



ACLU

AMERICAN CIVIL LIBERTIES UNION
of MASSACHUSETTS

Detention and Deportation in the Age of ICE

Immigrants and Human Rights in Massachusetts

DECEMBER 2008

EXECUTIVE SUMMARY

ICE'S SYSTEM OF VAST, UNCHECKED FEDERAL POWERS OPENS THE DOOR TO VIOLATIONS OF BASIC HUMAN RIGHTS.



Every day in Massachusetts, approximately 800 immigrants and asylum-seekers are in detention in county jails around the state waiting to be deported or fighting a legal battle to stay in the country. None of those persons are serving sentences for having committed a crime. They have not been judged by a jury of their peers. Instead, they are “civil detainees” held because they have overstayed a visa, are awaiting a decision on asylum, or are otherwise subject to deportation. Yet they spend months, and sometimes years, in cells side-by-side with sentenced criminals, not knowing when they will be allowed to leave.

When it was created in 2003, the federal immigration agency known as ICE (Immigration and Customs Enforcement) quickly created a new strategic plan — aptly named Operation Endgame — which calls for the removal of all deportable persons by the year 2012. This plan involves aggressive enforcement coupled with a heavy reliance on detention, and has resulted in record numbers of deportations — 349,041 persons in Fiscal Year 2008 alone. To keep up

with the increased numbers of arrests, ICE created a network of approximately 400 jails and detention facilities around the country where it now holds over 30,000 persons on any given day.

Despite having a vibrant and diverse working immigrant population, Massachusetts has become subject to these national trends. In New England,

FEAR IS RAMPANT IN MASSACHUSETTS' IMMIGRANT-HEAVY COMMUNITIES. FAMILIES HAVE RESPONDED TO RECENT ROUNDUPS OF IMMIGRANTS BY TAKING THEIR CHILDREN OUT OF SCHOOLS AND STAYING INSIDE THEIR HOMES.

ICE deported 3,836 people last year. Families and communities in Massachusetts are feeling the effects of roundups of immigrants, from the devastating raid in New Bedford in 2007 where 361 persons were arrested at once, to the smaller, but unrelenting arrests of immigrants in Boston, Lowell, Springfield and other immigrant-heavy communities. Fear is rampant. Small businesses catering to immigrant populations are shutting their doors; immigrant par-

ents are taking their children out of schools; families are staying inside their homes; and the state is now facing a gap in its census because immigrant families are too scared to answer questions about their households.

In Massachusetts, the federal government has contracted with seven county jails and one state facility to house immigrants detained in the region. These facilities, which already are overcrowded at up to two and a half times their capacity, receive funding from the federal government at a rate of between \$80 and \$90 a day plus guard hours, but little or no guidance or oversight about how to handle civil immigration detainees.

ICE's heavy-handed approach to federal immigration enforcement, together with its hands-off approach to supervising local facilities leads to dangerous consequences for the thousands of persons inside immigration detention.

Beginning in 2007, the ACLU of Massachusetts took on a state-wide project to document human rights issues for immigrants in detention. We spoke with 40 detained persons and dozens of advocates

and lawyers and secured the release of hundreds of pages of government documents. What we found raises serious concerns about human rights and due process violations for immigrants detained in Massachusetts

I. DUE PROCESS CONCERNS

ICE's new enforcement strategy involves an aggressive use of unchecked federal powers to move persons between jails and detention centers around the country and detain them for long periods of time.

A. ICE Abuses its Unchecked Power to Move Persons Around the Country

Because immigration detainees are federal detainees, ICE has almost unlimited power to detain them in any facility in the country and to move them from one facility to another without justification or advance notice. ICE takes full advantage of this power, transferring detainees on a daily basis all over the country. In 2007, ICE spent more than \$10 million to transfer nearly 19,400 detained persons. In New England, ICE arrests twice as many people as the region can hold; this means that half of those arrested are taken quickly to detention centers in places as far as Texas and Louisiana.

In Massachusetts, ICE appears to use its power to transfer persons in order to silence complaints about detention conditions or inhumane treatment. This report documents five instances in which persons were transferred to a different jail shortly after complaining about an incident. Detained immigrants expressed reluctance to speak out about problems because of a fear of being moved far away from their families, communities and lawyers. This fear came from the experience of seeing others moved after they had spoken out.

In addition, despite its multi-million dollar budget for daily transfers, ICE has no real-time tracking system to monitor the location of its detainees. In the New England region, relatives or lawyers of detained persons who have been moved call the ICE

New England headquarters for information on the location of their loved one or client and can wait for days for an answer because ICE computers do not have an up-to-date location.

B. Abuses Take Place During the Deportation Process

The persons who spoke with us about their experience reported that ICE agents used threats, coercion and physical force during the deportation process. Some reported that they were threatened with forced sedation if they did not cooperate; others reported that they were forcefully removed from their cells and put onto vans and planes. Some also reported being forced to sign or put thumb prints on papers that they could not read or understand.

Some detained immigrants reported that they were not told in advance of the date that they would be deported. This meant that they could not prepare luggage and personal items to take with them and could not prepare for family members or friends in the receiving country to meet them at the airport, instead traveling only with the items they had with them at the jail. This is a particularly difficult situation because ICE may drop off immigrants in a city that is nowhere near the city of the immigrant's final destination.

C. ICE Detains Immigrants for Excessive Periods of Time

Immigrants detained in Massachusetts spend many months and sometimes years in jail while they wait for their cases to be decided. At the time of our interviews, the 40 persons with whom we spoke had spent between one month and five years — on average over 11 months — in detention. Of those, 3 had spent over two years in detention; 10 had spent over one year; and 6 had been detained for approximately 6 months.

Long periods of detention occur for two principal reasons. First, even though the law allows the government a presumptive period of no longer than 6 months to keep a person in detention after final ad-



Image: Randolph Sill

Most immigrants in detention have never committed a crime. Yet, many spend months or years in crowded county jails fighting to stay in the United States or waiting to be deported.

judication of the immigration case, ICE does not have an adequate mechanism to track the length of individuals' detention. Detained persons themselves must remind ICE officials, and sometimes resort to filing habeas corpus petitions in federal court when their 6 months have elapsed.

Second, although regulations call for periodic reviews of custody, these reviews are lacking in due process: the burden is on the detained individual to prove that he or she has a reason to be released; the decision-maker is the agency itself; and the detained person often does not receive an opportunity to present evidence because he or she is not given advance notice that a custody review will take place.

Lengthy detentions, together with harsh conditions inside local jails, deter persons from continuing to

fight their cases in court, even though they may have legal relief from deportation. Immigrants face the impossible choice of going through the legal process and spending many months in jail, or giving up and allowing the government to deport them without a final adjudication.

II. INADEQUATE CONDITIONS OF CONFINEMENT

ICE combines a heavy-handed approach to enforcement with a hands-off approach to the daily responsibilities of detention. It outsources detention to local facilities but provides little or no supervision of conditions and does not have an adequate system for learning about problems.

A. Massachusetts County Jails are Overcrowded

The 800 detained immigrants in Massachusetts contribute to the crisis of overcrowding facing every county jail in the state. In some facilities, detained immigrants sleep side by side with inmates in cells meant to hold one person that currently hold two or three. In other facilities, they sleep in crowded makeshift dormitories or on mattresses in “boats” on the floor. This leads to crowded conditions in the cells, dormitories, cafeterias and recreation areas. It also strains the facilities’ medical resources, resulting in long wait times to see a doctor — one of the most commonly heard complaints.

B. Detained Persons Face Harsh Treatment by Corrections Officers

Detained immigrants reported that some corrections officers are rude, and single them out from the US citizens in their custody for harsh treatment. This involved daily yelling, denying access to bathrooms and services, using profanity and racially and ethnically charged language against persons in custody, and sometimes being physically abusive. This, coupled with the ICE’s unchecked power to transfer persons, means that guard abuse can be covered up. This report documents one case in which

a detained immigrant was moved to Vermont after a guard picked him up by the neck and slammed him against a wall. ICE agents told him that he had been sent to Vermont “to cool things off.”

C. Detained Persons Report a Variety of Dangerous and Difficult Daily Conditions

The persons with whom we spoke reported a litany of difficulties inside jails that made daily life harsh and punitive. These included being held in the same unit or the same cell with violent criminals; having to submit to strip searches and cell searches; unhealthy food and dirty water; a lack of access to bathrooms; difficulties in receiving visits from lawyers and family members; a phone system that makes it excessively expensive to call loved ones; no access to a legal library; no access to an outside recreation area; no access to educational services and no access to newspapers or reading materials. These harsh realities of jail life, together with the fact that detained immigrants do not have a set date of release and do not know how long they will be in jail lead to an environment in which depression, stress and anxiety are very high.

III. INADEQUATE MEDICAL CARE

Because the Department of Homeland Security’s sub-agency, the Division of Immigrant Health Services (DIHS), controls any non-routine care given to detained immigrants, the agency’s power over sick detainees is tremendous. This report documents two cases in which DIHS delayed or denied care based on the belief that the ill persons would soon be deported or released, and a third case in which DIHS refused to fix a broken finger because the fracture had occurred days prior to the person’s arrest, forcing him to stay in detention for months with a finger that became increasingly deformed and painful.

As a law enforcement agency, the Department of Homeland Security has a clear conflict of interest when it acts as a healthcare provider. In determin-

ing whether to deny or approve care, DIHS's standard is not to provide necessary medical attention, but to keep the immigrant healthy enough to be deported.

Government documents obtained by the ACLU of Massachusetts show that DIHS considers its relationship to the detained person one of doctor-patient. However, as we found, DIHS staff never have any contact with the patient. If DIHS denies the care that local facility doctors have requested, there is no appeal process. In fact, there is no standardized process even for notification of the decision to the detained person.

In addition, despite ICE's discretion to release immigrants with electronic monitoring or on personal recognizance, there is no standardized process by which a detained person can ask for release based on a medical condition.

ICE also fails to ensure continuity of care when it moves persons from one facility to another. Despite existing forms and regulations mandating that a detained person's medical record and a supply of prescription medication travel with him, the report documents cases in which this repeatedly did not happen. As a result, detained persons can go for days without their necessary medication when they are transferred.

IV. FAILURE TO SUPERVISE LOCAL FACILITIES

ICE does not train or prepare local facilities to deal with the population of civil immigration detainees and does not ensure that facilities meet ICE's own standards. Government documents obtained by the ACLU of Massachusetts show that ICE's yearly reviews of detention facilities often are empty gestures and do not address existing problems. The reviews ask about policy, not practice, and do not involve any input from detained persons. They are carried out with ample advance notice and give the facilities an opportunity to fix problems during the inspection period. In addition, there are no consis-

tent standards for judging a facility's compliance with ICE standards and no consequences for facilities that fail to meet any of the standards.

THE PERSONS WITH WHOM WE SPOKE REPORTED A LITANY OF DIFFICULTIES INSIDE JAILS THAT MADE DAILY LIFE HARSH AND PUNITIVE.

ICE's failure to supervise local jails means that the federal agency has no adequate mechanism for learning about problems with conditions. ICE does not maintain a daily presence in the jails, and ICE agents who visit on a weekly or monthly basis deal principally with immigration issues, not conditions issues.

CONCLUSION

The law allows the federal government to detain immigrants in deportation proceedings for one purpose only: to carry out their deportation. Immigration detention, as a form of civil detention, is not meant to be punitive or retaliatory. Yet ICE uses detention as an important tool in its law enforcement belt, subjecting immigrants to lengthy periods of detention, moving them around the country when they speak out about abuses, denying needed medical care, and allowing inadequate conditions and harsh treatment in local facilities to go unchecked. In doing so, ICE makes it excessively difficult for immigrants to seek legal avenues to stay in the country, and many choose deportation even when legal avenues to stay in the country are available.

Such an unchecked system of vast federal powers opens the door to abuse and violations of basic human rights. In its zeal to deport all deportable persons, ICE has trampled on fundamental rights guaranteed to all — citizens and non-citizens alike.

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