

## **U.S. Rejects Changes in Detainee Rules**

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**Byline:** By NINA BERNSTEIN

### **Body**

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The Obama administration has refused to make legally enforceable rules for immigration detention, rejecting a federal court petition by former detainees and their advocates and embracing a Bush-era inspection system that relies in part on private contractors.

The decision, contained in a six-page letter received by the plaintiffs this week, disappointed and angered immigration advocacy organizations around the country. They pointed to a stream of newly available documents that underscore the government's failure to enforce minimum standards it set in 2000, including those concerning detainees' access to basic health care, telephones and lawyers, even as the number of people detained has soared to more than 400,000 a year.

The Department of Homeland Security, which oversees the immigration detention system, a conglomeration of county jails, federal centers and privately run prisons, concluded "that rule-making would be laborious, time-consuming and less flexible" than the review process now in place, Jane Holl Lute, the agency's deputy secretary, said in the letter.

The department maintained that current inspections by the government, and a shift in 2008 to "performance-based standards" monitored by private contractors, "provide adequately for both quality control and accountability."

The administration's letter met a 30-day deadline set by Judge Denny Chin of Federal District Court in Manhattan. Judge Chin ruled last month that the agency's failure to respond to the plaintiffs' petition for two and a half years was unreasonable.

The government's decision "disregards the plight of the hundreds of thousands of immigration detainees," said Paromita Shah, associate director of the National Immigration Project of the National Lawyers Guild, one of the plaintiffs, which contends that the lack of enforceable rules is at the heart of persistent problems of mistreatment and medical neglect. "The department has demonstrated a disturbing commitment to policies that have cost dozens of lives."

The plaintiffs had expected better from the Obama administration, said Dan Kesselbrenner, the project's director.

But Matt Chandler, a spokesman for Homeland Security who served in the Obama campaign, put a different face on the rejection of rule-making.

"The rule-making process can take months, if not years," he said in an e-mailed statement, "and the administration believes that reforming our immigration detention system needs to happen much faster than that." A special adviser on detention to Janet Napolitano, the secretary of homeland security, "is engaged in a top-to-bottom review" of the detention system, he said, and will release her recommendations soon.

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In a telephone interview, the adviser, Dora Schriro, said Immigration and Customs Enforcement had made changes in recent years "in an effort toward continuous improvement."

"What's appreciably different about this administration is the recognition that detention and alternatives to detention are disciplines, and can and will be carried out under the most professional of standards," Dr. Schriro said.

But standards without teeth are doomed to fail, said lawyers for two other national immigration law organizations, one in Los Angeles and another in Chicago, echoing the plaintiffs' disappointment with the rejection of enforceable rules.

Both groups recently won the release of thousands of pages of detention inspection documents that had been kept secret. They said the documents showed that the government had routinely violated its own minimum monitoring standards and ignored findings of deficiencies for years.

The "performance-based" standards the Obama administration has now embraced have no penalties and are not significantly different from what failed in the past, said Karen Tumlin, a lawyer with the National Immigration Law Center in California. On Tuesday, the center issued what it called "the first nationwide comprehensive report" on violations of detention standards, based on records from 2004 and 2005 obtained through Freedom of Information litigation.

Dozens of more recent inspection documents, some from this year, show a similar pattern, said Chuck Roth, the director of litigation for the Chicago group, Heartland Alliance's National Immigration Justice Center. Many were posted by the government itself on the Immigration and Customs Enforcement Web site after the center won a three-year federal court battle to force their release.

"The groups that ICE commonly contracts with are staffed by former ICE employees and former corrections officers who have a vested interest in pleasing ICE," Mr. Roth said, "so we haven't seen them take the useful watchdog role."

The documents include eight years of monitoring reports by the American Bar Association, which has been granted access to detention centers and detainees only on condition that its findings, shared with the government, are not made public.

Reports from two bar association visits to the Elizabeth Detention Center in Elizabeth, N.J., in January 2006 and July 2007, illustrate the weaknesses. In 2006, the team noted detainee complaints about medical neglect and threats of physical violence that were reported to guards but ignored.

A year and a half later, a return visit was cut by the center to two hours from six hours, and "inexplicably, many of the areas that the delegation had requested to visit in advance and needed to see in order to fulfill its mission were locked" and off limits.

The delegation was unaware that only two months earlier a 52-year-old tailor named Boubacar Bah had died after suffering a skull fracture in the jail and being locked in an isolation cell without treatment for more than 13 hours.

"This whole detention system that has been created is a human rights nightmare," said Mary Meg McCarthy, executive director of the National Immigrant Justice Center. "The past administration created this, and now we need to dismantle it."

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