

INTRODUCTION

The immigration detention and removal system is, by law, a civil system. The persons within this system are not awaiting criminal trials or serving prison sentences. Rather, most are in removal (deportation) proceedings that are presided over by immigration judges from the Department of Justice's (DOJ's) Executive Office for Immigration Review (EOIR). Others have not yet been placed in removal proceedings; or have been ordered removed and are awaiting removal from the nation; or will never be placed in formal removal proceedings because they are subject to administrative removal by the U.S. Department of Homeland Security (DHS). The detention of immigrants serves to ensure court appearances and effect removal. It is not intended to serve a punitive purpose. By law, DHS must detain broad categories of noncitizens, and it has the discretion to detain all others in removal proceedings. A substantial percentage of persons in its custody do not have criminal records, and only a small percentage have criminal records based on violent conduct or pose a national security threat.

Despite DHS's civil legal authority, the management of the U.S. immigration detention system is based on a criminal detention model. Most persons in DHS custody — both those held by Immigration and Customs Enforcement (ICE) and the shorter-term detainees held by Customs and Border Protection (CBP) — are housed in jails and jail-like facilities, which are mostly administered according to American Correctional Association (ACA)-based standards that apply to persons awaiting criminal trials.

DHS/ICE has recently made it a priority to transform the immigration detention system from a criminal model into one that reflects its civil detention authority. The American Bar Association (ABA) Civil Immigration Detention Standards set forth below are intended to provide a tool that will guide DHS in the transition to a comprehensive civil detention system that does not primarily make use of jails and jail-like facilities to house the persons in its custody. Although the ABA recognizes the logistical and financial challenges involved in the

expeditious and complete transformation to a civil detention system, it nonetheless urges DHS to adopt these standards quickly and to begin to reconstitute its infrastructure and reform its system based upon these standards.

In 2008, DHS/ICE released extensive performance-based national detention standards (PBNDS) based on ACA standards for pre-trial detention. In February 2012, ICE released its revised PBNDS 2011, which continue to be based on ACA standards for pre-trial detention. In addition, DHS/ICE has developed civil detention principles (not standards), which have been incorporated into its statements of objectives (SOOs) used in soliciting bids for select new detention facilities.

The ABA civil immigration detention standards are not intended to be an exhaustive compilation of all the standards that might apply to persons subject to DHS custody. Rather, they are intended to provide DHS with a blueprint for developing civil detention standards, particularly those that implicate access to justice and other ABA priorities. The ABA standards are intended to assist DHS/ICE in its “real time” efforts to reform the U.S. immigration detention system. The ABA standards should be used by DHS/ICE to update the PBNDS and to guide its comprehensive transition to a civil detention system.

The ABA standards are meant to apply to persons subject to DHS custody, while recognizing the need to take more restrictive measures for the limited percentage of residents who may represent a danger to others or to themselves. The ABA offers these standards in order to minimize the risk of civil and human rights violations against immigration detainees. Facilities that do not meet the standards should not house DHS detainees.