

# Tortured & Detained

Survivor Stories of  
U.S. Immigration Detention

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The  
CENTER for  
VICTIMS of  
TORTURE  
Restoring the Dignity of  
the Human Spirit



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## ACKNOWLEDGEMENTS

CVT and TASSC would like to thank UUSC for their generous support. In addition, we would like to thank the individuals we interviewed and profiled for this report, as well as staff at the Florence Immigrant and Refugee Rights Project (FIRRP) in Florence, AZ; Casa Mariposa in Tucson, AZ; the Refugee and Immigrant Center for Education and Legal Services (RAICES) in San Antonio, TX; Casa Marinella in Austin, TX; and Ethiopian Community Support Services in Washington, D.C. The primary researcher and writer of this report is Annie Sovcik. Additional research and/or editing were provided by Scott Wright, Melina Milazzo, David Gangsei, Ann Willhoite, Marie Soueid, and Katherine Cosgrove. We would also like to thank Ruthie Epstein from the American Civil Liberties Union and Brittney Nystrom from Lutheran Immigration and Refugee Service for their helpful feedback and suggestions.

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# INTRODUCTION

Fahran worked as a translator to the U.S. Army in Afghanistan. He fled to the United States after being targeted for this work. After several months of travel via planes, road, and rivers through Dubai, Brazil, Ecuador, Colombia, Central America, and Mexico, he arrived at the U.S. border. “I was tired, thirsty, hungry, and in bad health conditions, including cuts on my legs that were infected. I was put in a cell for 24 hours, given a little piece of bread and some water. The floor was cement. I was begging for help.” In these conditions, he was interviewed by Border Patrol for three hours. He was taken to the Laredo Contract Detention Facility before being transferred to the South Texas Detention Center in Pearsall, TX, where he remained for 23 months before being granted asylum. During that time he kept thinking, “I was on the frontline for the United States. I left my family, my life, for safety. Now I’m in a cell.” He recalls, “I was so ashamed to tell my family at home I was locked up.”

After a journey that may be long and treacherous, survivors of torture who arrive at the U.S. border in search of asylum often believe they have reached a destination of safety and protection. As a party to the 1967 Protocol to the 1951 United Nations Convention Relating to the Status of Refugees and the United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment (CAT), the United States has committed itself to uphold the principle of *non-refoulement* and not return refugees to countries where their life or freedom would be threatened and where they are more likely than not to be tortured. The United States enshrined these principles into domestic law and established formal procedures for adjudicating applications for Asylum, Withholding of Removal and CAT protection.

Beza, a Christian woman fleeing religious persecution in Eritrea, arrived at the U.S. port of entry at Hidalgo, TX, and asked for protection. “I was shocked,” she explained. “I walked to the border to ask for asylum and was put into a small cell with eight people. There

was a toilet in the middle. I was there for 24 hours with nothing—no blanket or mattress, just a cement bench. It was so cold.”

As they flee for their lives, most survivors of torture carry the heavy weight of multiple and cumulative traumas in addition to the on-going traumatic experiences that can be associated with being a refugee. Receiving asylum in the United States can be a lifeline to safety and provide a path to healing but when asylum seekers arrive at a U.S. border or port of entry, they are frequently shocked at the treatment they endure upon reaching “safety” and “protection,” as they are arrested, shackled, and confined. This report estimates that in less than three years – from October 2010 to February 2013 – the United States detained approximately 6,000 survivors of torture as they were seeking asylum protection.

In conducting interviews with asylum seekers and survivors of torture who have been held in immigration detention, the Center for Victims of Torture (CVT) and the Torture Abolition Survivor Support Coalition, International (TASSC) found that asylum seekers are often in disbelief that they have been criminalized by virtue of trying to find protection. They describe feeling dehumanized by the conditions under which they are held—both in short-term holding cells managed by U.S. Customs and Border Protection (CBP) and in the detention centers used by U.S. Immigration and Customs Enforcement (ICE). They recall the utter state of confusion and isolation they feel as they are held with limited access to information about their situation and without knowledge of when—or if—they will be released. Moreover, while in custody, many suffer an on-going sense of dread at the possibility they may be returned to the country in which they experienced torture and/or other forms of persecution and/or in which they fear being subjected to future torture or other forms of persecution.

Detention is a daunting experience for anyone but particularly egregious for survivors of torture. For survivors, given the long-term impacts of torture

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.....

and trauma, the fact of being detained at all is often retraumatizing. Further, particular elements inherent in the detention experience—including a profound sense of powerlessness and loss of control—may recapitulate the torture experience. Beyond this, the indefinite nature of immigration detention is a blanket over it all, contributing to severe, chronic emotional distress.

This report offers several recommendations of steps that Congress, the Department of Homeland Security and the Department of Justice can take to mitigate the harmful impact of detention on survivors of torture and improve the immigration detention system overall, including:

**To Congress:**

- Provide the Executive Office for Immigration Review with adequate funding for nationwide expansion of the Legal Orientation Program and legal counsel programs;
- Eliminate mandatory detention and cease mandating that U.S. Immigration and Customs Enforcement (ICE) detain a set number of individuals daily so that all detention decisions can be made on a case-by-case basis and alternatives to detention programs can be fully utilized; and
- Provide funding to support Community Based Alternative to Detention Programs to facilitate the safe and supported release of survivors of torture and reduce ICE’s overall reliance on detention.

**To the Department of Homeland Security:**

- Promulgate regulations establishing basic minimum standards of care at all U.S. Customs and Border Protection facilities;
- Clarify that placement in a secure alternative to detention program can be considered “custody” for purposes of mandatory detention requirements; and
- Cease using actual jails and prisons for immigration detention purposes.

**To the Department of Justice:**

- Expand the Legal Orientation Program to serve all detention facilities used by ICE and guarantee that all immigrants in detention receive a legal orientation presentation as soon as possible; and
- Establish systems for government-funded counsel for survivors of torture and other particularly vulnerable immigrants in detention.

Given the extreme hardship, particularly in light of less expensive and more humane alternatives, survivors of torture should not be detained. Nevertheless, when they are, ICE should seek to facilitate their safe and supported release as soon as possible, including by ensuring they have access to legal information and legal counsel at every step along the way.

# PURPOSE AND METHODOLOGY

This report focuses on the personal and psychological aspects of the detention experience, from apprehension to release, and seeks to offer insights – through first-hand accounts to the extent possible – into what asylum seekers and survivors of torture are seeing, thinking, and feeling as they arrive in the United States, a perceived destination of “safety,” and subsequently endure shock and confusion at being arrested and detained. This report does not attempt to provide a comprehensive assessment of the current state of the U.S. immigration detention system. The recommendations contained at the end focus on meeting the unique needs of survivors of torture but most would benefit the U.S. immigration detention system more broadly.

The profiles in this report are comprised of self-reported information from the 22 individuals we interviewed in June and July of 2013, though the accounts described here are all consistent with secondary research into U.S. immigration laws, procedures, and practices. The challenges interviewees reported are, likewise, consistent with other in-depth reports of the U.S. immigration detention system. Secondary research into trauma and its effects as well as interviews with clinicians from CVT provided additional perspectives into

the particular impact detention has on survivors of torture. All participants consented to having their stories included in this report and used for public purposes. However, to protect individual identities we have changed all names and chose not to include any information that would make the individual easily identifiable. See Appendix A for a basic demographic breakdown of the individuals we interviewed.

In conducting interviews, we did not inquire into the individual’s experiences of torture or persecution but allowed them to share those aspects of their life as they determined. In the course of interviews, some participants specifically self-identified as survivors of torture while others did not offer information one way or another. All filed applications for asylum and indicated their primary reason for coming to the United States was to find safety—to flee persecution and/or torture. We determined that to inquire deeply into the reasons for which they fled their countries of origin would have been superfluous to the purpose of this report and could have risked retraumatizing the resilient survivors who generously shared their time, reflections, and trust. Without their openness—to no personal benefit—a report like this would not be possible. As individuals they represent courage, resilience, and hope. They offer inspiring insights into the rich capacity of the human spirit to struggle, survive and persevere. We are humbled by their strength.



# SURVIVOR JOURNEYS

Torture is defined in U.S. law as an act “specifically intended to inflict severe physical or mental pain or suffering upon another person.”<sup>1</sup> The legal definition requires the victim to be in the “custody or physical control” of another and the act must be committed “at the instigation or acquiescence of a public official.”<sup>2</sup> Despite its universal condemnation and absolute prohibition, approximately 117 countries worldwide still practice torture.<sup>3</sup>

Torture induces long-term suffering that leaves bodies and minds broken.<sup>4</sup> Many of torture’s survivors remain captive to their traumatic past, suffering from deep feelings of shame, self-blame, guilt, humiliation and loss of control.<sup>5</sup> They describe being haunted by intrusive memories, excessive rumination and nightmares, with repeated episodes of actively re-experiencing past traumas. Survivors have often lost their sense of safety, feel unable to attach to meaningful relationships, question their sense of justice in the world, feel that their identity and role in society is erased, and grapple with existential questions about life. They struggle with sleep disorders, anxiety, chronic pain, irritability, startle responses, suicidal ideation, and depression. Many

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• rights have occurred.”

report feeling “dead” inside and may describe themselves as if they are living outside their body, physically and emotionally numb, socially estranged and profoundly alone.

Torture instills “the fear of the unfathomable” into society.<sup>6</sup> By engaging

in this abhorrent human rights abuse—or being complicit in its practice—governments create a climate of fear that silences their residents, shatters trust, and suppresses civic engagement. Beyond that, torture is often indicative of broader human rights violations and abuses of power. Consequently, refugee survivors of torture are often fleeing situations in which genocide, war, military dictatorships, organized violence, massacres, disappearances, displacements, violent repression or other gross violations of human rights have occurred.

“It is reasonable to estimate that in less than three years—from October 2010 to February 2013—the United States detained approximately 6,000 survivors of torture as they were seeking asylum protection.”

The U.S. Department of Justice has estimated that there are over 500,000 survivors of torture in the United States.<sup>7</sup> While the exact number of survivors of torture seeking asylum in the United States on an annual basis is not tracked, by applying the overall torture prevalence rate of 5-35% for refugees,<sup>8</sup> it is reasonable to estimate that of the 29,484 refugees who were granted asylum in the United States in Fiscal Year 2012, up to 10,319 of them are survivors of torture.<sup>9</sup> By applying the same formula to an estimated number of asylum seekers held in U.S. immigration detention, it is reasonable to estimate that in less than three years – from October 2010 to February 2013 – the United States detained approximately 6,000 survivors of torture as they were seeking asylum protection.<sup>10</sup>

# WELCOME TO AMERICA

**Helina** walked up to U.S. Customs and Border Protection (CBP) officials at the San Ysidro, CA port of entry and asked for asylum, having fled Ethiopia for political reasons. She had spent several long months on a dangerous journey through Sudan, Dubai, Cuba, Ecuador, then traveling by land (walking, buses, train) and water through Colombia, Central America, and Mexico, before arriving in the United States. “When I started my journey,” she reflected, “I thought there was democracy in America. I did not expect what I experienced. I expected when I asked for help, I would get it. First, it seemed like we were welcome but then we were not.” She described being handcuffed, searched, given some paperwork, and taken into a cold room. “The room was cold. There was no shower. We couldn’t change our clothes. The bathroom was in the same small room. The toilet was steel and the room smelled like a toilet. There was a short wall but no privacy. You could smell everything. The room was crowded and people kept coming and going. There was nowhere, except a cold steel stool, to sit or sleep. I was kept in that room for 7 days.”

As they flee for their lives, most survivors of torture carry the heavy weight of multiple and cumulative traumas in addition to the on-going traumatic experiences that can be associated with being a refugee and grieving the loss of a “normal” life, including separation from family, alienation from language or culture, loss of home or livelihood, and fear of the unknown. This ongoing trauma further challenges a person’s sense of self or feelings of connectedness to community, culture or the future.<sup>11</sup> Asylum in the United States can be a lifeline to safety and offer a path to healing, but, as survivors go through the asylum process and continue to live with the constant fear of being returned to their place of torture, the traumatic experiences continue. This trauma is particularly acute for survivors of torture who are detained upon arrival in the United States, a place of previously perceived “safety.”

When **Pablo** and his wife arrived at the U.S. port of entry, fleeing persecution in Colombia, they presented themselves to CBP officials and asked for asylum. “At the border,” recalled Pablo, “Immigration tried to force us to sign some papers and go back to Mexico. We kept saying ‘we are here for help.’” **Pablo** and his wife were both handcuffed and taken to Laredo, TX, but were separated soon after. She was sent to a facility in Taylor, TX, while **Pablo** was shackled—hands, waist and feet—and put on a plane to another facility in Buffalo, NY. “I kept saying, ‘I’m here to apply for asylum in the United States. Why are you treating me this way?’ It was very traumatic to be arrested and separated like that.”

## ***Apprehended & Detained: How Survivors of Torture End Up in Immigration Detention***

Torture survivors seeking asylum protection in the United States may be detained upon arrival at an airport or border port of entry or may be apprehended on the border or in the interior of the United States. Under Section 235 of the Immigration and Nationality Act (INA) when a non-citizen is apprehended without proper documentation at a port of entry by CBP or within 100 miles of the border and 14 days of entry into the United States by either U.S. Immigration and Customs Enforcement (ICE) or Border Patrol, she is placed into Expedited Removal proceedings and deported without further hearings or review, unless she expresses a fear of return or an intention to apply for asylum.<sup>12</sup> By contrast, when ICE apprehends a non-citizen without proper documentation in the interior of the United States, it generally issues a Notice to Appear (NTA) charging document and places the individual in removal proceedings before an immigration court, during which time the individual may be detained under INA Section 236.

Under current law, an asylum seeker in Expedited Removal is held in mandatory detention until she passes a “credible fear” interview.<sup>13</sup> This interview, which assesses whether the applicant has a significant possibility of establishing eligibility for asylum,<sup>14</sup> is conducted by an Asylum Officer from U.S. Citizenship



and Immigration Services (USCIS). The interview may be conducted in person, by telephone or via video-teleconferencing. USCIS says that the agency strives to complete 80% of credible fear interviews within 14 days of a case being referred by ICE or CBP, though as asylum applicants at the border have increased significantly in the past year, demand on USCIS resources has also increased and wait times have gotten longer.<sup>15</sup>

### ***Asylum Seekers in Expedited Removal***

An asylum seeker in Expedited Removal who is found to have a credible fear of persecution if returned to her home country is referred to immigration court for a full hearing on her asylum claim. At this point, she may be eligible for release on parole, bond, or recognizance, depending on a variety of factors. To be eligible for parole, she must have been apprehended by CBP at a port of entry and classified as “arriving.” In order to be released, she must prove her identity, demonstrate to the satisfaction of ICE she is not a risk to the safety of the community or national security, and establish she has sufficient community ties to not constitute risk of flight, including an address and place of residence.<sup>16</sup> ICE’s parole decisions for “arriving” asylum seekers are not subject to review by an immigration judge or other independent court.

Non-“arriving” asylum seekers—those apprehended between a port of entry or within 100 miles of the border and 14 days of entry into the United States—are not eligible for parole but may be eligible for bond or release on recognizance. To be released on bond, the individual generally must prove her identity, provide evidence of financial stability, demonstrate lack of criminal history, and show community ties, including an address and place of residence. By statute, the minimum amount a bond may be set by ICE or an immigration judge is \$1,500 though the amount is often much higher.<sup>17</sup> Given that many survivors of torture seeking asylum in the United States arrive with limited savings or only the clothes on their back, high bond amounts are the equivalent

of being denied release if the amount is beyond any the individual could pay. ICE’s decisions on bond for non-“arriving” asylum seekers are subject to review, known as a “bond redetermination” hearing, by an immigration judge.

“There are no statutory limits to the amount of time a non-citizen may be held in immigration detention.”

There are no statutory limits to the amount of time a non-citizen may be held in immigration detention. When the steps described above go smoothly, asylum seekers tend to be released from detention within about four to six weeks of apprehension; however, others are kept in immigration detention for several months or even years, often because they lack a suitable housing option, cannot adequately prove their identity and/or are unable to afford the bond amount set by ICE or the immigration judge. This practice continues despite the availability and proven success of alternative to detention programs, discussed in greater detail under the “Other Options: Addressing Barriers to Release and Community Support” section of this report. Even when the individual has their documentation in order and a suitable housing option, detention time may be longer due to challenges with interagency coordination or delays resulting from backlogs at USCIS or in the immigration courts. CBP, ICE and USCIS are all agencies within the U.S. Department of Homeland Security (DHS), while the immigration courts are within the U.S. Department of Justice (DOJ), Executive Office for Immigration Review (EOIR).

### ***Conditions of Confinement at Holding Cells on U.S. Border***

**Rediet** left Ethiopia after being imprisoned twice for her pro-democracy activities. She escaped from jail and fled to Kenya. From Kenya, a family friend made

arrangements for her to get to the United States. She traveled through Dubai, Russia, Cuba, and Ecuador. From Ecuador she traveled by boat, foot, and car to Mexico. She was detained for four months by Mexican immigration officials before traveling to the U.S. border and requesting asylum at the San Ysidro, CA, port of entry. “When we arrived at the border, the immigration said ‘welcome,’ then they cuffed me on my wrists, waist and legs and put me in a small room. It was very crowded,” she said. “There was no chair, nothing. I slept on the floor for three days. I was only wearing a t-shirt and some pants. It was very, very cold. The toilet was in the same room and you could see the camera watching you as you used it. The first day, they gave us no food or water. No one explained anything. We were just on that cold, cold floor. Nothing happened

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.....

for three days. The smell was so bad—from the people with no shower and the toilet. It was terrible. The toilet that everyone uses is right next to the mattress where you put your head. For one week I had no shower, only one pair of pants, and one pair of underwear.”

Asylum seekers regularly express shock at the fact of being detained at all, particularly in the conditions in which they are held. They are in disbelief that they have been criminalized by virtue of trying to find protection. Research conducted by the United Nations High Commissioner for Refugees (UNHCR) suggests, “[M]any asylum seekers are unaware of the detention policies of their destination countries,

or indeed have little or no say about their journey or their final destination.”<sup>18</sup> In a 2011 report, Physicians for Human Rights (PHR) noted, “[I]ndividuals who are detained by repressive regimes on account of their political activities tend to survive the experience with fewer short and long term health consequences than individuals who are shocked to find themselves in custody.”<sup>19</sup>

**Eden** arrived at the U.S.-Mexico border after fleeing political persecution in Ethiopia. She was surprised by the conditions in which she was held. “I thought I’d be at some kind of camp, not a jail. I thought I’d be held in a place I would be free to walk around or go out.” Instead, she found herself being forced to sign papers she didn’t understand, without the assistance of an interpreter, utterly confused about what was happening and why, while being crammed into a small, crowded room with other recently arrived migrants. “It was so cold,” she described. “The room was very stinky – no one had showered.”

**Habtamu** fled Eritrea and walked up to a CBP agent at the port of entry at Brownsville, TX. He described, “The soldier told me to go back and said ‘you have no right to be here.’ Then another agent asked me if I was from Eritrea and they took me into a separate room to wait. After a few hours they gave me some food and water. I waited in that room for eight hours and was taken to an interview. I asked for an interpreter but the immigration officer said, ‘your English is good enough; they’re just easy questions.’ And they interviewed me for over 1 ½ hours, all in English, then made me sign papers.” After his interview at the border, **Habtamu** was held in a small cell with one other Eritrean man. He described the room as having one small “stretcher” bed so only one of them could lie down while the other spent the night on a small chair. The next afternoon, **Habtamu** and his cellmate were chained together and transported with a larger group of migrants to the Port Isabel Service Processing Center. Everyone had chains on their hands, waist, and legs. “I’m not a criminal,” he expressed. “I didn’t expect to be held like a criminal.”

In August 2013, Americans for Immigrant Justice issued a report on the conditions of the holding cells used by CBP on the border. The report states: “The temperature in the cells is so cold that CBP officers themselves refer to them as ‘hieleras,’ or iceboxes, in Spanish. Detainees’ fingers and toes turn blue and their lips chap and split due to the cold. Blankets are not provided. These crowded hieleras have no mattresses, beds or chairs, and there is a single sink and toilet in plain view. Detainees have no choice but to urinate and defecate in front of their cellmates... Generally detainees don’t understand the papers they’re signing since most don’t speak or read English, and no translation is provided.”<sup>20</sup>

**Elias**, an Orthodox Christian man, was forcibly conscripted into the Eritrean army. When he attempted to leave the army so that he could attend university, he was imprisoned and tortured. Upon being released from prison, he was forced to leave Eritrea. After a treacherous journey from Sudan to Dubai, to Russia, then Cuba, through Ecuador, Colombia, Central America, and Mexico, he finally arrived in the United States. Upon apprehension, he was shackled to another man and taken to an office for an interview. “I told immigration why I left Eritrea and that I was seeking asylum. They couldn’t find an interpreter so they went on with my limited English. I understood some things but not everything. They made me sign documents but I didn’t understand what I was signing.” He describes feeling scared, frustrated, and confused. “They told me they would take me to jail. I asked if I could make a phone call but they refused.”

**Meron**, an Ethiopian woman who fled political persecution, described arriving at the port of entry, asking for asylum, and being held in a cell at the border for a full week. “The cell was very, very cold,” she described. “I was only allowed one shower during the week and only allowed ‘outside’ for one hour per day.” Outside was a concrete space with high walls on all sides and little sunlight. “They made me sign papers. There was no interpreter and I didn’t know what I was signing.”

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Extreme temperatures can constitute a form of torture. In these cases, neither the intent nor the conditions themselves appear to amount to “cold” to the degree of “torture” or “cruel, inhuman and degrading treatment,”

but for someone who has been tortured it may be reminiscent of such experiences. As psychologist David Gangsei, International Clinical Advisor with the Center for Victims of Torture, explains, “Their subjective experience is being forced to endure prolonged physical discomfort. These kinds of uncomfortable conditions often trigger memories, thoughts and feelings from past experiences of torture or forced physical discomfort. It can create intense feelings of desperation that have a frantic quality to them. This can lead to deterioration in detainees’ mental and emotional condition, especially when you add the indefinite nature of the situation – that the person’s subjective experience at the time includes not knowing when or if it will ever end.”<sup>21</sup>

**Adama**, an asylee from Mali, arrived at the Laredo, TX, port of entry and walked up to a CBP agent. “I came on the bridge and I asked the United States for help,” he said. He was handcuffed and leg-cuffed, then put into a room. They would not remove his shackles for 6 more hours. They gave him papers and told him to fill out a form. “I was interviewed for 5 hours. They asked me about military training and explosives. I didn’t understand why they were asking me all of these questions. I kept telling them, ‘I’m here to ask you for asylum.’ I asked for an attorney but they refused. They

told me I had to answer all of their questions or I would get deported. I told them about all of my problems in Mali. I didn't have anything to hide." After the interview, they took him to a holding cell at the border. "The room was very, very cold," he said. "I asked for a blanket or something but they refused. I complained about my pain. I pounded on the door and told them I couldn't stay in that room any more. It was too cold. But they kept me there for two days."

## CONFUSED AND ISOLATED

After a week in a holding cell at the border near San Ysidro, CA, **Helina** was transferred to the Eloy Detention Center in Florence, AZ. She described being shackled while in transit—hands, waist, feet, all connected by a chain. "The handcuffs were painful—you couldn't even use the bathroom." She described feeling like they were "treated like criminals" and not understanding what was happening. "We were told there was no space in the California jail so we were taken by bus, then plane to Arizona, then by bus to a place called Eloy." When they arrived, they were given uniforms and the shackles were removed. "I didn't understand what was going on, where we were going, how long we would be there. I didn't even know the time; I could only tell if it was day or night."

Asylum seekers report feeling demoralized by the conditions of confinement while in ICE custody, as they are kept in "pods" with other detainees for up to 23 hours a day, subjected to frequent "counts," given little to no real outdoor access, transported in shackles, transferred without explanation, held by

jailers who do not speak their language, required to wear prison jumpsuits, and given very little access to information about where they are, what is happening, why it is happening, or what to expect.

**Juan**, an asylum seeker from Brazil, described detention as "mental torture." During that time, he said, "there was never anyone to explain anything – not immigration, not the county jail." During the years he spent in detention while he fought his case, Juan was transferred between different facilities several times. Each time he was transferred he was scared. "I didn't know what they were doing. I didn't understand why." He was not given any information, just woken up at 6:00AM and told he was being transferred. Then he would be put in shackles and transported to a different facility." He spent 2 years at the Pinal County Adult Detention Center in Florence, AZ. "At Pinal," he explained, "I didn't see the sun for 2 years. 'Outside' was a room with walls but no roof. You stay in one room the whole time, 24 hours a day. You eat there, sleep there, use the bathroom there."

Detention is a daunting experience for anyone, but particularly egregious for survivors of torture. To experience torture is to be dehumanized, psychologically dismantled, humiliated, forced to endure excruciating pain, and rendered powerless. For survivors, whose torture may have occurred while in a confinement setting, the immigration detention experience is often retraumatizing and may lead survivors to relive their horrid experiences of torture, including the profound sense of powerlessness and loss of sense of self, contributing to further psychological damage.

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**Fahran** spent 23 months at the South Texas Detention Center in Pearsall, TX. He spoke of the state he observed in other detainees. “I saw people who lost their minds. They couldn’t take it. It just became too much. One guy was not able to eat. He wouldn’t talk. He felt too much pressure; he started to breakdown. Then he just vanished from the dorms and we never knew what happened to him.”

According to the “Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention,” released in 2012 by the United Nations High Commissioner for Refugees (UNHCR), “Detention can only be exceptionally resorted to for a legitimate purpose... In the context of the detention of asylum-seekers, there are three purposes for which detention may be necessary in an individual case, and which are generally in line with international law, namely public order, public health or national security.”<sup>22</sup>

*“I kept asking myself, ‘what is the difference between Africa and America? Why do they detain me? They treat us just like a child, or worse, like an animal.’”*

**Rediet** recalled her sorrow during the 9 months she was detained at the Eloy Detention Center in Florence, AZ. “I kept asking myself, ‘what is the difference between Africa and America? Why do they detain me? They treat us just like a child, or worse, like an animal. You are sleeping and then, BANG!, they wake you up. ‘Hurry up,’ they say. At night you are woken up again and again. The air conditioning is too cold. There is too much cold with nothing to wear. If you have money you can buy extra food or extra clothes but without money, you have nothing.”

## ***The Impact of Indefinite Detention***

Because most individuals who are detained for immigration purposes are “in proceedings” rather than serving a sentence for a specified period of time, as in the criminal justice system, the length of their detention depends on a variety of factors, most of which, such as when their court dates are set or deportation flights are arranged, are entirely outside of their control and are not clearly communicated or predictable. Individuals have limited access to information about their options or what they can do or expect at each stage. Further, the information they do receive may be in a language they do not understand or is written in such “legalese” it would be challenging for any layperson to decipher.

**Elias**, an asylum seeker from Eritrea, described the challenges he faced in detention due to lack of communication. “The telephones were too expensive. I didn’t have money to make phone calls.” He felt like he could never explain himself, which impacted his feeling of safety within the facility. He described feeling confused and isolated, never being able to get any information in a language he understood. “I didn’t know what to do or how to make things better. I didn’t know what I could do.” His cell was crowded and had an open toilet for everyone. “We were not allowed outside except for one hour. I spent all my time in one room with many, many beds. To get to the cafeteria, everyone lines up and walks. This was not something I expected. There wasn’t anyone for me to talk to; no one from my country; no one who spoke my language.” He applied for bond but was denied due to lack of community ties.

With no defined end to their stay in detention, detainees feel there is no guarantee there will ever be an end. “Imagine living with the constant question ‘Am I ever going to get out of here?’” inquired

*“Imagine living with the constant question ‘Am I ever going to get out of here?’”*



CVT's David Gangsei, "and the demoralization that induces, along with the persistent feelings of threat—even if not directly expressed but present in the environment itself?" In the context of everything that is happening—from apprehension at the border and throughout their time in detention—the indefinite nature of the detention experience is a destructive blanket over it all.

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“In the context of everything that is happening—from apprehension at the border and throughout their time in detention—the indefinite nature of the detention experience is a destructive blanket over it all.”

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As our interviews reveal, indefinite detention can cause severe, chronic emotional distress: hopelessness, debilitation, uncertainty, and powerlessness. These factors combine to recapitulate the torture experience – that sense of bad things happening or potentially happening and not knowing what will happen next. The harmful psychological and physical effects are often severe and can include:

- Severe and chronic anxiety and dread;
- Pathological levels of stress that have damaging effects on the core physiologic functions of the immune and cardiovascular systems, as well as on the central nervous system;
- Depression and suicide;
- Post-traumatic stress disorder (PTSD); and
- Enduring personality changes and permanent estrangement from family and community that compromise any hope of the detainee regaining a normal life following release.”<sup>23</sup>

These effects are intensified in detainees who have been traumatized or tortured prior to commencement of indefinite detention. For survivors of torture, lack

of control and having no sense of what will happen next re-stimulates the kinds of experiences they had while being tortured. According to a 2011 report from PHR, “[These harms] threaten to severely exacerbate existing severe physical and psychological symptoms, perpetuate mental suffering, and thereby foreclose any opportunity for healing.”<sup>24</sup>

**Daniel**, a refugee from Liberia, spent 5 months at the Pinal County Adult Detention Center in Florence, AZ, before being granted asylum. He spoke of the utter sense of powerlessness and agony. “Detention messes with your mind,” he explained. “You don’t know when it will end or how it will end or whether you will see your family again. You have to hold onto your emotions. You hear about other people getting deported. You don’t know what will happen to you and there is no way to find out.” He described his experiences as a child in the Liberian Civil War and his fear of being deported from the U.S. “Anyone that was forced to run away from his home has seen a lot of things,” he explained. “I’ve seen so many dead bodies. People die in front of you. Life has been so hard. We grew up in war. We love the United States. I don’t want to go back [to Liberia]-- -I don’t know what to do or how to live there.”

“Even if the individual ultimately remains in detention for a relatively short period of time, at every stage the lack of information, lack of understanding, and lack of knowledge of how long she will be detained renders the subjective experience of detention as indefinite.”

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Even if the individual ultimately remains in detention for a relatively short period of time, at every stage the lack of information, lack of understanding, and lack of knowledge of how long she will be detained renders



the subjective experience of detention as indefinite. Realizing this makes the presence of an attorney – someone who may have some concrete information – that much more important. Nevertheless, the National Immigrant Justice Center found that 60 percent of those facing expulsion from the United States lack immigration counsel, with 84 percent of immigrants in detention going through proceedings without the assistance of legal counsel.<sup>25</sup> Thus, the isolation of detention often leaves a survivor of torture to navigate the complex asylum process alone.

**Habtamu**, an asylee from Eritrea, waited one month and two weeks for his credible fear interview. Then after the interview he waited another month for the results. “I couldn’t ask anyone. Time would pass. I was worried. There was no consistency. For some people, it would go fast. For others it would go slow. I couldn’t figure out why mine was so slow. The only information you got was from other people in detention.” During that time, he was frustrated that there was no one to ask and nowhere to find answers. “The video was not helpful. The things that were written were not helpful. At the law library, you could try but it was too hard to get information. I called the list of pro bono lawyers and they all told me I had to pass my credible fear interview first.” After passing credible fear, he was given ten days to present information that would establish his eligibility for release from detention on parole, but he didn’t have anywhere to go so he remained in detention for six months. **Habtamu** eventually found a lawyer who helped him complete his asylum application, but he represented himself pro se. “Most Eritreans,” he explained, “do not have money to hire a lawyer.”

### ***Exacerbating Trauma***

Multiple studies evaluating the detention of asylum seekers in various industrialized countries—including the United States, Denmark, Australia, the United Kingdom, and Canada—have demonstrated that detention, particularly given its indefinite nature for immigration purposes, exacerbates the severe mental health symptoms survivors of torture are

suffering and can be independently traumatic.<sup>26</sup> In a 2003 study of asylum seekers in the United States, PHR found, “Detention can induce fear, isolation and hopelessness, and exacerbate the severe psychological distress frequently exhibited by asylum seekers who are already traumatized.”<sup>27</sup> The British Journal of Psychiatry conducted a review of studies worldwide and reported, “All studies found high levels of emotional distress among individuals who were in detention or who had been previously detained... [There is] evidence that the findings relate in part to pre-detention trauma experiences, in addition to detention itself having an independent adverse effect on mental health.”<sup>28</sup> Beyond the short-term distress induced by detention, research has also found, “There is good evidence that such trauma [from detention] causes long-term mental health problems.”<sup>29</sup>

After two days in a holding cell at the border, **Adama** spent two months in detention at the South Texas Detention Center in Pearsall, TX. “At the intake I had to stay in a cold, cold room,” he said. “The air conditioner was so strong. Everyone was inside freezing. We were trapped in that cold room from 3:00PM to 7:00AM the next morning. They gave us a uniform, just short sleeves and thin fabric, but refused to give us any blankets or jackets. At 7:00AM we went to a huge room with about 120 people.” During those two months, he faced challenges in getting his religious diet request approved. “They had to send the request but it took one month to be approved. During that month there were meals I couldn’t eat.” Even after his request was approved, he never felt like he got enough to eat. “We ate breakfast at 4:30AM; lunch at 10:30AM and dinner at 5:00PM. People with money could buy food and put it in their locker to eat later, but if you didn’t have money, you are so hungry.” He described the challenge of getting medical attention for shoulder pain and a foot injury. “I was suffering a lot of pain. I needed attention for my shoulder pain and submitted a request but it took one week before I was called.”

**Adama’s** observations revealed an intense feeling of powerlessness, as detainees are dependent on

the officers for everything and feel as if they are discriminated against, ignored, and disrespected. “I saw many ugly things,” he reflected. “There is no respect from officers. You are treated like a prisoner and threatened with solitary confinement.” A man from his pod was taken to “solitary confinement” and did not return. **Adama** and his fellow detainees all believed it was because he wanted to go to the law library; it was rumored that he missed his court date while in segregation. Another man in **Adama’s** pod collapsed in the bathroom, started “tumbling” and “foaming at the mouth,” then stopped moving. In his view, the officers did nothing until the other detainees started hollering, “He needs attention! He needs attention!” The man was unconscious when the paramedics “took him away.” He, too, did not return. “Everyone thought he died,” **Adama** said, “The guards said he didn’t but we all think he did.”

ICE records do not indicate a death at the South Texas Detention Center during that period of time and this report is not implying that a death occurred. Rather, **Adama’s** impressions reveal much about his perception of safety and trust within the facility. For anyone in detention, there is a combination of the current trauma inherent in the detention experience and, for survivors of torture in particular, a re-stimulation of past traumas. The level of isolation, lack of information, and limited

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communication are all compounded by a perception of disrespect from the officers, and can make the detention environment one in which detainees feel under constant threat. This perception can be particularly acute

for survivors of torture, who may recall their torture experience when they are exposed to various events that are not explained and leave them completely at the mercy of the authorities. From a torture rehabilitation perspective, say experts, “If loss of control is a critical factor in the development of traumatic stress symptoms, then effective treatment would need to involve strategies that focus on helping the torture survivor regain sense of control.”<sup>30</sup>

In addition to loss of control and a perception of threat, boredom is one of the consequences of the nature and structure of detention, which for survivors of trauma, can be very harmful. As David Gangsei explained, “Survivors of torture often struggle with finding meaning and a sense of purpose and value in their lives after that has been stripped away. When in detention – again add the blanket of the indefinite nature of it – those things are eroded. Boredom can translate into much more profound distress and even despair when there is nothing to connect with to give you a way out. People in this situation are vulnerable to experiencing profound levels of meaningless and despair, especially as the structures are set up in a way that people are treated in a way that discounts them as a person.”<sup>31</sup>

**Cedric**, a refugee from Cameroon, was detained at the Pinal County Adult Detention Center in Florence, AZ, for 2 ½ years before being granted asylum. “It was mental torture,” he describes. “Being in that place was mental torture. There was nothing to stimulate my mind. You are around other people but it’s so lonely. Some people get along with others; others don’t care at all.” He spoke of his constant fear of being deported and the increasing weight of that fear every day in detention. “Deporting a refugee is sending someone to die,” he explained. “You make a mistake and your sentence is death.”

In coping with trauma and, particularly, with the kinds of intrusive thoughts that are symptomatic of Post-Traumatic Stress Disorder (PTSD), one of the ways survivors deal with this is to find ways to

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actively engage in the present. Outside of detention, this could include anything from engaging with their community, doing or finding activities they enjoy, pursuing education or career aspirations, or taking steps toward stabilization, like finding housing, doing chores or learning how to navigate the bus system. “The detention environment suppresses all of these options—structurally deprives people of opportunity for initiative—leaving people without anything positive to engage with,” says Gangsei.<sup>32</sup>

**Meron** described her loneliness. “I was so bored. All I could do was wonder about what was going to happen or when. I was so scared they were going to deport me. I was so lonely. I didn’t have any money to buy a phone card or make a call to my family. I missed them so much. I wanted to talk but I couldn’t. No one could come to visit me. I would see other people in my pod going to see visitors and would wish I could be happy like them.” Without anything to distract her mind or make the time pass she agonized about the unknown. “I met people who had been there for two or three years. One lady had been there for two years and then was deported. I was so scared.”

### **Limitations on Access to Legal Counsel and Information**

From apprehension to release, it is critical that all immigrants in detention are provided clear and reliable

information and regular updates. Jesuit Refugee Service Europe conducted a study on alternatives to detention and concluded, “Governments that are frank and transparent with migrants, inform them of all conditions, procedures and opportunities, and offer comprehensive support may find that rates of compliance increase as migrants develop trust towards the authorities. Frontloading support does not mean accelerating immigration procedures but rather making sure that migrants are well-equipped from the start.”<sup>33</sup> While not a substitute for full legal representation, the Legal Orientation Program (LOP), operated by EOIR, can help fill this gap. LOP contracts with nonprofit organizations to educate groups of detainees at some detention facilities about basic immigration law and procedure.

**Meron** described her confusion in detention. “I didn’t know anything. I didn’t know how to talk to anyone.” After being held for approximately two weeks, **Meron** had a credible fear interview and a judge saw her after about a month. When she eventually got connected to an attorney, she explained that things got much better. She described the sense of relief she felt in simply being able to ask her attorney some questions about what was going on or what to expect.

LOP provides a much-needed service that helps reduce anxiety and uncertainty amongst immigrants in detention. On an individual level, basic information about the process, even if it does not change the process itself or outcomes, can serve to support resilience and avoid retraumatization. On a systematic level,

“On an individual level, basic information about the process, even if it does not change the process itself or outcomes, can serve to support resilience and avoid retraumatization.”

.....

- “From apprehension to release, it is critical that all immigrants in detention are provided clear and reliable information and regular updates.”

by helping individuals make informed decisions and connecting them to basic services, including potential alternative housing options

or community resources, LOP results in fewer court hearings, less detention time and a reduction in court and detention costs.

**Helina** described feeling alone, full of fear and uncertainty while in detention but also spoke of the attorneys from the Florence Immigrant and Refugee Rights Project [the Florence Project], a non-profit legal service provider, with deep affection and appreciation. “When the Florence Project came they can help make your problems go away. Prior to talking with them, I didn’t understand what was happening. I knew of two people who stayed there for over a year – one Eritrean woman who cried all the time. I was terrified I would be there for all that time. Many others I met were there 4-5 months.”

According to an April 2012 report submitted by EOIR to the Senate Committee on Appropriations, LOP reduced case processing times by an average of 12 days when compared to individuals who did not receive LOP.<sup>34</sup> Using an average cost per bed day of \$112.83,<sup>35</sup> EOIR’s analysis determined that in FY 2011, LOP saved the federal government more than \$19.9 million. After deducting the cost of providing LOP services, which cost approximately \$70 per participant, the net savings to the government in FY 2011 were more than \$17.8 million.<sup>36</sup> Nevertheless, despite the obvious dual benefit of LOP to individuals and the immigration detention and court systems as a whole, this highly successful program is only funded to operate at 25 of the approximately 250 detention facilities used by ICE, reaching less than 30% of detainees in removal proceedings each year.

**Rediet** spent nine months at the Eloy Detention Center in Florence, AZ, before being released and later granted asylum. She waited two months for a credible fear interview and, even after passing the interview, she was held in detention for seven more months because she didn’t have a sponsor. “After 3 months in detention I got a free lawyer through the Florence Project. I had a lot of pain from the worry. My lawyer said she would find a community for me and asked Casa Mariposa if they would take me. I had no family or other place to go.” Rediet was released to Casa Mariposa, a Tucson-based alternative to detention shelter. After six more months an immigration judge in Tucson granted her asylum and she was able to petition for her husband and children to join her in the United States. “In Africa,” she said, “they say there is freedom in America. One I got my asylum, it is good but before that it was too hard. I expected to be held for one or two days so that they could ask me some questions but not for so many months.”

## OTHER OPTIONS: ADDRESSING BARRIERS TO RELEASE AND COMMUNITY SUPPORT

**Fahran** was detained for 23 months at the South Texas Detention Center in Pearsall, TX. He was offered a bond of \$2,500 but unable to pay and without a sponsor or place to live, he remained in detention. At first, he decided to represent himself, “I didn’t think I needed a lawyer. My story was true and I had documentation.” Although the immigration judge granted him asylum, the ICE trial attorney appealed the decision. Several months later, the Board of Immigration Appeals affirmed the immigration judge’s decision but the ICE trial attorney appealed again. Eventually, he contacted his brother in Sweden to ask for a loan to hire an attorney. “I was desperate.” After being granted asylum, he was released and given temporary shelter at Casa Marianella in Austin,

TX. “When I was released I only had the clothes I was wearing when I was arrested. They were dirty and had been in my backpack for two years.”

### **DHS/ICE Detention Reforms**

As ICE’s detention capacity grew rapidly—doubling from 18,000 to over 33,000 between Fiscal Year 2004 and Fiscal Year 2013, with the total number of immigrants passing through ICE custody increasing from 204,459 in Fiscal Year 2001, to 429,247 in Fiscal Year 2011,<sup>37</sup> non-governmental organizations, the media, congressional inquiries and inspector general reports revealed chronic problems, including inadequate access to health care, deaths in detention, physical and sexual abuse, overcrowding, lack of proper nutrition, interference with the practice of religion, excessive use of segregation, and problems with access to telephones. Reports also demonstrated the lack of procedural safeguards in place to protect immigration detainees, including asylum seekers and survivors of torture, from arbitrary and prolonged detention, and highlighted the availability of underused but effective and less costly alternatives to detention.<sup>38</sup>

Recognizing that the status quo was untenable, in 2009 DHS/ICE committed to overhaul the immigration detention system through taking steps to improve the management of its detention population and operations, advance the use of alternatives to detention, better manage special populations, enhance detainee medical care, and ensure accountability.<sup>39</sup> DHS/ICE has taken some significant steps in its reform efforts, including by deploying an automatic Risk Classification Assessment instrument, implementing new parole guidance for arriving asylum seekers, issuing new directives on transfers and parental interests, launching an on-line detainee locator system, revising its standards on use of segregation, and opening a “model” civil detention facility in Karnes County, TX.<sup>40</sup> Nevertheless, four years after DHS/ICE announced its intention to transform the immigration detention system, it

remains deeply flawed. In April 2013, the independent and bipartisan U.S. Commission on International Religious Freedom (USCIRF) issued a “Special Report,” finding that “while ICE has made progress toward implementing the reforms it announced in 2009, the U.S. government continues to detain asylum seekers under inappropriate conditions in jails and jail-like facilities.”<sup>41</sup> In addition, USCIRF found, “[F]urther improvements are needed to expand detainees’ access to legal information, representation, and in-person hearings.”<sup>42</sup>

Among the recent steps it has taken to improve the immigration detention system, ICE deployed an automatic Risk Classification Assessment instrument to “improve transparency and uniformity in detention custody and classification decisions.” The instrument provides objective criteria to detention and release

“The instrument takes past experience of trauma into consideration and offers an opportunity to conduct a prompt needs assessment of survivors of torture and facilitate their immediate safe and supported release.”

decisions, including classification level, if detained, and requires officers “determine whether there is any special vulnerability that may impact custody and classification determinations.”<sup>43</sup> The instrument takes past experience of trauma into consideration and offers an opportunity to conduct a prompt needs assessment of survivors of torture and facilitate their immediate safe and supported release, including by connecting them to a Community Based Alternative to Detention Program that can provide shelter, if necessary, and facilitate other services.



## Community Based Alternatives to Detention

**Meron** was detained at the South Texas Detention Center in Pearsall, TX, for three months. She had a credible fear interview within two weeks but after passing credible fear she was granted a \$7,500 bond to be released. Without enough money to pay the bond or anywhere to live, she remained in detention. Eventually she was able to get a loan from a friend overseas to pay the bond and a fellow detainee offered to let her stay with her family. Her advice to U.S. policymakers: “If they can help people without family find somewhere to stay—at least give them some numbers of places they can call; some information for what they can do.”

As mentioned previously, there are no statutory limits to the amount of time an asylum seeker—or any non U.S. citizen—may be held in immigration detention. Asylum seekers who are detained for longer than four to six weeks under current parole and other release processes generally remain because they lack a suitable housing option, cannot adequately prove their identity and/or are unable to afford the bond amount set by ICE or the immigration judge. These barriers to release can be addressed through alternative to detention programs.

The National Immigration Forum explained, “Less wasteful and equally effective alternatives to detention exist. Estimates from the Department of Homeland Security show that the costs of these alternatives can range from 70 cents to \$17 per person per day. If only individuals convicted of serious crimes were detained

“Research indicates, too, that asylum seekers consistently comply with conditions of their release from detention in over 90% of cases.”

and less expensive alternative methods were used to monitor the rest of the currently detained population, taxpayers could save more than \$1.44 billion per year—almost an 80 percent reduction in annual costs.”<sup>44</sup> Furthermore, according to UNHCR, “Evidence shows that alternatives to detention work in practice, whether in the form of reporting requirements, designated residence or supervision in the community, for example. Research indicates, too, that asylum seekers consistently comply with conditions of their release from detention in over 90% of cases.”<sup>45</sup>

BI Incorporated, the private company that ICE currently contracts with to manage its alternative to detention program, reported in 2010 that 93% of individuals actively enrolled in alternatives to detention attended their final court hearings and 84% complied with removal orders. BI’s programs offer appearance assistance to help ensure participants comply with the requirements of their immigration proceedings and provide limited case management. Some participants are enrolled in intensive supervision programs that include electronic monitoring, GPS tracking and phone reporting. None of BI’s programs, however, offer shelter options.<sup>46</sup>

“Asylum seekers who are detained for longer than four to six weeks under current parole and other release processes generally remain because they lack a suitable housing option, cannot adequately prove their identity and/or are unable to afford the bond amount set by ICE or the immigration judge. These barriers to release can be addressed through alternative to detention programs.”



Lutheran immigration and Refugee Service (LIRS), coordinates a more holistic alternative to detention program that should serve as a model. This program is presently being piloted in partnership with ICE and more than 20 local non-profit organizations in seven communities nationwide. LIRS describes its program as aiming to “build infrastructures of available, accessible, acceptable and high-quality community-based interventions to support compliance with conditions of release (e.g., appearances at removal hearings) in a manner that is more cost-effective than detention, respects human rights, improves integration and improves client health and welfare.”<sup>47</sup> It notes, however, that full implementation of this initiative is primarily challenged by lack of funding, including as it impacts community outreach, data collection, and connecting clients with legal, medical, mental health, visitation, housing, education and employment services.”<sup>48</sup>

To ensure that survivors of torture are not subject to indefinite or prolonged detention would require a combination of legislative and administrative reforms. These reforms should eliminate provisions in the law “mandating” detention, shift resources from detention to expand humane and effective alternatives to detention programs providing holistic support services, including community release programs, improve access to legal information, and improve due process and review standards.

## BEYOND DETENTION

Across the United States, asylum seekers currently wait an average of 560 days before their cases are heard in the immigration courts.<sup>49</sup> The most significant delays are for non-detained asylum seekers and immigrants, as detained cases move on an expedited docket. For each additional day a survivor of torture must wait for her case to be heard, it is one more day she lives in fear of being returned to the scene of her torture and it is one more day she may be separated from family members. During this time, she is living off of dwindling savings or the generosity of others because of restrictions on obtaining work authorization. Her housing may not be stable or available long-term, leaving her at risk of becoming homeless or forced to remain in a place she is unsafe or vulnerable to exploitation. For survivors of torture, this state of limbo may contribute to on-going trauma, while impeding their healing process and exacerbating symptoms of depression, anxiety, PTSD and other conditions they may be suffering as a result of their torture.

Beyond detention, Congress and the Administration should implement legislative and policy changes—including by providing additional funding where necessary—that would eliminate the backlogs in the immigration courts, reduce delays in asylum adjudications and allow asylum applicants to have their claims decided on their merits in a fair and efficient manner.

# RECOMMENDATIONS

## Welcome to America

- **The Department of Homeland Security** should promulgate regulations establishing basic minimum standards of care at all U.S. Customs and Border Protection (CBP) facilities. Such regulations should:
  - » Ensure that all facilities maintain adequate lighting and temperature control;
  - » Provide individuals in custody with basic information about immigration law and process, including information about where they are and what they may expect moving forward;
  - » Limit allowable time in CBP facilities to less than 48 hours;
  - » Require that all individuals in CBP custody receive potable water, regular nutritious and/or medically appropriate meals, access to private bathroom facilities, basic toiletries and hygiene items. Individuals should be provided with a cot, clean linens, and blankets;
  - » Ensure that CBP holding rooms do not exceed capacity;
  - » Limit the use of shackles, including during transportation;
  - » Provide individuals with access to the telephone and allow them to make phone calls; and
  - » Guarantee that interviews conducted with individuals are in a language they understand and they are not compelled to sign documents that have not been either translated or thoroughly explained to them in a language they understand.
- **Congress** should authorize the U.S. Commission on International Religious Freedom to conduct a thorough study of Expedited Removal. This study would evaluate whether DHS and its components—CBP, ICE and USCIS—

are following procedures designed to protect asylum seekers from return to persecution.

## Confused and Isolated

- **The Department of Justice, Executive Office for Immigration Review (EOIR)** should expand the Legal Orientation Program (LOP) to serve all detention facilities used by Immigration and Customs Enforcement (ICE), guarantee that all immigrants in detention receive a legal orientation presentation as soon as possible, and establish systems for government-funded counsel for survivors of torture and other particularly vulnerable immigrants in detention.
- **Congress** should provide EOIR with adequate funding for nationwide expansion of LOP and legal counsel programs.
- **Congress** should eliminate mandatory detention in Sections 235 and 236 of the Immigration and Nationality Act (INA) and cease mandating that U.S. Immigration and Customs Enforcement (ICE) detain a set number of individuals daily so that all detention decisions can be made on a case-by-case basis and alternatives to detention programs can be fully utilized.
- **The Department of Homeland Security** should clarify that placement in a secure alternative to detention program can be considered “custody” for purposes of mandatory detention requirements.
- **The Department of Homeland Security and Department of Justice** should promulgate joint regulations—and/or **Congress** should pass legislation—to enhance protections against arbitrary or prolonged detention by allowing all immigrants in detention to have access to a custody review by an immigration judge.
- **The Department of Homeland Security** should promulgate regulations codifying the directive: “Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture” and expand the scope of that process to also include non-arriving asylum seekers found to have a credible fear of persecution or torture.

- **The Department of Homeland Security, Immigration and Customs Enforcement** should cease using actual jails and prisons for immigration detention purposes. As a general matter, survivors of torture should not be detained. However, in the limited circumstances in which detention is used as a last resort—based on an individualized assessment that is subject to prompt review by an immigration court—survivors of torture should only be detained in facilities with conditions that provide a normalized environment. “Normalized” conditions allow for freedom of movement, provide educational and other programming, give individuals basic control over personal choices such as when or what to eat, ensure access to outdoors, guarantee privacy, permit detainees to wear their own—or civilian—clothing, limit the use of shackles during transportation, etc.

### **Other Options: Addressing Barriers to Release and Community Support**

- **Congress** should provide funding to support Community Based Alternative to Detention Programs to facilitate the safe and supported release of survivors of torture and reduce DHS/ICE’s overall reliance on detention. Community Based Alternative to Detention Programs would be managed by non-profit organizations and conduct screenings, provide appearance assistance, and offer a continuum of supervision and community support, depending on an assessment of each individual’s circumstances. Community support would include providing case management services, coordinating legal, social, mental health, medical or other services, and offering shelter options when necessary.

### **Beyond Detention**

- **Congress** should address the shortage of immigration court resources by providing adequate funding to the Department of Justice, Executive Office for Immigration Review (EOIR) to increase the number of immigration judges, law clerks and support staff.

- **Congress** should reduce the number of asylum cases being referred to the overburdened immigration courts that could otherwise be resolved by an Asylum Officer from U.S. Citizenship and Immigration Service (USCIS) by eliminating the one year filing deadline, a technical procedural barrier that delays the process and leads bona fide applicants to be denied asylum without regard to the merits of the claim or their fear of persecution, and by providing asylum seekers in expedited removal who have established a credible fear of persecution with a subsequent full interview and adjudication of their asylum claim by an Asylum Officer with USCIS rather than channeling them directly into an adversarial hearing in the overburdened immigration courts.

- **Congress** should provide adequate funding to support the USCIS Asylum Division in order to avoid a growing backlog or extended wait-times for credible fear and/or asylum interviews.

- **Congress** should increase funding to the Torture Victims Fund within the Department of Health and Human Services, Office of Refugee Resettlement to support torture survivor rehabilitation programs. These specialized programs have a proven track record of assisting torture survivors in gaining control of their lives, building confidence in their futures, reuniting with family members, improving their connectedness to the communities they live in, and reducing the incidence of serious health problems and dependence on emergency medical care.

# APPENDIX A

## Basic Demographics of Interviewees

<b>Countries of Origin of 22 Interviewees:</b>	Afghanistan, Brazil, Cameroon, Colombia, Ethiopia, Eritrea, Liberia, Mali, Mexico
<b>Range of dates interviewees were held in immigration detention in the United States:</b>	Of the 22, 3 were in detention in July 2013 at the time they were interviewed. 19 were interviewed outside of detention. All were detained between 2009 and 2013 with 12 detained within the past year.
<b>Immigration status of 22 Interviewees:</b>	17 were granted asylum by the immigration court between 2010 and 2013, 5 still have pending cases.
<b>Range of time held in detention:</b>	Between one week and 7 years, with average length of stay being 250 days; almost 8 months. <sup>50</sup>
<b>Male/female</b>	10 men, 12 women
<b>Reasons for fleeing</b>	21 cited “political” reasons for fleeing. 1 cited “religious” reasons (Christian).
<b>Number who presented themselves at the border v. who were apprehended in the interior of the United States</b>	15 walked up to a CBP agent at the port of entry to request asylum; 4 were arrested either between a port of entry or near the border; 2 were resettled as refugees when they were children and had criminal offenses (non-aggravated felonies) that put them into removal proceedings; 1 was arrested in the interior of the United States after his visa expired.
<b>ICE facilities in which interviewees were held</b>	Arizona: Pinal County Adult Detention Center, Florence, AZ; Florence Service Processing Center, Florence, AZ; Eloy Detention Center, Eloy, AZ California: Otay Detention Facility, San Diego, CA Louisiana: Oakdale Federal Detention Center, Oaxdale, LA; South Louisiana Corrections Center, Basile, LA New York: Buffalo Federal Detention Facility, Buffalo, NY Texas: T. Don Hutto Residential Center, Taylor, TX; Laredo Contract Detention Facility, Laredo, TX; South Texas Detention Facility, Pearsall, TX; Willacy Detention Center, Raymondville, TX (no longer used by ICE to detain immigrants); Port Isabel Service Processing Center, Los Fresnos, TX Virginia: Immigration Centers of America-Farmville, Farmville, VA
<b>Ports of Entry</b>	San Ysidro, CA; Hidalgo, TX; Brownsville, TX; Laredo, TX

# ENDNOTES

<sup>1</sup>18 U.S. Code Section 2340.

<sup>2</sup>Id.

<sup>3</sup>Hearing Notice, Tom Lantos Human Rights Commission, Healing the Wounds—Torture Treatment Centers Around the World (May 21, 2009) available at [http://tlhrc.house.gov/hearing\\_notice.asp?id=1190](http://tlhrc.house.gov/hearing_notice.asp?id=1190).

<sup>4</sup>Quiroga, Jose, MD, and Jaranson, James MD, MA, MPH, “Politically-motivated torture and its survivors: A desk study review of the literature,” TORTURE JOURNAL, Volume 15, Number 2-3, at 27 (2005), available at <http://www.ircct.org/Default.aspx?ID=4743>.

<sup>5</sup>Id. at 29.

<sup>6</sup>Jennifer Windsor, Statement at Symposium, “Torture is a Weapon against Democracy: How the United States is Working to End Torture Globally” (Jun. 26, 2013) available at <http://apps.law.georgetown.edu/webcasts/eventDetail.cfm?eventID=2041> at 00 58 01.

<sup>7</sup>United States Department of Justice, “Survivors of politically motivated torture: a large, growing, and invisible population of crime victims,” (January 2000), available at: [http://www.ncjrs.gov/ovc\\_archives/reports/motivatedtorture/torture.pdf](http://www.ncjrs.gov/ovc_archives/reports/motivatedtorture/torture.pdf).

<sup>8</sup>Basoglu, M, *Torture and its Consequences*, Cambridge: Cambridge U. Press (1992).

<sup>9</sup>U.S. Department of Homeland Security, Office of Immigration Statistics, “Refugees and Asylees: 2012,” (April 2013) available at [http://www.dhs.gov/sites/default/files/publications/ois\\_rfa\\_fr\\_2012.pdf](http://www.dhs.gov/sites/default/files/publications/ois_rfa_fr_2012.pdf).

<sup>10</sup>This number was derived by applying the torture prevalence rate of 5-35% found among refugees to the USCIS credible fear workload statistics on asylum seekers who have passed credible or reasonable fear. This number is significant for immigration detention purposes because pursuant to the expedited removal provisions in Section 235 of the Immigration and Nationality Act (INA), applicants for asylum are held in mandatory detention until they have established a credible fear of persecution. Therefore estimate of survivors of torture detained during expedited removal reflects the following breakdown of available U.S. government statistics: FY 2010 credible fear/reasonable fear: 3,721=SOT estimate: 186 (5%) to 1302 (35%); + FY 2011 credible fear/reasonable fear: 4,721= SOT estimate: 236 (5%) to 1652 (35%); + FY 2012 credible fear/reasonable fear: 11,754 = SOT estimate: 587 (5%) to 3793 (35%); + FY 2013 credible fear/reasonable fear (Oct 2012 + 1st quarter of 2013): 7,771 = SOT estimate: 388 (5%) to 2719 (35%) + FY 2012 immigration court asylum completions at detention centers: 3409= SOT estimate: 170 (5%) to 1,193 (35%). Total ranges between 1,567 (5%) and 10,659 (35%). See <http://www.uscis.gov/portal/site/uscis/menuitem7543f6d1a/?vgnnextoid=d2372376a3e5e210VgnVCM100000082ca60aRCRD&vgnnextchanel=d2372376a3e5e210VgnVCM100000082ca60aRCRD>. Note, however, that relying entirely upon credible and reasonable fear statistics is incomplete as this only takes into account survivors who were apprehended on the border or at a port of entry and placed into expedited removal proceedings. The number is higher once you factor in asylum seekers in the interior of the United States who filed their asylum application as a defense to deportation and are detained while in removal proceedings. For example, the U.S. Department of Justice Executive Office for Immigration Review (EOIR) reports that in FY 2012 the immigration courts located at detention centers (which does not comprise the entire detained docket) received 2899 asylum applications and completed 3409; in FY 2011 the immigration courts located at detention centers received 2089 asylum applications and completed 1262; and in FY 2010 they received 1058 asylum applications and completed 2194. Nevertheless, to avoid “double-counting” of asylum seekers who passed credible fear, the EOIR statistics are not included in the estimate. See <http://www.justice.gov/eoir/statpub.htm>.

<sup>11</sup>See *supra* note 4 at 25.

<sup>12</sup>INA Section 235(b)(1)(A)(i)-(iii).

<sup>13</sup>INA Section 235(b)(1)(B)(iii)(IV)(stating, “Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.”).

<sup>14</sup>INA Section 235(b)(1)(B)(v)(stating, “[T]he term “credible fear of persecution” means that there is a significant possibility, taking

into account the credibility of the statements made by the alien in support of the alien’s claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 208.”).

<sup>15</sup>*Hearing on Border Security Oversight before H. Comm. on Oversight and Govt Reform*, 113th Cong. (2013) (answers of Joseph Langlois, Associate Director of the Refugee, Asylum, and International Operations Directorate, U.S. Citizenship and Immigration Services) available at <http://oversight.house.gov/hearing/border-security-oversight-part-iii-examining-asylum-requests/>.

<sup>16</sup>U.S. Immigration and Customs Enforcement (ICE), “Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture,” (December 2009), available at [http://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole\\_of\\_arriving\\_alien\\_found\\_credible\\_fear.pdf](http://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_alien_found_credible_fear.pdf).

<sup>17</sup>INA Section 236(A)(2).

<sup>18</sup>Edwards, Alice, “Detention Under Scrutiny,” Forced Migration Review, Issue 44 at 5 (September 2013), available at <http://www.fmreview.org/en/detention.pdf> (citing Costello C & Kaytaz E, *Building Empirical Research into Alternatives to Detention: Perceptions of Asylum-Seekers and Refugees in Toronto and Geneva*, UNHCR Legal and Protection Policy Research Series (June 2013), available at [www.unhcr.org/51c1c5cf9.html](http://www.unhcr.org/51c1c5cf9.html)).

<sup>19</sup>Physicians for Human Rights, “Punishment Before Justice: Indefinite Detention in the U.S.,” at 11 (2011), available at [https://s3.amazonaws.com/PHR\\_Reports/indefinite-detention-june2011.pdf](https://s3.amazonaws.com/PHR_Reports/indefinite-detention-june2011.pdf).

<sup>20</sup>The “Hieleras”: A Report On Human & Civil Rights Abuses Committed by U.S. Customs & Border Protection (August 2013), available at <http://aijustice.org/the-hieleras-a-report-on-human-civil-rights-abuses-committed-by-u-s-customs-border-protection-2/>.

<sup>21</sup>Interview with David Gangsei, International Clinical Advisor, the Center for Victims of Torture (July 2013). [Hereinafter Gangsei Interview].

<sup>22</sup>United Nations High Commissioner for Refugees (UNHCR), “Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention,” at 16-17 (2012), available at <http://www.unhcr.org/refworld/docid/503489533b8.html> (clarifying that public order includes to prevent absconding and/or in cases of likelihood of non-cooperation, in connection with accelerated procedures for manifestly unfounded or clearly abusive claims, or for initial identity and/or security verification for a limited period of time as “such detention can only be justified where that information could not be obtained in the absence of detention.”).

<sup>23</sup>See *supra* note 19 at 2.

<sup>24</sup>Id.

<sup>25</sup>In a 2010 study, the National Immigrant Justice Center (NIJC) surveyed 150 immigration detention facilities, accounting for 98% of the system’s 32,000 detainee beds at the time, to determine accessibility of legal counsel. The survey results found that “80 percent of detainees were held in facilities which were severely underserved by legal aid organizations, with more than 100 detainees for every full-time NGO attorney providing legal services. More than a quarter of detainees were in facilities which were even more grossly underserved, where the ratio was 500 or more detainees per NGO attorney. A full 10 percent of detainees were held in facilities in which they had no access to NGO attorneys whatsoever.” National Immigrant Justice Center, *Isolated in Detention: Limited Access to Legal Counsel in Immigration Detention Facilities Jeopardizes a Fair Day in Court* (Sept. 2010), 4, 8, available at: <http://www.immigrantjustice.org/policy-resources/isolatedindetention/intro.html>.

<sup>26</sup>“From Persecution to Prison,” Physicians for Human Rights, at 5 (2003), available at [https://s3.amazonaws.com/PHR\\_Reports/persecution-to-prison-US-2003.pdf](https://s3.amazonaws.com/PHR_Reports/persecution-to-prison-US-2003.pdf) (finding, “Clinically significant symptoms of depression were present in 86% of detainees, anxiety was present in 77%, and PTSD in 50%. Further, study doctors documented that these levels of psychological distress worsened as the length of detention increased. While more than half (58%) of the asylum seekers interviewed reported having poor psychological health at the time that they fled their country, 70% stated that overall their mental health had worsened substantially while in detention.”); Hallas P, Hansen AR, Staehr MA, et al., “Length



of stay in asylum centres and mental health in asylum seekers: a retrospective study from Denmark," *BMC Public Health* 7: 288 (2007) (finding, "an increase in referrals for mental disorders with increased length of stay in asylum centres in a large, multiethnic population of asylum seekers."); Guy Coffey, Ida Kaplan, Robyn Sampson and Maria Montagna Tucci, "The meaning and mental health consequences of long-term immigration detention for people seeking asylum" *Social Science and Medicine*, 70 (12) June, 2070-2079 (2010) (finding "asylum seekers in detention have high rates of depression and Post Traumatic Stress Disorder (PTSD) and that the extent of their mental ill health is correlated with the length of time spent in detention."); Medical Justice, "The Second Torture": The immigration detention of torture survivors," at 4 (2012), available at <http://www.medicaljustice.org.uk/reports-a-intelligence/mj/reports/2058-the-second-torture-the-immigration-detention-of-torture-survivors-22052012155.html> (explaining, "In the experience of Medical Justice, victims of torture are routinely detained. This is particularly problematic because this population often suffers both the mental and physical effects of their torture for many years afterwards. This, coupled with the trauma of being detained for an indefinite time period, the limbo of their legal status, the specific medical needs of this vulnerable population, language difficulties and isolation from a community can all be highly damaging and/or injurious to one's health. Immigration detainees have particular health needs, many of whom are afflicted with mental health problems. There is a growing body of evidence that notes that these problems can be associated with their experiences pre-flight (prior to coming to the UK); exacerbated by immigration detention; or indeed caused by immigration detention itself."); Cleveland, Janet, "Psychological Harm and the Case for Alternatives," *Forced Migration Review*, Issue 44 at 7 (September 2013), available at <http://www.fmreview.org/en/detention.pdf> (noting, "after a relatively short imprisonment (average 31 days), 32% of detained asylum seekers reported clinically significant levels of posttraumatic stress symptoms, compared to 18% of their non-detained peers. Depression levels were 50% higher among detained than non-detained participants, with 78% of detained asylum seekers reporting clinical levels of depressive symptoms compared with 52% of non-detained asylum seekers.").

<sup>27</sup> "From Persecution to Prison," Physicians for Human Rights, at 1 (2003), available at [https://s3.amazonaws.com/PHR\\_Reports/persecution-to-prison-US-2003.pdf](https://s3.amazonaws.com/PHR_Reports/persecution-to-prison-US-2003.pdf).

<sup>28</sup> Katy Robjant, Rita Hassan and Cornelius Katona "Mental health implications of detaining asylum seekers: systematic review" *British Journal of Psychiatry*, 194: 306-312 (2009).

<sup>29</sup> Ward, Tony, "Long-term health costs of extended mandatory detention of asylum seekers," Yarra Institute for Religion and Social Policy, at 5 (October 2011), available at [www.yarrainstitute.org.au](http://www.yarrainstitute.org.au) (finding that "in addition to the high costs of maintaining detention facilities, there are significant additional costs as a result of prolonged detention for the long-term healthcare of former asylum seekers once they are released into the community.").

<sup>30</sup> See *supra* note 4 at 48.

<sup>31</sup> Gangsei Interview.

<sup>32</sup> *Id.*

<sup>33</sup> Amaral, Philip, "Immigration Detention: Looking at the Alternatives," *Forced Migration Review*, Issue 44 at 40, (September 2013), available at <http://www.fmreview.org/en/detention.pdf> (outlining six specific characteristics important for the well-functioning of the alternatives to detention: i) access to housing, ii) comprehensive support, including one-to-one case management, social support, legal assistance, medical support, child care if necessary – that focus on one-to-one care; iii) regular up-to-date information; iv) access to qualified legal assistance; v) emphasis on all possible outcomes; and vi) provide all of the above at the onset of a person's asylum or immigration case.)

<sup>34</sup> The April 4, 2012 EOIR report was transmitted on July 2, 2012 by the Department of Justice to the Chairwoman and Ranking Member of the Senate Committee on Appropriations' Subcommittee on Commerce, Justice, Science, and Related Agencies pursuant to the requirements of the Conference Report accompanying the Consolidated and Further Continuing Appropriations Act, 2012 (P.L. 112-55).

<sup>35</sup> National Immigration Forum, "The Math of Immigration Detention" (Aug. 2012), 2, available at <http://www.immigrationforum.org/images/uploads/MathofImmigrationDetention.pdf> (noting that

using the current cost of detention, the net annual savings to the government from the LOP are more than \$25 million).

<sup>36</sup> Vera Institute of Justice, "Legal Orientation Program: Evaluation and Performance and Outcome Measurement Report, Phase II" (May 2008), available at <http://www.usdoj.gov/eoir/reports/LOPEvaluation-final.pdf>.

<sup>37</sup> National Immigration Forum, "The Math of Immigration Detention: Runaway Costs for Immigration Detention Do Not Add Up to Sensible Policies," at 1, (August 2013), available at <http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf>.

<sup>38</sup> National Immigration Forum, "Summary of Reports on Immigration Detention," July 2008 – October 2012, available at <http://www.immigrationforum.org/images/uploads/2010/detentionreportssummaries.pdf>.

<sup>39</sup> Press Release, "Secretary Napolitano and ICE Assistant Secretary Morton Announce New Immigration Detention Reform Initiatives," U.S. Immigration and Customs Enforcement (October 6, 2009), available at <http://www.dhs.gov/news/2009/10/06/new-immigration-detention-reform-initiatives-announced>.

<sup>40</sup> "Detention Reform Accomplishments," U.S. Immigration and Customs Enforcement (ICE), updates available at <http://www.ice.gov/detention-reform/detention-reform.htm> (last visited October 2013).

<sup>41</sup> U.S. Commission on International Religious Freedom (USCIRF), "Assessing the U.S. Government's Detention of Asylum Seekers: Further Attention Needed to Fully Implement Reforms," (April 2013), available at <http://www.uscirf.gov/images/ERS-detention%20reforms%20report%20April%202013.pdf> (explaining, "The 2005 USCIRF Study found that the overwhelming majority of asylum seekers detained before their credible fear interview, and even after being found to have a credible fear, were detained under inappropriate conditions, in penal or jail-like facilities. Penal detention conditions risk re-traumatizing asylum seekers, and may lead some to prematurely terminate their asylum applications and return to their countries of origin, despite having credible fear. In some facilities, asylum seekers were living alongside U.S. citizens serving criminal sentences or criminal aliens, despite ICE detention standards forbidding the co-mingling of non-criminal detainees with criminals. In addition, the Study found asylum seekers were required to wear prison uniforms and were handcuffed and shackled like criminals. A 2009 internal DHS report into its own immigration detention system also expressed concern about the detention of asylum seekers under penal conditions and recommended that such detainees be held under civil conditions.").

<sup>42</sup> *Id.*

<sup>43</sup> See *supra* note 40.

<sup>44</sup> See *supra* note 37.

<sup>45</sup> See *supra* note 18 at 5 (citing Edwards *A Back to Basics The Right to Liberty and Security of Person and "Alternatives to Detention" of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants*, UNHCR Legal and Protection Policy Research Series, PPLA/2011/01.Rev.1, April 2011, [www.unhcr.org/refworld/docid/4dc935fd2.html](http://www.unhcr.org/refworld/docid/4dc935fd2.html); International Detention Coalition, *There are Alternatives, A Handbook for Preventing Unnecessary Immigration Detention*, 2011, <http://idcoalition.org/cap/handbook>).

<sup>46</sup> BI Incorporated, *Intensive Supervision Appearance Program II: An Alternatives to Detention Program for the U.S. Department of Homeland Security*, (BI Incorporated, CY 2010).

<sup>47</sup> Bremer, Megan, Haynes, Kimberly, Lynch Michael D., and Socha, Kerri, "New models for alternatives to detention in the US," *Forced Migration Review*, Issue 44 at 50, (September 2013), available at <http://www.fmreview.org/en/detention.pdf>.

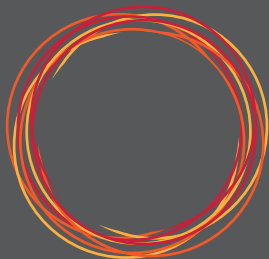
<sup>48</sup> *Id.*

<sup>49</sup> *Immigration Court Backlog Tool*, TracImmigration, Syracuse University [http://trac.syr.edu/phptools/immigration/court\\_backlog/](http://trac.syr.edu/phptools/immigration/court_backlog/) (last accessed July 22, 2013).

<sup>50</sup> This average was calculated without including the two outliers (one week and 7 years) or the three people who are currently in detention.







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