

DETENTION AND DEPORTATION IN THE **AGE OF ICE**

Immigrants and
Human Rights
in Massachusetts



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Detention and Deportation in the Age of ICE: Immigrants and Human Rights in Massachusetts

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INTRODUCTION

DESPITE LONG
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BECOME NATURALIZED
UNITED STATES
CITIZENS.



As an important port of entry into the United States, Massachusetts historically has been a home for immigrants from all corners of the world. Today, slightly over 14% of Massachusetts' population is foreign-born, surpassing the national average of 11.7%.¹ In a state facing a dwindling workforce due to retiring baby boomers and an exodus of residents, immigrants make up 17% of workers, and the U.S. Census Bureau projects that Massachusetts will remain dependent on immigrants for its population growth over this decade.²

Immigrants in Massachusetts reside throughout the Commonwealth's many diverse communities. In Boston, early immigrants from Ireland and Italy gave the city its distinctive traditions that endure today, while newer immigrants

1. U.S. CENSUS BUREAU, 2006 AMERICAN COMMUNITY SURVEY, http://factfinder.census.gov/servlet/ACSSAFFacts?_event=Search&_state=04000US25&_lang=en&_sse=on.

2. Massachusetts Immigrant and Refugee Advocacy Coalition, *The Truth About Immigrants in Massachusetts*, July 27, 2006, <http://www.miracoalition.org>.

SINCE THE OVERHAUL OF THE FEDERAL IMMIGRATION AGENCY AND THE CREATION OF THE DEPARTMENT OF HOMELAND SECURITY IN 2003, THE FEDERAL GOVERNMENT HAS DETAINED 1.5 MILLION IMMIGRANTS AND DEPORTED OVER ONE MILLION.

from China and Russia have added to the city's international appeal. In the suburbs north of Boston, Brazilians and Central Americans make up a large portion of these culturally rich communities. In the fishing villages of Southern Massachusetts, a vibrant Portuguese community has taken root. In

Western Massachusetts, Africans and Latin Americans populate many of the urban and rural cities and towns.

In addition to adding to the state's diversity, immigrants in Massachusetts tend to integrate themselves into the American tapestry. For example, despite long waitlists, 46% of immigrants in Massachusetts have become naturalized United States citizens. And thanks to community-based and government-sponsored programs, most have learned to speak English — of those who speak another

language, 77% speak English well or very well.³

Yet, immigrants in Massachusetts have become subject to the national trends of increased detention and deportation. As a result of changes in federal laws and the government's stepped-up enforcement schedule, immigrants in Massachusetts and around the country are being jailed and deported at record levels. Since the overhaul of the federal immigration agency and the creation of the Department of Homeland Security in 2003, the federal government has detained 1.5 million immigrants and deported over one million.⁴

The government's new policy calls for deporting as many persons as its resources allow, with a goal of deporting 100% of all deportable persons by the

year 2012. This policy has manifested itself in mass arrests at workplaces and homes and increased cooperation with local law enforcement to track down, arrest and detain deportable persons.

Massachusetts has seen its share of worksite raids. Most notably, Immigration and Customs Enforcement (ICE) arrested 361 workers at a factory in New Bedford in March 2007, and moved most to facilities in Texas within 48 hours. The operation gained nationwide notoriety for the devastating effect it had on the families and small children who were left behind, leading a federal judge to call it "ham-handed."⁵ Smaller enforcement efforts have continued in Boston, Lowell, and other immigrant-heavy communities.

The new policy also calls for an increased use of detention to make sure that those who are arrested eventually are deported — even if this means keeping immigrants in jail for months or years. As a result, new private prisons and local county jails are signing contracts with the federal government to house the over 30,000 persons held in immigration detention every day.

Most immigrants who are arrested, detained and ordered deported have never committed a crime. In fact, non-citizens are less likely than U.S. nationals to commit crimes. For example, in 2000, among men age 18 to 39 (who comprise the vast majority of the prison population), the rate of incarceration for foreign-born men was 0.7 percent. The rate of incarceration of native-born men in that age group was 3.5 percent, or five times greater.⁶

Although almost all violations of immigration law are not crimes, and cannot be punished with jail sentences, ICE keeps immigrants in deportation

3. *Id.*

4. Carmen Gentile, *Group Calls for Inquiry Into Death of Detainee*, N.Y. TIMES, July 15, 2008; U.S. Dep't of Homeland Security, *Yearbook of Immigration Statistics, 2003–2005*, <http://www.dhs.gov/ximgtn/statistics/publications/YrBk03En.shtm>.

5. See *Aguilar v. U.S. Immigr. & Customs Enf. Div. of Dep't of Homeland Sec.*, 490 F. Supp. 2d 42, 48 (D. Mass. 2007).

6. Ruben G. Rumbaut, Ph.D. and Walter A. Ewing, *The Myth of Immigrant Criminality and the Paradox of Assimilation 6* (American Immigration Law Foundation 2007).

proceedings and persons seeking asylum in conditions almost identical to those serving criminal sentences. In Massachusetts, detained immigrants are placed in the state's already crowded county jails, many times side by side with criminal inmates.

However, because the immigration system is a civil system — not a criminal one — the rules and safeguards of criminal incarceration do not apply. Persons in ICE detention are called “detainees” instead of “inmates;” they are not entitled to a free lawyer; they are not entitled to Miranda warnings; there is no jury trial; there is no set date for release; and in many cases detained immigrants are not entitled to bail. To those inside immigration detention, daily life is no different from — and as we found out, sometimes worse than — serving a jail sentence.

The system of immigration detention remains a closed one, unknown to the general public, even as increasing billions of public dollars are poured into it every year. Independent organizations and media have little or no access to the facilities housing immigrants, and detention statistics are not easily available. This leads to a lack of public accountability for government policies that affect millions of persons.

METHODOLOGY

This report stems from a 22-month long project to document the conditions of confinement for persons held under the custody of Immigration and Customs Enforcement (ICE) in Massachusetts facilities. It was conceived in response to a national and regional outcry regarding sub-standard conditions for persons in custody of ICE. Although for years, advocates in Massachusetts have worked to address the problems that stem from immigration detention, this is the first time a comprehensive documentation of the issue has been done in our state.

The ACLU of Massachusetts (ACLUM) conducted one-on-one interviews with 40 persons who were detained in Massachusetts. With approximately 15

of those detainees, we conducted multiple interviews over several months, researching fully their situation, obtaining documentation, speaking with their attorneys and with authorities, and tracking

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the progress of their cases as they fought to obtain the services they required. We corresponded with ICE officials in a few of the cases that presented urgent situations. We also received correspondence from over 30 persons in detention, documenting the conditions under which they were living. In order to protect the identities of the persons who agreed to speak with us, we have changed the names of those who have been featured.

In addition to the interviews with persons in detention, ACLUM conducted interviews with dozens of advocates, attorneys, and family members of detained individuals. We met with community groups in several settings to discuss, among other things, detention issues. Through several coalitions of advocates, we attended meetings with ICE officials and were able to ask questions about detention in Massachusetts.

ACLUM requested and received public records relating to immigration detention in Massachusetts from ICE through the Freedom of Information Act and from Essex, Suffolk, Plymouth and Bristol counties through Massachusetts's Public Records



laws. We also requested and received information from the Massachusetts Department of Public Health.

Five months before the printing of this report, ACLUM shared its initial findings with ICE officials and invited them to comment. As of the printing of this report, ICE had not responded to the request.

ABOUT THE ACLU

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization dedicated to protecting human rights and civil liberties in the United States. The ACLU is the largest civil liberties organization in the country, with offices in 50 states and over 500,000 members. The ACLU was founded in 1920, largely in response to the curtailment of liberties that accompanied America's entry into World War I, including the persecution of political dissidents and the denial of due process rights for non-citizens. In the intervening decades, the ACLU has advocated to hold the U.S. government accountable to the rights protected under the U.S. Constitution and other civil and human rights laws.

Founded in 1919, the ACLU of Massachusetts is the Commonwealth's affiliate of the national ACLU organization. As part of its resolve to preserve and protect fundamental rights, ACLUM works toward the protection of human rights and civil rights for immigrants in the Commonwealth.

In 2004, the ACLU created a Human Rights Program specifically dedicated to holding the U.S. government accountable to universal human rights principles in addition to rights guaranteed by the U.S. Constitution. The ACLU Human Rights Program incorporates international human rights strategies into ACLU advocacy on issues relating to racial justice, national security, immigrants' rights, and women's rights.

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-



[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.

RECOMMENDATIONS

TO THE MASSACHUSETTS STATE GOVERNMENT

- Withdraw from existing 287(g) Memoranda of Understanding with the federal government regarding immigration law enforcement and enter into no new agreements. To the extent any remain, require oversight and monitoring, including data collection regarding race/ethnicity of affected persons and bases for arrest and detention.
- Advocate with federal government to end raids in residences and places of employment in Massachusetts. Insist that to the extent conducted, raids be carried out in strict compliance with constitutional, statutory, and regulatory requirements.
- Work with federal agencies to provide local support to immigrants arrested in workplace or residential raids. This includes advocating for access by the Department of Social Services and the Governor's office.

TO COUNTY SHERIFFS AND JAIL ADMINISTRATORS IN MASSACHUSETTS

- Ensure that ICE detainees in county jail are treated humanely and with full respect for their human dignity and with regard to their status as civil detainees. Provide training to guards and corrections officers about the special needs of the detained immigrant population. Special attention should be paid to asylum-seekers.
- Provide a transparent and accountable process for grievances. This should include grievance forms in duplicate or triplicate, where detainees can keep a copy of filed grievances, and a system through which detainees can keep track of the response.
- Provide a transparent and accountable system for requesting medical care. Monitor the length of time detainees wait to be seen by a medical staff member and make appropriate adjustments in terms of staff to meet the needs.
- Ensure that immigration detainees are housed in separate units from criminal detainees.
- Ensure access to recreation, especially outdoor recreation.

- Allow immigration detainees to receive visitors without adhering to jail rules that require a limited list of visitors and a waiting period to change names on that list. Allow ICE detainees to receive in-person contact visits whenever possible.
- Work to reduce the numbers of persons in jails over their capacity by expanding release alternatives for criminal inmates.
- Ensure the availability of special diets for medical and religious needs that include adequate daily calories, vitamins and proteins.
- Ensure that telephone systems are functional, and that detained persons are able to make free calls to service providers and government agencies that receive such calls.

TO THE UNITED STATES CONGRESS

- Adopt legislation mandating humane treatment and respect for basic human rights for all persons in ICE custody and require ICE to promulgate binding regulations that strengthen existing detention standards. Mandate annual reporting from ICE on facilities' compliance with detention standards.
- Allocate resources away from bed space for detention and toward alternatives such as electronic monitoring and community-based release programs.
- Add due process guarantees to the custody review process, including mandating review during the removal period. Review should be carried out by a body independent of DHS/ICE, and detained immigrants should be given full due process rights to challenge their detention through the custody review process, including adequate notice of the review, access to attorneys, and the opportunity to present evidence.
- Mandate that DHS/ICE report any deaths of detainees in its custody, the cause of death and the results of any investigation.

TO THE DEPARTMENT OF HOMELAND SECURITY AND IMMIGRATION AND CUSTOMS ENFORCEMENT

- Strive to decrease the number of persons detained by increasing the use of release on parole, bond or other alternatives to detention, with special priority given to asylum-seekers and persons with serious medical or mental health care conditions.
- Issue a moratorium on contracting for, or construction of, additional immigration detention bed space pending a comprehensive review of the feasibility and effectiveness of alternatives to detention and less restrictive forms of detention.
- Promulgate enforceable and strengthened detention standards that are binding on all facilities that house immigration detainees.
- Issue a moratorium on immigration raids pending a thorough review of their fairness and efficacy.
- Clarify the mission of the Division of Immigration Health Services to provide quality health-care to all persons in DHS custody regardless of the status of their immigration case or expected date of release and modify all related policies to reflect that mission.
- Promote accountability and transparency in the Division of Immigration Health Services toward the view of providing the highest standard of care to persons in their custody by delegating decision-making authority to physicians who conduct evaluations on-site and establishing a national appeals board composed of independent physicians to review treatment authorization request denials. Include a process through which the detained person is informed of available services and how to request them; provided prompt responses to all requests for health care and medical records; provided prescribed medications and medically necessary treatment on schedule; and can have a voice in decisions regarding their care.

- Investigate all allegations of inadequate medical care at local facilities and create a process that addresses inadequacies.
- Ensure that detained persons are not transferred from one facility to another as a consequence of filing a grievance or airing a complaint. Ensure that ICE's standard for the transfer of medical records and prescription medication when a detained person is moved is followed in every instance.
- Maintain a regular presence of ICE personnel at each facility where immigrants are detained. In the alternative, set up a toll-free number where ICE detainees can call to speak to an ICE agent regarding their case.
- Expand free phone access to the DHS Office of Inspector General to all facilities where ICE houses detainees.
- Improve oversight of detention facilities. Ensure that each facility is in fact reviewed on an annual basis; that those reviews require interviews with detainees; and that the reviews are conducted by staff persons who are specialists in the Detention Standards. Conduct at least some of those reviews on an unannounced basis. Expand and impose penalties on facilities that fail to comply with the ICE Detention Standards.
- Promote and support reviews of facilities by independent agencies, including the American Bar Association and the United Nations High Commissioner for Refugees. Release all such reviews to the public. Analyze independent reviews to determine which areas and which facilities require focused improvement. Report the results of this analysis each year to Congress and the public.
- Ensure that detainees have access to educational and cultural programs at local jails.
- Create real-time tracking system for location of ICE detainees. Integrate local and national systems to include consistent up-to-the-minute information about location of detainees. Make this information available to family members and attorneys of detained persons.
- Ensure that detained persons are given advance notice of the scheduled date of deportation and an opportunity to allow family members to bring luggage and personal items to the facility from which the detained person will be deported.
- Create a system to track the length of individuals' detention, and a system to alert deportation officers when a custody review is due and when detention becomes inconsistent with the Supreme Court's decision in *Zadvydas v. Davis*.

BACKGROUND

ICE ARRESTS OVER 1.6 MILLION IMMIGRANTS EVERY YEAR AND HOLDS MORE THAN 30,000 PERSONS IN DETENTION EVERY DAY.



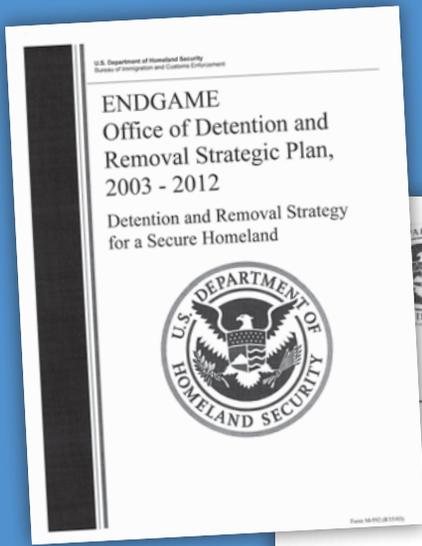
I. The U.S. Has Engaged in an Unprecedented Increase in Enforcement and Deportations Since 2003

In March 2003, the Immigration and Naturalization Service (INS), which was part of the U.S. Department of Justice, ceased to exist and was replaced by a new agency called U.S. Immigration and Customs Enforcement (ICE). ICE was established under the newly formed Department of Homeland Security (DHS), the second largest law

enforcement agency in the country. The restructuring was not purely an administrative shuffling of departments; it signaled a radical shift in the way the federal government now approached immigration — as a threat to the security of the country. As the largest investigative arm of DHS, ICE sharpened its focus away from services and toward stricter enforcement of immigration laws. Exceeded in investigative and enforcement power only by the Federal Bureau of Investigations, ICE arrests over 1.6 million immigrants every year and has 30,000 persons in detention every day.⁷

7. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *FACTSHEET: DETENTION AND REMOVAL OPERATIONS: ALTERNATIVES TO DETENTION* (March 2007); Anna Gorman, *Immigration Detainees are at Record Revels*, L.A. TIMES,

**DOCUMENT: OPERATION ENDGAME, A DRACONIAN
PLAN TO DEPORT ALL DEPORTABLE IMMIGRANTS**



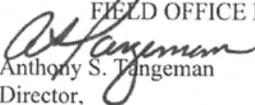
U.S. Department of Homeland Security
Immigration and Customs Enforcement

HQOPS 50/10

425 I Street NW
Washington, DC 20536

June 27, 2003

MEMORANDUM FOR DEPUTY ASSISTANT DIRECTOR, FIELD OPERATIONS
DIVISION
FIELD OFFICE DIRECTORS

FROM: 
Anthony S. Tangeman
Director,
Office of Detention and Removal

SUBJECT: Office of Detention and Removal (DRO) Strategic Plan 2003-2012: Endgame

I am proud to release, Endgame, DRO's 2003-2012 Strategic Plan. In September 2001, I chartered the Strategic Plan Working Group, made up of your peers in the field, at headquarters and in other immigration enforcement programs to develop a mission statement, DRO goals and performance measures to guide our operations for the next ten years. I am extremely pleased with their efforts and the result is Endgame.

As the title implies, DRO provides the endgame to immigration enforcement and that is the removal of all removable aliens. This is also the essence of our mission statement and the "golden measure" of our success. We must endeavor to maintain the integrity of the immigration process and protect our homeland by ensuring that every alien who is ordered removed, and can be, departs the United States as quickly as possible and as effectively as practicable. We must strive for 100% removal rate.

Endgame will serve as the basis for operational and budgetary plans and their execution for the next 10 years and has already proven beneficial in many instances. This plan has proven instrumental in developing our budgets, and business plans. DRO will be one of the first programs within the Department of Homeland Security to be subjected to the Office and Management and Budget's Program Assessment Rating Tool and with this strategic plan in place we expect to earn high ratings.

Endgame is a tool to be used and referenced by the entire DRO staff. I ask that each of you take ownership of this plan and the strategic goals we wish to achieve. Through the sharing of best practices, execution of operations professionally, efficiently and effectively, together we can accomplish our mission, reach our vision and maintain our significant presence as the immigration enforcement integrator.

My points of contact for Endgame are Adam X. Piceno and Jennifer Kliska,
(202) 305-9312 and x9319.

The complete text of
Operation Endgame
is available at [http://
www.aclum.org/ice](http://www.aclum.org/ice).

Even before 2003, changes to the Immigration and Naturalization Act (INA) had led to harsher consequences for unauthorized immigrants. In 1996 the Antiterrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) dramatically increased the number of non-citizens who could be detained and deported by expanding a list of crimes for which lawful permanent residents (green card holders) could be deported. Legal residents now could be deported based on crimes committed in the past — even crimes committed long before the 1996 changes. This meant that non-citizens who had pled guilty to certain crimes understanding that their immigration status would be unaffected now faced a startling new consequence.

In addition, these changes created a much harsher environment for non-citizens — they mandated detention for all persons in deportation proceedings because of a criminal conviction; eliminated much of the discretion of immigration judges to waive deportation under compelling circumstances; mandated detention for asylum-seekers, and; under a process known as “expedited removal,” gave low-level immigration inspectors wide authority to return asylum-seekers encountered at airports.

While it is impossible to know the actual number of persons currently living in the United States who are subject to deportation, the Department of Homeland Security estimated in 2000 that there were 8.5 million “unauthorized immigrants.” That estimate went up to 11.6 in 2006.⁸ In addition, ICE recently estimated that there are 304,000 legal immigrants currently serving criminal sentences who can be deported because of their crimes.⁹

Although the 1996 amendments to the law paved a

path to increased deportations, in practice, INS was able to deport only a small fraction of deportable persons because of a lack of resources and political will to take on what seemed like an impossible task — finding and deporting millions of people. The new agency, ICE, addressed this problem head-on and devised a bold and unrelenting new strategy.

OPERATION ENDGAME: A DRACONIAN PLAN TO DEPORT ALL DEPORTABLE IMMIGRANTS

A few months after ICE’s creation, its Office of Detention and Removal (DRO) issued a comprehensive ten year strategic plan entitled “Opera-

“MOVING TOWARD A 100% RATE OF REMOVAL FOR ALL REMOVABLE ALIENS IS CRITICAL TO ALLOW THE ICE TO PROVIDE THE LEVEL OF IMMIGRATION ENFORCEMENT NECESSARY TO KEEP AMERICA SECURE.”

tion Endgame,” which announced a new goal of deporting 100% of persons subject to deportation by the year 2012.¹⁰ Framing the issue as one of national security, the report explained DRO’s belief that “[m]oving toward a 100% rate of removal for all removable aliens is critical to allow the ICE to provide the level of immigration enforcement necessary to keep America secure.”¹¹

The plan spelled out a series of strategies to increase enforcement and deportations, and was intended to serve as the basis for operational and budgetary plans for the next 10 years. The plan included:

- Significant increases in detention and removal operations and resources
- Annual increases in deportations toward a goal of “a 100% rate of removal for all removable aliens”

Nov. 5, 2007; See also U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *FACTSHEET: DETAINEE HEALTHCARE*, <http://www.ice.gov/pi/news/factsheets/detaineehealthcare.htm>.

8. U.S. DEP’T OF HOMELAND SECURITY, *ESTIMATES OF UNAUTHORIZED IMMIGRANT POPULATION RESIDING IN THE UNITED STATES (Jan. 2006)*, http://www.dhs.gov/xlibrary/assets/statistics/publications/ill_pe_2006.pdf.

9. Julia Preston, *304,000 Inmates Eligible for Deportation*, *Official Says*, N.Y. TIMES, March 28, 2008

10. U.S. DEP’T OF HOMELAND SECURITY, IMMIGRATION AND CUSTOMS ENFORCEMENT, *ENDGAME: OFFICE OF DETENTION AND REMOVAL STRATEGIC PLAN*, 2003–2012, FORM M-592 (Aug. 15, 2003).

11. *Id.*

- New information technology resources
- Cooperative relationships with the private sector and foreign governments
- Significant changes in the organizational structure, chains of command, and hierarchy
- New tools to meet an increased demand for processing and removing individuals

BUILDING THE ARCHITECTURE FOR INCREASED DETENTION AND REMOVAL

Since its creation, ICE's budget has continued to grow to meet pace with its objectives. From a budget of less than \$3.6 billion dollars in 2005, ICE's most recent request for Fiscal Year 2009 is of \$5.67 billion.¹² Since the creation of ICE, Congress has appropriated almost \$208 billion towards ICE's efforts to deport immigrants.

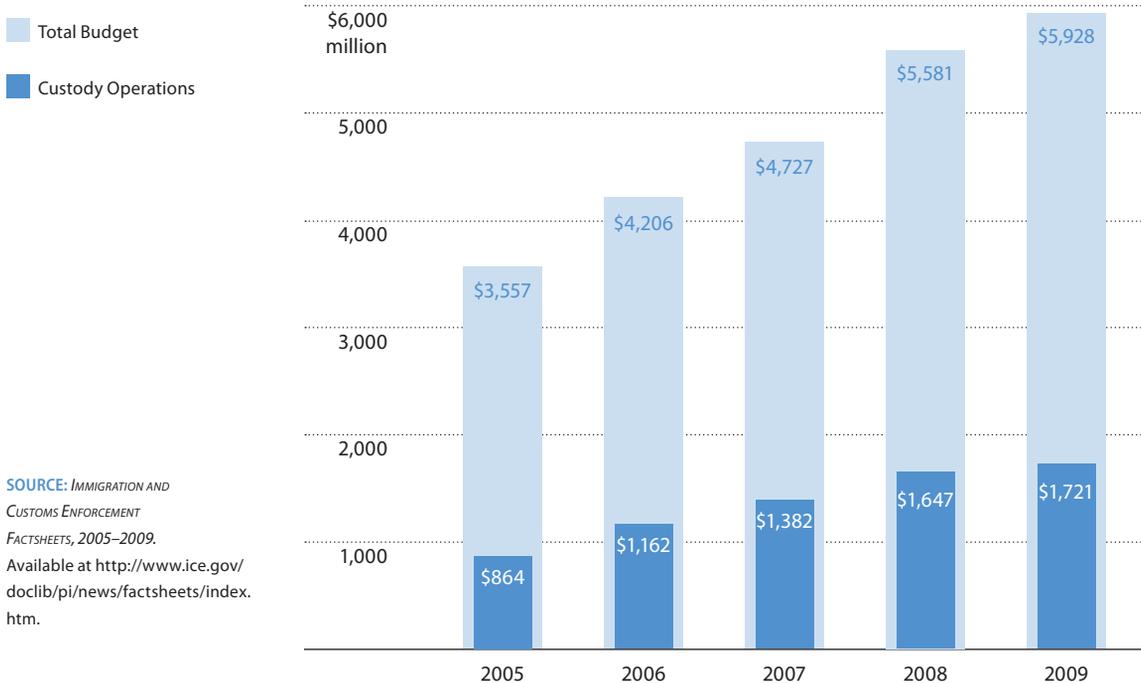
New resources and an aggressive deportation plan have led to a remarkable increase in the number of deportations. In fiscal year 2008, ICE deported a record 349,041 persons, up from 186,151 in 2003.¹³

EACH YEAR SINCE ITS FOUNDING, ICE HAS REQUESTED INCREASES IN FUNDING FOR DETENTION SPACES. FROM 2007 TO 2009 ICE REQUESTED A TOTAL INCREASE OF 11,850 BEDS. ITS 2009 BUDGET INCLUDES FUNDING FOR A RECORD 33,400 DETENTION BEDS.

12. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *FACT SHEET: FISCAL YEAR 2009* (Feb. 1, 2008), <http://www.ice.gov/doclib/pi/news/factsheets/2009budgetfactsheet.pdf>.

13. Maria Sacchetti, *Deportations in N.E. Increased From Last Year*, BOSTON GLOBE, Nov. 7, 2008, at B4.

ICE BUDGET • 2005–2009 • in millions of dollars



SOURCE: IMMIGRATION AND CUSTOMS ENFORCEMENT FACTSHEETS, 2005–2009. Available at <http://www.ice.gov/doclib/pi/news/factsheets/index.htm>.

II. ICE Has Dramatically Increased Detention of Immigrants Pending Deportation

According to ICE, one of the greatest obstacles to reaching the goal of 100% removal of all removable persons was the lack of resources required to detain immigrants prior to deportation. This lack of resources had led to a practice that ICE called “Catch and Release” whereby persons apprehended by authorities would be given notice of their removability and released on bond with a future date for processing or a court hearing.

In a reversal of this policy, ICE has dramatically increased the number of persons it detains prior to

deportation. In 2006, ICE detained over 40% more people than it did in 2005 and more than three times as many as it had detained a decade before. In June 2007, the national daily ICE detainee population hit an all-time record, surpassing 30,000, up from an average of about 19,700 the previous year.¹⁴ Currently, ICE has funding for 33,400 beds.¹⁵

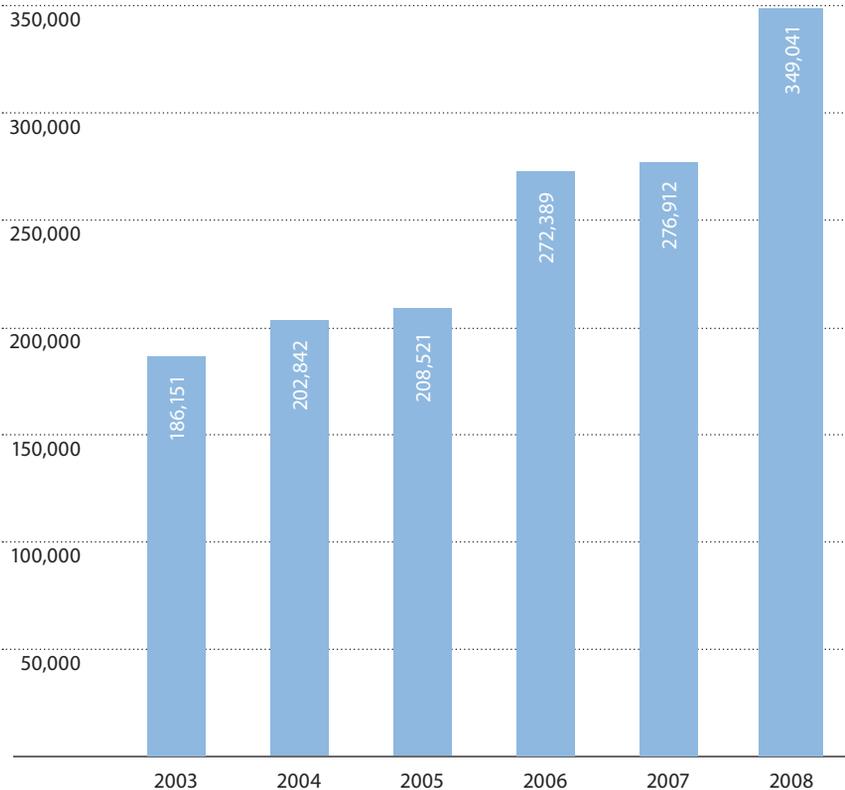
ICE’s budget requests to Congress show an ever-increasing use of detention. Each year since its founding, ICE has requested increases in funding for detention spaces. ICE’s Fiscal Year 2007 (“FY07”) budget included an increase of 6,700 beds¹⁶ at a cost

14. *Id.*; Anna Gorman, *Immigration Detainees are at Record Levels*, L.A. TIMES, Nov. 5, 2007.

15. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *FACT SHEET: FISCAL YEAR 2009* (Oct. 23, 2008), <http://www.ice.gov/doclib/pi/news/factsheets/2009budgetfactsheet.doc>.

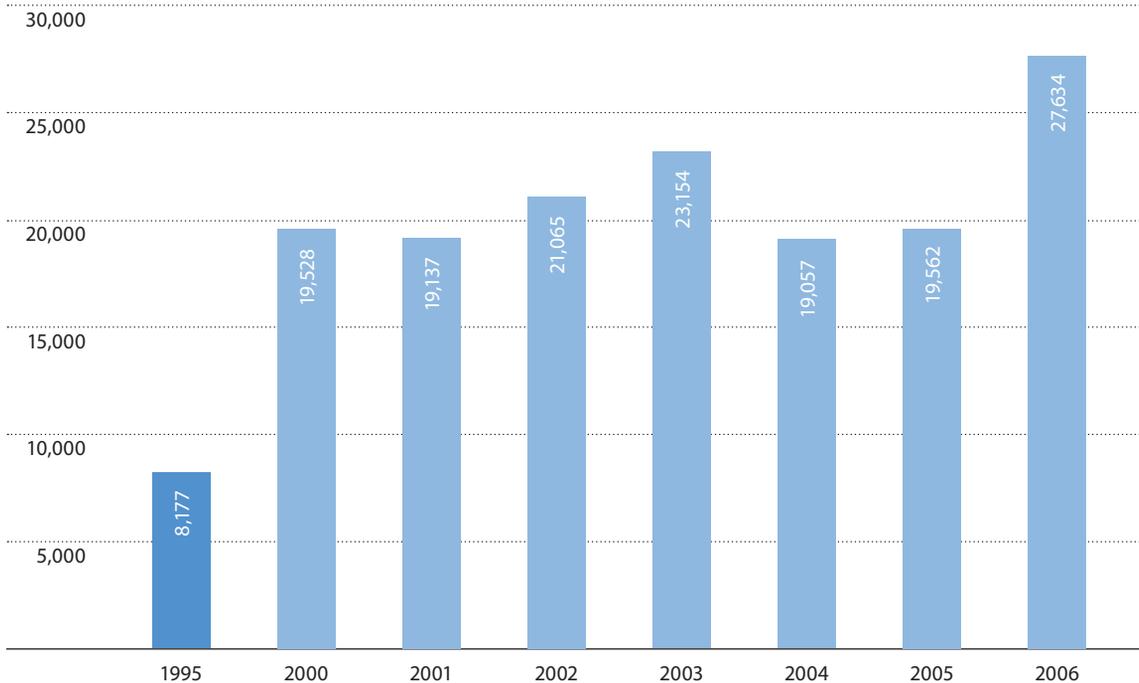
16. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *FACT SHEET: FISCAL YEAR 2007* (Feb. 5, 2007),

DEPORTATIONS • fiscal years 2003–2008



SOURCES: U.S. DEP’T OF HOMELAND SECURITY, *YEARBOOK OF IMMIGRATION STATISTICS, 2003–2005*, <http://www.dhs.gov/ximgtn/statistics/publications/YrBk03En.shtm>, <http://www.dhs.gov/xlibrary/assets/statistics/publications/AnnualReportEnforcement2004.pdf>, http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2005/Enforcement_AR_05.pdf, http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement_ar_06.pdf; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *2007 ANNUAL REPORT*, http://www.ice.gov/doclib/about/ice07ar_final.pdf; Maria Sacchetti, *Deportations in N.E. Increased From Last Year*, BOSTON GLOBE, Nov. 7, 2008, at B4.

DETAINEES HELD BY ICE • 1995, 2000–2006



SOURCE: Pastore, Ann L. and Kathleen Maguire, eds. *SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS*, TABLE 6.61.2006. Available at <http://www.albany.edu/sourcebook/pdf/t6612006.pdf>.

of \$945 million, up from \$641 million in FY05.¹⁷ Its FY08 budget included 4,150 additional beds, for a total of 32,000 detention beds, at a cost of \$250.4 million.¹⁸ For its FY09 budget, ICE has received a \$71.7 million increase for 1,400 additional beds and increased removal costs.¹⁹

The increased use of immigration detention mirrors the United States' exploding prison population. Although the U.S. has less than 5 percent of the world's population, it has a quarter of the world's prisoners — 2.3 million persons behind bars, far

outnumbering any other country.²⁰ This number does not include the thousands of persons in immigration detention held in jails around the country, but increased ICE detention is consistent with the American phenomenon of reliance on incarceration to enforce its laws.

According to a Washington Post article, “With roughly 1.6 million illegal immigrants in some stage of immigration proceedings, ICE holds more inmates a night than Clarion hotels have guests, operates nearly as many vehicles as Greyhound has buses and flies more people each day than do many small U.S. airlines.”²¹

<http://www.ice.gov/doclib/pi/news/factsheets/2007budgetfactsheet.pdf>.

17. Gorman, *supra*, note 14.

18. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *FACT SHEET: FISCAL YEAR 2008* (Dec. 28, 2008), <http://www.ice.gov/doclib/pi/news/factsheets/2008budgetfactsheet.pdf>.

19. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *FACT SHEET: FISCAL YEAR 2009* (Oct. 23, 2008), <http://www.ice.gov/doclib/pi/news/factsheets/2009budgetfactsheet.doc>.

20. Adam Liptak, *Inmate Count in U.S. Dwarfs Other Nations*, N.Y. TIMES, April 23, 2008.

21. Spencer S. Hsu and Sylvia Moreno, *Border Policy's Success Strains Resources*, WASH. POST, Feb. 2, 2007, at A1.

III. ICE Outsources Detention to Hundreds of Local Jails Around the Country

Every day, ICE detains approximately 30,000 persons in a vast network of jails and detention centers all over the country. Currently, ICE uses: 8 facilities run by ICE itself; 7 private facilities run by the Corrections Corporation of America, the GEO Group and others;²² and approximately 300 jails and prisons run by local governments.²³ The majority of immigrants are detained in local jails, and this population has seen the largest growth in recent years. From 1995 to 2006, the number of ICE detainees held in local jails increased more than 500 percent.²⁴ In 2006, local jails around the country

held 45 percent ICE’s detainees.²⁵ Today, they hold approximately 63 percent.

In New England, ICE has space to house approximately 1,200 detainees a day. Approximately 800 of those detainees are in facilities spread out across Massachusetts. Presently, most ICE detainees in our state are held at 6 county jails — Bristol County Correctional Facility (“Bristol”), Franklin County Correctional Facility (“Franklin”) Middleton House of Corrections in Essex County (“Essex”); Norfolk County Correctional Facility (“Norfolk”); Plymouth County Correctional Facility (“Plymouth”), Suffolk House of Corrections (“Suffolk”) — one state facility, Old Colony Correctional Center (“Old Colony”); and one federal facility, the Federal Medical Center at Devens, (“FMC Devens”). A small number of persons are also housed at Barnstable County Correctional Facility. ICE pays these facilities between \$80 and \$90 a day per detainee.²⁶

22. U.S. IMMIGRATIONS AND CUSTOMS ENFORCEMENT, *PROTECTING THE HOMELAND; SEMIANNUAL REPORT ON COMPLIANCE WITH ICE NATIONAL DETENTION STANDARDS (Jan.–June 2007)*, http://www.ice.gov/doclib/pi/news/newsreleases/articles/semi_annual_dmd.pdf; See also, Gorman, *supra*, note 14.

23. *Id.*

24. Amanda Petteruti and Sastassia Walsh, Justice Policy Institute, *Jailing Communities: The Impact of Jail Expansion*

While the ICE detainee population has increased nationwide, the total jail population has also exploded around the country. In Massachusetts, official reports show that prisons and jails in every county are beyond their capacity.²⁷ This is despite the fact that four new jails were built since 1990 — Bristol opened in 1990; Suffolk House of Corrections opened in 1991 and includes a four-floor unit that houses only ICE detainees; Essex opened its Middleton jail in 1991; Plymouth opened in 1994 and Franklin opened in August of 2005.²⁸ In order to accommodate the increased ICE population, in 2007 Bristol built a new building across from its

sion and Effective Public Safety Strategies, April 1, 2008, <http://www.justicepolicy.org>.

25. *Id.*

26. Documents obtained through Freedom of Information Act, available at <http://www.aclum.org/ice>.

27. Laura Crimaldi, *Slammers Slammed: Officials: Millions Needed to Fix Dangerously Crowded Lockups*, Boston HERALD, May 20, 2007.

28. FRANKLIN COUNTY SHERIFF’S OFFICE, *GROUND BREAKING FOR THE NEW Franklin* (Aug. 5, 2005), <http://www.fcso-ma.com/new.html#August%205,%202005>; Essex County Sheriff’s Department website, <http://www.mass.gov/?pageID=sesseterminal&L=2&L0=Home&L1=Facilities&sid=Sessex&b=terminalcontent&f=history&csid=Sessex>.

KNOWN APPROXIMATE BEDSPACE AVAILABLE FOR ICE DETAINEES

Massachusetts Facility	Detainees
Barnstable County	16
Bristol County Correctional	238–272
Essex County	34
Franklin County Correctional	69
Norfolk County Correctional	60
Plymouth County Correctional	232
Suffolk House of Corrections	275

SOURCES: ICE; Aaron Nicodemus, *New Dartmouth jail facility to house illegal immigrants*, SOUTH COAST TODAY, April 2, 2007; Documents obtained through FOIA.

main jail exclusively for ICE detainees. The unit is made of up of two wings with 32 bunk beds in each, for a total of 128 beds. Combined with the pre-existing capacity for ICE detainees in a converted gymnasium at the main facility, and capacity for 34 women in a wing of the women's prison, Bristol County can hold 238 ICE detainees at a time.²⁹

29. *Id.*

FINDINGS

A PERSON DETAINED IN MASSACHUSETTS CAN BE PLACED IN A FACILITY AS FAR AWAY AS NEW MEXICO AND TEXAS, AND ICE CAN TRANSFER THAT PERSON BACK AND FORTH WITHOUT PROVIDING ANY JUSTIFICATION OR NOTIFYING THE FAMILY.



I. Due Process Concerns

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

Because persons detained by ICE are in federal custody, they can be held in any of the over 300 facilities around the country where ICE has contracts to hold detainees. For example, with few exceptions, a person detained in Massachusetts can be placed in custody in a facility as far away as Texas or New Mexico. ICE can transfer that person back and forth as many times as ICE wishes to do so, without

having to provide any justification or to notify the detained person or the family. ICE is only obligated to inform the attorney of record, if there is one, that a transfer has taken place after the fact. In its statements to advocates, ICE tends to justify transfers by citing lack of bed space in one facility versus another, but in practice and by law, the agency is not required to give a reason for a transfer.

ICE takes full advantage of this power, transferring detainees from one facility to another on a daily basis all over the country. In 2006, ICE created a center to coordinate the movement of detainees, transferring large numbers of detainees that year.³⁰

30. Gorman, *supra*, note 14.

In 2007, ICE spent more than \$10 million to transfer nearly 19,400 detainees.³¹ As we found out, this means that when detained immigrants begin to complain about conditions at one facility, they can easily be moved to another.

“Everybody knows that if you are too sick and cost them too much money, they transfer you to a jail far away or deport you quicker.”

—Person detained at Suffolk

The New England regional office of ICE, which has jurisdiction over Massachusetts, Rhode Island, Connecticut, Vermont, Maine and New Hampshire, arrests approximately twice as many people as the region can house. This means that half of those arrested in New England are quickly transferred outside of the 6-state region, many to the large detention centers in Texas.

“I know I’ll probably be moved but I am not the kind of person to keep quiet.”

—Person detained at Suffolk after filing a grievance

Detained persons can be moved at any time. In Massachusetts, we have found that typically, persons who are arrested in the state are first brought to Suffolk in Boston to be processed. Then they are either placed in a facility in Massachusetts or are sent out of state. They usually remain in the facility in which they are placed until they are deported, but we have found that, often, when a detainee has a problem at a facility or becomes vocal about a complaint, he or she is transferred.

1. Transfers Silence Human Rights Complaints

Many detained persons we interviewed told us that it is common knowledge that “troublemakers get transferred” — that is, when a detainee complains about a situation, he or she is moved to another

facility. This puts persons in ICE custody in a precarious position. If they have complaints about conditions at the jail, they can file grievances, like inmates at the jail. However, unlike inmates, they can be picked up and moved across the country. This is a significant disincentive to reporting problems at the jail.

- A group of detained immigrants at Suffolk wrote to the *Boston Globe* alleging that they had been forced to submit to a strip search in front of other detainees. After the *Globe* reported the story, two of the detainees whom the jail considered to have been part of the complaint were transferred to Franklin after having spent months at Suffolk without incident. Cellmates of one of the transferred persons confirmed that his bed remained empty for weeks after his departure, contradicting any claim that the transfer was done because of lack of bed space. A third person involved in the complaint was moved to a different unit of the same jail.
- A detained person who was picked up by his neck and slammed against the wall by a guard at Suffolk was transferred to a jail in Vermont, where an ICE agent told him that he had been sent there “to cool things off.” He was then brought back to a different jail in Massachusetts. He never filed a complaint against the jail because he was afraid of retaliation.
- A person detained at Plymouth who had spent months asking to see a doctor was transferred to Bristol shortly after his embassy got involved in advocating for him to receive medical care.
- A person detained at Suffolk protested her detention because she believed her *habeas corpus* petition had been granted. She wrote a letter to the Sheriff and was soon moved by ICE to York, Pennsylvania. An ICE agent told her that she was being moved so she would stop speaking out.

These transfers nullify any complaints or grievances a detained person may have filed or aired at the original facility, which need not respond to a

31. Gorman, *supra*, note 14.

grievance by a person who is no longer there. One person who had been injured as a result of ICE's forceful handling of him during a deportation attempt asked a nurse for a grievance form. He reports that she denied him the form and said, "But you're leaving anyway."

2. Clients Lose Contact with Their Lawyers When Moved Far Away

In some cases, when a person is in immigration proceedings in a Massachusetts court and venue has been established, he cannot be moved outside of the jurisdiction. These detainees can be held anywhere in Massachusetts, even if the jail is far away from his or her lawyer. For example, a Boston-based lawyer who has a client at Plymouth or Bristol must drive an hour each way to visit him; one who has a client at Franklin must drive two hours each way to visit.

Many persons in ICE custody, however, are sent too far for their lawyer to make personal visits. The government allows immigration court appearances by video, so persons with court dates can be held far from the jurisdictions where the court is hearing their case. However, video appearances are riddled with their own technical problems, and many lawyers and advocates feel that they are not an adequate substitute for in-person appearances, especially for clients who are not fluent in English or need interpreters.

Preparation for a legal case becomes particularly difficult when the lawyer and client are in faraway states. The lawyer cannot call a facility to speak to her client — she must wait for her client to call her, or communicate by letter. The expense of receiving collect calls from jail also adds to the costs of litigation that the detained person must pay, and letters are not guaranteed to arrive in a timely manner.

For this and other reasons, few private immigration lawyers in Massachusetts handle cases where the client is in detention. Attorneys have told us that there are just too many barriers making detention cases so difficult that they choose not to take them.

One of the key barriers is that their client can be moved far away in the middle of a case.

3. Detained Persons Disappear in Transit Because There Is No Real-Time System for Tracking Their Location

One of the most frustrating and inexplicable aspects of immigration detention is the fact that it is often difficult for family members and lawyers to learn the exact location of detained persons. As explained above, persons in ICE custody can be held in any of over 300 jails, prisons and detention centers anywhere in the country. Despite efforts from advocacy groups, there is no one comprehensive and up-to-date list of all of the facilities in the country where ICE detains persons, and ICE does not make one public.³²

ICE's system for tracking detainees does not have a real-time account of the location of detainees in transit. When a person is initially arrested or transferred out of a facility, it can take several days for ICE's system to catch up. After an initial arrest, the ICE Boston Field Office has no information for the first few days. Days after a transfer, the ICE Field Office's computers continue to show that the person is at the facility they have just left, even though that facility's records reflect that the person was picked up by ICE. The local facility does not have records of where ICE has taken the person, and the receiving facility may take several days to list that person in its records. This leads family members or lawyers to conduct a frantic search for the detained person — calling every facility they know of to inquire about their missing loved one or client.

ONE OF THE MOST FRUSTRATING ASPECTS OF IMMIGRATION DETENTION IS THE FACT THAT IT IS OFTEN DIFFICULT FOR FAMILY MEMBERS AND LAWYERS TO LEARN THE EXACT LOCATION OF DETAINED PERSONS.

32. The Detention Watch Network, a non-profit organization advocating in the area of immigration detention keeps a national map of detention facilities at <http://www.detentionwatchnetwork.org/dwnmap>. However, the map is not complete as it is based on knowledge gathered only by advocates in the field.

A FATHER LEARNED OF HIS DETAINED SON'S TRANSFER WHEN HE TRIED TO VISIT HIM AT SUFFOLK. ALTHOUGH ICE HAD REMOVED THE SON FROM THE JAIL ON A FRIDAY, IT WASN'T UNTIL THE FOLLOWING TUESDAY THAT ICE WAS ABLE TO LOCATE HIM AND TELL THE FATHER WHERE HE WAS.

Adding to the confusion is the fact that the ICE Boston Field Office is open only Monday through Friday during business hours. In one case, ACLUM learned that a detained person who had been interviewed for this report was taken back into custody after having been released. Our office called the local ICE district office on a Friday afternoon and was told that they would not be able to tell until Monday where the person was located. In another case, the father of a detained person learned of his son's transfer when he tried to visit him at Suffolk. Although ICE had removed the son from the Boston jail on a Friday, it wasn't until the following Tuesday that ICE was able to locate him and tell the father of his son's location, despite the father's pleading for information for days.

When family members learn that a loved one has been taken into custody or has been moved from one facility to another, fear and panic quickly set in. They want to learn what facility is holding their loved one, but they may not know for several days if the individual is in the United States, has been deported, or even if he or she is alive. For immigrants who come to the United States fleeing repressive governments where disappearances are part of the recent political history, this temporary disappearance of a loved one is especially difficult.

4. Detained Persons Lose Contact with Family and Friends and Give Up

One of the things that helps sustain detained immigrants through months (and sometimes years) of detention is contact with close friends and family. When they are moved far from that community, detained immigrants experience loneliness and quickly lose hope. Conscious of the toll that having a detained loved one takes on the family's resources, some detainees told us that they did not wish to burden their family members with long trips for a

short visit, especially when visits take place behind a glass wall.

"It is a war of attrition."

—*Boston immigration attorney*

Many lawyers and advocates believe that detained immigrants who stay close to their families and communities are more likely to challenge their deportation orders in court all the way through the appellate stage. Detained immigrants who are moved far away from their homes are more likely to give up on their cases — even when legal options remain — because fighting their cases means remaining in detention and away from their families for months or even years.

5. Transfers Force Detained Persons to Re-submit to Onerous Processes

Every time detained immigrants enter a new facility, they must re-start many processes, which may have taken time to complete in the previous facility. For example, every time persons enter a new facility, they normally must:

- Submit to a strip search, which often means a body cavity search, upon entrance to the facility;
- Go through a medical screening and fill out a medical history chart;
- Go through a tuberculosis screening. One person said that, despite her protests, she received two tuberculosis screening injections in the same week when she was transferred from one facility to another.
- Request their daily medication if the medical chart did not transfer with them;
- Set up a canteen or commissary account to be able to purchase items, and wait the requisite amount of time — as long as two weeks — before money can be deposited in it;
- Set up an account with the phone service provider in order to place calls;
- Set up a list of phone numbers that the detainee may call, and wait the requisite amount of time before being able to make calls;

- Set up a list of visitors that the detainee allows to see him or her and wait the requisite amount of time — as long as three weeks — before receiving visits;
- Request any special accommodations such as a bottom bunk, multiple mattresses, or a special type of meal.

In addition, when a person is transferred, he must learn the written and unwritten rules of the jail and build relationships with new fellow detainees, inmates, guards and administrators. Such transfers are extremely stressful and take a toll on immigrants' mental and physical health.

6. ICE Does Not Facilitate Voluntary Transfers

Because many jails do not provide access to outdoor recreation, ICE guidelines state that when a detained person is in a facility with indoor-only recreation, he or she can request a transfer to a facility that has outdoor recreation. None of the persons we interviewed said they knew that it was possible to ask for such a transfer, and nobody knew of an example of such a transfer taking place. Two persons asked to be transferred to a facility with better health care, and were promised by an ICE agent that they would look into that possibility, but those transfers never took place.

7. Transportation Between Facilities Is Unsafe and Inhumane

Several persons reported that when they are transferred between facilities, and when

they are transported to court dates, consulates, outside meetings or outside medical facilities, they often are not provided food or water, despite the fact that the trip could take all day. They reported being transported by van as far away as upstate New York in shackles with no seat belts and no heat in the winter.

In Massachusetts, ICE contracts with the Suffolk County Sheriff's office to provide transportation to its detainees. Suffolk uses vans that have two metal benches that run lengthwise and a thick partition in the middle. Persons being transported in the vans sit shackled in groups of up to five per side. Persons who have been transported in these vans complain that there is not enough room for their legs and that the seats are very uncomfortable.

In one case, a person was transported with nine others from Boston to New York City, a ride of over four hours. He reported that they were not provided with food or water or let out to use the restroom or stretch their legs during the entire trip. When one



Every time detained immigrants are transferred, they must learn the written and unwritten rules of a new jail and build new relationships with other detainees, inmates, guards and administrators — all of which takes a toll on their mental and physical health.

person in the van complained, one of the drivers told him to stop complaining or he would turn off the air conditioning.

8. ICE Misplaces Personal Property and Funds

When ICE transfers persons from one facility to another, their personal property, including their legal papers, often does not transfer with them. One person detained at Suffolk who had two boxes of legal papers in a storage area because it exceeded the amount of materials he could have in his cell was given a claim ticket for the boxes when he was transferred to Franklin. Despite the efforts of a lawyer, those boxes were never found. An ICE agent told the lawyer that it was the detained person's responsibility to take his property with him and that the papers probably had been destroyed.

Some detained persons also reported that the money they had in their canteen accounts did not transfer to the new facility. ICE does not coordinate moving canteen funds so a person who is transferred must plead with the receiving facility to retrieve the money from the sending facility.

B. Abuses Take Place During the Deportation Process

1. ICE Agents Use Force and Threats

Several persons reported that ICE agents used threats of force or actual force in order to obtain signatures or fingerprints on deportation papers. Two detained persons reported that ICE threatened to inject them with drugs if they did not cooperate with agents. One person reported that when he resisted being taken out of the vehicle that transported him to Logan airport, ICE agents punched and dragged him on the airport sidewalk.

Three detained persons reported that ICE agents told them they needed to sign papers, but covered up what the papers said and would not allow them to see what they were signing. Three detained persons also reported being physically forced to sign or put fingerprints on papers.

- A person who refused to sign his deportation papers was handcuffed behind his back and forced to put his fingerprint on a document. This caused an injury to his wrist and his home country now will not accept him until his wrist has healed.
- A person who refused to sign travel papers was put in double handcuffs and shackled to the waist. The person reported that ICE agents tried to twist his arms to sign.
- ICE agents attempted to remove a person by force from his cell when he refused to sign travel papers. This resulted in the person hitting his head on the floor and later becoming unconscious. (See Simon's story, page 29.)

2. ICE Does Not Consistently Give Notice of Deportation Date

Some detained immigrants reported that they are not given advance notice of the date of their deportation, and have no opportunity to gather luggage and personal belongings or make arrangements in the country of arrival. One person was told that he was being moved from the jail for a court appointment and later found out that he was being deported instead. (See Simon's story, page 29.)

Without the opportunity to make arrangements, detained immigrants are deported with nothing but the clothing, money and items they have with them in detention. Because ICE arranges for deportees to be transported to large cities in the receiving countries but makes no arrangements for them to get to their final destination, this means that deported persons may be dropped in a city where they have no family or contacts, with little or no money or items necessary for their survival.

3. ICE Botches Deportation Attempts

Persons in ICE custody have no control over when the government will be able to deport them. Even when they cooperate with their deportation, the process can take months. The government must obtain travel documents from the receiving country and schedule a federal government flight called



Simon's Story

One morning in February of 2007, after having been in detention for almost three months, Simon was awoken in his cell at Plymouth County Jail and told to prepare to be taken to Boston for a court date. Although Simon did not know he was scheduled to be in court, he was fighting a deportation order, hoping to be able to stay in the United States with his U.S. citizen spouse. He was taken by van to Suffolk County jail in Boston, where he was put into a cell to wait. After several hours elapsed and he was not taken to court, an ICE agent notified him that he was being deported to the Democratic Republic of Congo.

Simon's immigration case was still on appeal, so he did not understand why he was being deported. In addition, having no advance notice of the deportation date, Simon did not have his personal items or luggage with him, and his family in the Congo would not know he was coming. He asked to speak with his lawyer and was allowed one phone call but the lawyer was not in his office. An ICE supervisor entered Simon's cell, handed him deportation papers and tried to convince Simon to sign them. When Simon refused, the supervisor threatened that he would inject Simon with tranquilizers in order to deport him. Outraged and incredulous, Simon still refused to sign the papers without the chance to actually speak with his attorney.

At this point, an agent, whom Simon describes as a very large man, entered the cell and, together with the supervisor, grabbed Simon and tried to force him out. Simon resisted, grabbing onto a pole in the room. The agents continued to grab and pull at Simon, creating a kind of tug-of-war until Simon's head hit the hard cell floor. The next thing Simon remembers is being taken to the medical unit at Suffolk. His glasses were broken and he was in pain. The deportation was postponed and Simon was returned to Plymouth. There he immediately was placed into the disciplinary segregation unit, where inmates and detainees are locked in cells alone or in pairs for 23 hours a day. The facility never issued Simon a disciplinary citation or explained why he was placed in segregation, in violation of jail rules.

Simon's head was in pain and he became dizzy. The next day, Simon lost consciousness and was taken on a stretcher to a doctor, who wrote in his medical chart, "No sign of injury," and returned him to the segregation unit. The next morning, when the guards called him for breakfast, Simon was unable to get up. Guards entered his cell and tried to wake him, at which point Simon fell to the floor. He was taken downstairs and seen by a doctor, who wrote in his chart, "Reports pain at back of head. Stands from lying position easily. No tenderness back of skull. Contusion ... altercation." The doctor prescribed Tylenol for 7 days. Despite reporting pain and having lost consciousness twice, Simon was never given any treatment besides Tylenol. No x-rays or other diagnostic tests were performed.

Simon was stripped naked and put into "Room 114", or as Simon refers to it, "the rubber room" because of its rubber walls. Room 114 is designed for inmates in danger of hurting themselves who must be monitored constantly, which the facility refers to as "1:1 watch." It has only a bench, a mattress, a drain for urinating and defecating, and a glass front where an officer is able to watch the person inside. According to Simon, there was urine and feces in the room from a previous person. The smell was so unbearable that he spent hours lying by the door, where a tiny space at the bottom let in a small amount of air. Jail officials never told Simon why he was put in Room 114. An observation chart in his medical file confirms what he remembers, that he was never allowed to go outside to use the bathroom, instead having to urinate and defecate in the room; and that the only food or drink he received during the 31 hours he spent there was a sandwich and milk that guards brought 24 hours after he entered the room.

continued ►

At one point, he was visited by a mental health worker who wrote in his chart, “seen ... [because] this pm while on 1:1 watch he appeared dazed/dizzy — unable to sit up. He stated that he was assaulted in the unit [and] feels ‘pain’ in his head. He was unable to fully participate in the evaluations ... unable to fully assess 20 questions of medical issues that could render full mental health assessment. ... triage with medical staff/MD/PA re: medical protocol to be followed. Maintain 1:1 pending medical recommendations / resolutions...”

After spending 31 hours naked in the “rubber room,” Simon was transferred to the medical unit where he spent two days. He was seen several times by staff members, and then released back to the segregation unit, where he spent weeks in isolated 23-hour lockdown. Again, the jail did not issue a disciplinary order.



When Simon, center, returned to his country, his relatives welcomed him and celebrated that his difficult time in detention was over. Despite Simon’s experience, he wishes to return to the United States to be with his U.S. citizen wife, to whom he continues to be married.

Months later, after the ACLU of Massachusetts obtained a copy of Simon’s medical file, we learned that in Room 114, Simon had been on suicide watch. Up until that point, Simon had assumed that the “rubber room” was part of his punishment. The file shows that a Captain filled out a Suicide Notification Form, stating that Simon was found with a “sheet tied around head” on the morning he was taken to Room 114. This notification is the only page in Simon’s chart that mentions a suicide attempt. Despite the notification, Simon never received any counseling or treatment for mental illness. No follow-up was ever done, there is nothing suggesting he would be a poor candidate for the isolation unit given his mental health history, and there are no other mentions of mental health issues. Simon claims that it is “ridiculous” that he would try to commit suicide and denies having a sheet tied around his head. He believes that he was put into the “rubber room” as a punishment for resisting the ICE agents.

After the first deportation attempt was aborted, an ICE agent visited Simon’s jail and notified him of his new deportation date. His family prepared luggage and dropped it off at Suffolk . He was taken by van to Suffolk County in Boston, where he waited for hours, but with no explanation, he was returned to Plymouth and told that his deportation would be rescheduled. Three additional times, an ICE agent told Simon that his deportation was scheduled. Three times those dates came and went.

The psychological toll this took on Simon was noticeable. During each visit with him, we noticed that he became more and more depressed and hopeless. Each time ICE told him he was going to be deported, he made the difficult psychological adjustment to leaving behind his life in the United States and going to a country he barely remembers. His family in Boston said their goodbyes and his family in the Congo prepared to meet him at the airport and adjust to his stay in their home. Each time, Simon felt both a sense of fear of his new life and a sense of relief at leaving the jail. And each time, those fears and hopes were turned on their heads as he remained in detention. He stopped trusting the ICE agents when they said his deportation was scheduled and came to feel that he would never leave the jail. He stopped communicating with his lawyer, feeling that fighting his case was useless.

Simon spent 16 months in jail, and withstood 5 failed deportation attempts before he was finally deported.

“JPATS” or Justice Prisoner and Alien Transportation System, or a commercial flight. Typically, the government groups together a number of persons from the same country and schedules them to be flown together to that country.

Several persons reported that they have been taken to the airport on numerous occasions, only to find that the papers were not in order and the deportation had to be aborted with little or no explanation. These failed deportation attempts take a huge toll on detained immigrants, both physically and psychologically. They must make arrangements for family in the United States to bring them luggage and necessary items, and for family in the receiving country to expect them. In addition, when they are removed from and then returned to a facility, they face problems getting their personal property and canteen funds restored. Their bed may have been taken by a new person and they must now deal with being in a new unit or a new facility.

- Two persons reported being transferred from Massachusetts to Batavia, New York, from where their flight would leave, only to be transferred back to Massachusetts some days later.
- Three persons reported being taken as far as the airport, only to find that the travel papers were not sufficient to carry out the deportation.

C. Immigrants Are Detained for Excessive Periods of Time

The 1996 amendments to immigration laws made many categories of immigrants ineligible to request release on bond.³³ By law, these persons must remain in custody pending the outcome of their deportation hearings.

33. These categories include almost anyone who is inadmissible or deportable on crime-related grounds; persons inadmissible or deportable on terrorism grounds; most arriving passengers; and individuals who have final orders of removal. See INA §§ 235(b)(1)(B)(iii)(IV), 235(b)(2)(A), 2369c)(1)(A, B, C, D), 241(a)(1,2,3).

“If criminals can get out on parole, why can’t I?”

—*Immigrant with no criminal record and no eligibility for release on bond*

Although the national average of time spent in ICE detention is 37 days, this number is not reflective of the situation in Massachusetts or the New England area, because the average is dramatically lowered by deportations in border states. While there is no official data on the number of days that immigrants in Massachusetts spend in ICE detention, the 40 persons with whom we spoke had spent between 1 month and 5 years in detention — on average over 11 months — at the time of our interviews. Of those, 3 had spent over 2 years in detention; 10 had spent over 1 year; and 6 had been detained for approximately 6 months.

1. ICE Does Not Comply with Supreme Court Precedent and Its Own Rules About Length of Detention

In 2001, the United States Supreme Court ruled, in *Zadvydas v. Davis*,³⁴ that the government could not indefinitely detain aliens in order to carry out their deportation. Under regulations promulgated to comply with *Zadvydas*, ICE must conduct a “custody review” of detained persons before a 90-day removal period has ended and must provide the person with 30 days written notice of the review so that she may submit information in writing in support of release.³⁵ The “custody review” consists of the director of the regional ICE office looking at the detained person’s file and making a decision about whether or not to continue detention based on a series of factors including whether the person is likely to be deported soon and if there is a history of criminal conduct.

In May of 2004, the United States General Accounting Office (GAO) issued a report to Congress, finding that ICE did not have an adequate

34. 533 U.S. 678 (2001).

35. See 8 C.F.R. §241.4(k)(1)(i); 8 C.F.R. §241.4(h)(2).

system in place to conduct these custody reviews in a timely manner, and was not in compliance with *Zadvydas*.³⁶ It found:

ICE does not have information that provides assurance that its custody reviews are timely and its custody determinations are consistent with the *Zadvydas* decision and implementing regulations. One reason ICE has difficulty providing assurance is that it lacks complete, accurate, and readily available information to provide deportation officers when post order custody reviews are due for eligible aliens. In addition, ICE does not have the capability to record information on how many post order custody reviews have been made pursuant to regulations and what decisions resulted from those reviews. Therefore, ICE managers cannot gauge overall compliance with the regulations for aliens who have been ordered to be removed from the United States.

Because ICE's own procedure does not alert it when a person has been in custody past the six-month period, detained persons must take it upon themselves to alert ICE. This means trying to speak to an ICE agent or filing a *habeas corpus* petition in federal

after the petition was filed and scheduled deportations shortly after the filing of the other three petitions. Resorting to the federal courts to ensure that ICE complies with *Zadvydas* is not an adequate guarantee because most detained immigrants do not have attorneys and do not have the ability to file petitions on their own.

The ACLU of Massachusetts found that ICE is not following its own custody review guidelines in Massachusetts. Many persons simply are not given notice that a custody review is going to take place, or that one has taken place. Others receive notice after the review has taken place, when it is too late to submit evidence showing that they are not a flight risk or a danger to the community.

2. ICE's Process for Reviewing Custody Raises Due Process Concerns

In addition to the fact that ICE is not consistently following its own rules, there are concerns about detained persons' rights to due process of law in these custody proceedings. First, although the regulations allow detained immigrants to present evidence to support their release, there is no hearing and no right to an attorney in this process, despite the fact that the deprivation of liberty is at stake.

Second, the process is entirely administrative and the decision-maker is the agency itself. Because ICE's mission is to effectuate the deportation of detainees, it cannot make an impartial decision about the detainee's liberty.

Third, it unclear what standards ICE uses to determine whether the person will be kept in custody or released. One important factor in this determination appears to be the detainee's criminal history. From the custody reviews that we were able to see for this report, it appears that ICE considers past criminal convictions as a sign that a person is a flight risk or a danger to the community and must be kept in detention. This leads to persons with criminal records being punished twice for past criminal activity, for which they have already completed the required punishment.

THE PROCESS IS SO INEFFECTIVE AND SO OPEN FOR ABUSE THAT PEOPLE WHO SHOULD BE RELEASED FROM DETENTION LANGUISH IN JAILS FOR MONTHS OR YEARS.

court. We analyzed the 14 publicly available *habeas* petitions filed in 2008 in federal court in Massachusetts in which immigrants claimed that they had been in detention for more than 6 months after final adjudication. Most immigrants were successful in compelling ICE to release them shortly after filing. ICE released 11 of them within 1-4 months

36. U.S. GENERAL ACCOUNTING OFFICE, *REPORT TO CONGRESSIONAL REQUESTERS, IMMIGRATION ENFORCEMENT; BETTER DATA AND CONTROLS ARE NEEDED TO ENSURE CONSISTENCY WITH SUPREME COURT DECISION ON LONG-TERM ALIEN DETENTION*, Doc. GAO-04-434, May 2004.

Fourth, there is no appeal process from a denial of release. The only avenue available to a detainee who has been kept in custody after the removal period has ended is to file a *habeas corpus* petition in federal district court. This process is cumbersome and especially difficult for those detainees who do not have an attorney.

Fifth, the process is so ineffective and so open for abuse that people who should be released from detention languish in jails for months or years despite the fact that they are neither a danger to the community nor flight risks, and despite the fact that some of them have nowhere to go because their home countries will not accept them.

- Annette came to the United States fleeing violence in her native African country and married a U.S. citizen. In the United States, Annette received a master's degree in Rehabilitative Counseling and worked for years helping to rehabilitate veterans in a local government agency. When she applied for a green card, the government accused her of marriage fraud because her passport stated that she was already married in her country. Annette explained that she had become married to a man under their country's customary marriage practice, which is not legally binding until a second ceremony takes place. Their relationship had fallen apart before the second ceremony was conducted, so her "marriage" was never finalized. A Reverend from her country supported Annette's explanation of the legal practice. A judge found that this story was not credible and ordered her deported. ICE agents arrested Annette from her home and placed her in detention. Despite supporting



Frank (pictured here with his son) is currently in deportation proceedings. He was arrested by ICE in 2004 because a past criminal offense made him deportable. In 1986, he had pleaded guilty to a drug crime — giving up his right to a trial — in exchange for serving no jail time. At the time, the government ensured him that his immigration status would not be affected by his plea. Despite this assurance, and despite never having served a day in jail for his crime, he spent over 5 years in immigration detention fighting his deportation in the courts. During those five years, he spent time in many of the facilities in Massachusetts featured in this report.

letters from her employers, friends, and community members, she spent over one year in jail before she was deported. She did not receive any notice of a custody review and did not have any opportunity to submit evidence to support her release. She could have submitted evidence that she was neither a flight risk nor a danger to the community. For example: she had long-standing ties to her community; after 11 years, she was still married to the same U.S. citizen with whom she was accused of committing marriage fraud; she was currently in school and halfway through a second master's degree; she owned a home in Massachusetts; and she had no criminal record.

- Charles came to the United States from Liberia. Six months and 22 days after ICE detained him

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and placed him in Plymouth, he received a custody review. The agency decided to continue his detention because he had been “convicted of a number of particularly serious crimes, including crimes of violence” and the agency believed that he was “a danger to the community and a severe flight risk.” The crime of violence to which the agency referred was a guilty plea to violating a restraining order his girlfriend had placed on him. In order to explain, his girlfriend wrote a letter to ICE in which she stated, “I ... put a restraining order on [Charles] because while we were dating I found out that [Charles] was seeing someone else. So I ... got mad and jealous so to get him back I put a restraining order on him because my feelings were hurt, not because of violence.” His next three custody reviews stated that he was being kept in detention because he had not complied with his obligation to help ICE obtain travel documents from Li-

beria. He explained to ICE several times that he had called the embassy and that they refused to recognize him as a Liberian national because his name was not a Liberian name. He was stuck in a limbo, from which he began to believe he would never emerge. He spent over two years in jail until he filed a *habeas corpus* petition on his own, with the help of a law student and materials from a non-profit organization.

Even in cases where immigrants cannot be deported (usually because their country of origin will not accept them), we have found that of the people we interviewed, they were more often than not held in detention for the full six months that the Supreme Court has said is presumptively reasonable. One person reported that his deportation officer told him that even though ICE knew they would not be able to deport him, he had to stay in jail for six months. When he was released and then re-arrested, ICE officers said he would be in jail for



Under “Enhanced Supervision and Reporting,” most persons released because ICE has been unable to deport them within 6 months are required to wear non-removable electronic monitoring bracelets on their ankles and comply with related restrictions.

90 days and then released again, as if the jail time were a sentence.

In addition, ICE recently has begun implementing a new program called “Enhanced Supervision and Reporting” under which most persons released because ICE has been unable to deport them within 6 months are fitted with non-removable electronic monitoring bracelets on their ankles, through which their whereabouts can be monitored 24 hours a day. The program, which released persons must agree to or be put back into detention, includes a curfew — usually persons must be at their specified place of residence from 7:00 in the evening to 7:00 in the morning. It also includes a geographic limit on travel — in this region, participants in the program cannot travel outside of New England. In addition, participants must submit to unannounced home visits; must agree to charge the bracelet for two hours every day by plugging it into a wall outlet; and are required to attend regular check-ins. ICE

has contracted with a private security firm, G4S, to implement the program at a price of \$25 million per year.³⁷ G4S personnel are responsible for fitting participants with the bracelet; monitoring participants' location; conducting the unannounced home visits; maintaining communication with the participants; and reporting back to ICE.

D. ICE Compromises Attorney–Client Confidentiality

At Bristol, in both the women's unit and the ICE building, there is no place for attorneys to meet privately with their clients. When an attorney visits a detained client, he or she must speak to the client through a Plexiglas wall and phone in the general visitation area where non-lawyers may be visiting. The conversation, therefore, is not private, and it is unclear if the communication is monitored or recorded.

In addition, because there is no contact allowed, if the lawyer needs to exchange legal materials with his client, or to obtain the client's signature, he must do so by handing the materials to a guard who delivers them to the person, a process lacking in privacy. While the main jail at the Bristol complex has meeting rooms for lawyers, there is no procedure in place to transport detained persons from the ICE building and women's unit to the main building in order to meet with an attorney.

At Suffolk, when a detained person is placed in the segregation unit, contact visits for attorneys are denied. Lawyers must speak to their clients in a room with glass in between them. However, the glass is thick, and the two parties can only hear each other by speaking loudly, or even shouting. This makes it difficult to have a private conversation since guards are within a few feet of the room and can hear the conversation. As with Bristol, if papers need to be exchanged, they must go through the guards.

37. G4S, *G4S SECURITY SERVICES UK & IRELAND STRATEGY IMPLEMENTATION*, http://www.g4s.com/ir-cmd07-uk_strategy-dts.pdf.

E. Access to Legal Libraries Is Inadequate

“I heard a myth about a legal library but I'm not sure if it's true.”

— *Person detained at Plymouth*

Because there is no legal right to a free lawyer in immigration proceedings, many immigrants must navigate the legal system on their own. In order to research legal options and prepare *pro se* motions from detention, it is imperative that detained im-

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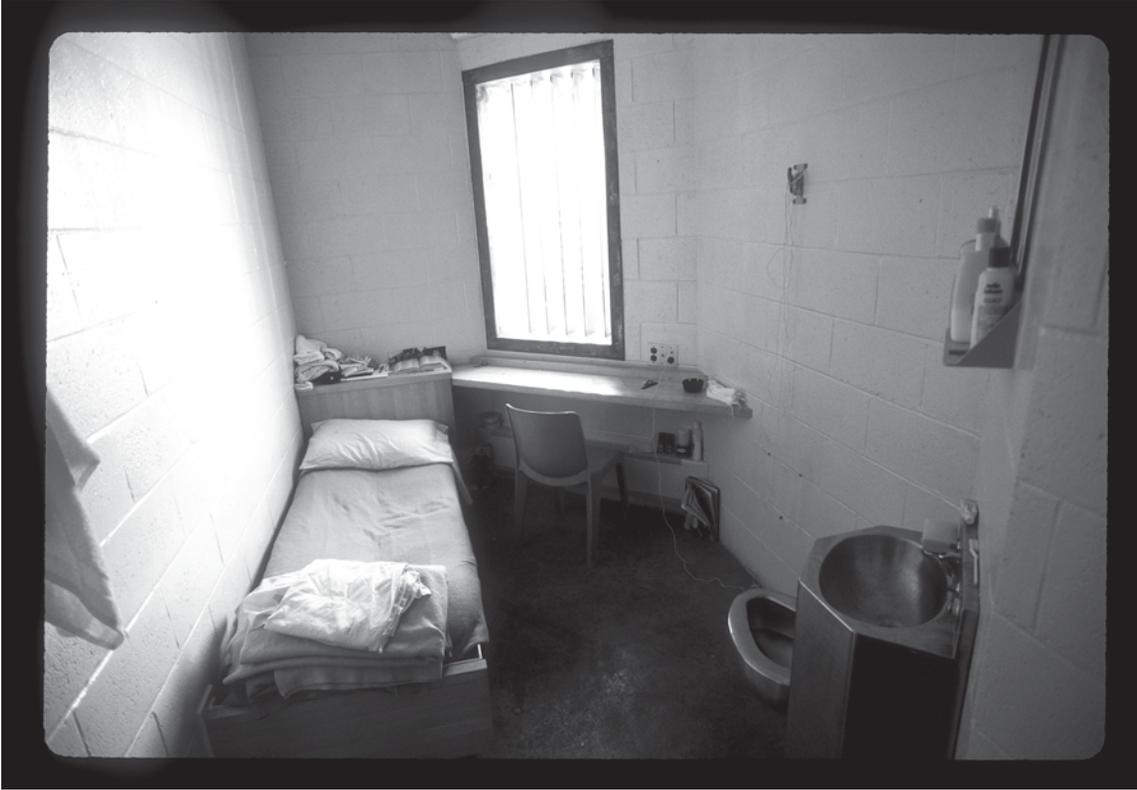
migrants have access to up-to-date legal materials, materials about human rights conditions in foreign countries, and a way to type or write. At Bristol, Plymouth and Suffolk, detained immigrants reported little or no access to a library with up-to-date information about immigration law or other legal materials.

At Suffolk, there is one computer per unit of approximately 75–80 persons. The Suffolk Detainee Manual states:

Each unit has a law library, which is computer based. A detainee may access the computer while out during recreation. In addition, time can be scheduled at the computer if a detainee is facing a court deadline or other matter where additional time is necessary. The computers have additional information, which is located on CD Rom(s) and must be requested from the unit officer.

A person detained at Suffolk reported that although the computer has the Lexis-Nexis program, the program is not updated — in 2007 the program was updated only through 2004. Others reported that when the computer or printer has broken, it has taken several months for the facility to fix it.

Persons detained at Plymouth expressed different



Cells similar to this one are being fitted with a second bed above the first one and used to house two people.

beliefs about the existence of a legal library. None at Plymouth had ever been to a library where there were legal materials. One person believed there was a form where one could request legal materials, but the requester would have to know what he needed.

At the main building in Bristol there is a computer but it does not include any legal materials. There also is no printer or typewriter, and at the ICE building, there is a computer with a few cases, but the reports from Amnesty International that immigrants use for asylum applications are outdated.

II. Inadequate Conditions of Confinement

A. Facilities Are Dangerously Overcrowded

The national increase in immigration detention has affected Massachusetts and the entire ICE Boston District. Currently, the Boston District has approximately 1,000–1,200 contracted spaces for detainees. Despite new construction, overcrowding remains a problem in Massachusetts, where every county jail is currently beyond its capacity, some housing more than twice the number of persons they were built to house.³⁸

38. MASSACHUSETTS DEPARTMENT OF CORRECTION, *QUARTERLY REPORT ON THE STATUS OF PRISON OVERCROWDING, SECOND QUARTER 2008*, http://www.mass.gov/Eeops/docs/doc/research_reports/2nd_08_overcrowding.pdf.

POPULATION OF MASSACHUSETTS FACILITIES HOUSING ICE DETAINEES

Facility	Design Capacity	2008 Avg. Daily Population	Capacity Being Used
Barnstable	300	416	139%
Bristol	566	1,480	261%
Essex	658	1,690	257%
Franklin	144	301	209%
Norfolk	354	692	195%
Plymouth	1,140	1,492	131%
Suffolk	1,599	2,525	158%

SOURCE: MASSACHUSETTS DEPARTMENT OF CORRECTION, QUARTERLY REPORT ON THE STATUS OF PRISON OVERCROWDING, SECOND QUARTER 2008 (Aug. 2008), http://www.mass.gov/Eeops/docs/doc/research_reports/2nd_08_overcrowding.pdf

At one point at Essex, some persons detained by ICE slept on mattresses on the floor of a converted gymnasium, with no access to recreation and with one toilet for approximately 70 persons. Because there was no shower in the gym, guards would take small groups of persons on a first-come-first-served basis two or three times a week to a unit that had showers. This meant that those in the gym did not get showers every day and struggled to be in the groups taken to shower. This also put additional strain on the units that have access to showers.

“Conditions in all jails have a negative impact on the health and well-being of the people in them.”

—*The Justice Policy Institute*³⁹

At Plymouth, cells originally meant to house four detainees are now housing five, with an added bed next to the toilet. These cells leave only 22 feet of space per occupant, well below the 60 feet that the Massachusetts Department of Public Health (MDPH) recommends. At Franklin, cells originally meant to house one person are now housing

39. Petteruti and Walsh, *supra*, note 24.

two. A top bunk has been added, but there is no room for a ladder, a second chair or a second desk. The person who sleeps in the top bunk must climb onto the desk and jump up to the top bunk. At Bristol, the main building is currently holding almost four times the number of persons it was design to hold.⁴⁰

Overcrowding also affects the common recreation areas where increased numbers of detainees and inmates must compete for tables, space in outdoor areas, and television-watching privileges. Some jails are so crowded that there is no recreation available. At Essex and Bristol, the gymnasiums have been converted to crowded housing units with rows of bunk beds and mattresses on the floors. This means that no inmates or detained persons have access to a functioning gym.

Overcrowding also affects access to bathrooms and medical services. When jails are over capacity, detained persons have to struggle with others for time in the showers and it is more difficult for the facility to maintain sanitary conditions because of the increased use of bathrooms.

Although ceasing to house ICE detainees would address part of the counties’ overcrowding problems, sheriffs may be unwilling to give up their contracts with ICE because they are a needed source of income. For example, ICE pays Plymouth County \$86.91 a day per person; Suffolk receives a daily rate of \$90.00⁴¹

B. Detained Persons Face Harsh Treatment by Corrections Officers

“It is a fight with them. Maybe it’s because the unit has only immigrants, I don’t know, but it’s a constant fight with them.”

—*Person detained at Suffolk*

40. *Id.*

41. Documents obtained through Freedom of Information Act, available at <http://www.aclum.org/ice>.

“They treat you like you’re nothing.”

—Person detained at women’s unit at Bristol

It is difficult to generalize about the nature of the relationship between detained persons and the many men and women who guard them. The persons we talked to described varying kinds of relationships with corrections officers, explaining that the individual personalities of the guards dictate how they treat the detainees. At Franklin and Norfolk, persons described a generally respectful attitude among administrators and corrections officers. However, reports from Plymouth and Suffolk showed a pattern of disrespect and harsh treatment.

1. Guards Disrespect Persons in Their Custody by Engaging in Taunting and Racial and Ethnic Insults

“This is what you get for coming to this country.”

—Corrections officer at Suffolk, reported by a detained person who was restrained and pushed to the ground by a team of officers while being transferred to the segregation unit

“It makes me sad to see grown-up people acting like that.”

—Person detained at Suffolk of certain corrections officers who he says taunt and provoke detainees

Guards have a great deal of control over the day-to-day life of detained persons — they control everything from calling detainees when they have visitors to allowing them access to bathrooms and recreation areas. When an officer overuses his or her power, it can make daily life a difficult struggle for detained immigrants.

At the male immigration unit at Suffolk, immigrants detained in unit 8-4 consistently complained about one female guard who made life very difficult for them. They complained that she would rap loudly on the bars of the doors early in the morning, yell at them without reason and randomly deny certain individuals access to their case workers.

Three persons detained at Suffolk reported that corrections officers provoke or taunt them and then punish them for reacting. One person at Plymouth had the same complaint. Many at Suffolk and Plymouth reported that guards use profanity when speaking to them and sometimes utter racially charged insults.

“They look at us like we’re animals.”

—Person detained at Plymouth

- A person reported that after he received a visit from the Pakistani consulate, a guard shoved him against the wall, searched his body, and asked, “Your consulate brought you a bomb? Where is fucking Osama?”
- A person reported that when he complained that the heat was on in the jail during a hot summer day, a guard answered that he was “trying to make the detainees feel like they were at home in the Caribbean.”
- A person who complained that he was not receiving adequate medical care wrote in a letter, “One of the [Lieutenants] told me that I am a immigrant so no one gives a fuck about my medical treatment. He said that I should go back to my country or I will suffer while in his house.”
- A person who had permission from the facility doctor to have two mattresses because of a medical condition faced constant harassment from guards when they saw the mattress. When she would show the note from the facility’s doctor, they would accept it, but she reported that the guards’ initial reactions were always harsh, often using profanity when they questioned her about the mattresses.
- A person reported that while he was being restrained, a guard told him, “Go back to your country.”

In addition, those who have been incarcerated as criminal inmates in other facilities or in a different unit of the same jail report that the treatment of immigration detainees is significantly worse than that of criminal inmates. Even within the same jail,

detained immigrants reported that guards are more respectful of criminal inmates.

“Here they don’t respect you because they know you’re an immigrant and will be deported so they don’t care.”

—*Person detained at Suffolk*

One person who had been at Suffolk in a criminal unit before being taken into ICE custody and moved to the ICE unit reported that he believes that criminal inmates get better treatment. He said that the difference in the ICE unit is that guards “mess with you” and “mess with your mind,” doing things such as instigating fights and then sending detainees to isolation as punishment.

2. Detained Persons Suffer Punishment and Retaliation for Complaining

We received reports of harsh disciplinary consequences in the forms of collective punishment for individual infractions; use of segregation and isolation; and, as mentioned above, the use of transfers within the jail or to other facilities as a consequence for what officers consider misconduct.

Persons detained at Suffolk reported that entire units are locked down for many hours when one person misbehaves. A person detained at Plymouth reported that when there is an incident, the unit can be locked down for days at a time. This means that detainees spend most of the day inside their cells with no recreation time.

Persons detained at both Suffolk and Plymouth repeatedly reported that they are sent to “the hole” (segregation or isolation) for speaking up or complaining about issues. Many expressed that they did not complain about conditions for fear of being sent to “the hole.” Segregation units are separate from the general population units. Persons confined there are locked in a two-person cell for 23 hours a day. They are escorted out by a guard for one hour a day to shower and make phone calls. They may be in handcuffs or shackles during that hour, and the restraints may be kept on while they shower. Those

in segregation have no contact with the rest of the population. Meals are brought to the cell, visitation rights are restricted or denied, personal comfort items such as skin lotion and combs are taken away, and canteen rights are denied.

At most jails, when an officer files a disciplinary action against an inmate or detained person, staff immediately bring the detained person to the segregation unit. The disciplinary process includes a short hearing in front of a superior officer and an appeal. This can take several days or weeks to complete, and the person remains in segregation during that time. If the person is found guilty of the infraction, he or she is given a sentence of time in segregation or isolation, but the time already served does not count toward that sentence. If the person is found not guilty, he is released from the segregation unit, but there is no compensation for the time served there.

“If you complain, they send you to the hole.”

—*Six persons detained at Plymouth*

The isolation unit is similar to the segregation unit in that it involves 23-hour lockdown, but the detained person is in a cell by himself and has no contact with any other person except the guards who bring him meals and escort him out once a day. Two detained persons complained that the isolation room was very cold and that they were denied blankets for many hours when they were first placed there.

Experts have documented the negative impact segregation and isolation have on prisoners, and recommend great care when placing persons in isolation. For persons with existing psychiatric issues, experts recommend limited or no use of isolation.⁴² In 2005, Health Law Advocates, a Massachusetts-

42. See, e.g. Bruce A. Arrigo and Jennifer Leslie Bullcock, *The Psychological Effects of Solitary Confinement on Prisoners in Supermax Units: Reviewing What We Know and Recommending What Should Change*, INT’L JOURNAL OF OFFENDER THERAPY AND COMPARATIVE CRIMINOLOGY, 2007; TERRY A. KUPERS, PRISON MADNESS (Jossey-Bass, Inc. 1999).

based public interest law firm that works on health care issues, sent a letter to the Commissioner of the Massachusetts Department of Correction urging, among other things, that the department refrain from disciplinary isolation of inmates with mental illness or who are at risk of mental illness. The organization explained,

[S]uch conditions are harmful to inmates' mental health. Security considerations must be carefully balanced against the necessity of appropriate mental health care for at-risk inmates. The overrepresentation of mentally ill inmates in disciplinary units suggests a trend of addressing behaviors caused by mental illness through punitive rather than therapeutic measures. Mental health providers in DOC facilities must be encouraged to offer clinical evaluations of inmate behaviors, with treatment recommendations as appropriate, rather than yielding to disciplinary determinations made by non-health services personnel.⁴³

In addition, persons with mental health needs are significantly more likely to commit rule infractions than other detained persons.⁴⁴ Mental illness may be the cause of “bad behavior” and can also influence how a person responds to disciplinary action.

- Two detained persons with long histories of mental illness were punished for misbehaving with several days of isolation and segregation, despite the documented impact this has on mental health.
- In one case, a person spent several weeks in isolation immediately after being released from suicide watch.
- In one case, a person detained at Plymouth was denied a visit to the dentist, despite an ongoing

43. Letter from Laurie Martinelli, Exec. Dir., Health Law Advocates, to Kathleen M. Dennehy, Commissioner, Mass. Dep't of Correction (April 5, 2005) (on file with author).

44. Danielle Drissel, *Mass. Prison Health Services: History, Policy and Recommendations*, MASS. L. REV. vol. 87 no. 3 (2003).

dental problem, while he was in isolation. Jail officials explained to ICE that it was policy that while in isolation, detainees are not allowed visits to the dentist.

3. Grievance Procedures Are Lacking

“You can't win. They are all together. You can't beat them.”

—*Person detained at Plymouth*

“The C.O.'s and ICE guys just laugh at us when we complain.”

—*Person detained at Suffolk*

In order to complain about harsh treatment or about a specific officer, detained immigrants must follow the facility's established grievance procedure. This involves a standardized grievance form that detainees must fill out and file with the facility's authorities. There are several problems with this grievance system that make it difficult for grievances to receive adequate attention.

First, grievance forms are not always readily available. Some persons reported that they have asked for grievance forms and were told they could not be found or that none were available.

“A closed mouth can't eat.”

—*Detainee at Plymouth explaining why despite the consequences, he continued to speak out against abuses*

Second, there is no procedure to track a grievance. It takes weeks to receive a response, and some reported that sometimes, they receive no response at all. The only recourse is to file another grievance. Grievance forms are not printed in duplicate or triplicate so the person making the grievance can keep a copy, and do not require a signature by an officer marking that the grievance was received. In order to have proof that a grievance was filed, detained persons sometimes make a hand-written copy of the grievance form to have for their own records.

Raheem's Story



Raheem was detained at Suffolk. He suffered from a medical condition that required him to drink a great deal of water, which meant that he needed to use the restroom often. At Suffolk, cells are not equipped with toilets — instead detained persons use a bathroom in the unit's common area. When detained persons are locked inside their cells, such as at night, during routine headcounts or several times during the day, they must ask guards to open the doors and allow them to go to the bathroom. They report that guards are sometimes slow to respond. One morning, the detainees in unit 8-4 were locked in their cells while guards performed a count. Raheem needed to use the bathroom and asked the guards on duty, but they denied him. Because Raheem could not wait any longer, he did what many detainees have learned to do: he urinated in a bag that he had stored from when he purchased rice from the canteen. Several detainees reported that urinating in a "rice bag" and later dumping its contents in the bathroom is a common practice when guards do not allow them out to use the bathroom. One person told us that even the guards tell them to urinate in a bag instead of letting them go to the bathroom.

When the cell doors were opened, he headed to the bathroom in order to dispose of the urine in a toilet. According to Raheem, a female officer saw that he had urinated in a bag, became angry and yelled at him. She filled out a disciplinary report and cited him for infraction 11-B, "Use of obscene language, actions or gestures." In the Disciplinary Report, she wrote that Raheem had "display[ed] obscene actions," explaining that she "observed detainee ... in the corner of cell 3 doing what appeared to be urinating. At the time I questioned detainee ... when he stated 'I could not wait, I had to go to use the bathroom.'" Raheem maintains that the officer could not have actually seen him urinating because he had done it in a corner of the cell, with his back turned, and that he does not believe she was near his cell when this happened. He also explained that as a Muslim man, he would be too embarrassed to urinate in front of a female. Raheem was given 10 days in isolation.

A cell-mate who became angry about the officer's reaction and tried to support Raheem as he explained the situation was also cited for disobeying an order and being insolent, and sentenced to six days in isolation.



“The Cold Room”

Two persons detained at Plymouth and one person detained at Suffolk reported strikingly similar experiences of being placed with little or no clothing in a room where the temperature was extremely cold. Each said that he asked for a blanket and was denied and that he was left there for hours or days. All three described the room as having one bench and a place in the corner to urinate, but no toilet, which according to advocates, is consistent with the rooms used for persons in danger of harming themselves.

■ ■ ■ JORGE

When Jorge was arrested by ICE and taken to Plymouth, he was put through the standard intake process. A staff member asked him about his mood, and he told her that he was sad and depressed about being arrested and about having to be away from his family. He was handcuffed and sent to the suicide watch room, where he stayed from 10 p.m. on a Friday until approximately 12 noon on Monday, at which point a mental health worker saw him and ordered him released. He reports that the room was extremely cold and that he was made to remove all of his clothes and given only a paper gown to wear. The gown quickly tore and he asked for a new gown and a blanket, but the guard laughed at him and told him there was nothing he could do. He reports that the guards gave him a sandwich but he was too upset to eat. He tried to keep himself warm by moving around and did not sleep during the approximately 60 hours he spent in the room because he was so cold.

■ ■ ■ VLADIMIR

Vladimir had an argument with guards at Plymouth when he asked to wear a religious head garment but was told that the jail policy did not allow it. Two guards approached Vladimir and took him to a room in the solitary confinement unit. Vladimir states that he was made to undress completely and that a guard performed a cavity search. He states that the guards turned on the air conditioning in the room, making it extremely cold, and that there was urine and vomit in the room from previous occupants. He stayed in the room for five hours while guards shouted obscenities at him, hitting the walls and making noise. Later, Vladimir reports that guards opened the door and threw underwear and clothes at his head.

■ ■ ■ CHARLES

While Charles was at Suffolk, two ICE officers visited him and attempted to get Charles’s signature on a deportation paper. He refused to sign because he believed he was still appealing his deportation order in court. He reports that the officers tried to force him to sign the papers, and when he continued to refuse, they handcuffed and shackled him, and put him in a cold room where the air conditioning was blasting — he estimates that it was about 50 or 55 degrees Fahrenheit. His only clothes consisted of the thin jail uniform, which resembles medical scrubs, so he asked for a blanket, but was refused. He spent approximately 10 hours in the room, and was allowed to go out once to go to the bathroom. He noted that the temperature outside the room was much warmer. □

HEADQUARTERS EXECUTIVE REVIEW

Review Authority

The signature below constitutes review of this report and acceptance by the Review Authority. OIC/CEO will have 30 days from receipt of this report to respond to all findings and recommendations.

HQDRO EXECUTIVE REVIEW: (Please Print Name)	Signature
Anthony S. Tangeman	<i>Anthony S. Tangeman</i>
Title	Date
Deputy Executive Associate Commissioner	6/13/12

Final Rating: Superior
 Good
 Acceptable
 Deficient
 At-Risk

Comments: The facility does not classify and house INS detainees according to classification or threat level. This places non-criminal detainees at-risk. INS detainees must be classified and housed according to an appropriate classification level. A rating of Deficient is supported until the classification issue is resolved.

DOCUMENT: CIVIL DETAINEES ARE HOUSED WITH VIOLENT CRIMINALS

ICE's predecessor agency, the Immigration and Naturalization Service, inspected the Plymouth jail and found that it failed to comply with ICE's standards because it did not separate non-criminal immigrant detainees from criminal inmates, creating a dangerous environment.

Final Rating: Superior
 Good
 Acceptable
 Deficient
 At-Risk

Comments: The facility does not classify and house INS detainees according to classification or threat level. This places non-criminal detainees at-risk. INS detainees must be classified and housed according to an appropriate classification level. A rating of Deficient is supported until the classification issue is resolved.

Third, grievances must be signed by the person making the complaint and must be delivered to an officer. This means that anonymous complaints are impossible and that the complainant may have to file the grievance with the very officer about whom he is complaining.

Fourth, each grievance form can be signed by only one person and it can involve only one instance. This means that collective complaints and complaints about patterns of abuse are impossible through the grievance system. Instead of filing grievances, groups of detainees resort to writing collective letters to the media, lawyers, advocacy organizations

and the superintendent, but there is no standardized system for responding to these letters.

Fifth, persons in ICE custody face a situation different from that of inmates who have a complaint. While both detainees and inmates have access to the same procedure, persons in ICE custody can face harsher forms of retaliation if they speak up. As described above, immigrants can be moved from one facility to another without notice or justification. This means that the grievance disappears and the detained person has to face detention in a new place, often faraway from his or her family or lawyer.

C. Civil Detainees Are Housed with Violent Criminals

At all facilities in Massachusetts except for the men's unit at Suffolk and the ICE unit at Bristol, persons in ICE custody are housed in the same units and cells as sentenced persons and pre-trial or pre-sentencing detainees. These include county, state and federal inmates, some of whom may have committed violent crimes. Those in ICE custody, including asylum seekers, may share a cell with a criminal inmate who is serving a sentence for a violent crime.

This situation leads to unsafe and punitive conditions because most persons detained by ICE have never been imprisoned before and are thus unprepared for prison life. One person who served criminal sentences in several institutions before being taken into ICE custody described this as a dangerous situation, saying, "there are immature characters who never served a day in jail and don't know the code of conduct." He believes the situation is bad both for the persons in ICE custody and the prisoners because when immigrants do not understand the unspoken rules, they are more likely to make mistakes or inadvertently break rules, and the entire unit may be punished for it.

Women at Suffolk described racial problems between the immigrants, many of whom are Latin Americans, and the American inmates, many of whom are African-American. One woman reported that after a fight broke out she decided to stay out of the recreation area and keep to herself in her small cell.

D. Food and Water Are Inadequate

1. Food Is Inadequate

One of the most common complaints we heard about Essex, Bristol, Plymouth and Suffolk related to the poor quality of the food. At Essex, a common complaint was that the portions of food are so small that inmates and detained persons go hungry

when they do not have money to buy canteen items. One person wrote "The portions are horrible, ... every inmate in here complains how hungry they are. They don't feed you enough in here." When portions are not big enough to satisfy a normal appetite, it is especially difficult during the evening because most facilities serve dinner between 4:00 p.m. and 6:00 p.m. and do not serve another meal until breakfast.

At Suffolk, Plymouth and Bristol, there are no arrangements for those who need special diets for medical reasons such as high blood pressure or diabetes. There also are no special religious diets such as those that include Kosher or Halal food.

The "ICE Detainee Guide" given to persons detained at Suffolk states, "Special diets as prescribed by the medical division are available. All meals are pork-free." However, the persons we spoke with reported that they are served pork bologna several times a week.

"You would not give that food to your cat."

—Detainee at Bristol

In ICE's 2004 and 2006 reviews of Plymouth, the facility told the ICE reviewer that it served "religious and medical meals" and that "meals and menus are based on the religion and ethnicity of inmates." However, three persons detained at Plymouth reported that they asked for special religious and medical diets and were denied.

- A Muslim man detained at Suffolk requested Halal meals but was denied. He later developed diabetes while in detention and was hospitalized. When he returned to Suffolk from the hospital, he was told that no special diet was available for diabetics. On a day that an ACLUM representative visited him, he reported that he had eaten a brownie and grits for breakfast, two foods loaded with carbohydrates and sugars, which are dangerous to diabetics. An advocate contacted ICE about the situation, and the detainee began receiving extra portions of food. The extra portions,



A detained person at Plymouth showed these items to the ACLUM. Top photo: the tube on the right (taken from a flexible pen) developed a hard, brown crust on the inside after being held under the water at Plymouth for several weeks. The tube on the left is an example of a new, clean tube. Bottom photo: a white towel turned brown after being held under a faucet in a cell at Plymouth.

however, included a bologna sandwich, which he could not eat because of his religious beliefs.

- An HIV-positive person detained at Plymouth reported that he asked for a special diet but did not get one, although his meal was served in a different color tray.
- A woman at Bristol wrote in a letter, “When it comes to food, we eat cold sliced ham for lunch 4 times a week. Our food is always cold. For the past 5½ months I have been here, they have not served us a piece of chicken. It is either ham or mashed potato. Vegetable is served twice a week very much overcooked.”

In addition, we heard reports that the food is undercooked or overcooked, that it sits out for some time before it is served, that it is never hot, that there is little or no salt in it, and that it is generally unhealthy and unsatisfying. Persons reported eating ham or bologna several times a week. Those who have the money avoid the prison food and resort to eating packaged food from the canteen. Three persons reported weight loss since entering the facility because they were unable to eat the food.

2. Water Safety Is Uncertain

Persons detained at Plymouth report that the water has a “rusty” and “dirty” smell and turns a white towel brown after a few minutes of being held under a faucet. The authorities at the facility are aware of these reports. A private company conducted a test in 2004 and 2006 and reported no problems. However, none of the samples taken by the company were from the cells, shower areas or areas where detained persons get their water. In addition, many report skin irritation, which they believe is a result of problems with the water.

Most facilities provide juice or milk with meals, but no water. Often, the only drinking water available is from the sinks in the bathrooms.

E. Detained Persons Lack Access to Bathrooms

At Suffolk, cells are not equipped with toilets. Persons detained there must use a common bathroom in the hallway of the unit. During times of the day and evening when cell doors are locked, they must ask a guard to open the door and allow them to go to the bathroom. Guards sometimes fail to respond to requests to use the bathroom.

A group of 53 persons in the ICE unit at Suffolk signed a letter to a local lawyer and to the ACLU of Massachusetts describing this problem. They wrote, “During this 7-hour period ... we are forced to urinate, either in canteen rice bags or hold our bladders till the morning shift.”

Suffolk County Jail
20 Bradston St.
Boston MA 02118

February 8, 2008

[REDACTED]
Dear Sir or Madam,

My name is [REDACTED], an ICE detainee at the Suffolk County House of Corrections, in building 8-4. My Detainee ID number is [REDACTED]. I'm writing on behalf of all ICE detainees in Building 8, in regards to the conditions that we are dealing with. As of late, when shift changes from the 2nd to 3rd shift. At approximately (12) midnight our cell doors are then being locked and controlled at the panel by the 3rd shift C.O.'s _____ and _____, till morning. During, this 7-hour period we have been experiencing lack of toilet and water access. As a result of this "Quote on Quote" malfunctioning to our cell doors, we are forced to urinate, either in canteen rice bags or hold our bladders till the morning shift. We the People in ICE custody feel, by complaining to the Superintendent would only worsen, one of many problems at hand. If this office finds our case, relating to this toilet issue to be as valuable as we do then maybe it could help us remedy this torturing situation at once. It leaves us with so many questions: such as, our cells aren't toilet ready, so why lock us in at their convenience, while it leaves us all detainees suffering unnecessarily. If this office can provide us with prompt aid in this sensitive matter of ours, it would bring us all here in building 8 great pleasures. Thank you.

Sincerely,

Name: [REDACTED] Alien # _____ Signature: [REDACTED]

Name: _____ Alien # _____ Signature: _____

F. Facilities Do Not Provide Access to Recreation

Persons detained by ICE can spend months and years in detention while they fight their deportation cases or wait to be deported. Despite the length of detention, detainees report a stark lack of recreational opportunities and educational programs. Some reported feeling depressed and anxious at the lack of things to do in jail. They described the months and years spent in detention as lost time.

According to the Justice Policy Institute, "because jails have historically been intended to hold people

for short lengths of time, they typically have no or few services or programming."⁴⁵ When jails do offer programs, persons in ICE custody have no access to them because ICE will not pay for programs. This means no access to English proficiency classes, technical workshops, programs that teach skills or crafts, and stress-management or addiction support groups that may be available to sentenced inmates.

Even the ability to work is denied. At Plymouth, for example, persons held in ICE custody may not take part in voluntary work programs, in contrast

⁴⁵ Petteruti and Walsh, *supra*, note 22.

to sentenced criminals in the same jail who earn benefits for working in the units.

“I’m wasting away in here. There is nothing to do.”

—*Woman detained at Bristol*

Persons detained at Plymouth, Bristol and Suffolk reported that their only recreation is watching hours of television every day. The only books available are small collections of novels in English that form the reading library. Friends and family members cannot send their loved ones used or family books; facilities only receive new books sent directly from a publisher or a large online bookseller such as Amazon.com or Barnes & Nobles. At Bristol, detained persons have access to local newspapers, but not major ones such as the *Boston Globe*. At Suffolk, the *Boston Globe* is available only when a guard leaves his or her own personal copy for them.

- A person who spent over 8 months in detention told us that his only wish was to be able to read some books in his native language. His English was not good enough to read the few novels available and he did not want to further burden his family by asking them to buy him new books.
- A person detained at Suffolk who previously had been incarcerated and had experience leading addiction support groups asked if he could create a group such as Alcoholics Anonymous or Narcotics Anonymous but was denied.
- An immigration lawyer reported high levels of depression among his clients because of the lack of programs and educational opportunities.

Persons detained at Franklin, Suffolk and Bristol reported little or no access to an outdoor area for recreation or fresh air. At Suffolk, the gym is open for several hours a week, and although there is an outdoor area, detained persons have no access to it during the winter. At Franklin, detained persons reported that although there is an outdoor recreation area, they never are allowed to use it. At the new ICE building at Bristol, detained immigrants have access to a small fenced-in outside area, which

they call the “dog kennel,” and which has no recreational equipment. At Plymouth, detained persons describe a similar area as a “hamster cage.”

G. Facilities Conduct Strip Searches, Cavity Searches and Cell Searches

Upon entrance to a facility, detained persons typically are subjected to strip or cavity searches. This can be a humiliating experience. As a female detainee detained at Bristol wrote:

I was treated very inhumanely when I was arrested. First I was stripped completely and then asked to spread my legs wide apart over a mirror on the floor. I was made to cough and my breasts lifted as if I am a drug dealer. It was a very humiliating experience for me.

Inside the jails, detained persons are subjected to routine searches of their cells, in which some report that their mail and legal materials are confiscated. They also are subjected to periodic strip searches after contact visits.

In addition, a group of persons at Suffolk reported in June 2007 that during a random cell search, they had been made to strip in the cell in front of each other. They wrote a letter to the *Boston Globe*, which reported on the allegations. The facility conducted an investigation and concluded that the allegations were unfounded. The officers involved denied that they had made anybody strip, explaining that one detainee became angry about the cell search and pulled down his pants without being asked to do so.

H. Contact with the Outside World Is Unnecessarily Difficult

1. Family Visits

The ability to receive visits from family members plays a crucial role in maintaining immigrants’ mental health and spirits while in detention. One lawyer reported that in his experience, when family

is able to visit, immigrants are less likely to give up their legal claims and agree to deportation. Several administrative and physical obstacles make regular visits difficult.

- At most jails, there is a waiting period of several weeks after a person first enters the facility before he or she can receive visits.
- In addition, the visitation rules can be very burdensome. Detained persons must specify the names of their visitors in advance. Typically, only three persons are allowed to be specified, and in some jails, the list of visitors can be changed only once every six months. A wife of a person at Suffolk reported that the procedure for visits was for her to call on Tuesdays between 9:30 a.m. and 2:00 p.m. to make an appointment to visit her husband the following Friday or Sunday. Every time she called the facility during those times, there was no answer. She left messages but nobody returned her calls. She had to take time off of work to call many times during the day on Tuesday in order to make an appointment.
- At Bristol, Franklin and Plymouth, detained persons are not allowed contact visits. Visitors must speak to them through a Plexiglas barrier and a phone. Some reported that this prospect

was so humiliating that they asked their families not to visit them.

2. Phone Calls

Detained persons cannot receive calls at facilities. Instead, they must rely on their own ability to make phone calls to the outside. In 2007, the United States Government Accountability Office observed 23 ICE-run detention facilities and found systemic telephone system problems. The GAO encountered “significant problems in making connections to consulates, pro bono legal providers, or the DHS Office of the Inspector General (OIG) complaint hotline.”⁴⁶

In order to call family members and private lawyers, detained persons must create an account with Correctional Billing Services (CBS), which provides phone service to facilities in Massachusetts, and has a monopoly over those services. For each phone call placed, CBS charges a connection fee of \$3.00 plus an additional charge of ten cents per minute for

46. U.S. GOV. ACCOUNTABILITY OFFICE, REPORT TO CONGRESSIONAL REQUESTERS, *TELEPHONE ACCESS PROBLEMS WERE PERVASIVE AT DETENTION FACILITIES; OTHER DEFICIENCIES DID NOT SHOW A PATTERN OF NONCOMPLIANCE*, GAO-07-875 (July 2007), <http://www.gao.gov/new.items/d07875.pdf>.

THE IMPACT OF TIME SPENT IN JAIL

“As most people who are jailed are there for shorter periods of time than people sentenced to state prison, it is easy for those who do not know the facts to minimize the impact of jail time. But the days, weeks, months and years that some people spend in jail carry significant consequences for the individuals jailed and the communities that have to house, maintain, and pay tens of billions of dollars to maintain the jails. ...

Jail incarceration has a negative impact on health, mental health, employment, and the family and community connections of people incarcerated.

Jails rarely have adequate resources available to treat people with physical or mental health problems, and according to the National Association of Counties, jail often “traumatizes persons with mental illness and makes them worse.” No surprise, then, that the suicide rate in jails is nearly four times the rate in the general population.”

—Justice Policy Institute

SOURCE: Petteeruti, Amanda and Walsh, Sastassia, *Justice Policy Institute, Jailing Communities: The Impact of Jail Expansion and Effective Public Safety Strategies*, April 1, 2008, <http://www.justicepolicy.org> (citing Rosado, Ed. 2002. Diverting the mentally ill from jail. National Association of Counties Legislative Department.).

local calls and significantly more for long distance calls. Some persons complained of problems such as communications being cut off in the middle and being overcharged by CBS.

In addition, ICE states that detained persons should be able to call free legal service providers and consulates and embassies at no expense. At Plymouth and Suffolk, detained persons reported major problems calling these, and legal service providers themselves reported problems receiving calls.

I. Many Become Depressed and Feel Effects of Tense Environment

Detained persons report that the combination of the daily obstacles they face in jail, coupled with the uncertainty of not knowing when they will be released or deported makes for a tense environment where they suffer from anxiety and depression. Indeed, many who we interviewed expressed feelings of anxiety, stress and sadness. Some broke down in tears when recounting what it is like to live in ICE detention.

“Some people just sleep all day, they can’t take it.”

—Person detained at Suffolk County HOC

“Somebody is going to snap.”

—Person detained at Suffolk

“The immigrants here are really suffering.”

—Person detained at Plymouth

Several advocates and lawyers opined that it is ICE’s intention to make detention as difficult as possible in order to increase the chances that detained immigrants will give up legal claims and accept a quicker deportation. One lawyer called it “a war of attrition.” Some also felt that detention was used as a deterrent to new immigrants coming into the country.

III. Inadequate Medical Care

A. Detained Persons Face Long Delays in Getting Medical Care

ICE’s failure to provide adequate medical care to persons in its custody has become a topic of national attention. Between 2004 and 2007, sixty-six persons died in ICE custody.⁴⁷ Most recently, an immigrant from China died in Rhode Island’s Wyatt Detention Center, after officials there did not believe that he was ill and in pain. Mr. Ng died of cancer and doctors determined that he had been living in detention with a fractured back.⁴⁸

When detained immigrants become ill and require medical attention, they must follow the facility’s procedure, which is the same at all county jails in Massachusetts — fill out a medical request form, commonly called a “sick slip” or “sick call” and wait to be called. While emergency room care is usually available, for non-emergency conditions, detained persons must wait to be called.

In our interviews throughout the state, the most common complaint about medical care was the long wait-time to see a doctor. Overcrowding at county jails has put a strain on the medical systems, which are the likely cause behind backlogs in responding to medical requests. Immigrants detained at Plymouth, Suffolk and Bristol reported waiting several weeks between the time they asked to see a doctor and the time they were called by the medical staff. Some reported that they made requests and were never seen.

These delays can have an impact on even non-life threatening conditions because the exclusive form of medical care available is that provided by the facility’s medical staff. Detained persons cannot take their own steps to treat a condition while they wait

47. Nina Bernstein, Margot Williams, *Immigration Agency’s List of Deaths in Custody*, N.Y. TIMES, May 5, 2008.

48. Nina Bernstein, *Ill and In Pain, Detainee Dies in U.S. Hands*, N.Y. TIMES, Aug. 12, 2008.

to be seen. Except for Tylenol and in some places Advil, the facilities do not offer other over-the-counter medication for purchase, and they do not allow outside medication into the facility. Whereas outside of detention, issues such as a headache, a common cold, constipation, diarrhea, dry skin, rashes or difficulty sleeping can be solved with a simple visit to the pharmacy, in detention, only medical staff can dispense such medications. Detained persons have no choice but to ask to see a doctor and wait for days or weeks.

“I came in here brand new and I’m going to leave like I’m a hundred years old.”

—*Person detained at Plymouth*

Even when there are no excessive delays, the system is set up so that in non-emergency cases, the earliest a person will be seen by a doctor is the day following the request. For example, the Suffolk rules state that sick call is held 6 days a week and that the procedure is to fill out a request form, return it to a nurse who delivers previously prescribed medication in the evening and wait to be seen the following day.

“There are no doctors.”

—*Person detained at Plymouth*

A mandatory one-day wait period for non-emergencies may not seem like an unreasonable requirement in an age of HMOs and doctors with long

patient lists. However, it is important to note that detained persons cannot take their own steps to address pain or discomfort before being called by the medical staff.

“They respond quicker for a maintenance repair call than for an inmate who writes a sick call.”

—*Person detained at Plymouth*

As one detainee explained, if he wakes up one morning with a strong headache, his only recourse is to fill out a medical slip and hope to be called the next day. This led him to exclaim, “Around here, they expect you to know a day ahead of time if you’re going to be sick.” In addition, when there is no sick call on Sundays, a person who feels ill on Saturday morning must wait at least until Monday to receive care.

Detained immigrants seem to react in three different ways to the difficulties in seeing a doctor: they give up on the jail’s medical system altogether and hope conditions will heal on their own; they rely on their lawyers to call the facility to request that they receive care; or they fill out repeated requests for treatment and risk being seen as a nuisance.

- One man told us that he sprained his ankle and asked to see a doctor, but when four months passed and he still had not been seen, he called his lawyer. The lawyer contacted the facility and the man was seen shortly after that.

DOCUMENT: REQUESTING MEDICAL CARE

Suffolk County Sheriff’s Department “ICE Detainee Guide”

Emergency health care is provided 24 hours a day (7 days per week) in the medical unit. Sick call is held (6) days per week (holidays and Sundays excluded). If you wish to be seen at sick call, you must fill out a sick call request slip (Note: it is very important that you state the reason for submitting your slip) and return it to a nurse during the evening medication line. You will be held in your unit the following day until you are called by medical staff (you will be assigned to see either the RN, VP, or MD). If you do not wish to be seen at sick call, you must respond to the medical unit when called and sign a Refusal of Treatment Form with the medical staff.

- Two persons reported that the medical staff told them they complain too much.
- Medical staff labeled two persons in their medical charts as “angry” and “irate” when they complained about not receiving care.
- A man with a mental illness who requested repeatedly to be treated for a skin condition was told that there was nothing wrong with him. Medical staff noted in his chart that his skin looked normal and instead re-ordered his antidepressant medication. The person reported that the doctor told him not to complain anymore because he would not be seen. When he was released, a doctor found that he had a fungal infection on his skin. (See Albert’s story, page 55.)
- A man who, shortly before being detained by ICE, had been diagnosed with a pre-cancerous lesion requiring careful follow-up waited for five months before seeing a specialist, during which time his lesion became increasingly painful. (See Raheem’s story, page 41.)
- A man who suffered from severe psoriasis and received no relief from the creams he was prescribed, went into the medical unit on a Saturday afternoon, and asked to see a doctor. Instead of seeing a doctor, he was charged with “disobeying an order of a staff member” and “conduct which disrupts the security/orderly running of the institution.” Officers wrote a Disciplinary Report but noted no insolent or physical conduct other than the person stating that he would not leave until a doctor saw him. He was placed in segregation, where he remained for approximately two weeks.
- A detained person had a headache and filed a medical request. Knowing that he would not be seen at least until the next day, a fellow detainee offered to “lend” him some over-the-counter painkillers he had in his cell. The person with the headache was punished for going into another person’s cell and when he tried to explain, he was yelled at and a team of guards was called to restrain him.
- When she entered the facility, a woman told the intake nurse that she was taking medicine for anxiety and depression. Fifteen days later, when she had not received the medication yet, her therapist from outside the facility sent the information about her medicine to the jail’s medical unit. Her lawyer also sent documentation about her medical history. A month after being arrested, she still was not receiving any medication.

B. ICE Controls and Denies or Delays Non-Routine Care

The medical staffs in Massachusetts county jails generally are made up of doctors, nurses, mental health specialists and dentists. They are responsible for the routine care of inmates and detainees, but treatment that requires hospitalization or a specialist must be performed outside of the jails, typically in nearby hospitals that service inmate populations. The standard contract between ICE and local facilities specifies that the jail will cover the costs of routine medical care performed by its own medical staff, but that ICE pays for and must pre-approve any care performed outside of the facility. Whenever medical staff at a jail refer a person in ICE custody to an outside facility, they must send a request to ICE, where the Division of Immigration Health Services (DIHS) receives the request and approves or denies it.

A typical contract between ICE and a local facility states:

The DIHS [Division of Immigration Health Services] acts as the agent and final health authority for BICE [Bureau of Immigration and Customs Enforcement, another way of referring to ICE] on all off-site detainee medical and health related matters. The relationship of the DIHS to the detainee equals that of a physician-patient. The Service Provider [jail] shall release any and all medical information for BICE detainees to the DIHS representatives upon request.

The Service Provider shall solicit DIHS approval before proceeding with non-emergency, off-site medical care (e.g. off site lab testing, eyeglasses, cosmetic dental prosthetics, dental care for cosmetic purposes). The Service Provider shall submit supporting documentation for non-routine, off-site medical/health services to DIHS. ... For medical care provided outside the facility, the DIHS may determine that an alternative medical provider or institution is more cost-effective or more aptly meets the needs of BICE and the detainee. The BICE may refuse to reimburse the Service Provider for non-emergency medical costs incurred that were not pre-approved by DIHS.

Although the contract states that the relationship between DIHS and the detainee constitutes that of a physician and a patient, none of the detained persons with whom we spoke ever had contact with any person from DIHS. The detained patients had no access to the decision-making process, and learned whether their treatment was approved or denied only through the doctors at the jails. They reported that if time passed and they did not receive any updates about a request, they had to ask to see the jail doctor again, who would inform them of the decision, if one had been made.

“They’ve ruined me. What am I going to do when I get out? How will I support my family?”

—Person detained at Plymouth who became increasingly ill while in detention

Medical staff at jails place requests to DIHS using a web-based form. DIHS staff members, which, according to a recent investigative series by the Washington Post total “four nurses, working 9 to 4, East Coast time, five days a week,” determine whether to deny or approve coverage.⁴⁹

According to the Post, DIHS’s standard of care for

49. Amy Goldstein and Dana Priest, *System of Neglect*, WASH. POST, May 11, 2008.

deciding whether to provide or deny medical care is “to keep detained immigrants healthy enough to be deported.”⁵⁰ Gary Mead, acting head of ICE’s Detention and Removal Office, reiterated that standard on a radio show when he responded to the Post’s articles. Mr. Mead acknowledged this mission, but justified it, stating,

[W]e do have to balance the basic needs of ultimately removing people who have been adjudged removable from the country and their medical care. We have to be sure that they are medically capable of being removed but then we also have to balance how much additional medical care do we give them before they return to their country. So I do think it’s unfair to say that we’re conflicted, but we do have to make that balance — how long do we keep someone in custody who has been ordered removed, how much medical care do we give them?⁵¹

If DIHS denies a request for treatment, there is no process for the detained person to appeal the decision. Just as detained immigrants have no access to the decision-making process at DIHS, and there is no procedure for informing the patient of the outcome of the request, detained immigrants also have no recourse after the decision has been made.

A detained person who broke his finger days before being arrested by ICE was seen by doctors at two facilities and told he needed to see an orthopedist in order to fix the finger, which was visibly deformed. ICE denied the request, labeling the procedure as “elective” because the finger had been broken before the person was arrested. Despite the person’s repeated complaints of increasing pain and numbness in his finger, he never was allowed to see a specialist.

50. *Id.* The Washington Post reported that this role had led doctors in the system to express concern about violating medical ethics. As one doctor expressed in a letter to DIHS, “[t]he agency’s mission of “keeping the detainee medically ready for deportation” often conflicts with the standards of care in the wider medical community.”

51. *The Diane Rehm Show* (National Public Radio broadcast May 13, 2008).



Oscar's Story

Oscar was detained by ICE in February 2006, when he was 24 years old. He suffers from a kidney ailment called membranous nephropathy, where his kidneys are unable to properly filter waste and fluids. The list of medications he was taking before he was detained by ICE is lengthy.

When he arrived at Plymouth County Jail, he filled out a health intake form where he indicated the details of his condition, but did not see a doctor. Without his medicines, he began to feel the impact of withdrawal and of his kidney condition. He became increasingly bloated and began feeling great pain in his joints. He describes his body as being “filled with water,” which he could feel when he lay down.

In the days that followed, his body became so bloated and disfigured that he was unable to stand or walk. His cellmates helped him stand to go to the bathroom and began to take him food because he could not make it down the stairs to the cafeteria. Despite repeated and increasingly desperate requests to see a doctor, Oscar was not seen until 3 or 4 weeks after his admission. The doctor told him that he had to obtain Oscar's medical records before he could provide him with any medication. Approximately 6 weeks after his admission, he began receiving medication.

However, the medication was not as helpful as he hoped. He continued to be bloated and in pain. Forty-eight days after he was admitted to Plymouth, he was taken by ambulance to Jordan Hospital where he was told that the potassium level in his blood was dangerously low and that he was lucky that his heart had not stopped.

When he returned from the hospital, Oscar was put in the medical unit at Plymouth. He was not getting his medications regularly and complained that the prison was not administering them correctly. His joint pain and severe bloating continued, and he reached out to his lawyer and others for help.

In May of 2006, he called the PAIR Project (Political Asylum/ Immigration Representation Project), a non-profit organization based in Boston. A lawyer from PAIR visited him in detention and wrote a letter to a Supervisory Officer at ICE in Boston expressing her concern for Oscar's “serious health condition.” In the letter, she stated that when she visited Oscar, he was “extremely bloated and uncomfortable because he had not received all of his medications the day before ... I was shocked as a layperson by the difference between his appearance on the day I met him and the photograph on his Plymouth identity card. [Oscar's] face was bloated beyond recognition. I would never have guessed that the young man sitting before me was the same man depicted on the identity card.” She asked ICE to look into the situation and to consider transferring him to a facility with better medical care.

After the PAIR Project lawyer's intervention, and over 4 months into his detention, medical staff at Plymouth began giving Oscar the medication he needed on a timely basis. He got to know the medical staff there and began to receive the medication regularly. However, he did not get the special high-protein diet he required. While the doctor filled out a form saying he needed more protein in his meals, Oscar reports that the doctor told him “Now it's up to the kitchen guys.” Oscar began receiving an extra serving of bread or slice of pizza, but no extra protein.

By the time the ACLU interviewed him in January 2007, he had been in detention for almost a year, and he was still bloated and appeared approximately 50 pounds heavier than his admission picture. He said he was depressed and had run out of energy and given up fighting the system at the jail. He was deported soon after.

UNLIKE CRIMINAL INMATES, PERSONS DETAINED BY ICE MUST DEAL WITH A DUAL SYSTEM OF APPROVAL FOR CARE. FIRST, THEY MUST STRUGGLE TO BE SEEN BY THE LOCAL JAIL'S DOCTOR. THEN, THEY MUST WAIT FOR FEDERAL APPROVAL FROM A SYSTEM TO WHICH THEY HAVE NO ACCESS.

Unlike criminal inmates, persons detained by ICE must deal with this dual system of approval for care. First, they must struggle to be seen by the local jail's doctor, which is a problem for both inmates and detained immigrants. Then, whereas criminal inmates' medical care is covered by the facility, persons detained by ICE must wait for federal approval from a system to which they have no access.

The lack of transparency in approving care is compounded by ICE's almost limitless discretion to transfer detained persons to facilities anywhere in the country and to release them instead of keeping them in jail. In some cases ICE appears to delay approving care until a person is released or deported.

- A detained man waited five months to be seen by a specialist to take a look at a painful lesion inside his mouth. He was transferred to a different jail a few days before his appointment at a hospital and then was brought back to that jail after the appointment had passed. He was unexpectedly released three days after he saw a specialist, who ordered a biopsy, which was never performed. (See Raheem's story, page 41.)
- A detained man, who had a skin condition and a dental condition that required outside treatment was told by the jail's doctor that ICE would not pay for his treatment because he was scheduled to be released soon. (See Albert's story, page 55.)

C. ICE Compromises Continuity of Medical Treatment When It Transfers Persons

Transfers from one facility to another are especially difficult on persons who require daily medication. When a transfer happens, medical records are not automatically sent along and the receiving facility is not notified of the incoming person's medical issues

and medication regimen.

ICE's own guidelines state that when a detainee is transferred from one facility to another, form USM-553, entitled "Medical Summary of Federal Prisoner/Alien in Transit" must travel with her.

The guideline also specifies that ICE will ensure that the person in transit is given three to seven days' worth of the medication she is taking. Even the standard contract between ICE and local jails specifies that whenever a detainee is transferred, her medical records will travel with her and the receiving facility will be notified of any dangerous medical situation or risk of suicide, so that it can reject any detainees for which it is not equipped to care.

The ACLU of Massachusetts has found that, in practice, this does not happen with regularity. Despite the existence of rules and a form, there is no actual working protocol for medical records and medication to transfer in a timely manner. Instead, detained persons are moved without these, and they themselves must alert the staff in the receiving facility of their medical issues. At that point, the receiving facility must request the medical records from the sending facility. This can take several days, during which time the person goes without his or her medication.

- A detained person who was receiving daily anti-psychotic medications was transferred three times within one month to three different jails in Massachusetts, each time without his medical records. At each transfer, he spent several days without the required medication, suffering difficult effects. During one transfer, the detainee reported that the facility gave an envelope (which could have included the medical records) and a bag with the detainee's medication to the officer who was transporting him. This medication and envelope were confiscated at the receiving facility and never given to the detainee.
- ICE arrested a person while he was being confined under a court order at Bridgewater State Hospital. The person had a long history of psychiatric issues, including a suicide attempt, and

Albert's Story

Albert is a 27-year-old man from Liberia with a documented history of schizophrenia. Although his country of origin would not accept him, he spent 21 months in detention. There, he faced a variety of medical problems that went untreated.

He first spent approximately one year at Suffolk, where he complained that he sometimes spent days without his psychiatric medications and often was told by the nurses that they had run out. He was then transferred to Bristol, but he wasn't given any of his medication during transit, and he spent four days without it. At Bristol jail, he began experiencing a painful skin condition and began receiving a cream that proved effective. However, he again complained that he would go for days without his psychiatric medications. One day, he was disciplined for using obscenities against guards and not having his door locked during the head-count. He was punished with 20 days in segregation, which involves being locked in a cell for 23 hours a day, in a unit separated from the general population. The disciplinary report made no mention of his schizophrenia or the fact that he had not been getting the medication on a regular basis.



Less than two months after he entered Bristol, he was transferred to Plymouth, where, again, his medical records and prescription medication did not accompany him. Because he had been in segregation in Bristol jail, he was placed in segregation at the new facility. At his booking interview, Albert told the officers about his psychiatric history, including the medications he was taking and his history of a suicide attempt. He was referred to the Mental Health Counselor, who saw him two days later. The counselor wrote in the chart that by the time she saw him, he had missed three days of his medication. She then immediately placed Albert on a "one-to-one" medical watch until the medication could be reinstated, because of "potential self-harm when not on meds." It took another day for Albert to begin receiving his medications and he spent several more days on medical watch. He remained in segregation.

At Plymouth, his skin condition worsened. At one point, the pain from the irritation was so bad that he had trouble walking and could not climb onto his top bunk. He was treated with creams, which Albert reports did not work. Because Plymouth did not have the medical records from the previous facility, they could not identify the medication Albert had taken in the past, which had worked.

continued ►

for months had been receiving intensive psychiatric care, including a regimen of several psychiatric medications. ICE removed him from the hospital and within days, transferred him to New Mexico without any medical documentation. It took the family's intervention to ensure that the receiving facility was alerted about his situation, and the family itself had to send the detainee's lengthy medical file and medication regimen to New Mexico. He was later transferred to Rhode Island, where, again, ICE did not provide the facility with his medical records. The family learned about his transfer when they went to visit him in Boston, and again had to send the medical file to the Rhode Island facility.

This interruption in medical treatment is compounded by the stress of being moved without notice from one place to another, often to facilities faraway from detainees' family members and lawyers, who advocate with jail facilities for detainees to receive medical care.

IV. Failure to Supervise Local Facilities

A. ICE Does Not Adequately Supervise or Prepare Facilities to Handle Immigration Detainees

Although persons detained by ICE in Massachusetts are in the physical custody of the local facilities that house them, ICE remains the legal custodian and is responsible for the treatment and wellbeing of persons in its custody. ICE does not have adequate mechanisms in place to supervise the more than 30,000 persons it detains on a daily basis in the hundreds of local facilities around the country.

ICE REMAINS THE LEGAL CUSTODIAN OF THE MORE THAN 30,000 ICE DETAINEES IN LOCAL FACILITIES AROUND THE COUNTRY.

ICE's use of local facilities to house its detainees is subject to a contract, called an Inter-Governmental Service Agreement. This contract details each party's rights and obligations. The only mention in the contract of the local facility's obligation to treat ICE detainees according to a set of rules is in one paragraph in the contract:

The Service Provider shall ensure compliance with the [ICE] detention standards (find under www.immigration.gov/graphics/lawsregs/guidance.htm and Department of Justice core detention standards to be provided by [ICE] ... Compliance shall be made within ninety (90) days from the effective date of this agreement.

ICE provides no further training or explanation of what the guidelines require. (Even the web link provided in this paragraph is no longer functioning.) When ACLUM asked under the Freedom of Information Act for any training materials or guidelines issued to the local facilities, ICE responded, "Please note that ICE does not provide manuals, handbooks, guidelines or instructional material to

DOCUMENT: ICE DOES NOT ADEQUATELY SUPERVISE FACILITIES

Significant Incident Summary Worksheet

For ICE to complete its Review of your facility, the following information must be completed prior to the scheduled review dates. The information on this form should contain data for the past twelve months in the boxes provided. The information on this form is used in conjunction with the ICE Detention Standards in assessing your Detention Operations against the needs of the ICE and its detained population. This form should be filled out by the facility prior to the start of any inspection.

<i>Incidents</i>	<i>Description</i>	Jan – Mar	Apr – Jun	Jul – Sept	Oct – Dec
Assault: Offenders on Offenders ¹	Types (Sexual ² , Physical, etc.)	44	31	35	46
	With Weapon	0	0	0	0
	Without Weapon	44	31	35	46
Assault: Detainee on Staff	Types (Sexual Physical, etc.)	4	3	4	7
	With Weapon	0	0	0	0
	Without Weapon	4	3	4	7
Number of Forced Moves, incl. Forced Cell moves ³		40	25	29	22
Disturbances ⁴		0	0	0	1
Number of Times Chemical Agents Used		2	3	5	4
Number of Times Special Reaction Team Deployed/Used		0	0	0	0
# Times Four/Five Point Restraints applied/used	Number/Reason (M=Medical, V=Violent Behavior, O=Other)	14/v	11/v	10/v	7/v
	Type (C=Chair, B=Bed, BB=Board, O=Other)	c	c	c	c
Offender / Detainee Medical Referrals as a result of injuries sustained.		0	0	0	0
Escapes	Attempted	0	0	0	0
	Actual	0	0	0	0
Grievances:	# Received	0	0	0	0
	# Resolved in favor of Offender/Detainee	0	0	0	0
Deaths	Reason (V=Violent, I=Illness, S=Suicide, A=Attempted Suicide, O=Other)	0	0	0	0
	Number	0	0	0	0
Psychiatric / Medical Referrals	# Medical Cases referred for Outside Care	0	0	0	0
	# Psychiatric Cases referred for Outside Care	0	0	0	0

- ¹ Any attempted physical contact or physical contact that involves two or more offenders
- ² Oral, anal or vaginal penetration or attempted penetration involving at least 2 parties, whether it is consenting or non-consenting
- ³ Routine transportation of detainees/offenders is not considered "forced"
- ⁴ Any incident that involves four or more detainees/offenders, includes gang fights, organized multiple hunger strikes, work stoppages, hostage situations, major fires, or other large scale incidents.

ICE requests the information in this worksheet in advance of its visit to the facility. However, the numbers seem to have no bearing on the final rating, since there is no mention in the reports of the numbers provided. Many reviews provided numbers that were either missing or not credible. Yet, there were no consequences for failing to provide the requested statistics. In this 2004 review of Plymouth County jail, the facility received a final rating of "good" and there is no mention of the missing statistics.

employees at any detention facility housing ICE detainees in Massachusetts. Information responsive to Item 6 of your request would likely be issued by each individual facility.”

1. No Consistent Presence of ICE Personnel at Local Facilities

Because many of the issues that persons in ICE custody face cannot be resolved by local authorities and must be made directly to ICE, they rely on visits to the jail by ICE personnel. Detained persons report that ICE agents visit facilities less than once a week and that they provide very little information. A common complaint was that the visiting ICE agent could not tell detainees anything specific about their cases and could not help them with medical complaints. Detained persons wait weeks to have their questions answered by ICE and have no way to speak to an ICE representative quickly if they need something.

In the Boston district, since ICE’s Office of Detention and Removal moved from the John F. Kennedy Building in downtown Boston to an office building in Burlington, Massachusetts, in late 2007, all of the ICE agents who were once stationed at local jails have been moved to Burlington. This means that there is no permanent presence of ICE personnel at jails to monitor conditions or communicate with the approximately 1,200 persons in its custody around New England.

2. No Transparency in Independent Reviews of Facilities

Although independent agencies such as the American Bar Association and the United Nations High Commissioner for Refugees conduct periodic reviews of facilities holding ICE detainees, those reports are not made available to the public or to advocacy organizations.⁵² Both the ABA and

52. ACLUM requested to see those reports for Massachusetts facilities under the Freedom of Information Act. The government denied the release of these documents, stating that they could not be located. We filed an

the UNHCR review detention conditions on the government’s condition that the reports be kept confidential.⁵³

B. ICE’s Own Review of Local Facilities’ Compliance with Its Detention Standards Is Ineffective

During the 1990’s, ICE’s predecessor, INS, together with many advocacy organizations created the INS Detention Standards. These 36, and later 38, non-binding rules address all aspects of detainee life from the significant (“All detainees have access to and receive medical care”) to the mundane daily workings of a detention facility (“All worn or discarded keys and locks [are] cut up and properly disposed of”). As mentioned above, contracts with local facilities state that they must comply with the standards.

As part of ICE’s functions, the agency strives to conduct yearly reviews of facilities to determine whether they are complying with the standards. According to the Detention and Removal Office (DRO):

DRO manages its own Detention Management Control Plan (DMCP) to ensure its facilities comply with American Correctional Association detention standards and their own more stringent and comprehensive ICE Detention Standards. Through execution of thorough and routine inspections outlined in the DMCP, DRO ensures its facilities are operated in a professional manner and are compliant with appropriate codes, standards, and regulations.⁵⁴

appeal, number HDS08-122. As of the printing of this report the appeal was pending.

53. ACLU of Southern California and National Immigration Law Center, *U.S. Immigration Detention System; Substandard Conditions of Confinement and Ineffective Oversight*, May 3, 2007, http://www.nilc.org/im-lawpolicy/arrestdet/UNspecialrapporteur_presentation_2007-05-03.pdf.

54. U.S. DEP’T OF HOMELAND SECURITY, *ENDGAME*, note 8, at 2–3.

WHILE SOME REVIEWERS MAKE CAREFUL COMMENTS, OTHERS APPEAR TO GO THROUGH THE MOTIONS. FOR EXAMPLE, ONE REVIEWER SIMPLY ANSWERED “YES” TO EACH OF THE 700 QUESTIONS — AND THEN GAVE BRISTOL A PERFECT SCORE.

The reviews consist of a visit by an ICE officer, who meets with facility staff and fills out an approximately 80-page worksheet that includes almost 700 questions relating to the 36-38 detention standards. The reviewer answers “Yes,” “No,” or “Not Applicable” to each of the questions for each of the standards. The reviewer then makes a finding regarding each standard, which can be “Acceptable,” “Deficient,” “At-Risk,” or “Repeat Finding.” The reviewer then writes a final report giving the facility an overall rating of “Superior,” “Good,” “Acceptable,” “Deficient” or “At-Risk.”

Through a Freedom of Information Act request, the ACLU of Massachusetts obtained 15 reviews of 4 facilities in Massachusetts from 2002–2007. We found that because of several structural and practical deficiencies, the reviews fail to ensure that facilities are complying with the ICE standards, and that, in turn, they fail to ensure that facilities respect and protect the fundamental human rights of persons in ICE custody.



1. Yearly ICE Reviews Focus on Policy, Not Practice

Although the reviews ask over 700 questions, the questions address the institution’s policies but do not measure whether the policies are carried out with consistency or at all. All 700 questions can be answered without ever speaking to a single detained person.

At the completion of the review, most reviewers write in boilerplate language: “Staff and detainees were cooperative and available to assist reviewers and to answer questions posed by the team,” but there

is no indication that the reviewers asked questions of detainees or that those questions were asked in a manner designed to elicit honest responses. There is no room in the 80-page worksheet of questions for comments from detainees. None of the questions address detainee’s opinions or real-life experience with the rules.

The level of detail and care taken in each review varies by year and by facility. While some reviewers make careful comments, others appear simply to go through empty motions.

For example, the 2005 review of Bristol received a perfect score. Every single one of the almost 700 questions was answered in the positive, without a single remark.

The reviewer answered “yes” to every question, even when a “yes” answer was not logical, either because the question was not applicable to that facility, or because answering “yes” to one question contradicted a “yes” answer for a following question.

The review also was inconsistent with previous and subsequent reviews of the same facility. For example, other reviewers noted that Bristol jail does not allow visits by minors, yet the 2005 reviewer answered that it did.

Strangely, although the facility had a perfect compliance record that year, it received a mark of “good” instead of “superior.” The report was filed and signed by the Field Office Coordinator of the Detention Management Control Program (DMCP), who found that the report was “in compliance with the reporting policies” and forwarded it to John P. Torres, Acting National Director of ICE.

2. ICE Reviews Do Not Result in Positive Changes

It is unclear what consequence the ICE reviews have on the facility’s compliance with ICE standards. There is little or no indication that when ICE identifies a deficiency, the issue is resolved. Several structural problems make positive change difficult.

First, there is no continuity of reviews from year to year. Reviewers do not take into consideration the

Detainee Grievance Procedure

One of the ICE detention standards regards the procedures in place for detainees to file grievances. The ICE reviewer’s worksheet asks whether there is a written procedure for informal resolution of oral grievances. The question requires a yes or no answer, and does not ask the reviewer to consider the substance or quality of the procedure, the number of grievances filed, or the content of those grievances.

In actuality, the reviewer has access to the number of grievances filed because before the facility’s review takes place, ICE asks for statistics on a variety of issues – including the number of grievances filed in the previous year. (See document on page 58.) Despite the fact that the report filed by the ICE reviewer includes these numbers, there is no indication that the reviewer takes these numbers into consideration in evaluating the facility.

This leads to an inadequate picture of the grievance process at the facilities. For example, in the 2001 through 2005 reviews of Bristol County jail, the facility reported vastly differing numbers of lodged grievances, yet there was no mention in the worksheets or final reports for these years about the inconsistencies.

In addition, the worksheet does not ask about detainees’ experience with the grievance procedure. In our interviews, we heard many reports of a lack of a working grievance procedure. Detained persons reported difficulty in obtaining grievance forms; discouragement by jail staff from filing the grievance forms; a lack of response to grievances; fear of retaliation for filing grievances; and actual retaliation for filing grievances.

BRISTOL COUNTY JAIL	
Year	Number of Grievances
2001*	10
2002	1,494
2003	1,115
2004	2
2005	127

** 2001 data is for October through December only*

previous years’ reports when conducting the audit. When the same problems were identified over the years, there was no notation that the issue had been identified in the past and had not been resolved.⁵⁵

Second, there is no guidance or standards on what constitutes “acceptable” or “deficient.” It is unclear which or how many questions have to be non-compliant in order for any one standard to receive a grade of less than acceptable. The worksheet offers no guidance relating to whether some items are more important than others, or if a certain number

55. This is evident in the relatively innocuous issue of a “sneeze guard” in the cafeteria serving line at Plymouth and Suffolk. The lack of a sneeze guard is documented in four reports, yet there is no mention in any report that it was documented before.

of non-compliant items equal a certain finding. It is then unclear what effect non-compliance with any individual standard has on the overall rating.

This lack of standards leads to inconsistent findings. For example, in the 2002 INS review of Plymouth, the facility received a rating of “deficient” because of two non-compliant items. In the 2005 review of Suffolk, despite at least 23 non-compliant items, the facility’s overall rating was “good.” This included several significant problems:

- Quarters in segregation unit are not well ventilated, adequately lighted, appropriately heated or maintained in a sanitary condition.
- Detainee’s attorney of record is not notified when the detainee is transferred out of the jail.

The following information summarizes the rating of all standards included in the inspection report. Each standard is identified and a short summary is provided regarding standards or procedures not currently in compliance.

- Compliant - 36
- Deficient - 0
- At-Risk - 0

Constraints or difficulties experienced during the review:

During the review there were no constraints or abnormal difficulties encountered. Staff and detainees were cooperative and available to assist reviewers and to answer questions posed by the reviewers.

RIC Observations and Comments:

- **Best Practice: Medical Unit:** The medical unit of the facility is well versed in all medical procedures. Medication is dispensed in a timely manner. Officers are NOT allowed to dispense medication to detainees who are not competent for the task.

- **Law Library:** The law library is exceptional. It is well stocked to supply stand-alone law and print materials. These stand-alone materials are more than adequate for the facility.

- **Kitchen:** Upon the initial walk thru of the kitchen, there were problems evident to this inspector. A conversation with the Chief [redacted] and Cook Supervisor entailed the importance of this area to the inspection. The initial walk thru was on Monday the actual inspection was on Wednesday. The day of the inspection revealed a kitchen that was meticulously cleaned and ready. All paperwork was in order and ready for this inspector. The kitchen area passed a through inspection and is an area that will be spot-checked from time to time for compliance.

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(b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

- Detainees are not given the completed Detainee Transfer Notification Form when transferred out of the facility.
- Mailroom clerks open any suspicious items without the detainee being present.

THERE ARE NO CONSEQUENCES FOR A FACILITY THAT FAILS TO COMPLY WITH THE STANDARDS AND LITTLE OR NO INDICATION THAT WHEN ICE IDENTIFIES A DEFICIENCY, THE ISSUE IS EVER RESOLVED.

The following year, the facility did not comply with at least 28 items, an increase from the previous year. Yet, it was still found to be in compliance with all of the standards, and given a rating of “Good.”

Third, DHS does not analyze the results of the annual reviews or use them to generate policy changes aimed at increasing compliance with the Detention

Standards. There are no consequences if a facility fails to comply with the standards. ICE does not require a temporary cessation of use of a deficient facility or termination of the facility’s contract.⁵⁶

Fourth, the facilities are given too much time to prepare and correct deficiencies ahead of and during inspections. While it is important to give facilities adequate time to make improvements and adjustments, it is also important to visit jails on normal days when they are unprepared for a visit, in order to get an accurate picture of the daily situation. Facilities receive a 30-day notice that a DHS review will take place. The facilities are asked to provide certain statistical information in advance of the visit and the days of the visit are pre-scheduled.

Giving too much time to prepare gives the facilities the opportunity to temporarily cover up issues for

⁵⁶ ACLU, *U.S. Immigration Detention System*, note 52.

the inspection. Two detainees at Plymouth told us that a jail prepares for inspections by making prisoners clean and paint areas, and that when inspectors visit, the kitchen uses disposable trays instead of the plastic ones regularly used.

In addition, ICE reviewers give the facility the opportunity to correct issues *during the inspection period* — ensuring that they are not reported as deficiencies. For example, in the 2005 review of Suffolk, the reviewer found some areas in the kitchen that were deficient. The reviewer’s response was to alert the kitchen staff or jail authorities and return approximately four days later, where the reviewer noticed “a small improvement” and noted that the “second visit proved to this inspector that the kitchen was now up to ICE standards.”

In the 2003 review of Bristol, the reviewer’s own notes described a similar process (see document, page 62): “Upon the initial walk thru of the kitchen,

there were problems evident. ... A conversation with the Chief [redacted] and Cook Supervisor entailed the importance of this area to the inspection.” The

IT IS IMPORTANT FOR INSPECTORS TO CONDUCT UNANNOUNCED VISITS IN ORDER TO GET AN ACCURATE PICTURE OF THE DAILY SITUATION.

actual inspection two days later “revealed a kitchen that was meticulously cleaned and ready.”

This review gave the facility a final rating of “acceptable” and there is no notation of a follow-up visit before the next annual one. According to the records provided to ACLUM, Bristol did not receive another visit until two years later, and there is no record of subsequent “spot-checks.” The next inspection gave the facility an overall rating of “Good” and made no mention of any kitchen issues.

EXAMPLE: LACK OF PROGRESS AND INCONSISTENT FINDINGS

Plymouth’s Failure to Provide Visits to Detainees in Segregation

While it is difficult to say if facilities improve because of ICE visits, some reviews show the opposite: issues remain unresolved in repeated ICE reviews and there are no consequences for failure to comply. In the 2002 review of Plymouth (when INS was still in existence), the reviewer identified that detainees were not allowed to have visitors while in administrative or disciplinary segregation, in violation of the INS rules. This, and a few other problems, resulted in an overall rating of “deficient,” triggering further review. The facility was asked to draft a plan of action to address the deficiency and a follow-up review was to be scheduled within 90 days.*

By the following year’s inspection, ICE had taken over INS’s functions. The 2003 review made no mention of the deficiencies identified in 2002. It rated the facility as “good” and featured a glowing commentary by the reviewer. By then, the average daily number of ICE detainees at Plymouth had doubled from 75 to 150.

As late as 2006, reviews noted that the visitation policy had not changed, but reviewers continued to rate the facility as “good.” The 2006 reviewer went as far as to recommend a classification of “superior” but his supervisor disagreed, rating the facility only as “good” because of the visitation issue and one other deficiency.

* We do not know if these steps were taken, since no related documentation was provided to ACLUM as a response to its Freedom of Information Act request.

3. Findings from ICE Reviews Are Inconsistent with Reports from Detained Persons and Advocates

The deficiencies in the DHS reviews lead to results that are starkly inconsistent with the reports gathered here. Because the ICE reviewers did not speak with detained persons or advocates, the results are skewed to reflect the views of the authorities.

For example, one reviewer, who classified Plymouth as “Good,” wrote, “My inspection of Plymouth County exposed a facility in excellent order. Their attention to detail showed itself in all aspects of the day to day operations. ... Plymouth County is a facility that most other facilities aspire to being.”

Another year, a reviewer wrote, “Plymouth County is one of the best overall facilities this reviewer has inspected to date. All aspects of the facility function as a well oiled machine.”

These findings stand in stark contract to the opinions of many detained persons, lawyers and advocates we interviewed. Detained persons complained about the food, lack of medical care, lack of contact visits and the difficult atmosphere created by the fact that they are housed together with the criminal population. In addition, the Massachusetts Department of Public Health inspections of the facility reveal that Plymouth has problems with overcrowding, cleanliness and hygiene.

THE HUMAN RIGHTS OF PERSONS IN ICE CUSTODY

AS THE U.N. COMMITTEE ON HUMAN RIGHTS EXPLAINS, “RESPECT FOR THE DIGNITY OF [PERSONS DEPRIVED OF THEIR LIBERTY] MUST BE GUARANTEED UNDER THE SAME CONDITIONS AS THAT OF FREE PERSONS.”



This report assesses the due process rights and conditions of confinement for persons in the custody of Immigration and Customs Enforcement (ICE) in Massachusetts facilities according to standards set forth in United States law, international instruments and universally held norms expressed in customary international law. The United States has ratified several treaties relating to the rights of detainees. The principal ones among these are the International Covenant on Civil and Political Rights (ICCPR)⁵⁷ and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).⁵⁸ As treaties ratified by the United States, these binding obligations have become “the supreme Law of the Land” according to the U.S. Constitution.⁵⁹

57. International Covenant on Civil and Political Rights [hereinafter “ICCPR”], adopted December 16, 1966, 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States of America on June 8, 1992.

58. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [hereinafter “CAT”], adopted December 10, 1984, G.A. Res. 39/46, U.N. Doc. A/39/51, entered into force June 26, 1987, ratified by the United States of America on October 21, 1994.

59. U.S. Constitution, Art. 6, sec. 2.

In addition to those treaties, there is a body of international law and jurisprudence that reflects universally held beliefs relating to detention.⁶⁰ To the

HUMAN RIGHTS LAW OFFERS A BROAD AND INCLUSIVE APPROACH TO ANALYZING THE TREATMENT OF DETAINEES THAT FOCUSES ON FUNDAMENTAL RIGHTS AFFORDED TO ALL PERSONS, WHETHER DETAINED OR NOT.

extent that these guarantees have become customary international law, they, too, are binding on the United States government and on the Massachusetts state government.

WHY HUMAN RIGHTS?

Although the United States Constitution and federal and state laws govern many areas relating to detention, such as the Eighth Amendment prohibition on cruel and unusual treatment, international human rights law is a helpful standard. Human

57 Universal Declaration of Human Rights, G.A. Res. 217 A (III), adopted by the U.N. Doc. A/810 (Dec. 10, 1948); American Declaration of the Rights and Duties of Man, Adopted by the Ninth International Conference of American States, Bogotá, Colombia [hereinafter “American Declaration”]; Organization of American States Charter [hereinafter “OAS Charter”], Apr. 30, 1948, 2 U.S.T. 2394, 119 U.N.T.S. 48, entered into force Dec. 13, 1951, ratified by the United States, June 15, 1951, amended 721 U.N.T.S. 324, entered into force Feb. 27, 1970; United Nations Standard Minimum Rules for the Treatment of Prisoners, Adopted August 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977); United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988); U.N. Standard Minimum Rules for the Treatment of Prisoners (“Standard Minimum Rules”) ECOSOC Res. 663C and 2076, adopted July 31, 1957, U.N. Doc. E/3048 (1957) and May 13, 1977, U.N. Doc. E/5988 (1977); United Nations Basic Principles for the Treatment of Prisoners, adopted by the U.N. General Assembly Dec. 14, 1990, U.N. Doc. A/RES/45/111; U.N. High Commissioner for Refugees, Guidelines on Detention of Asylum Seekers.

rights law offers a broad and inclusive approach to analyzing the treatment of detainees that focuses on fundamental rights afforded to all persons, whether detained or not.

In addition, the human rights discourse is a powerful and universally accepted set of rights to which many audiences can relate. While different groups may disagree on who should be allowed to be in the United States legally, and what the punishment should be for being in the country without status, most agree that treating persons in our custody in a way that violates their basic rights to dignity and personal integrity is wrong and un-American.

INDIVIDUALS DO NOT LOSE THEIR HUMAN RIGHTS ONCE THEY ARE DETAINED

A common thread throughout the various relevant international instruments and statements of international law is the concept that persons do not lose their human rights once they are detained. Except for the right to liberty and the accompanying restrictions (such as infringements on the right to privacy, family life and freedom of movement), most other rights are unaffected by detention. As the U.N. Committee on Human Rights explained:

Not only may persons deprived of their liberty not be subjected to torture, or other cruel, inhuman or degrading treatment or punishment, including medical or human experimentation, but neither may they be subjected to any hardship or restraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the ICCPR, subject to the restrictions that are unavoidable in a closed environment.⁶¹

61. United Nations Committee on Human Rights, General Comment No. 21, Article 10, Humane Treatment

UNIVERSALLY RECOGNIZED RIGHTS

The right to be treated humanely and with respect for human dignity⁶²

Government officials must treat persons in their custody “with humanity and with respect for the inherent dignity of the human person.”⁶³ Conditions that do not amount to cruelty or torture, may nonetheless be in violation of international norms if they are designed to, or have the effect of, disregarding the basic human dignity of detained persons.

The right to due process of law⁶⁴

Under international law, detention must never be arbitrary. It must be done pursuant to existing laws and a legal process. Because the fundamental right to liberty is involved, detained persons are entitled to a judicial process. At a minimum, detained persons must be informed of the reasons for their detention, have the ability to take proceedings before a court without delay, and be given a fair trial before a competent and neutral court, with the opportunity to present evidence.

In addition, non-citizens lawfully in the United States (such as permanent residents who are deportable because of criminal convictions) may be expelled only after legal process.⁶⁵

The right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment⁶⁶

Both the ICCPR and the CAT set out this prohibi-

tion, which is believed to have attained the level of *jus cogens*, the highest form of international law. The CAT defines torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.⁶⁷

While these treaties do not define what constitutes cruel, inhuman or degrading treatment (CIDT), it generally is defined in relation to torture. Article 16 of the CAT addresses CIDT as acts that “do not amount to torture;” Article 6 defines torture as an *aggravated* and *deliberate* form of CIDT, causing very serious and cruel suffering.⁶⁸ It is important to note that both torture and CIDT are equally prohibited under international law.

In its reservations to the Convention against Torture, the United States claims to be bound by the obligation to prevent “cruel, inhuman or degrading treatment or punishment” only insofar as the term means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution. Furthermore, U.S. reservations state that mental pain or suffering refers only to prolonged mental harm from: (1) the intentional infliction or threatened infliction of severe physical pain or suffering;

of Prisoners Deprived of their Liberty, UN Doc. HRI/Gen/1/Rev.1 at 33 (1994), para. 3.

62. ICCPR Article 10. *See also Wilson v. The Philippines*, UN Human Rights Committee, Case No. 1069/2002 (2003).

63. ICCPR Article 10.

64. Universal Declaration of Human Rights, Article 9; ICCPR, Articles 9, 13; American Declaration, Articles 18, 24, 25 and 26; American Convention, Articles 7 and 8.

65. ICCPR Article 13.

66. Universal Declaration of Human Rights, Article 5; ICCPR, Article 7; American Convention, Article 5.

67. CAT, Article 1(1).

68. *See also*, Beth Stephens & Michael Ratner, *International Human Rights Litigation in U.S. Courts* (1996).

(2) the use or threat of mind altering substances; (3) the threat of imminent death; or (4) the belief that another person will imminently be subjected to the above mistreatment.

The United States federal government and its state governments are bound by these prohibitions. Not only must they not subject any persons in their custody to prohibited treatment, they also have affirmative obligations to take steps to prevent and punish prohibited acts. As a party to this treaty, the United States is obligated to outlaw acts of inhuman and degrading treatment; train and educate all personnel involved in arrest or detention; systematically review interrogation rules and methods for the treatment of persons in custody; and hear complaints about ill-treatment.⁶⁹

THE UNITED STATES HAS YET TO FULLY COMPLY WITH ITS OBLIGATIONS UNDER THE CONVENTION AGAINST TORTURE.

Although the United States has enacted domestic legislation outlawing torture, these laws are limited to specific contexts such as refugee claims, extradition of foreign fugitives, criminalizing acts of torture committed by U.S. officials outside of U.S. territory, providing compensation to U.S. citizens tortured by a foreign nation, and providing a civil remedy for non-citizens for torture violations. The United States has yet to fully comply with its obligations under the Convention to adequately prevent U.S. officials and individuals from subjecting detained persons to torture and cruel, inhuman or degrading treatment or punishment and to punish such conduct wherever it exists.⁷⁰

Several instruments make clear that persons fleeing

The right to seek asylum and *non-refoulement*⁷¹

Several instruments make clear that persons fleeing

69. CAT, Articles 10, 11, 12 and 13.

70. For a full discussion of the laws enacted to prohibit torture and their shortcomings, see Shadow Report submitted by the ACLU to the United Nations Committee Against Torture, April 2006. Available at http://www.aclu.org/safefree/torture/torture_report.pdf.

71. Universal Declaration of Human Rights, Article

persecution have a right to seek and receive asylum in a foreign country. The United States has an obligation to grant asylum to persons fleeing persecution. In cases where a person would be tortured, subjected to cruel treatment or killed if returned to his home country, the principle of *non-refoulement* (non-return) prohibits countries from expelling that person to that country.

Asylum-seekers also have certain rights above and beyond those of other immigrants because of their precarious position. The United Nations High Commissioner for Refugees strongly discourages the detention of asylum-seekers:

The detention of asylum-seekers is, in the view of UNHCR, inherently undesirable. This is even more so in the case of vulnerable groups such as single women, children, unaccompanied minors and those with special medical or psychological needs. Freedom from arbitrary detention is a fundamental human right and the use of detention is, in many instances, contrary to the norms and principles of international law.⁷²

The right not to be discriminated against⁷³

Human rights apply to all persons, regardless of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” States must not deny fundamental rights based on any of these categories and must take affirmative steps to bring an end to all forms of discrimination based on them.

In addition, in the detention context, international human rights law requires humane treatment of all

14(1); American Declaration, Article 27; Convention Against Torture, Article 3.

72. U.N. High Commissioner for Refugees, Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers (Feb. 1999), <http://www.unhcr.org.au/pdfs/detentionguidelines.pdf>.

73. International Convention on the Elimination of All Forms of Racial Discrimination, Adopted December 21, 1965 by General Assembly resolution 2106 (XX).

persons in custody, regardless of alienage or the reason for their detention.⁷⁴

The rights of civil detainees⁷⁵

Because ICE detainees are not detained pursuant to criminal charges, they are entitled to rights above and beyond those of criminal detainees. For example, detainees must be segregated from convicted persons and receive “separate treatment appropriate to their status as unconvicted persons.”⁷⁶ Detainees also may not be treated in a manner that amounts to punishment because they have not been convicted of criminal wrongdoing.⁷⁷

Other enumerated rights⁷⁸

Other international instruments specifically and thoroughly address the treatment of detained persons. These instruments call for such things as: registration of the names of all detainees; segregation of men from women and juveniles from adults;

adequate medical care; the provision of personal hygiene products and clothing appropriate to the climate; access to cultural and educational activities; library privileges and the abolition of solitary confinement as a punishment.

UNITED STATES LAW

The Eighth Amendment to the U.S. Constitution, made applicable to the states by the Fourteenth Amendment, protects prisoners from cruel and unusual punishment. Because this amendment applies only to convicted persons, it does not apply directly to civil detainees. Instead, protections for immigrants detained by ICE are derived from the Fifth Amendment, which protects any person in the custody of the United States from conditions that amount to punishment without due process of law.⁷⁹ Some courts have held that conditions of confinement for civil detainees must be superior not only to conditions for convicted prisoners, but also to conditions for pre-trial criminal detainees.⁸⁰ If a civil detainee is confined in conditions that are identical to, similar to, or more restrictive than those under which pre-trial detainees or convicted prisoners are held, those conditions are presumptively punitive and unconstitutional.

In November 2000, the former Immigration and Naturalization Service (“INS”) and the U.S. Attorney General released the Detention Operations Manual (“DOM”), which contained thirty-six Detention Standards. There are currently 38 detention standards in the DOM, which apply to facilities holding detainees for more than 72 hours. Whereas the standards state that they are mandatory for all facilities run by ICE, they are merely guidelines for the hundreds of county jails and prisons operating around the United States, such as the county jails in Massachusetts.

74. *Wilson v. The Philippines*, UN Human Rights Committee, Case No. 1069/2002 (2003), (finding pre-trial detention of non-citizen with convicted prisoners and maltreatment while in detention to violate the ICCPR provisions governing freedom from torture and prisoners’ right to adequate treatment (Arts. 7 & 10, respectively).

75. ICCPR Article 10, Section (2)(a); American Convention, Article 5, Sections 3 and 4; United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 8.

76. ICCPR Article 10. (2)(a); American Convention, Article 5, Section 3; UN Body of Principle, Principle 8.

77. American Convention, Article 5, Section 3.

78. See e.g. United Nations Basic Principles for the Treatment of Prisoners; United Nations Standard Minimum Rules for the Treatment of Prisoners, Adopted August 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977); United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988); United Nations Standard Minimum Rules for the Treatment of Prisoners, U.N. ECOSOC Res. 663C and 2076, adopted July 31, 1957 and May 13, 1977.

79. See *Wong Wing v. United States*, 163 U.S. 228 (1896).

80. *Jones v. Blanas*, 393 F.3d 918 (9th Cir. 2004), cert. denied, 126 S.Ct. 351 (2005); *Haitian Centers Council, Inc. v. Sale*, 823 F. Supp. 1028 (E.D.N.Y. 1993).

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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. Yet they spend months and sometimes years in cells side-by-side with sentenced criminals — not knowing when they will be allowed to leave.

EMBARGOED UNTIL DEC. 10, 2008

Detention and Deportation in the Age of ICE tracks the experience of 40 detained persons through the system of detention set up by Immigration and Customs Enforcement (ICE). The report is the first of its kind to thoroughly document jail conditions and due process issues for immigrants detained in Massachusetts. A series of personal stories illustrates that in its zeal to deport all deportable persons, ICE tramples on fundamental rights. In-depth analysis of hundreds of pages of government documents reveals the massive and growing federal presence in our state.

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