

**SYSTEMIC PROBLEMS PERSIST
IN U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT CUSTODY
REVIEWS FOR INDEFINITE DETAINEES**

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Executive Summary

Catholic Legal Immigration Network, Inc. (CLINIC) has completed a report on the Department of Homeland Security's compliance with United States Supreme Court decisions and federal regulations related to the indefinite detention of immigration detainees who cannot be sent back to their home countries after they are ordered deported by U.S. immigration authorities. In order to gather this information, CLINIC conducted a six-month study between September 2005 and March 2005 of the Department of Homeland Security's (DHS) methods for determining which indefinite detainees should be released under supervision of immigration authorities until authorities arrange to deport them. As no formal assessment of this process by DHS is publicly available, CLINIC interviewed approximately 20 lawyers and advocates who work with indefinite detainees across the country for this report.

U.S. law mandates that certain immigrants be detained during the period in which they are being processed for deportation. These include immigrants being deported on the basis of criminal grounds. After they are ordered deported, the expectation is that these individuals will be sent back to their home countries immediately. Some detainees cannot be readily sent home, however. This may be because they lack appropriate identity information, or their countries of origin refuse to accept their return for any number of reasons.

In March of this year, when the most recent DHS statistics were available, DHS was holding approximately about 1,200 individuals in detention after they had been ordered deported. The largest numbers of indefinite detainees were held in the following districts: Philadelphia, Newark, Buffalo, New Orleans, Eloy, AZ and San Diego. Some of these districts may encompass more than one detention facility.

Decisions by the United States Supreme Court in 2001 and 2005 require that immigration officials release indefinite detainees under supervision of immigration authorities, as long as they are not considered dangerous to the community or a flight risk. If the problems preventing an immigrant's deportation are resolved, DHS re-detains the immigrant and deports him or her from the United States. DHS has issued regulations implementing these Supreme Court mandates.

On the basis of our study, CLINIC makes the following conclusions:

(1) If the immigrant is not removed immediately after a deportation order is issued, DHS regulations require an initial review of an immigrant's custody by local offices of DHS within 90 days of the deportation order. Local implementation of custody reviews varies

vastly among local DHS offices. CLINIC found that in many locations across the country, 90-day local reviews do not occur or do not occur for several months after this 90-day mark. Many detainees do not receive any notice of the custody review, or if they receive notice, they do not receive it in time to permit them to prepare evidence supporting their request for supervised release.

While some local DHS offices made custody review determinations on the basis of DHS regulations, other offices failed to consider some important factors. There is a great deal of inconsistency in the quality of these reviews among DHS offices. The regulations require uniform standards for custody review, but in practice no consistent standard is used, either across DHS offices or sometimes even within individual DHS offices.

(2) If the decision is made to continue detaining an immigrant after this initial custody review at the local DHS office, a second custody review is required by DHS regulations after the detainee has been in custody for an additional three months. DHS regulations specify that the second custody review should be done by an office at DHS headquarters in Washington, D.C.

CLINIC could determine very little about this second level of review. Very frequently, detainees received no response from DHS headquarters about the status of their cases and while they remained in detention, very few detainees ever received a written decision explaining their continued detention. It is difficult to measure DHS compliance with the regulations governing the six-month custody review, because so little information is released by DHS Headquarters and so few decisions appear to be issued.

(3) CLINIC concludes that, unless the detainee is released at the 90-day mark by the local DHS office, the chances of a custody review decision of any kind from DHS are very slim. Most detainees at that point must resort to filing suit in U.S. District Court (a writ of habeas corpus) requesting that a federal judge determine their eligibility for release under DHS regulations and Supreme Court case law.

(4) A common rationale used by DHS to deny release to detainees is their alleged "non-cooperation" with securing documentation from the consulates of their home countries that would permit them to be deported. CLINIC found that, in many instances, DHS fails to notify detainees about the specific steps they must take in order to "cooperate." CLINIC determined that allegations of non-cooperation could often be resolved if detainees were able to access information about which documents DHS already had obtained and which documents were lacking. For most detainees, however, an effective mechanism does not exist to ask DHS about the status of their cases.

(5) There appear to be widespread communication problems between DHS and the consulates of the receiving countries. Consulates often state that they have not received any requests for travel documents from DHS while DHS will say that they have made several attempts to secure travel documents and have received no response from the consulates.

(6) CLINIC also investigated conditions of supervised release for immigrants who were able to obtain release from immigration detention. In 2004, DHS began releasing certain detainees only if they wore an electronic monitoring device in the form of an ankle bracelet. Practitioners have reported that little if any information is provided to detainees who are released with ankle bracelets about the rules of their release. No formal process has been established for revocation of such supervised release, meaning that detainees may be taken back into detention on the basis of a "violation" of this program of which they previously were unaware.

(7) Immigrant detainees do not receive free legal representation from the government. Because very few legal organizations and pro bono lawyers serve immigration detainees, only a small portion of low-income or indigent immigration detainees across the country have lawyers. While the lack of legal representation is a problem for all immigrant detainees, the problem is most acute for indefinite detainees. The CLINIC report raises concerns that unrepresented detainees who do not have access to federal court review of their detention may be languishing for extended periods of time in immigration detention, despite legal mandates that their continued detention be regularly reviewed.

(8) CLINIC believes that DHS understaffing of the custody review process is a significant factor in the serious problems revealed by this report. As it has in the past, CLINIC urges DHS to deploy sufficient staff to custody review tasks. DHS should also take steps to ensure that detainees have ready access to the information in their immigration files that would assist them in cooperating with government efforts to deport them. In addition, DHS should issue a clarification of, and guidance on, standards used to consider immigration detainees for supervised release in order to address the ad hoc and inconsistent determinations currently taking place across the country.

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