

Restoring Accountability to U.S. Immigration Enforcement

The time has come to restore American values of due process and justice to our immigration enforcement policies

Smart enforcement requires smart priorities.

Recommendations

- Eliminate wasteful spending on catch-all enforcement actions that lack clear, consistent objectives and redirect resources to focus strategically on serious enforcement concerns that promote public safety.
- Institute a rational enforcement policy and review procedures to ensure targeted and calibrated enforcement of our immigration laws that is measured by performance standards.

Facts

- DHS pledged to combat serious criminal activity through immigration enforcement. Instead, DHS has engaged in indiscriminate home and workplace raids and traffic stops where the vast majority of individuals swept up by these enforcement actions posed no threat to public safety. DHS has used such enforcement actions as tools to meet the agency's arrest and deportation quotas rather than adhering to the agency's stated mission of protecting public safety. As a result, DHS resources have been diverted from the core mission of keeping America safe.
- DHS has wasted resources on the arrest and deportation of victims of torture and abuse who are eligible for asylum, long-term lawful permanent residents with old and often minor convictions, veterans of the armed services and their family members, children, and citizens who were wrongly detained and deported.

The federal government must avoid wasteful spending by ensuring that detention is used only when necessary.

Recommendations

- DHS should use its detention resources in the most cost effective manner. Detention should be used only as a measure of last resort and for the shortest amount of time necessary.
- Legislation is needed to improve and expand Alternatives to Detention (ATD) programs in order to reduce the costs of detention on taxpayers and to ensure humane and safe treatment for all individuals. Secure, community-based, cost-saving programs should be used over custodial programs for individuals who do not pose a danger to the community.
- Congress should ensure that mandatory detention categories are not expanded and the authority of immigration judges should be restored to make individualized determinations regarding a person's liberty.

Facts

- Taxpayers are paying the price of DHS' skyrocketing use of immigration detention. More than 33,000ⁱ people are held in immigration detention on any given day with more than 311,000 people detained in FY 2007.ⁱⁱ In FY 2009, ICE's budget for custody operations is \$1.7 billion.ⁱⁱⁱ This year, the agency plans to increase its detention capacity by 1,400 beds^{iv} and has estimated that 442,941 detainees will be held in ICE custody.^v
- The current mandatory detention policy overburdens an already crippled immigration system and causes unnecessary suffering to families and communities.
- This policy has stripped DHS of its discretion to make common sense decisions on how best to use its resources. It has also led immigration officers and judges to err towards detention.
- Although the DHS Office of the Inspector General has recommended that DHS expand ATD programs and Congress has appropriated funds for such programs, ICE has not implemented any cost-saving community-based ATD programs.^{vi}

We must be true to American values by requiring that all individuals in DHS custody are treated safely and humanely.

Recommendations

- Congress should require DHS to improve and codify enforceable detention standards and should create independent oversight of detention facilities to ensure DHS accountability.

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- Ensure that ICE fully reviews all facilities for compliance with these detention standards, including a review of detainee-filed grievances in its evaluations.
- DHS should limit the transfer of detained individuals to facilities located far from their homes and families without good cause and avoid transfers of individuals who have an existing attorney relationship.

Facts

- Even with the reported deaths of 90 detained immigrants since 2003, detention conditions continue to decline. Detainees are frequently denied appropriate medical care, visitation, legal materials, functioning telephones, and access to counsel.^{vii}
- The U.S. Government Accountability Office (GAO) found that ICE lacks a uniform policy for providing medical care to detainees and a number of facilities have no health care staff on-site.^{viii}

We must ensure that all individuals receive their fair day in court.

Recommendation

- Legislation should expand the availability of judicial discretion, including humanitarian waivers, so that each person's immigration case can be evaluated on its own merits.

Fact

- America's long standing tradition of promoting justice and fairness has been undermined by the detention and removal of individuals absent the individualized determination by a judge regarding a person's right to remain in the United States.

The federal government must safeguard against racial profiling and human rights violations which occur under the guise of immigration enforcement.

Recommendations

- The authority to enforce civil immigration law should return to the purview of trained and experienced immigration officers.
- Congress should withhold funding of ICE programs that rely on state and local law enforcement in immigration enforcement until DHS has conducted a thorough review of all current ICE programs and implements clear objectives and standards to ensure that the programs uphold due process and human rights.

Facts

- Through agreements between ICE and local law enforcement agencies, DHS has sanctioned immigration enforcement at the local level that lacks clear, consistent objectives and meaningful oversight, according to a recent study by GAO.^{ix} These programs have eroded public trust in law enforcement and have resulted in racial and ethnic profiling as well as the unlawful detention of U.S. citizens and permanent residents.^x
- Many local police jurisdictions have rejected these programs because they believe that they work counter to community policing goals by undermining the trust and cooperation of immigrant communities, place an undue burden on the cities' already reduced resources, and leave cities vulnerable to civil liability claims.^{xi}

ⁱ Statement of Dora Schriro, Special Advisor to Secretary Napolitano before the House Appropriations Committee Subcommittee on Homeland Security, Mar. 3, 2009

ⁱⁱ DHS: Organizational Structure and Resources for Providing Health Care to Immigration Detainees, *GAO report 09-308R* (Feb. 23, 2009) available at <http://www.gao.gov/new.items/d09308r.pdf>

ⁱⁱⁱ ICE Budget Fact Sheet FY 2009, available at: <http://www.ice.gov/pi/news/factsheets/index.htm>

^{iv} Schriro, *supra* note 2.

^v Statement of James T. Hayes, Jr., Director, Office of Detention and Removal Operations before the House Appropriations Committee Subcommittee on Homeland Security, Mar. 3, 2009

^{vi} DHS Office of Inspector General Detention and Removal of Illegal Aliens Audit Report, *OIG-06-33*, (Apr. 2006). Available at: http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_06-33_Apr06.pdf

^{vii} See, e.g., DHS: Treatment of Immigration Detainees Housed at ICE Facilities, *OIG-07-01*, (Dec. 2006). Available at: http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_07-01_Dec06.pdf; see also, DHS: Organizational Structure and Resources for Providing Health Care to Immigration Detainees, *GAO report 09-308R* (Feb. 23, 2009) available at <http://www.gao.gov/new.items/d09308r.pdf>

^{viii} DHS: Organizational Structure and Resources for Providing Health Care to Immigration Detainees, *GAO report 09-308R* (Feb. 23, 2009) available at <http://www.gao.gov/new.items/d09308r.pdf>

^{ix} Immigration Enforcement Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws, *GAO report 09-10*, (Jan. 2009) available at: <http://www.gao.gov/new.items/d09109.pdf>

^x See Justice Strategies, *Local Democracy on Ice: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement* (Feb. 2009). Available at <http://www.justicestrategies.org/sites/default/files/JS-Democracy-On-Ice.pdf>; see also, ACLU of North Carolina & UNC School of Law, *The Policies and Politics of Local Immigration Enforcement Laws, 287(g) Program in North Carolina* (Feb. 2009); <http://acluofnc.org/?q=new-study-finds-dramatic-problems-287g-immigration-program>

^{xi} STATEMENT BY THE CHATHAM COUNTY BOARD OF COMMISSIONERS, available at:

<http://www.chathamjournal.com/weekly/news/government/lucier-backs-out-of-public-citizen-forum-90226.shtml>