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Immigration Detention System Lapses Detailed

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Growing numbers of noncitizens, including legal immigrants, are held unnecessarily and transferred heedlessly in an expensive [immigration](#) detention system that denies many of them basic fairness, a bipartisan study group and a human rights organization concluded in reports released jointly on Wednesday.

Confirmation of some of their critical conclusions came separately from the [Homeland Security Department](#)'s inspector general, in [an investigation](#) that found detainee transfers by [Immigration and Customs Enforcement](#) were so haphazard that some detainees arrived at a new detention center without having been served a notice of why they were being held, or despite a high probability of being granted bond, or with pending criminal prosecutions or arrest warrants in the previous jurisdiction.

The bipartisan group, [the Constitution Project](#), whose members include [Asa Hutchinson](#), a former under secretary of homeland security, called for sweeping changes in agency policies and amendments to immigration law, including new access to government-appointed counsel for many of those facing deportation.

In its [report](#), the human rights organization, [Human Rights Watch](#), revealed government data showing 1.4 million detainee transfers from 1999 to 2008, most of them since 2006. The transfers are accelerating, the report found, with tens of thousands of longtime residents of cities like Philadelphia and Los Angeles being sent to remote immigration jails in Texas and Louisiana, far from legal counsel and the evidence that might help them win release.

“ICE is increasingly subjecting detainees to a chaotic game of musical chairs, and it’s a game with dire consequences,” said Alison Parker, deputy director in the United States for the human rights group, and author of its report. The data underlying the report was obtained under the Freedom of Information Act, and analyzed by the Transactional Records Access Clearinghouse (TRAC) of [Syracuse University](#), which issued its own [report](#).

The inspector general’s investigation found that the consequences of haphazard transfers include a loss of access to legal counsel and relevant evidence; additional time in detention; and “errors, delays and confusion for detainees, their families, legal representatives” and the immigration courts.

Some detainees were transferred with files lacking a photo and a security classification, field inspectors found in work conducted from October 2008 to February.

Officials at Immigration and Customs Enforcement, which is part of Homeland Security, said the agency would issue advisories reminding field offices of 10-year-old national detention standards that require a review of a detainee's "alien file" before any transfer, and reinforcing the need to coordinate with immigration courts.

In August, the Obama administration announced ambitious plans to overhaul immigration detention, a disjointed network that relies heavily on private prisons and county jails. But taken together, the three reports underscore the gap between the plans and the problems on the ground in a system that, according to the inspector general, is estimated to be detaining more than 442,000 people a year — more than double the number in 2003, ICE's first year of operation.

John T. Morton, director of the immigration agency, envisions a "truly civil detention system" shaped by more centralized agency control. In contrast, the Constitution Project recommends shrinking the use of detention, in part by adding more constitutional safeguards required in the criminal justice system.

"None of the recommendations being made should in any way compromise national security," Mr. Hutchinson said Wednesday in an interview before he presented the report at the National Press Club in Washington. "It simply allows for a more humane and more efficient system."

Immigration law is complex, and the deprivation of liberty is quite similar to the situation in other settings that require court-appointed counsel for the indigent. But 60 percent of noncitizens face deportation without a lawyer, and transfers compound the problem, the reports said.

The immigration agency has said it uses transfers to deal with an imbalance in the number of detention beds at various locations. But the TRAC analysis shows that the number of transfers has grown much more rapidly than the detention population. It found that in the first six months of the 2008 fiscal year, 53 percent of detainees were transferred at least once, and that one in four were transferred multiple times, a fivefold increase since 1999.

Though transfers occur in almost every state, the data show that the jurisdiction receiving the most transferred detainees is the Federal Court of Appeals for the Fifth Circuit, covering Louisiana, Mississippi and Texas — which is widely known for decisions hostile to the rights of noncitizens and has the worst ratio of immigration lawyers to detainees, the human rights report said.

A strong case against deportation sometimes simply evaporates in such a transfer, the report said. It cited a Jamaican New Yorker transferred to Texas after three months in detention in New York and New Jersey.

Immigration authorities contended that he should be deported based on two prior convictions for drug possession.

In New York, his drug misdemeanors were not considered an "aggravated felony," and based on the man's 22 years of legal residency and strong family relationships in the United States, he would have been eligible for "cancellation of removal," a form of relief from deportation. In Texas, he was barred from relief based on Fifth Circuit rulings, and deported.

The bipartisan group said the agency makes it too hard for people to avoid detention while challenging deportation. It recommended a significant easing in the burden of proof, and a hardship waiver from mandatory detention for lawful permanent residents.

In what it called “an aspirational goal,” it recommended that where free counsel is not available, all indigent noncitizens in standard deportation proceedings have access to a government-paid lawyer. It also urged Congress to give immigration judges discretion to appoint counsel, and to require a lawyer in certain cases, including those involving unaccompanied children and the mentally ill.

Mr. Hutchinson said that the immigration agency could make many other changes immediately, including some that would “correct some potential unfairness in the system” unintentionally left by his own efforts when he was in office.

According to the Human Rights Watch report, a memorandum Mr. Hutchinson issued in 2004 is now used as a loophole to hold detainees for weeks without giving them notice of why the government is seeking to deport them. “This can certainly be tightened up and narrowed,” Mr. Hutchinson said.