Varick detention center and putting the T. Don Hutto Residential Center on probation are at least tangible signs of the administration’s movement towards reform. Overall, the administration’s reform efforts thus far, though generally commensurate in spirit with developing a more civil detention
system, still lack the power of legal enforcement and leave much to be desired in the form of substantive and sustainable policy changes. Indeed, as other scholars have argued, although humane values and correctional “philosophies” are necessary and commendable, they are nevertheless “insufficient to ensure humane conditions,” particularly without the proper resources and administrative competence necessary for instituting just and humane practices (Jacobs, 2004:179; see also Lin, 2000; Bottoms, 1999; Crouch et al., 1999).

CONCLUSION

When it comes to immigration detention policy reforms, instituting changes for improving the treatment of immigrant detainees in the U.S. is a difficult endeavor with many obstacles. Thus far, the administration has made some notable progress, though most of its propositions for further reform remain in question. Amid the signs of progress, the administration has also met with criticism for its continuance of certain controversial policies, particularly those concerning the use of deputized police to arrest suspected criminals and hand them over to immigration authorities for deportation. In the end, to fully stand by his administration’s promises, President Obama must take more substantive steps towards reforming the existing system.

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NOTES

1 Critics have long called for the adoption of “legally enforceable standards” as means to insure that any recommendations passed down from an administration be legally binding in a court and, just as importantly, be instituted with the backing of resources required for effective oversight and imposition of penalties against detention centers operating in violation of both standard guidelines and procedures, as well as any newer reforms set forth (e.g., see Goldman & Martin, 1983).

2 Arizona’s Senate Bill 1070, otherwise referred to as the Support Our Law Enforcement and Safe Neighborhoods Act, was signed into law by Arizona Governor Jan Brewer on April 23, 2010. It includes provisions making it a misdemeanor crime for people to be in Arizona without documentation proving their U.S. citizenship or legal status, pushes state and local officials and agencies to enforce federal immigration laws, and sets restrictions against the sheltering, hiring, or transportation of undocumented aliens (Arizona State Legislature, 2010).
REFERENCES


Promises and Human Rights


