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ARTICLE

INS DETENTION IN FLORIDA

CHERYL LITTLE*

"This is a very stressful situation here. It's like you have been cut off from the outside world. You have no one to talk to or to help you."

—INS detainee at the Port Manatee County jail in Florida.

Immigration and Naturalization Service (INS) detainees represent the fastest growing segment of our nations exploding jail population. While the increase in the number of federal and state inmates actually slowed in 1997, the number of detainees in INS custody increased by forty-two percent over the previous year. According to the INS, in late October 1998, there were more than 16,400 persons in INS custody¹—triple the 5,500 of five years ago. In 1997 alone, over 155,000 detainees passed through

*Attorney and Executive Director of the Florida Immigrant Advocacy Center, Inc. (FIAC). Factual assertions within this article are based on Ms. Little's first-hand knowledge and expertise within the immigration arena. More detailed factual information may be found in two reports published by FIAC. See CHERYL LITTLE & JOAN FRIEDLAND, FLA. IMMIGRANT ADVOCACY CTR., INC., *FLORIDA COUNTY JAILS: INS'S SECRET DETENTION WORLD*, (Nov. 1997); CHERYL LITTLE & JOAN FRIEDLAND, FLA. IMMIGRANT ADVOCACY CTR., INC., *KROME'S INVISIBLE PRISONERS: CYCLES OF ABUSE AND NEGLECT*, (July 1996). Copies of these reports and updated supplements are available from FIAC for the cost of reproduction.

1. See Kristine Marcy, Remarks at the U.S. Immigration & Naturalization Service Florida District's First Meeting on Krome Stakeholders Issue (Nov. 10, 1998) (Meeting notes on file with author).

INS facilities, including local jails.² An INS spokesperson in Washington recently announced, "We apprehend and take into custody more people than any other agency in the world."³ "The INS anticipates that its average daily population in detention, which was 8,592 in fiscal year 1996, will increase to some 24,000 in fiscal year 2001."⁴

The INS is also the largest armed federal agent force in the United States today.⁵ More INS officers are now authorized to carry guns and make arrests (12,400) than the Federal Bureau of Investigations (FBI), the Drug Enforcement Administration, the Bureau of Prisons (BOP), and the U.S. Customs Service.⁶ These facts are somewhat ironic, given that the INS is an agency whose performance has long been called into question. Most recently, Syracuse University's Maxwell School of Citizenship and Public Affairs ranked the INS last for performance among the fifteen federal agencies it studied.⁷

The soaring INS population is in large part due to the draconian immigration laws passed in recent years, including the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA)⁸ and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).⁹ These acts make detention more likely both for asylum seekers and for aliens with criminal convictions. IIRIRA establishes a new expedited removal system that calls for the detention of asylum seekers pending a positive credible fear finding before an asylum officer or an immigration judge. Both AEDPA and IIRIRA require the INS to detain without bond many who have committed a deportable crime, even if they are legal residents of the United States. In several of these cases, the crime in question was not grounds for deportation prior to passage of the new law (retroactive

2. See Marcy, *supra* note 1.

3. Mirta Ojito, *Change in Laws Sets Off Big Wave of Deportations*, N.Y. TIMES, Dec. 15, 1998, at A1.

4. U.S. Committee for Refugees, *Out of Reach? NGO Monitoring and Services for INS Detainees*, 19 REFUGEE REPS. 2 (June 1998).

5. See Ojito, *supra* note 3.

6. See *id.*

7. See Max J. Castro, *Better Immigration Laws, Better Relations with U.S. Neighbors*, MIAMI HERALD, Mar. 17, 1999 at 21A.

8. Pub. L. No. 104-132, 110 Stat. 1214, (codified in scattered sections of 28 U.S.C.) (1996).

9. Pub. L. No. 104-208, 110 Stat. 3009 (codified as amended in scattered sections of 8 U.S.C.) (1996).

application). Indeed, the new law greatly expanded the definition of a deportable crime to include everything from forged checks and simple theft to selling marijuana, domestic violence, some cases of drunk driving and any conviction carrying a sentence of a year or more.¹⁰ Additionally, the law took away the power of judges to consider mitigating factors.¹¹ Certain INS detainees who, like the Cubans, cannot be deported may therefore be facing a virtual life sentence.¹²

The INS uses four types of facilities for detention. Three facilities are currently operated under the BOP, six are contract detention facilities, eight are INS owned and operated and the rest are local jail facilities negotiated through Intergovernmental Service Agreements (IGSAs).¹³

In attempting to deal with the sharp rise in their detention population, the INS is increasingly relying on state and county jails. Over half of INS detainees, including asylum seekers, are now being housed in local jails with which the INS negotiates bed space.¹⁴ While the INS requested funding to build four new detention projects in fiscal year 2000, the number of detainees held in county jails may actually increase to seventy-five percent

10. See Fred Hiatt, *Law Without Mercy*, WASH. POST, Feb. 7, 1999 at B7. Section 440(c) of the AEDPA requires the INS to detain virtually all aliens convicted of certain crimes who are awaiting removal hearings, without the possibility of release on bond. See Anti-Terrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214, (codified in scattered sections of 28 U.S.C.) (1996). Section 303(c) of the IIRIRA, which added new INA § 236(c), broadens this mandate. See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (codified as amended in scattered sections of 28 U.S.C.) (1996).

11. See Hiatt, *supra* note 10.

12. The ability to release deportable immigrants who committed crimes is restricted even if they are legal residents and who pose no danger to the community or risk of flight. District Directors have the authority to release aliens remaining in detention 90 days after final orders in their cases, but only if the aliens can demonstrate by clear and convincing evidence that there release is not a threat to the community, among other factors. See 8 C.F.R. § 241.4. (1999). While the INS recently established a review panel to determine if certain Cuban detainees should be released, it is fraught with problems. See IMMIGRATION AND NATURALIZATION SERV., U.S. DEPT OF JUSTICE, INS REVIEWS LONG-TERM DETENTION CASES (June 17, 1999) (News Release No. 1-99).

13. See DETENTION & DEPORTATION STAFF, U.S. DEPT OF JUSTICE, QUESTIONS & ANSWERS REGARDING INS DETENTION FACILITIES, Oct. 2, 1998. The eight INS owned and operated facilities "are located in California (2), Arizona (1), Texas (2), Florida (1), and New York (2)." *Id.* "On August 31, 1998, INS held 16,017 persons in custody. Of this number, 3,554 (22.2%) were held in INS' own facilities. Another 1,771 (11%) were held in contract detention facilities. . . . 8,544 (53.3%) were held in local jails." *Id.* "The INS has negotiated [IGSAs] with approximately 475 local jails." *Id.*

14. See *id.*

of the total population in the coming years, according to the INS.¹⁵

Although the INS budget increased from \$600 million in 1986 to \$4.3 billion in 1999, most of this money is directed at activities along the U.S.-Mexican border. The Eastern Region of the INS, which includes Florida, is the hardest hit of the three INS regions because its detention costs tend to be higher.¹⁶ The INS is detaining about 6,500 people—1,000 more than its budget allots in its Eastern Region.¹⁷ The unprecedented expansion of the INS's detention capacity and responsibility has led to overwhelming challenges for the INS and increasing problems for those in INS custody. In Florida, INS detainees are either housed at the Krome Processing Center (Krome) in Miami, Florida, or in one of several county jails.¹⁸

The Krome detention center is a minimum-security facility located on the edge of the Everglades, about twenty-three miles from downtown Miami. According to the General Accounting Office, Krome is an "isolated" facility.¹⁹ It was opened as a temporary processing facility in 1979 to handle the influx of Cuban refugees during the Mariel boatlift.²⁰ It became a housing facility in 1982, when the INS instituted a policy of detention of Haitian asylum seekers.²¹ Currently, it is one of several "Service Processing Centers" in the country run by INS. The Office of Inspector General (OIG) describes Krome as a "long-term detention facility,"²² even though neither Krome's physical plan nor its programs are designed for long-term detention.

15. See U.S. Committee for Refugees, *supra* note 4, at 1.

16. See William Branigin, *INS Weighs Plan to Free Criminals*, WASH. POST, Feb. 4, 1999, at A2.

17. See Frank Davies, *Immigration Agency Hard-Pressed to Meet Deportation Goal*, MIAMI HERALD, Feb. 26, 1999, at 3A.

18. To the best of Florida Immigrant Advocacy Center's knowledge, the jails used by the INS in Florida are county jails, with the exception of the Ft. Lauderdale City Jail. This article will therefore refer to the jails in Florida as county jails.

19. U.S. GEN. ACCOUNTING OFFICE, IMMIGRATION CONTROL: IMMIGRATION POLICIES AFFECT INS DETENTION EFFORTS, 46 (June 1992).

20. See MICHAEL R. BROMWICH, OFFICE OF INSPECTOR GENERAL, ALLEGED DECEPTION OF CONGRESS: THE CONGRESSIONAL TASK FORCE ON IMMIGRATION REFORM'S FACT-FINDING VISIT TO THE MIAMI DISTRICT OF INS IN JUNE 1995, 24-25 (June 1996) [hereinafter *OIG Report*].

21. See *id.*

22. See *id.*

INS officials have described Krome as a "jail."²³ INS officers practice shooting at a nearby target range, and the sound of gunfire is easily heard by detainees and visitors.²⁴ Detainees must wear uniforms.²⁵ According to the OIG, in March 1994, the INS began to house large numbers of detainees with criminal convictions at Krome and by June 1995, about half the population of Krome had a criminal history.²⁶

Krome's population has increased and decreased over the years in response to refugee flows, the tightening and loosening of parole policies, and more recently, new laws requiring mandatory detention of certain detainees. The population of Krome has changed without regard for accepted correctional standards and the capacity of the INS to safely house any particular number of detainees. Until recently, INS officials set the self-imposed population cap at Krome at 274, even though the population often far exceeded that number. In late 1998, the cap was raised to 400 yet the population often numbers around 500. Many of these detainees are seeking political asylum pursuant to the new expedited removal process.

For years, Krome, the only detention center operated by the INS in Florida, has been racked by complaints about its operations. In 1996, the OIG issued a report containing the results of its investigation of INS misconduct during the Miami visit of a Congressional Task Force on Immigration Reform.²⁷ The report concluded that the INS tried to prevent the delegation from seeing "true conditions" at Krome, which was then so overcrowded that conditions there presented a health and safety

23. See Larry Rohter, *'Processing' for Haitians is Time in a Rural Prison*, N.Y. TIMES, June 21, 1992, at 18E; Larry Rohter, *Haitian Refugees Allege Abuse at Florida Center*, N.Y. TIMES, June 5, 1992.

24. See Larry Rohter, *'Processing' for Haitians is Time in a Rural Prison*, N.Y. TIMES, June 21, 1992, at 18E.

25. See IMMIGRATION & NATURALIZATION SERVICE, DEPT OF JUSTICE, *DETAINEE HANDBOOK: KROME SERVICE PROCESSING CENTER*, 20.

26. See *OIG Report*, *supra* note 20, at 28. Within its own facilities, the INS claims to maintain a policy that non-criminal aliens and those aliens with minimal criminal history must be housed separately from dangerous criminal aliens. When a facility is responsible for housing both criminal and non-criminal aliens, the INS says that intermingling of populations is limited through proper identification and classification of all detainees. Still, there are ongoing complaints that the identification of "dangerous" criminal aliens at Krome is arbitrary and unreasonable and these detainees are often mixed with the general population, including areas where minors are kept.

27. See *OIG Report*, *supra* note 20.

hazard.²⁸ Only as a result of the OIG investigation and report did the INS take any disciplinary action against INS employees.²⁹

In June 1996, the Florida Immigrant Advocacy Center, Inc. (FIAC) issued a report titled, *Krome's Invisible Prisoners: Cycles of Abuse and Neglect*.³⁰ The allegations contained in this report were just the latest in a long and repetitious litany of allegations concerning Krome.

Many of the ongoing complaints about Krome have centered on attorney access. Generally, Krome detainees are not represented by lawyers at their removal hearings. They are not entitled to court appointed lawyers. Because of Krome's distance and the difficulty of contacting, interviewing and representing clients in the Immigration Court there, even many private lawyers are unwilling to represent detainees at Krome.

Since August 1997, FIAC has operated a pro bono representation project at Krome. The INS now allows FIAC to use the largest of the four booths in the attorney visitation area as an office and has provided a filing cabinet that can be locked. The project has its own telephone line, installed with INS cooperation and paid for by FIAC. However, the space provided is exceedingly small for both a lawyer and a paralegal and does not allow confidential communications with clients. The inadequacy of the space is compounded by the constant demand for services, both in person and by telephone.

The INS and the Executive Office for Immigration Review (EOIR) are required to provide Krome detainees with a list of free or low cost legal services. For years, the INS opposed checking the accuracy of the list it distributed, which included

28. See *OIG Report*, *supra* note 20, at 35, 103. Krome was so overcrowded in June 1995 that Dr. Ada Rivera, the chief of the Public Health Service Clinic at Krome, warned of serious "health problems" and said that urgent measures were needed to "prevent any potential epidemics." *Id.* at 32. Valerie Blake, then Deputy District Director, found Krome "out of control." *Id.* at 42-43. The response of the INS to the overcrowding, health threats, and security threats was not to develop rational detention and parole policies. Instead, it chose to hide these problems. A June 9, 1995 E-mail message from Krome Administrator Constance K. Weiss stated that INS would be moving detainees "to non-service facilities upstate . . . to be stashed out of sight for cosmetic purposes." *Id.* at 47.

29. See MICHAEL R. BROMWICH, OFFICE OF INSPECTOR GENERAL, FOLLOW UP REPORT: ALLEGED DECEPTION OF CONGRESS: THE CONGRESSIONAL TASK FORCE ON IMMIGRATION REFORM'S FACT-FINDING VISIT TO THE MIAMI DISTRICT OF INS IN JUNE 1995, 1 (Sept. 1997).

30. CHERYL LITTLE & JOAN FRIEDLAND, FLA. IMMIGRANT ADVOCACY CTR., INC., *KROME'S INVISIBLE PRISONERS: CYCLES OF ABUSE AND NEGLECT*, (July 1996).

organizations that did not provide services to detainees and did not state what services were available and to whom. As part of the 1995 settlement of a lawsuit brought by Haitian detainees, the INS was supposed to verify the accuracy of its list, but it has not adequately complied with this obligation.

The legal services list, which is now prepared only by the EOIR, remains woefully inaccurate. It includes organizations that do not provide legal services to detained persons, or do not have lawyers, or are at too great a distance to visit Krome, as well as attorneys in private practice who only accept a few pro bono cases per year. It does not even include the Catholic Legal Immigration Network, Incorporated (CLINIC), one of the only two groups providing free legal services at Krome. The list is also only in English.

The telephones that the detainees have regular access to do not allow confidential communications between detainees and their attorneys, nor are notices posted advising detainees of access to "special telephones" which they may use for confidential communications. Calls to attorneys are cut off after fifteen minutes. The telephones do not comply with recently issued Detention Standards³¹ that set specific requirements for telephones for confidential calls.

Detainees may now make free calls to the legal service agencies on the list or to their embassies. They cannot, however, make collect international calls. Therefore, unrepresented detainees have great difficulty contacting their families in order to obtain identification or supporting documentation. If detainees have money, they may buy telephone cards so that they can make calls. But they report that they lose money buying these cards since incomplete calls are charged to the card.

In complying with the new INS Detention Standards, Krome officials recently dropped a longstanding requirement that detainees waive their right to a meal if they speak to an attorney during mealtime, although certain INS officers seem to be unaware of the policy change. The INS has also begun the

31. See *INS Detention Standards*, 19 REFUGEE REPS. 8 (June 1998). In January 1998, the INS issued 12 standards in response to concerns of non-governmental organizations and the legal community regarding detention conditions and the lack of legal access for the growing population of INS detainees. These standards are not legally binding on the INS and they do not apply to county and local jails.

process of complying with Detention Standards regarding a law library by providing a small space for the library. Access to the area is seriously hindered though because of space and time restrictions. Moreover, proper and updated materials are not available.

Detainees often have no access to paper, pens, pencils, envelopes, stamps or INS forms. They also cannot send certified mail such as pleadings to the Board of Immigration Appeals or the federal courts.

Attorneys visiting Krome cannot schedule appointments in advance. The INS is carrying out a "pilot project" in which FIAC and CLINIC attorneys will be permitted to give INS a list of detainees they wish to speak to the next day. Retained and other *pro bono* attorneys cannot yet do this. Attorneys have been advised that detainees should be brought to the attorney visitation area within twenty minutes. However, they frequently wait hours longer than that. A sign in the lobby advises attorneys that they may contact the detention supervisor if this is not done. However, not all lobby officers are aware of the process, and the sign does not advise attorneys to ask to speak to the Chief Detention Officer who has agreed to be responsible for this area.

Detainees are not always on the lobby officer's list of detainees. One day late last year, for example, approximately thirty detainees were not on the list. After an attorney advises the lobby officer that he or she wishes to speak to a client, the officer calls the area where the detainee is supposed to be. However, the officers in the buildings do not always promptly call the detainees to their attorney interview, and attorneys may wait a substantial time only to learn that their clients have not been summoned. Often, the names are so garbled by the officers that detainees do not recognize their own names when called for an interview. Building officers do not generally notify the lobby officer when they are unable to locate a detainee. Sometimes, the detainee is called from the building but only gets as far as the processing section because no officer is available to escort him or her to the attorney visitation area. When detainees are placed in the attorney visitation area, the attorney is often not notified that they are there.

The most conscientious lobby officers are very persistent in checking that detainees have in fact been called and been sent to the processing section and the attorney visitation area. They also check not only the building where detainees are housed, but work areas and the Public Health Service (PHS) Clinic. However, the not-so-conscientious lobby officers do not do this.

In 1991, at the urging of the American Bar Association (ABA) and after years of complaints concerning the attorney-client visitation area, the INS remodeled the area. Ironically, after remodeling there were fewer booths than before. There are now only four booths, one of which is in constant use by FIAC and CLINIC. Attorneys must frequently bring an interpreter to communicate with their clients, but the space on the attorney side of the three smaller booths does not easily accommodate two chairs of the kind provided for attorney visits. Sometimes chairs are not available at all. Furthermore, despite the remodeling, conversations may still be overheard from one room to another. Attorney booths are not wheelchair accessible. Attorneys whose clients are in wheelchairs must often wait additional time for another room, such as a courtroom, to be available or must meet outside in the visitation area. The visitation area has a roof but is otherwise open to the elements.

A notice is posted in the lobby setting forth the hours that attorneys may visit their clients. However, no explanation is provided as to if or how attorneys may reach their clients by telephone. Because attorneys cannot reliably reach their clients by telephone, they must travel the long distance to Krome to speak to them, even when circumstances do not warrant a visit in person.

Attorneys are denied access to their clients when a lockdown is called at Krome. Attorneys are generally not permitted to bring cellular phones or tape recorders into Krome buildings. There is no copying machine available to them. The only telephone accessible to them is a pay phone immediately outside the front door, in the area where INS employees smoke. Private communications are therefore impossible. Krome is located in the Everglades, so mosquitoes and the heat are a significant problem for attorneys who use the pay phone. In addition, the phone is often broken.

Attorneys and detainees also cannot pay fees, including filing fee for a motion to re-open, at Krome. They must first pay fees at the INS office in Miami, a distance of at least twenty-three miles from Krome, and then go to Krome to file the document.

Attorneys sometimes have difficulty ensuring that documents are timely filed at Krome. For example, pleadings sent to Immigration Court at Krome by courier service must be left with the INS lobby officer, rather than taken to the Immigration Court a short distance inside the building. The INS officer does not necessarily deliver the documents to the court or advise the Court that documents have arrived. Attorneys also cannot fax documents to the INS or the Immigration Court at Krome. The INS has failed to respond to complaints about the problem.

Similarly, attorneys who leave documents (such as entry of appearance or parole requests) at Krome for the INS are not given stamped copies, which would enable them to prove service of the documents when they do not reach their intended destination. Requests to the Public Health Service (PHS) for medical records must be left with the lobby officer. These, too, are not always delivered to PHS.

Detainees regularly complain that detention officers discourage them from getting lawyers, claiming that they will be more likely to be transferred, denied release, or otherwise harmed. Sometimes even having a lawyer is harmful. It is not an uncommon problem for detainees to hire lawyers to represent them at Krome and never see the lawyer again or not until a few minutes before an important hearing. Nor is it uncommon for lawyers to fail to do the legal work they were hired for, such as to file an asylum application. For detainees, there is little recourse, since they have spent their money on the first lawyer and may not have money for another. Because immigration lawyers are not required to be admitted to practice in Florida (they need only be admitted to practice somewhere in the United States), the Florida Bar has no jurisdiction to receive complaints against lawyers who are licensed elsewhere.

For more than a week in May 1998, FIAC attorneys were denied access to a large group of Haitians detained at Krome, both to make know-your-rights presentations and for individual

meetings. INS officials claimed that: (1) the organizations would be soliciting clients, (2) the INS had already advised the detainees of their rights and therefore there was no need for such presentations, and (3) access should be denied for medical reasons³² (although others were given access to the Haitians and the Public Health Service director saw no need for the group to be quarantined).

In early June, 1998, a team of INS and ABA staff visited four pilot sites, including Krome, to assess implementation of new INS standards intended to set uniform requirements for INS detention facilities regarding various aspects of detention, such as access to legal counsel, materials, telephones and medical treatment.³³ After the visit, Christina DeConcini, director of the ABA Immigration Pro Bono Development and Bar Activation Project, reported that unlike the other three facilities, Krome staff seemed unaware of the new standards and that Krome "was a complete disaster on virtually all the standards."³⁴

Lately, the most serious complaints about conditions at Krome stem largely from the impact of the new laws and the overcrowded conditions. On September 21, 1998, for example, the Miami Herald ran a front page article describing Krome's medical facility, once hailed as a model, as a roach-infested, outdated clinic where overworked staff were often unable to provide proper medical care.³⁵ One worker at Krome described for the Herald a litany of clinic deficiencies so extensive that "the whole system needs to be closed down, and the patients evacuated."³⁶ Indeed, one detainee, featured in the Herald article because his case "illustrate[d] many of the clinic's shortcomings," died shortly after being sent to an outside hospital for care.³⁷

32. See *Don't Buy INS Excuses*, MIAMI HERALD, May 16, 1998, at 24A. See also Allison Klein, *INS Won't Allow Contact with Haitian Detainees*, MIAMI HERALD, May 16, 1998, at 2B.

33. See *INS Detention Standards*, *supra* note 31.

34. *Id.* at 9.

35. See Andres Viglucci, *Critics of Clinic Paint a Tarnished Krome*, MIAMI HERALD, Sept. 21, 1998, at 1A. Dr. Ada Rivera, a Public Health Service Officer based at Krome, serves as medical chief for INS' network of detention center clinics. In 1995, the Krome medical facility became the first INS medical facility to win accreditation from the Joint Commission on Accreditation of Healthcare Organizations. See *id.*

36. *Id.*

37. Andres Viglucci, *Inmate Death Spurs Call for Krome Review*, MIAMI HERALD, Jan. 31, 1999, at 1B. A Miami Herald editorial in late March again detailed the serious ongoing concerns about Public Health Services at Krome. See *First Do No Harm: Health*

On April 4, 1999, the Herald described a number of incidents at Krome's health clinic wherein mentally ill detainees, in dire need of appropriate care themselves, "terrorized or assaulted other patients, officers and medical staff."³⁸ In late 1998, the INS announced plans to build a new complex, to temporarily move PHS to another building, and to bring medical services up to date.³⁹ In the meantime, promised improvements in PHS have not occurred and PHS officials publicly deny the existence of any problems and have not responded to detailed written complaints by FIAC.

Recent complaints about the treatment of women and children at Krome also largely stem from the severe overcrowding and lack of appropriate facilities. Indeed, Detention Officers (DOs) at Krome were so troubled by the conditions facing women and children held in processing that they sent a memo to their supervisor claiming that, among other things:

- 1) Criminal Aliens and Male Detainees share the same restroom with minors.
- 2) Women and children eat their meals on the floors, because they don't have any seats or tables to sit on.
- 3) There is [sic] only six beds for thirty-nine women to sleep or sit on.
- 4) Ventilation is poor for thirty-nine women and children to be housed in one room.
- 5) Women and children don't have any recreation at all.
- 6) The noise level is extremely high making it very difficult to interview and process Detainees.⁴⁰

Care at Krome, MIAMI HERALD, Mar. 29, 1999, at 10A.

38. Andres Viglucci, *Krome Clinic Under Fire: Violence From Mentally Ill Detainees Raises Safety Concerns*, MIAMI HERALD, Apr. 4, 1999, at 1B.

39. See IMMIGRATION & NATURALIZATION SERV. FLA. DIST, KROME STAKEHOLDERS ISSUES: FIRST MEETING: NOVEMBER 10, 1998, 3 (Jan. 11, 1999). This plan was part of a larger plan to make temporary improvements at Krome as a result of an allocation of \$2.3 million at the end of the last fiscal year. See *id.* Improvements also include: building a new complex to house women and children, removing a lot of the fencing to provide better sight for officers and easier circulation, which has been done, the renovation of food services, and building a new training center. Still, INS officials say they need an additional \$5-7 million for much-needed further improvements.

40. Memorandum from the Detention Enforcement Officers, Krome SPC, Miami, Florida to SDEO and Through Chain of Command (Aug. 9, 1998) (on file with author).

Unfortunately, women and children continue to be held in the processing area under unacceptable conditions. Moreover, for those women and children held in hotels at night and brought to Krome during the day, facilities are inadequate and inappropriate.⁴¹ Pregnant women continue to be housed at Krome without adequate medical care or an appropriate diet. Recreation for women has been severely curtailed because of the large number of male detainees. The INS has announced plans to build a new complex to house women and children at Krome. However, many immigrant advocates believe that the detention of women and their children, even under improved conditions, is generally unacceptable.

Krome had no permanent Officer-In-Charge (OIC) for over two years—from the time the Office of Inspector General issued its scathing report about Krome until the fall of 1998 when Edward Stubbs was appointed OIC. Even though Stubbs has made a number of important changes at Krome in a short time and seems intent on turning the facility around, he clearly faces an uphill battle. Recently, two detainees filed complaints of unprovoked physical abuse by officers. On January 21, 1999, two detainees escaped from the Krome Detention Center. On January 28, 1999, The Miami Herald reported that Krome was in

The memo also addressed concerns of detention officers that they might be punished for complaining:

These and many more violations of human rights and detention policies, set forth by the District Director and the U.S. IMMIGRATION SERVICE, are continuously violated at the Krome detention service, when it involves minors.

It has been known, that when officers address issues of concern to all that are involved, [sic] and past practice, is to label or cast the officers as troublemakers or whiners. We hope that by reporting some of these violations we can instill a new attitude of caring, professionalism and concern. We feel that this [sic] not only a human rights issue but also a safety and legal issue that I.N.S. can not [sic] afford to ignore. We further hope that by speaking the truth, none of the officers will receive criticism or retribution by management for trying to do the right thing.

Id.

41. In response to a complaint by a female detainee that she was the victim of improper sexual advances by an INS officer while housed in a Miami motel, the INS Commissioner responded that the charge was unsubstantiated. See Letter from Doris Meissner, Commissioner, Immigration and Naturalization Service, to Cheryl Little, Executive Director, Florida Immigrant Advocacy Center, Incorporated 2 (Jan. 13, 1999) (on file with author). However, the Commissioner did acknowledge that the investigation disclosed "several systemic issues" and that the findings regarding the treatment of women and children at Krome were forwarded to senior agency management for review and action. *Id.*

a "heightened state" of alert after administrators learned of a potential disturbance.⁴² Amnesty International has made repeated attempts to get a response to their June 11, 1998, letter to INS officials detailing a number of concerns about Krome. The recent resignation of Kristine Marcy, Senior Counsel for Detention and Deportation in the Office of Field Operations, who worked diligently to improve conditions at Krome, further jeopardizes major changes underway there.

Stubbs also faces opposition from recalcitrant officers in key positions about whom FIAC has received complaints for years.⁴³ This "culture of impunity that allow[s] official misbehavior to flourish" at Krome was detailed in a Special Report by The Miami Herald.⁴⁴ Officers who spoke to the Herald complained of an "entrenched clique of supervisors and officers who have engineered favored job assignments and promotions for allies while freezing out rivals and berating subordinates."⁴⁵ They also complained of low staff morale, having to work twelve-hour shifts without a lunch break and often missing the precious fifteen-minute breaks because no one is available to relieve them.⁴⁶ In April 1999, The Miami Herald reported that some Krome officers, many of whom are long-time Krome employees, scorn reform and psychologically abuse the detainees, often using racially offensive language.⁴⁷ These officers frequently threaten detainees who

42. See Andres Viglucci & Yves Colon, *Krome on Alert for Possible Unrest*, MIAMI HERALD, Jan. 28, 1999, at 1B.

43. Many Krome employees are competent and dedicated, but they have had to work in accordance with irrational and shifting policies and INS culture has prevented them from contesting or making public the reality of detention. Over the years, there have been serious conflicts among INS officials who administer Krome. For example, the Assistant District Director for Detention and Deportation has testified in deposition that Krome administrators did not give him information or follow his instructions, and that the then Acting District Director prevented him from carrying out his responsibilities at Krome. See Deposition of Kenneth Powers, Assistant District Director for Detention and Deportation, 10-11, 31-32 (July 30, 1993), taken for and filed in *Haitian Refugee Center, Inc. v. Reno*, Docket No. 93-0080-CIV-DAVIS, (S.D. Fla.). Former INS employees have long accused Krome officials of establishing their own personal fiefdoms. The conflicts between officials have undoubtedly played a role in Krome's problems.

44. Andres Viglucci, *Inside Krome: Reformers Promise an End to Abuses, But an Entrenched Culture Stands in the Way*, MIAMI HERALD, Feb. 28, 1999, at 1L.

45. *Id.*

46. See *id.* Additionally, in a letter to The New Times, an anonymous Krome officer claimed he had "never worked in an environment with such disorganization, such a lack of intelligence by supervisors, such a lack of communication among the ranks, such a lack of security, and such favoritism." *Collision Course at Krome*, MIAMI NEW TIMES, Jan. 1999, at 3-4 (anonymous letter to the editor).

47. See Viglucci, *supra* note 38.

dare complain about their treatment with transfers to isolated facilities.

INS officials have increasingly relied on transferring detainees to county jails to solve Krome's problems. But the county jails are subject to even less public scrutiny than Krome. These county jails are a secret detention world, one that is out of the public eye and subject to little scrutiny by the INS itself. In Florida, these jails are located in isolated areas, ranging from the Monroe County Detention Center in Key West, Florida (in the southern tip of Florida) to the Bay County Jail in Panama City, Florida (in the northern panhandle of Florida).⁴⁸ Private corporations like the Corrections Corporation of America operate some, such as the Bay County Jail.

Florida's county jails are, by definition, short-term facilities. Their structure and programs are not designed for holding prisoners more than a year. They are punitive facilities not intended for asylum seekers. Under county jail classification systems, INS detainees are often classified as maximum-security prisoners, regardless of their status as asylum seekers or, for detainees with criminal convictions, the severity of their criminal convictions. As a result, they do not have access to the few programs or benefits that criminal prisoners do. They are not eligible to join work release programs or to become trustees. As maximum-security prisoners, INS detainees with criminal convictions face a harsher security classification than they had when serving their sentences. Asylum seekers in Florida who have committed no crime and are running for their lives, are often mixed with INS and non-immigration detainees with criminal convictions. Both asylum seekers and INS detainees who have finished serving their criminal sentences are treated as criminals, and transported from place to place in handcuffs and shackles, sometimes even within the facility.⁴⁹

The INS has taken no action to ensure that county jails meet any standards regarding treatment of detainees. Contracts

48. See DETENTION & DEPORTATION STAFF, *supra* note 13, app. 1.

49. In the spring of 1997, detainees at the Manatee County jail were handcuffed and shackled during attorney and medical visits, even when jail officials acknowledged they pose no security threat. FIAC attorneys had to make three separate requests to get a client's handcuffs removed so he could sign legal papers. Detainees have said that they have foregone visits with family because of this policy. FIAC attorneys complained about this policy and recently learned that this is no longer done.

between the federal government and the counties are absurdly incomplete and provide minimal requirements as to how the counties should treat INS detainees. Draft standards recently issued by the Department of Justice for INS detention facilities do not even cover the county jails.⁵⁰ And since 1996, Florida county jails are not even subject to state supervision. Florida state corrections officials recently warned that eliminating Florida's jail inspection program was a mistake and that inmates would be exposed to more abuse and taxpayers to more multi-million dollar court claims as a result.⁵¹

Detention in county jails has a devastating impact on detainees' ability to obtain legal representation or to obtain the necessary information and materials to represent themselves.⁵² The INS transfers detainees to distant locations even when their lawyers have filed an entry of appearance form with the INS and transfer will make representation virtually impossible. Despite INS claims to the contrary, detainees are sometimes transferred before their court hearings although they may have attorneys in Miami who have entered their appearance in Immigration Court. Detainees cannot let their attorneys know they are being transferred, and the INS rarely notifies attorneys of their clients' transfers. As a result, attorneys often spend weeks attempting to locate their clients. Even the INS has had trouble locating detainees. Detainees have sometimes missed hearings because of the transfers. Even if the detainees are brought back to Krome before hearings, they cannot adequately prepare for them.

Representation by *pro bono* agencies or lawyers is difficult enough at Krome but nearly impossible if the detainees are detained in county jails. County jail officials do not provide a list of agencies providing free legal services. The only list of agencies that detainees may (but do not always) receive prior to their

50. See *INS Detention Standards*, *supra* note 31. INS officials claim that they will require county jails to follow certain standards when they negotiate a new contract with them or when the old contract comes up for renewal. But this falls far short of what is needed to improve conditions in the county jails.

51. See Chad Terhune, *State Must Inspect Jails, Officials Say*, WALL ST. J. (FL. J. ED.), Aug. 11, 1998, at F2.

52. It is much more difficult for INS detainees who are in custody to obtain a lawyer than it is for immigrants who are not in custody. The Executive Office for Immigration Review (EOIR) of the U.S. Department of Justice reported that less than 11% of INS detainees were represented in their immigration proceedings in 1996, compared to 52% of non-detained persons in immigration proceedings. See U.S. Committee for Refugees, *supra* note 4, at 1-2.

transfer to county jails is inaccurate, incomplete, and generally irrelevant to the geographical area where the detainees are. Detainees must rely, to their detriment, on informal sources of information about representation. The problem is compounded by multiple transfers, which are not uncommon. One detainee interviewed by FIAC had been detained in eight different Florida facilities in less than one year.

Unrepresented detainees are at a severe disadvantage, especially given questionable communications between the INS and the Immigration Court. For example, a Port Manatee Stockade detainee learned that his asylum hearing, by agreement between the INS lawyer and the judge, was going to be held the next day, instead of a month later. This deprived him of his opportunity to obtain counsel and documentation in support of his application.

Transferred detainees are often told they cannot bring with them materials, such as attorneys' or friends' telephone numbers, that they will need. Transfers also cause other critical documents to be lost. Essential documents pertaining to hearings that are mailed to detainees frequently do not arrive or are not forwarded.

Detainees' ability to make telephone calls to lawyers or to their families for assistance in their cases is severely restricted. In all of the facilities FIAC attorneys visited, detainees can only make collect phone calls on the telephones to which they have direct access. As a result, they have great difficulty contacting attorneys. Detainees cannot even reach legal service agencies such as FIAC which are willing to accept collect calls from detainees, because FIAC phones are generally answered by an automated system. Nor do many facilities allow attorneys to call their clients or leave a message for clients to call them. Detainees also cannot make toll free calls, including those to legal service organizations, nor can they reach an operator. Detainees also have difficulty getting telephone numbers; when phone books are available, they are only for the local area.

Most jails limit the length of calls made from telephones to which detainees have regular access, so contacts with attorneys and families are interrupted after a few minutes. Access to non-collect telephones is critically important for detainees who need to call their families or friends in their home country to obtain

identification or supporting documentation for their asylum claims. They often cannot make collect international calls because the jail telephones or the country to which the call is made do not allow collect calls. Detainees are denied access, or are unaware they may request access to, special telephones for non-collect calls. In none of the jails FIAC visited was any provision made for confidential telephone communications with an attorney. Detainees are also limited by the number of telephones available and often complain that phones are broken.

Detainees do not generally have access to law libraries with immigration materials. This access is especially important if the detainees are unable to find a lawyer to represent them. For example, the Fort Lauderdale City Jail does not even have a law library. Requests must be made to the county attorney for particular law books without first reviewing the books. This is an impossible method of research. The Bay County Jail has no library but simply an attorney on retainer to whom detainees may write. However, that attorney advised FIAC that she has little knowledge of immigration law and, in any event, does not have access to INS files. Materials sent to detainees by human rights organizations sometimes do not reach them. The two Manatee County Jails have no law library for INS detainees and no attorneys on retainer.

The INS does not provide any instructions to county jails requiring access to a law library or legal materials. The contracts between the INS and the county jails do not require the availability of law libraries. In some facilities detainees are not given access to the law library, albeit one without immigration materials, because they are just passing through, even though they may spend months there. Nor does the INS advise detainees how they may represent themselves or explain the process or criteria for obtaining release from detention.

Detainees also often do not have the means to adequately communicate with lawyers in writing or to appropriately send legal mail. If they cannot afford to buy stamps or envelopes, they have no access or severely restricted access to free stamps and envelopes. Detainees also cannot send legal documents or pleadings by registered or certified mail. They often do not receive mail sent to them.

Many county jail detainees, including asylum applicants, have become lost in the immigration system or face indefinite detention as a result of harsh new immigration laws. Many remain in INS custody because their files have not been reviewed to determine if they should be released. Some of them have spent years in custody. They are isolated and have little access to attorneys or the outside world. For them, the American judicial system is only a myth.

Ironically, detainees who have final deportation orders and who want to be deported often spend inordinate amounts of time in county jails after the orders are entered. One detainee in Panama City withdrew her appeal so that she could be deported and her attorney delivered a plane ticket to Krome. Nonetheless, she was still transferred to Panama City, Florida, where she languished for months.

These transfers camouflage the actual length of detention. During depositions taken in *Kattola v. Reno*,⁵³ a case challenging detention conditions, INS officials could not accurately state the length of detention or the number of detainees that were held for long periods. Even more disturbing, some officials simply denied the occurrence of long-term detention. Many of these detainees are asylum seekers. Cuban and other asylum seekers, along with detainees with criminal convictions who cannot be deported because their countries will not accept them (such as Cubans and Vietnamese), have spent years in detention.

When detainees are transferred to a county jail, they fall into a black hole. Their INS files do not follow them. Their personal property, including documents, may be left behind at other facilities. At the Manatee facility, FIAC attorneys had to insist their clients were there when jail officials said they were not. Detainees may actually disappear from the legal radar screen and thereby lose access to the courts if they are transferred. Two Vietnamese detainees in the Bay County Jail Annex in Panama City told FIAC attorneys they filed habeas corpus petitions in federal court. However, their petitions were dismissed when the Federal Marshall Service, after checking with the INS and other agencies, was not able to locate the detainees for their hearing. The detainees' correct names, alien numbers and jail address

53. CV. No. 94-4859, (C.D. Calif.)

were listed in the petitions. Some of the jails are so isolated that people living in those towns do not even know they exist, let alone that they contain prisoners from many countries.

The officials running the jails do not know anything about immigration law, immigration procedure, or the status of detainees' cases. Detainees in county jails are also at a disadvantage in court proceedings because the immigration judge and INS attorneys have opportunities to communicate with each other that the detainees do not.

Detainees' medical records sometimes do not follow them. We have had to contact the Public Health Service Clinic at Krome to advise medical personnel that detainees are not receiving prescribed medication because the medical records have not arrived or the medication is not available. Detainees complain of grossly inadequate medical care in the county jails and in substantial delays in obtaining any treatment. One detainee, who had recurrent bouts with breast cancer while in state custody, underwent a mastectomy, and spent months trying to persuade the INS to provide a long overdue mammogram to ensure the cancer had not returned. Routine dental care, eye care, and psychological counseling is not provided because the jails are short-term facilities that do not provide those services. Multiple transfers make access to these services even less likely. Detainees often are required to buy over-the-counter medications from jail commissaries that charge inflated prices.

Detainees have little access to the INS once they are transferred. In every county jail FIAC attorneys visited, detainees may only make collect phone calls. Yet, they cannot make collect calls to their deportation officers whose telephones, in any event, are answered by an automated system. Even if they had the means to make a non-collect call to a deportation officer, it is notoriously difficult for detainees (and everyone else) to reach deportation officers on the phone.

County jails often have orientation materials geared toward criminals, not immigration prisoners. In any event, materials concerning the operation of the jails are not provided in languages other than English and sometimes Spanish. Thus detainees who speak other languages are not only isolated from the INS but also are unable to communicate with their jailers or to understand jail procedures. Sometimes they are transferred in

lieu of disciplinary proceedings where they could defend themselves against false charges of misconduct. Sometimes they face disciplinary proceedings in county jails where they have little chance to answer charges or are punished unfairly.

Some jails operate in an unhealthy, unsafe atmosphere. For example, when FIAC attorneys visited the Bay County Jail Annex in Panama City in 1997, virtually unrestricted smoking was permitted in the facility for detainees and employees (including the cells in the living areas) at all hours. Even cigar smoking was permitted. The jail reeked of cigarette smoke, and detainees complained of headaches and other ill effects from the pervasive smoke. The air conditioner was turned off at night, so air circulation was limited. In an odd twist, detainees could not smoke outside because jail officials did not want cigarette butts on the property.

In some jails, such as in Panama City, food portions are tiny. Detainees must buy food, much of which is filling junk food, from the commissary to feel that they have eaten enough. Those who do not have money cannot do so.

Detainees in Florida's county jails have few indoor and outdoor recreational activities available and spend much of their time sleeping. They often spend little time outdoors. Few books or magazines are available and, where they are available, are not in detainees' languages. County jails with a "get tough" policy toward criminal prisoners do not even have televisions.⁵⁴

It should be noted that detainees are housed in facilities which would have unoccupied beds absent the presence of INS or other federal prisoners. The INS detainees are providing a substantial source of funding for the counties that run these jails. These county jails are millions of dollars richer, thanks to the new, stricter immigration laws.

FIAC attorneys have long complained that conditions at Krome and in Florida's county jails are a recipe for disaster. Detainees are increasingly more frustrated and have frequently resorted to lengthy hunger strikes to call attention to their cases and to abusive officers. Indeed, recent events in two of Florida's county jails should serve as a warning that ignoring the serious

54. FIAC detailed concerns about INS detainees in Florida's county jails in a June 1997 report. See CHERYL LITTLE & JOAN FRIEDLAND, FLA. IMMIGRANT ADVOCACY CTR., INC., *FLORIDA COUNTY JAILS: INS'S SECRET DETENTION WORLD* (Nov. 1997).

problems facing INS detainees will only result in even greater problems.

In the summer of 1998, INS detainees held in the Jackson County Jail in Mariana, Florida, claimed that they were subjected to racial and ethnic slurs, shackled naked to concrete slabs in spread-eagle positions where they were left for hours, beaten with batons, and shocked with electric riot shields. Soon after these complaints surfaced, the INS, to their credit, transferred the thirty-four INS detainees to the Monroe County Jail in Key West, Florida, and promised to conduct an internal investigation. Amnesty International then wrote to the Attorney General requesting a thorough investigation.⁵⁵ While the Attorney General's office has claimed that this investigation is a priority, events thus far unfortunately suggest otherwise.⁵⁶ With the possible exception of one detainee who has been deported, the detainees in question have not even been interviewed pursuant to this investigation.

Similarly, in the fall of 1998, INS detainees at the Port Manatee Central Jail in Palmetto, Florida, said they were violently abused by sheriff's deputies following a protest about jail conditions. The incident followed written complaints filed by the detainees against their jailers. The detainees alleged they were beaten, stripped naked, dragged through dog and human waste and left for 20 hours in flooded cells. Although INS officials deny any wrongdoing they did acknowledge that some of the detainees' complaints were valid. The detainees' filed a pro se civil-rights complaint in federal court in Tampa and the FBI is conducting its own investigation of the incident.

55. See Letter from Javier Zúñiga, Director, Americas Program, Amnesty International, to The Honorable Janet Reno, Attorney General 2 (Oct. 1, 1998) (of file with author).

56. FIAC attorneys wrote the attorney General in mid-November, 1998, complaining that documents long ago provided by FIAC to the Office of Inspector General in the Jackson jail case had been lost, that the investigation was still in the "pre-investigation stage" and that none of the detainees-in-question had yet been interviewed by investigators. Letter from Cheryl Little, Executive Director, FIAC, and Joan Friedland, Staff Attorney, FIAC, to The Honorable Janet Reno, Attorney General (Nov. 19, 1998) (on file with author). FIAC attorneys complained again in March 1999, that attorneys had not been contacted before one of their clients had been approached by investigators, that at least one of the detainees had been deported without the opportunity to effectively voice his complaints, that Justice Department officials had claimed that federal agents did not have to interview detainee witnesses because FIAC had already taken statements from them, and that previous calls for investigations into allegations of abuse of INS detainees have routinely been deficient.

But no matter what the outcome of the two investigations, there is ample evidence that housing immigrants in county jails is fraught with problems. A blistering report recently released by Human Rights Watch detailed a number of human rights abuses in county jails, including Florida, and stressed the need to follow internationally recognized standards for humane treatment of INS detainees.

The alarming number of persons now detained by INS presents a serious obstacle to improvements in conditions of detention. Yet, ninety-day reviews required for the possible release of detainees who cannot or have not been deported have often not taken place; detainees have not been provided with adequate notice of the criteria to determine release or documents that should be presented; and the release decisions have been entirely arbitrary.⁵⁷

The situation at Krome and the county jails may soon become even more critical. INS officials have announced their

57. Many people, the vast majority of them Cuban or Vietnamese, remain in INS detention because deportation orders entered against them cannot be carried out. Either the United States has no repatriation agreement with their countries or their countries will not accept them. See Yves Colon, *Detainees Procedures Overhauled: Criminals at Krome to Get Cases Reviewed*, MIAMI HERALD, Aug. 7, 1999, at 1B. The INS perpetuates the common misconception that IIRIRA prohibits the release of these detainees. The INS knows, however, it has the power to release detainees who do not pose a risk to the community or a risk of absconding. On October 7, 1998, Michael A. Pearson, INS Executive Associate Commissioner of the Office of Field Operations, issued a memorandum to INS regional directors regarding detention and release from detention. See Memorandum from Michael A. Pearson, Executive Associate Commissioner, Office of Field Operations, to Regional Directors (Oct. 7, 1998) (*reprinted in* 17 AM. IMMIGR. LAW. ASS'N MONTHLY 1007 (Nov. 1998)). In the memo, Mr. Pearson makes clear that aliens who have not been removed within 90 days after a final removal or deportation order may be released from detention under an order of supervision. See *id.* On February 3, 1999, Mr. Pearson issued another memo to INS regional directors in which he "clarified" the procedures regarding release of detainees who had not been deported. Memorandum from Michael A. Pearson, Executive Associate Commissioner, Office of Field Operations, to Regional Directors (Feb. 3, 1999) (on file with author). He ordered District Directors to review every administratively final order removal case *before* the 90-day removal period expires. See *id.* He made clear that the District Director might release the alien from detention if it is established that she or he will not pose a danger to the community or a significant flight risk. See *id.* For the most part, these provisions have been disregarded and the procedures ignored. The 90-day reviews have seldom occurred. Some detainees have been "hand-picked" for a brief post-90-day review (10 to 15 minutes) by an INS panel, but they have not been provided with adequate notice of the criteria to determine their release nor the documents to be presented. Detainees have waited months for panel decisions. These decisions have been entirely arbitrary and inconsistent. Detainees with relatively minor convictions have been denied release, while others with more serious convictions have been released. Most detainees haven't even been offered a panel review.

intention to more than triple Krome's capacity and said that use of county jails in Florida will increase.

The INS now has an annual budget of \$1 billion dollars solely for the detention and deportation of immigrants. But even INS officials concede that the INS does not have the resources to detain all persons that the new laws require they detain.⁵⁸ They claim they would need 21,000 additional beds, 1,500 extra employees and \$652 million dollars more to do the job Congress is asking them to do.⁵⁹

The United Nations High Commissioner for Refugees and its Executive Committee have stated that, as a general rule, asylum seekers should not be detained. In October 1999, immigration advocates pointed out that the immigration detention system has grown far more quickly than the INS' capacity to provide appropriate oversight and urged INS to consider meaningful alternatives to detention.⁶⁰ In September 1998, INS Commissioner Doris Meissner testified before the Immigration Subcommittee of the Senate Judiciary Committee that the INS would be continuing to monitor a pilot project on detention alternatives currently being conducted in New York City.

A more humane release policy is likely to meet with much opposition in Congress. In February 1999, faced with the impossible task of detaining thousands more persons than they had bed space and resources for, INS officials said they were considering releasing some non-violent criminal detainees to make room for more serious offenders. This statement came under immediate attack by U.S. Representatives Lamar Smith and Elton Gallegly who called for INS Commissioner Doris Meissner's removal.⁶¹ The American Immigration Lawyers Association (AILA) came to Meissner's defense, blasting Smith

58. "With the expiration of the transition rules, the INS estimates that between 162,000 and 300,000 aliens will be subject to mandatory detention in fiscal 1999." William Branigin, *'Criminal Aliens' Jam INS Detention Centers*, WASH. POST, Nov. 2, 1998, at A17. Congress gave the INS funds to add about 7,000 beds. See *INS Chief Didn't Make This Mess*, ST. PETERSBURG TIMES, Feb. 26, 1999, at 18A. The Clinton administration subsequently requested money for 3,000 more, as part of a humanitarian relief package in the aftermath of Hurricane Mitch however, even if this request is granted, it will fall far short of the money the INS needs to do the job.

59. See Ojito, *supra* note 3.

60. See Open letter from Lutheran Immigration and Refugee Service 3 (Oct. 8, 1999) (on file with author).

61. See Letter from Lamar Smith and Elton Gallegly, U.S. Representatives, to The Honorable Janet Reno, Attorney General (Feb. 11, 1999) (on file with author).

and Gallegly for "demagoguing the issue" and creating laws that the INS could not possibly implement.⁶² In March of 1999, the Commissioner herself wrote an op-ed piece criticizing the new law requiring mandatory detention of aliens with criminal records as having gone "too far."⁶³

No matter how controversial these immigration issues are, the INS has a moral and legal responsibility to ensure the health and safety of detainees entrusted to its care. INS detention standards therefore must be effectively implemented and extended to all facilities housing INS detainees. Congress should fix the problem it created by ensuring that only those who truly pose a threat to society or are likely to abscond need to be detained. Unless these actions are promptly undertaken, current detention problems will only worsen.

62. Statement of Jeanne Butterfield, Executive Director, American Immigration Lawyers Association, in response to Lamar Smith and Elton Gallegly's February 11, 1999 letter to The Honorable Janet Reno, Attorney General (Feb. 11, 1999) (on file with author).

63. Doris Meissner, *Fairness in Immigration: Our Job is to Enforce the 1996 Law*, MIAMI HERALD, Mar. 2, 1999, at 21A.