

# OUTSOURCING RESPONSIBILITY

THE HUMAN COST OF PRIVATIZED IMMIGRATION DETENTION IN OTERO COUNTY

January 2011





American Civil Liberties Union of New Mexico  
Regional Center for Border Rights

**OUTSOURCING RESPONSIBILITY**

**The Human Cost of Privatized Immigration Detention in Otero County**

**TABLE OF CONTENTS**

<b>Acknowledgements</b>	<b>1</b>
<b>INTRODUCTION</b> .....	<b>3</b>
<b>BACKGROUND</b> .....	<b>6</b>
Outsourcing Immigration Detention	7
Management and Training Corporation	8
Otero County Processing Center:	
A Microcosm of Privatized Detention Facilities	9
<b>FINDINGS</b> .....	<b>13</b>
<b>I. ACCESS TO JUSTICE</b>	<b>15</b>
Detainee Transfers Inhibit Access to Justice	15
Transfer Impedes Access to Counsel	16
Changes in Court Jurisdiction Threaten Equal Treatment	17
Isolation Causes Immigrants to Abandon Cases	17
Conditions During Transfer Raise Safety Concerns	18
Physical and Mental Health are Compromised During Transfer	19
Mandatory Detention and Due Process Violations	20
Changes in Parole Policy Improve For Asylum Seekers	21
Immigrants with Final Removal Orders Remain in	
Detention for Prolonged Periods	21
Immigration Court Proceedings Limit Due Process	22
Access to Legal Materials is Limited	24
<b>II. CONDITIONS OF CONFINEMENT</b>	<b>27</b>
Equal Access to Religious Practice is Questioned	27
Immigrants Report that Religious Dietary Needs are Not Met	29
Access to Recreation is Limited	30
Visitation Policy is Restrictive	32
Detained Immigrants Face Challenges Communicating with	
Family, Friends, and Attorneys	32
Pod Conditions are Inadequate	32
Food Services are Deficient	34
Detained Immigrants Report Abusive and Discriminatory	
Treatment by Correctional Officers	35

Immigrants Report Arbitrary Placement in Segregation	38
Immigrants Report Being Subjected to Invasive Searches and Unnecessary Lockdowns	39
<b>III. MEDICAL &amp; MENTAL HEALTH TREATMENT</b>	<b>43</b>
Allegations of Inadequate Medical Treatment: Physicians Network Association	44
Immigrants Report Lack of Adequate Medical Treatment	44
Immigrants Report Mechanisms to Access Medical Care Delay Treatment	46
Immigrants Report that Continuity of Care is Compromised by Detention	48
Detained Persons Report Insufficient Dental Care	50
Mental Health Care	51
<b>IV. EFFECTS ON FAMILY &amp; COMMUNITY</b>	<b>55</b>
<b>V. OVERSIGHT, ACCOUNTABILITY, &amp; ICE REFORM EFFORTS</b>	<b>59</b>
Grievance Procedures Fail to Provide Resolution for Detained Immigrants	60
Facility Inspections and Reviews Fail to Ensure Adequate Oversight	61
ICE Makes Efforts to Improve Oversight and Accountability	62
<b>CONCLUSION &amp; RECOMMENDATIONS .....</b>	<b>65</b>
<b>CONCLUSION</b>	<b>67</b>
<b>RECOMMENDATIONS</b>	<b>69</b>
To DHS, ICE and DOJ	69
To Members of the U.S. Congress	71

## ACKNOWLEDGEMENTS

Emily P. Carey, program coordinator with the ACLU of New Mexico Regional Center for Border Rights, was the primary investigator and author of the report.

The report was edited by Micah McCoy and Vicki B. Gaubeca of the ACLU-NM.

The ACLU-NM would like to express gratitude to Melissa Bertolo who volunteered countless hours of research and investigative assistance; Jeremy Snyder and Michael Kiehne for research support; Brendan K. Egan, staff attorney with Rothstein, Donatelli, Hughes, Dahlstrom, Schoenburg & Bienvenu, LLP for pro bono legal support to the written portion of the project; the ACLU Washington Legislative Office; Brian Erickson, Border Servant Corps volunteer with the ACLU-NM for reviewing the report; Laura Rotolo with the ACLU of Massachusetts for answering endless questions from the author; and to all of the colleagues in New Mexico and beyond who offered suggestions and support. Also, this report would not have been possible without the support of a grant from the *Pro Hac Vice* Fund of the New Mexico Bar Foundation.

Special thanks to all of the legal advocates and family members of immigrant detainees who contributed their experiences to this report. Most importantly, the ACLU-NM is grateful to all of the detained immigrants willing to share their stories.



# INTRODUCTION



**“We are human beings. The public must know what is going on here.”**

—Javed E., immigrant formerly detained at the Otero County Processing Center<sup>1</sup>

On June 23, 2008, the Otero County Processing Center opened its doors in the rural border community of Chaparral, Otero County, New Mexico. Owned by Otero County and operated by the private prison contractor Management and Training Corporation (MTC), the facility has the capacity to house up to 1,086 immigrants through an exclusive contract with Immigration and Customs Enforcement (ICE). As one of the only organizations in New Mexico monitoring civil liberties, the American Civil Liberties Union of New Mexico (ACLU-NM) began receiving phone calls from attorneys and immigrant advocates across the country within days of the start of facility operations. Most of the immigrants in the facility are Mexican and Central American nationals apprehended in the area,

while others have been transferred from cities like New York, Los Angeles, Boston, and Miami and originated from countries all over the world.

The ACLU of New Mexico started to assist immigrants held by ICE far beyond the six-month limit established by the U.S. Supreme Court in *Zadvydas v. Davis* after they had been ordered removed by an immigration judge. In the course of this work, advocates, detainees, and family members of detainees approached ACLU representatives with other concerns about the facility including racial and religious discrimination, inadequate medical and mental health care treatment, arbitrary use of segregation, and intimidation and humiliation tactics. The ACLU monitored for patterns of



civil and human rights violations and sought resolution in individual cases where abuse was egregious to protect the health and well being of detained immigrants. Local ICE officials were responsive in most of these cases.

This report stems from interviews with more than 200 immigrants detained at the Otero County Processing Center from the time the facility became operational. Outside the boundaries of New Mexico, Otero became known in the advocacy communities as “The Hub” because of all of the immigrants arriving from out of state. In New Mexico, however, local, state, and federal elected officials, the general public, and even some immigrant advocates were not aware of the facility’s existence. For many, the Otero County Processing Center represents a national trend in immigration detention that relies on facilities built in remote locations, lacking legal and community resources for informal oversight, and managed by private, for-profit corporations. This report was conceived out of the desire to learn more about what happens inside the walls of the facility and to raise awareness in New Mexico of the role our state now plays in this matter of national concern.

During the interview process, Department of Homeland Security (DHS) Secretary Janet Napolitano and DHS ICE Assistant Secretary John Morton announced their intention to reform immigration detention. ACLU-NM applauded the agency on this effort, but felt it was important to continue the interviews with the additional goal of providing findings and recommendations to inform detention reform efforts. The troubling use of private for-profit prison contractors to operate ICE facilities, and the resulting oversight and accountability problems became evident during the course of interviews.

This report represents the experiences and voices of immigrants detained at the Otero County Processing Center from September 2009 through July 2010. These interviews were conducted during a time of transition for ICE. Even as ACLU-NM sat down to write, the landscape of immigration detention was constantly shifting and changing. Several changes have been noted in Findings, Section V, but the list is not comprehensive and several initiatives are ongoing or may recently have been implemented. ACLU-NM views the voices in this report as indicative of why immigration detention reform was and is necessary, and the continued steps that are needed to ensure humane treatment

of immigrants in detention. The efforts of ICE leadership merit recognition, but much work remains to ensure that the findings enclosed in this report are not repeated.

Though this report focuses on the Otero County Processing Center, it aims to shed light on the civil and human rights violations that often occur when the federal government cedes responsibility for civil immigration detention to private prison management companies. Advocates throughout the country echo similar concerns with privately contracted immigration facilities in their areas. In a report issued to the United Nations Special Rapporteur on the Rights of Migrants, Judy Greene and Sunita Patel write:

“We must never forget, however, that this ‘market’ results in commodification of immigrant bodies. Detention for dollars puts perverse financial incentives into place. ...This insidious incentive cuts directly across concerns about compliance with detention standards that were created to foster a decent, humane custodial environment for the rapidly-growing number of people who are subjected to detention.”<sup>2</sup>

## Methodology

In September of 2009, ACLU-NM staff formalized their interview process by developing and utilizing a questionnaire. The questionnaire consisted of more than 100 questions on various topics, including access to justice, conditions of confinement, and procedures for seeking resolution to concerns. ACLU-NM completed 42 of these in-depth interviews by July 1, 2010, and stayed in contact with several of the interviewees throughout the duration of their detention. Aggregate information was also compiled from informal interviews and mail correspondence with the more than 200 detained immigrants with whom ACLU representatives came into contact since the summer of 2008. In several cases, ACLU staff reviewed medical records, case documents, grievance forms and other documents related to individual cases. The ACLU interviewed legal advocates and family members of several detained immigrants.

In addition, ACLU-NM utilized the state Inspection of Public Records Act to request records from Otero County. The county did not provide any



responsive documents, stating that they “do not run the facility or have access to their records.”<sup>3</sup> However, ACLU-NM ultimately employed the federal Freedom of Information Act to obtain hundreds of pages of documents related to the Otero County Processing Center from ICE.

## About the ACLU

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, non-partisan organization dedicated to protecting the civil liberties and human rights of all persons living within the boundary of our nation. Founded in 1920, the ACLU is the largest civil liberties organization in the country, with offices in all 50 states, Puerto Rico and Washington, D.C., and more than 500,000 members.

The American Civil Liberties Union of New Mexico (ACLU-NM) was founded in 1962 as an affiliate of the national ACLU. ACLU-NM is dedicated to protecting the civil rights and legal freedoms of all New Mexicans that are guaranteed by the United States Constitution and the Bill of Rights with particular emphasis on freedom of religion, speech, press, association, assemblage, and the right to vote, due process of law and equal protection of law. ACLU-NM protects and defends these rights through legal action in the courts, policy advocacy, and comprehensive communications and public education programs. ACLU-NM has two offices: the central office in Albuquerque and the Regional Center for Border Rights (RCBR) in Las Cruces. The Regional Center for Border Rights works in conjunction with ACLU southwest state affiliates and immigrant rights advocates to address civil and human rights violations that stem from border-related immigration policies. The Regional Center for Border Rights began operation in June of 2007.

## (Endnotes)

1. ACLU interview with Javed E. (pseudonym), April 2010.
2. Greene, Judy and Patel, Sunita. (no date). The Immigrant Gold Rush: The Profit Motive Behind Immigration Detention. Submitted to the U.N. Special Rapporteur on the Rights of Migrants. Retrieved from: <http://www.immigrantjustice.org/view-document/44-unsr-profit-motives.html>
3. Otero County initial response letter to the ACLU Request to Inspect Public Records, May 10, 2010. On file with the author.



# BACKGROUND



LEFT: Border fence between the United States and Mexico

*“I ran away from my country, from war....I know why I came. If I wanted war, I would have stayed.”*

- Omar B., asylum seeker formerly detained at the Otero County Processing Center<sup>1</sup>

In the years following the events of September 11, 2001, the United States rapidly expanded its immigration detention and removal operations, particularly in the U.S.-Mexico Border region. In FY 2009, the Department of Homeland Security (DHS) detained more than 380,000 people in more than 350 facilities across the country at a cost of more than \$1.77 billion.<sup>2</sup> In 1995, Immigration and Customs Enforcement (ICE), the branch of the Department of Homeland Security charged with detention and removal operations, had bed capacity to detain 7,500 immigrants.<sup>3</sup> In FY 2003, the number of immigration detention beds available on any given day grew to 19,444 and is now at more than 33,000.<sup>4</sup>

ICE apprehends and detains individuals on violations of federal civil immigration law. These individuals are not serving sentences for criminal convictions nor awaiting trial in criminal proceedings. Immigrants in detention include youths, the elderly, men, women, families, torture survivors, victims of trafficking and of other crimes, legal permanent residents, the developmentally delayed, individuals with significant health concerns, and other vulnerable populations. ICE apprehends immigrants for any number of reasons including: student or visitor visa overstay, asylum seekers who arrive at a port of entry, and those who work without proper authorization. Others are detained and subjected to deportation based on changes made

to immigration law in 1996 that, according to many legal experts, severely limited due process and expanded the categories of deportable crimes. For example, a long-time legal permanent resident can now be subject to deportation for offenses committed years ago for which he or she never served jail time. Individuals in ICE custody are in civil detention, yet the current detention system reflects an increasingly privatized penal model rife with problems.

On October 6, 2009, DHS Secretary Janet Napolitano and ICE Assistant Secretary John Morton announced a plan to overhaul the immigration detention system. ICE wrote, “Recognizing that the purpose of immigration detention is not punitive and the importance of providing our detainees with quality care, ICE is engaged in a broad detention reform effort.”<sup>5</sup> A series of immediate reforms and one-year bench marks were established. A discussion of progress to date can be found in Findings, Section V of this report. As part of the reform efforts,

*“This facility is not a detention center; it’s a business.”*

– Hafez E., detained at Otero County Processing Center<sup>7</sup>

ICE stated its intent to centralize control over facility contracts and review existing contracts to make decisions about modifications or terminations. To their credit, ICE has reduced the number of authorized facilities from the 350 in FY 2009 to 270 as of January 2010 and has been actively working to reduce that number further.<sup>6</sup> Reform measures do not, however, include a plan to move away from the privatization of immigration detention.

### **Outsourcing Immigration Detention**

Immigrants are detained in a convoluted web of federal detention facilities, as well as local and county jails. ICE has increasingly relied on private contractors, such as Management and Training Corporation (MTC), GEO Group, Inc. and Corrections Corporation of America (CCA), to manage their detention facilities. Of the authorized facilities, only a small percentage are government owned and operated or dedicated contract detention facilities owned and operated by private contractors. The vast majority are intergovernmental service agreements in which

a local government owns the facility and either operates the facility themselves or contracts with a private contractor for facility operation. The exact percentage of ICE detainees held in facilities managed by private contractors is unknown, however, an analysis conducted by the Migration Policy Institute of data obtained through a Freedom of Information Act Request by the Associated Press indicated that, on a snapshot day of January 25, 2009, when ICE was still utilizing 286 facilities, at least 12 of the 17 facilities that had a daily population of more than 500 detainees were privately operated. These 12 facilities accounted for nearly 50 percent of the detained population on that date.<sup>8</sup> Several facilities with an average daily population of fewer than 500 detainees had also been privatized. This outsourcing of immigration detention to private industry muddies transparency and dilutes accountability. Tom Barry, director of the Center for International Policy TransBorder Project states, “The complicated character of America’s new private/public prison complex – which brings together federal agencies with local governments and a welter of private contractors and subcontractors – has led to a lack of clarity about who is primarily responsible for the humane care of imprisoned immigrants.”<sup>9</sup>

Immigration detention represents a new, profitable market for private corrections companies. In the 1990s, the private prison industry faced a decline in revenues. Over-speculation and decreased reliance of local governments on private industry to house their prison populations left empty beds.<sup>10</sup> Changes in immigration laws which expanded mandatory detention, matched with more aggressive immigration enforcement and an increased detention budget, created a new demand for ICE detention space.<sup>11</sup> Private industry was poised and ready to meet this demand. Private prison expert Michele Deitch is quoted by Copley News Service saying, “The private prison industry was on the verge of bankruptcy in the late 1990s, until the feds bailed them out with the immigration-detention contracts.”<sup>12</sup> In 2001, following the events of September 11, Steve Logan, then CEO of the private prison company Cornell Industries, announced to investors, “I think it’s clear that with the events of Sept. 11, there’s a heightened focus on detention, both on the borders and within the U.S. [and] more people get caught. So that’s a positive for our business. The federal business is

the best business for us.”<sup>13</sup>

And they are profiting. Forty percent of CCA’s \$1.7 billion revenue in 2009 was generated by immigration detention.<sup>14</sup> In 2007, GEO Group, Inc. attributed 27 percent of its revenue to ICE, the U.S. Marshals Service, and the Bureau of Prisons; for a total of \$1.2 billion.<sup>15</sup> Even while ICE leadership moves to increase alternatives to detention, new enforcement programs focused on local and federal law enforcement collaborations—such as Secure Communities and the 287 (g) program—promise to keep the immigration detention industry booming.<sup>16</sup>

Prison developers now approach local communities to bid for Intergovernmental Service Agreements (IGSA) with ICE. Local governments leverage the costs of private industry by publicly financing construction through industrial revenue bonds. In return, prison developers promise to create jobs in the community and pay a portion of the profit back to the local government. Otero County, not unlike many small rural communities throughout the United States with high unemployment and a depressed economy, saw prison development as a much-needed economic opportunity. In the past, however, these types of agreements have left communities like Otero County deep in debt while the private companies profit.<sup>17</sup>

Otero County issued more than \$62 million in bonds to pay for the construction of the Otero County Processing Center.<sup>18</sup> The county has an Intergovernmental Service Agreement (IGSA) with Immigration and Customs Enforcement to exclusively house immigrants in ICE custody. The county, in turn, subcontracts for management and operation of the facility with Management and Training Corporation (MTC), a Utah-based private prison contractor. MTC further subcontracts for provision of medical services with a private correctional healthcare company, Physicians Network Association.

### **Management and Training Corporation**

MTC is perhaps best known for the connection between MTC Executive Lane McCotter and the Abu Ghraib facility in Iraq where the Department of Justice tasked McCotter with reconstructing Iraq’s prisons.<sup>19</sup> He left before reports of

prisoner abuse made international news, but was responsible for reopening Abu Ghraib and training the guards.<sup>20</sup> McCotter previously gained notoriety in Utah where he served as Director of the Utah Department of Corrections. In 1997, under McCotter’s watch, a mentally ill inmate died after being strapped naked to a chair for 16 hours by Utah prison staff.<sup>21</sup> An article published in *The Nation* quotes then ACLU of Utah Director Carol Gnade, “Lane McCotter’s administration here had a horrifying record on human rights.”<sup>22</sup>

MTC has also gained notoriety in New Mexico. MTC managed the Santa Fe County Adult Detention Facility (SFCADF) from October 2001 to April 2005 along with subcontractor Physicians Network Association (PNA), which administered medical and mental health care services (PNA ended its contract in 2004).<sup>23</sup> In 2002, the Department of Justice (DOJ) inspected the Santa Fe County Adult Detention Center. In a scathing report released three months before MTC Executive Lane McCotter was sent to re-open Abu Ghraib, DOJ investigators highlighted a number of deficiencies in violation of inmate civil rights. They wrote:

“As described more fully below, we conclude that certain conditions at the [Santa Fe County Adult] Detention Center violate the constitutional rights of inmates. We find that persons confined suffer harm or the risk of serious harm from deficiencies in the facility’s provision of medical and mental health care, suicide prevention, protection of inmates from harm, fire safety, and sanitation. In addition, the facility fails to provide inmates sufficient access to the courts to seek redress for grievances.”<sup>24</sup>

As a result of this report, Santa Fe County signed a memorandum of agreement with the federal government to improve the facility’s conditions. Despite the agreement, in 2005, inmates at SFCADF sued MTC, the Santa Fe County Board of Commissioners, and other defendants for conducting illegal strip searches of pre-trial detainees without reasonable suspicion. The case resulted in an \$8.5 million settlement in favor of the inmates.<sup>25</sup> In June of 2004, inmate Dickie Ortega was beaten to death by other inmates after facility staff placed him in a pod known to be under gang control and after Ortega



had previously been beaten at the same facility. The family filed suit in 2006 claiming deliberate indifference to the protection and security of Mr. Ortega.<sup>26</sup> In 2006, ACLU-NM settled civil rights claims against MTC (and other named defendants) over allegations that a jail guard raped female inmates at the McKinley County Jail in New Mexico, another MTC-managed facility.<sup>27</sup> MTC came under fire again in 2006 after a female inmate at SFCADF was allegedly raped by male inmates due to facility negligence and then subjected to an unwarranted strip search upon return from the hospital.<sup>28</sup>

### **Otero County Processing Center: A Microcosm of Privatized Detention Facilities**

Management and Training Corporation's poor track record in New Mexico did not deter the Otero County Commissioners from signing a contract with them to manage operations at the county's newest detention facility and allowing them to once again partner with Physicians Network Association.

The Otero County Processing Center is located in the unincorporated rural *colonia*<sup>29</sup> of Chaparral in a remote area of the high desert approximately a half-hour drive from El Paso, an hour drive from Las Cruces, New Mexico, and across the street from the McGregor Range military base. The area has a high prevalence of poverty, a lack of basic infrastructure, and a dearth of legal and other community resources.

In the fall of 2008, immigrants at the detention center began filing complaints with the ACLU-NM Regional Center for Border Rights alleging due process violations and inhumane conditions. Beginning in September of 2009, ACLU-NM staff conducted a series of in-depth interviews with detained immigrants to better understand the conditions in which they are held. Despite ICE's announcement of detention reform, the ACLU continued its efforts to assess the daily reality of immigrants living in a privately operated facility with complex contractual structures. As ICE continues to restructure immigration detention, we hope that the findings and recommendations of this report will encourage dialogue on the use of private contractors to manage and operate ICE facilities and on the effects these contractual

structures have on transparency, oversight and accountability, and ultimately on the civil and human rights of the immigrants for whom the agency is responsible.

### **(Endnotes)**

1. ACLU interview with Omar B. (pseudonym), Nov. 2009.
2. Schriro, Dr. Dora. (2009, Oct. 6) Department of Homeland Security Immigration and Customs Enforcement: Immigration Detention Overview and Recommendations. Retrieved from: <http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>
3. Schriro, Dr. Dora. Immigration Detention Overview and Recommendations.
4. Detention Watch Network web site. About Detention, Detention Watch Network. Retrieved from: <http://detentionwatchnetwork.org/aboutdetention> and Department of Homeland Security. Office of the Inspector General: Immigration and Customs Enforcement Polices and Procedures Related to Detainee Transfers. OIG-10-13. November 2009. Retrieved from: [http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG\\_10-13\\_Nov09.pdf](http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_10-13_Nov09.pdf)
5. U.S. Immigration and Customs Enforcement. Detention and Policy Reforms. Retrieved from: <http://www.ice.gov/detention-reform/>
6. U.S. Immigration and Customs Enforcement, Detention Reform Accomplishments. Retrieved from: <http://www.ice.gov/detention-reform/detention-reform.htm>
7. ACLU interview with Hafez E. (pseudonym), April 2010.
8. Kerwin, Donald and Lin, Serena. (2009, September 10) Immigrant Detention: Can ICE Meet Its Legal Imperatives and Case Management Responsibilities? Migration Policy Institute. Retrieved from: <http://www.migrationpolicy.org/pubs/detentionreportSept1009.pdf>
9. Barry, Tom (2009, February 23). Medical Claims and Malpractice in Correctional Healthcare. Americas Program Report. Retrieved from: <http://www.cipamericas.org/archives/1651>
10. Berestein, Leslie (2008, May 4). Detention Dollars: Tougher Immigration Laws Turn the Ailing Private Prison Sector into a Revenue Maker. *San Diego Union Tribune*. Retrieved from: <http://legacy.signonsandiego.com/news/business/20080504-9999-lz1b4dollars.html>
11. Detention Watch Network, History of Immigration Detention. Retrieved from: <http://www.detentionwatchnetwork.org/node/2381>
12. Berestein, Leslie. (2008, May 11). "Private Prison Industry" Experiences Boom. Copley News Service. Retrieved from: <http://www.infowars.com/private-prison-industry-experiences-boom/>
13. Ali, Sam, Visconti, Luke, and Frankel, Barbara. (2010, October 15). The Prison Industrial Complex: Biased, Predatory and Growing. Diversity Inc. Retrieved from: <http://www.diversityinc.com/article/8063/The-Prison-Industrial-Complex-Biased-Predatory-and-Growing/>



14. Raghunathan, Suman. (2010, May 27). Private Prison Firm Exploiting Broken Immigration System. Progressive States Network, blogpost. Retrieved from: <http://www.progressivestates.org/node/25179>
15. Berestein, Leslie. (2008, May 4). Detention Dollars.
16. Secure Communities is an ICE initiative intended to focus on the identification and removal of "high risk criminal aliens" through technology and information sharing between law enforcement agencies. The 287(g) program allows for the cross designation of local law enforcement officers with certain federal immigration officer authority. For more information on these programs as well as a discussion of the concerns, go to: [www.uncoverthetruth.org](http://www.uncoverthetruth.org) and [www.ice.gov](http://www.ice.gov).
17. Reichbach, Matthew. (2009, October 10). Private prison developer behind Montana fiasco involved in construction of NM private prisons. *The New Mexico Independent*. Retrieved from: <http://newmexicoindependent.com/39009/private-prison-developer-behind-montana-fiasco-involved-in-construction-of-nm-private-prisons>; Elliot, Justin. (2009, October 12). Behind Montana Jail Fiasco: How Private Prison Developers Prey on Desperate Towns. TPMuckraker. Retrieved from: [http://tpmmuckraker.talkingpointsmemo.com/2009/10/behind\\_hardin\\_jail\\_fiasco\\_private\\_prison\\_salesmen\\_preying\\_on\\_desperate\\_towns.php?ref=fpblit](http://tpmmuckraker.talkingpointsmemo.com/2009/10/behind_hardin_jail_fiasco_private_prison_salesmen_preying_on_desperate_towns.php?ref=fpblit); and Greene, Judith. (2001). Bailing Out Private Jails. *The American Prospect* (2001, September 9). Retrieved from: [http://www.prospect.org/cs/articles?article=bailing\\_out\\_private\\_jails](http://www.prospect.org/cs/articles?article=bailing_out_private_jails)
18. Gibel, Bryan. (2008, March 17). Immigration advocates say prison expansion will only compound problems. *Santa Fe New Mexican*. Retrieved from: <http://www.santafenewmexican.com/Local%20News/otero-county-More-detainees--more-complaints>
19. Frosch, Dan. (2004, May 12). Exporting America's Prison Problems. *The Nation*. Retrieved from: <http://www.thenation.com/article/exporting-americas-prison-problems>
20. In 2003, American soldiers and intelligence officers were accused of "systematic and illegal abuse of detainees" at the Abu Ghraib facility in Iraq, including beating detainees, threatening detainees with rape, and sodomizing a detainee with objects. Source: Hersh, Seymour M. (2004, May 10). Torture at Abu Ghraib. *The New Yorker*. Retrieved from: [http://www.newyorker.com/archive/2004/05/10/040510fa\\_fact](http://www.newyorker.com/archive/2004/05/10/040510fa_fact); Butterfield, Fox. (2004, May 8). Mistreatment of Prisoners is Called Routine in U.S. *New York Times*. Retrieved from: <http://www.nytimes.com/2004/05/08/national/08PRIS.html>
21. Hersh. Torture at Abu Ghraib; Butterfield. Mistreatment of Prisoners.
22. Frosch. Exporting America's Prison Problems.
23. Physicians Network Association. About PNA. Retrieved from: <http://www.pnmedical.net/about.php>
24. Department of Justice, Letter to Mr. Jack Sullivan, Santa Fe County Commission Chairman (2003, March 6) regarding the Santa Fe County Adult Detention Center.
25. Rothstein, Donatelli, Hughes, Dahlstrom, Schoenburg & Bienvenu LLP. (2006, July 6). Press Release: Settlement Reached in Santa FE County Strip Search Class Actions. *Leyba, et al. v. Santa Fe County Board of Commissioners, et al.* Retrieved from: [http://www.contractormisconduct.org/ass/contractors/132/cases/674/709/management-and-training-corp-strip-search\\_pr.pdf](http://www.contractormisconduct.org/ass/contractors/132/cases/674/709/management-and-training-corp-strip-search_pr.pdf)
26. Martinez v. Management and Training Corp., et al. Case 2:06-cv-00567-RB-ACT Case Complaint. Retrieved from: [http://www.contractormisconduct.org/ass/contractors/132/cases/679/716/management-and-training-corp-martinez\\_complaint.pdf](http://www.contractormisconduct.org/ass/contractors/132/cases/679/716/management-and-training-corp-martinez_complaint.pdf)
27. The lawsuit claimed Detention Officer Brian Orr committed sexual abuse and cruel and unusual punishment and that the jail's acting warden, the McKinley County commissioners and Management and Training Corporation, were negligent for failing to properly train and supervise Orr. In a January 2007 criminal trial, Orr was found not guilty of sexual abuse; ACLU of NM (2006, January 25). Press Release: ACLU of New Mexico Files Lawsuit Over Jail Guard's Sexual Abuse of Female Prisoners. Retrieved from: [http://www.contractormisconduct.org/ass/contractors/132/cases/678/715/management-and-training-corp-sexual-assault\\_pr.pdf](http://www.contractormisconduct.org/ass/contractors/132/cases/678/715/management-and-training-corp-sexual-assault_pr.pdf)
28. Sanchez v. Management and Training Corp., et al. Case 1:06-cv-00912-BRB-RHS, Case complaint, retrieved from: [http://www.contractormisconduct.org/ass/contractors/132/cases/680/717/management-and-training-corp-sanchez\\_complaint.pdf](http://www.contractormisconduct.org/ass/contractors/132/cases/680/717/management-and-training-corp-sanchez_complaint.pdf)
29. A colonia has been defined by the Department of Housing and Urban Development as an unincorporated community within 150 miles of the U.S.-Mexico border characterized by lack of infrastructure such as potable water, adequate sewage systems, and safe housing. Source: Department of Housing and Urban Development, Community Development Block Grants – Colonias, retrieved from: <http://www.hud.gov/offices/cpd/communitydevelopment/programs/colonias/cdbgcolonias.cfm>

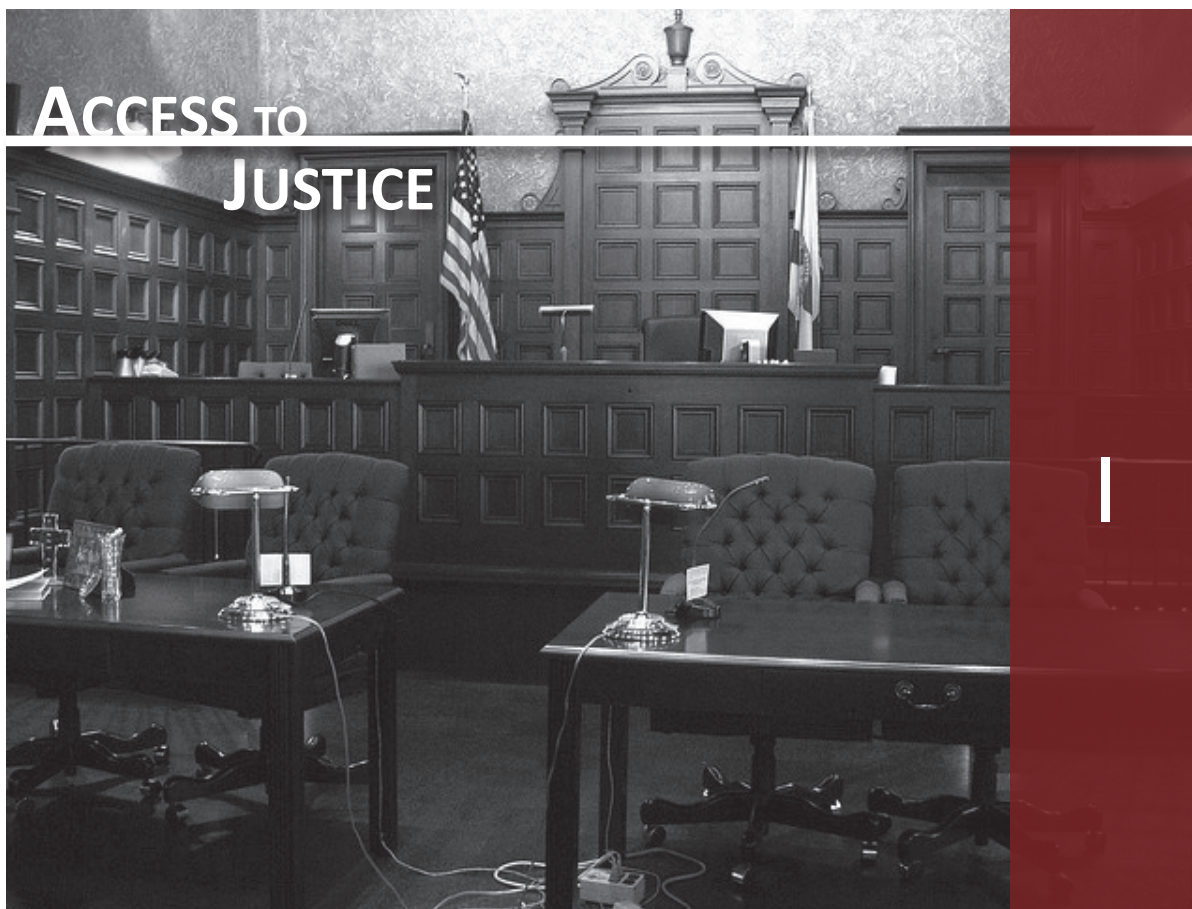


# FINDINGS

---







# ACCESS TO JUSTICE

PHOTO: CLYDE ROBINSON

*"In re Gault, 387 U.S. 1, 18 L. Ed. 2d 527, 87 S. Ct. 1428 (1967), When the government, with plenary power to exclude, agrees to allow an alien lawful residence, it is unconscionable for the government to unilaterally terminate that agreement without affording an indigent resident alien assistance of appointed counsel. Expulsion is such a lasting punishment that meaningful due process can require no less."*

- Joseph Q. (pseudonym) in a letter to ACLU<sup>1</sup>

## **Detainee Transfers Inhibit Access to Justice**

In recent years, ICE has increased the practice of transferring immigrants to a detention facility far away from the location of arrest. Between 1999 and 2008, ICE carried out 1.4 million detainee transfers.<sup>2</sup> The effects of transfer on an individual's access to justice as well as emotional health can be devastating. The Otero County Processing Center (Otero) receives a large number of detainees from around the United States. The first detainees to arrive at Otero in June 2008 were previously detained at the Mira Loma Detention Facility in Lancaster, California.

Shortly thereafter, a group of individuals from a Cambodian community in Lowell, Massachusetts, arrived following their arrest by ICE.

Otero continues to receive immigrants from geographically far-flung places such as New York, Massachusetts, Connecticut, Florida, and Southern California. Currently, the largest number of transferred detainees originates from the Los Angeles area. ICE policy requires consideration of a specific set of criteria when deciding whether or not to transfer an individual. These criteria include individuals' existing legal representation, special medical needs, and security.<sup>3</sup> Despite the

fact that the standards specify, “the determining factor in deciding whether or not to transfer a detainee is whether the transfer is required for operational needs, for example, to eliminate overcrowding,” or “to meet the specialized needs of the detainee;”<sup>4</sup> immigrants transferred to Otero stated that their transfers were inconsistent with ICE policy. For example, some immigrants reported that they had attorneys and scheduled court hearings at their previous locations. Others were told they were being transferred for medical reasons, only to find that Otero could not meet their medical needs. All but one of the 42 detained immigrants who participated in an in-depth interview with the ACLU were transferred to Otero from the east and west coasts.

Human Rights Watch published a report entitled, *Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States*, which highlights the negative effects of transfer on individuals. This report, in conjunction with non-governmental organization consultation with ICE, led to a commitment by ICE to work towards reducing the number of transfers and revising policy guidance on transfers.<sup>5</sup> The ACLU-NM Regional Center for Border Rights looks forward to the anticipated changes in policy and practice that will reduce the concerns raised in the following findings.

### **Transfer Impedes Access to Counsel**

Individuals in immigration proceedings have the right to an attorney but are not provided an attorney at the cost of the U.S. government. For many immigrants, it is difficult or impossible to hire a private attorney. Many must rely on non-profit service providers for representation or assistance in finding a private attorney who will take their case at no cost. Immigrants at Otero face additional barriers to seeking representation. The facility is remote, and although it is located in the state of New Mexico, immigrants in Otero are either taken to court in El Paso, Texas, or have hearings via video conferencing. There is not a single low-cost or free legal service agency with the capacity to provide individual representation to detainees at Otero.

The Diocesan Migrant and Refugee Services (DMRS), an El Paso based non-profit legal service

provider, participates in the Legal Orientation Program (LOP) and provides presentations at the facility four days a week. The LOP was developed to inform immigrants in detention about their rights, the immigration court process, and detention.<sup>6</sup> This program results in increased court efficiency and provides effective *pro se* information to detainees, but it cannot replace individual representation. The Removal Defense Unit of DMRS cannot provide free individual representation for Otero detainees because funding sources limit work for residents of Texas. Las Americas, the only non-profit legal service agency providing assistance for asylum seekers in the area, also lacks the capacity to take cases from Otero. Immigrants who scrape up enough money to hire private counsel find that very few local attorneys are willing to represent them. Many attorneys in the region do not want to travel to Otero. Others turn down cases due to high interpretation costs for languages not common to the U.S.-Mexico border region.

Immigrants transferred to Otero from urban centers like Los Angeles find options for legal assistance drastically diminished. Some endeavor to find a lawyer in the location of their arrest in the hope of having their case moved back to that area. However, attempts to change the court venue are largely unsuccessful. Immigrants are then faced with the high cost of paying travel expenses and telephone charges if they retain out-of-state attorneys. Otero currently does not allow free telephonic legal appointments, forcing detained immigrants to use expensive phone cards to contact their attorney on a public pay phone. Communication difficulties often result in termination of the attorney-client relationship. Transfer can also prolong immigrants’ detention by interrupting court proceedings and access to witnesses, paperwork, and other important evidence.

- Raul was transferred six times prior to arriving at Otero. After being moved between several facilities in California, he thought he would stay at the Mira Loma Detention Center in Lancaster, so he sought legal representation after a month’s detention there. Even though he had an attorney and a court hearing in seven days, ICE transferred Raul to the Otero County Processing Center. His court hearing was delayed nearly two months. At the time of our interview, six days before his



rescheduled court hearing, Raul had not yet been able to communicate with his attorney or his family.<sup>7</sup>

### Changes in Court Jurisdiction Threaten Equal Treatment

There are 12 federal circuit courts of appeals throughout the United States. Interpretation of immigration law varies greatly between the circuit courts and can mean the difference between a favorable outcome and deportation. Human Rights Watch explains:

*This is a very important issue for non-citizens facing deportation, because if their convictions are considered “aggravated felonies” under immigration law, they will be placed into summary deportation procedures. In these summary procedures, a non-citizen cannot ask a judge to consider canceling the deportation even if he can show that his crime was relatively minor or his connections to the United States (such as family relationships) are strong. If a detainee is transferred to the jurisdiction of a court that considers his criminal conviction (for which he has already served his criminal punishment) an aggravated felony, there is little he can do to defend against his banishment from the United States.<sup>8</sup>*

The Otero County Processing Center is physically located in the jurisdiction of the Tenth Circuit Federal Court of Appeals. However, immigrants detained at Otero are subject to interpretation and application of the law under the Fifth Circuit Federal Court of Appeals because the nearest immigration court is located in El Paso, Texas. According to many legal advocates, existing case law in the Fifth Circuit is adverse towards non-citizens. For the many immigrants transferred from jurisdictions with more favorable interpretations of the law, this can be devastating.

- Gustavo was a legal permanent resident for more than 35 years. He is married to a United States citizen and has U.S. citizen children. In a letter to the ACLU he wrote, “... one misdemeanor ...and one violation of the

moral and health code in [my state of origin] adds to an aggravated felony on Federal Immigration law in the state of Texas, and order me deported for life, regardless I’ve been with LPR status for [the] last 35 years, and have no state felonies convictions, and have no convictions in the state of Texas, have an American wife, have American children still living with us at home, regardless, I have always worked and pay taxes, and never received public assistance...” Gustavo reported that he paid a small fine and never served jail time for his offense.<sup>9</sup>

- Brian was a legal permanent resident married to a United States citizen and the father of two children. He was in immigration custody for more than a year. Brian believed his case was jeopardized by his transfer from California to New Mexico. “In Los Angeles, I (and others) was told that we were being transferred to New Mexico in Chaparral, NM, because there was no bed space in California. I do not believe that that was true. After arriving to Chaparral, NM, I encountered detainees who had already been housed in Lancaster, California, for months before being transferred. If it was an issue of space, new detainees would have been transferred. I believe only certain detainees were transferred because their conviction would make them removable in the 5<sup>th</sup> District.... In the 9<sup>th</sup> District where I reside I would not be removable or detainable. For the same conviction, in the 5<sup>th</sup> District I am considered both. Although they are different districts, they are nonetheless Federal Districts. In my opinion, I believe there is a basis for a claim of violation of the ‘equal protection’ clause, since those individuals, myself included, with the same conviction are treated differently in different districts.”<sup>10</sup>

### Isolation Causes Immigrants to Abandon Cases

Many individuals expressed that separation from family, friends, and other support systems was detrimental to their emotional health and affected decisions about whether or not to keep fighting their cases. It is financially unfeasible for most family members to travel to visit their loved one or to appear as witnesses for court hearings.

At Otero it is particularly difficult because the facility is not in close proximity to the airport. In addition to flight, hotel, and food costs, a car rental is necessary.

- James came to the United States as a visitor from Europe in 1985. He worked at a café in Los Angeles frequented by movie stars and other famous people and was a well-known and loved character at the café. ICE took him into custody for overstaying his visa. He was transferred from Los Angeles to Santa Ana, California, and then to New Mexico. He

---

*“We cannot help but think that the reason they brought us over here was to break us down...I feel disconnected from everything. I feel completely isolated. I am tired from my hands to my feet.”*

– Javier M., transferred from California to New Mexico<sup>11</sup>

*“I don’t know why they brought me here. What I think, I think they brought us here because they know it’s difficult. They send us here so we can be deported.”*

– Chiumbo M., a detained asylum seeker transferred to New Mexico<sup>12</sup>

---

stated, “They drag me from home, bring me out here. I have to hire a local lawyer. Crimes are treated differently. A misdemeanor in California is now judged under the Fifth Circuit as felonies.” James experienced health problems at the facility including coughing up blood and exacerbation of his depression. “I feel depressed, homesick and deterred. I have to call home collect and it’s expensive. People stop answering.” James asked to be deported because he did not want to spend another day in detention. “They should expedite it quick instead of treating me like a package or a piece of inventory to take space and make money.” Six months later he was returned to his country of origin.<sup>13</sup>

Detainees are responsible for informing their loved ones of their new location. However, the transfer process can happen very quickly.

Detainees are often not given the opportunity to contact family prior to their transfer and do not have access to a phone until after arrival and completion of processing in the new facility. Families often do not know where their loved one is for days or if they are safe and well.

- On the day that he was to be released from prison in Florida, Dominic was taken into ICE custody and transferred to New Mexico. “My family thought I was coming home. I thought I had to go to immigration for about a week or so. I didn’t know it would be this long.” Dominic was in immigration custody for more than two years with a claim to U.S. citizenship.<sup>14</sup>

When asked if there was one recommendation that could be made to ICE or congressional representatives, a daughter of a detainee at Otero responded, “If there is anything they could do to make the process simpler. If someone is picked up they should be tried in their own state. He was transferred so many times and it would be better if they would tell us. The process is a strain.”<sup>15</sup>

On July 23, 2010, ICE launched an Online Detainee Locator System. The system is a publicly accessible internet-based tool to assist families, attorneys, and other interested parties in locating immigrants who are or recently have been in ICE custody.<sup>16</sup> Some improvements are needed, but this is a welcome step towards alleviating concerns for people previously unable to find a loved one lost in the system.

### **Conditions During Transfer Raise Safety Concerns**

Immigrants taken into custody by ICE are often confused, frightened, and uncertain about what is happening. Most are given little notice before they are transferred to a new location. Others are released from a local jail or federal prison expecting to be with their families, only to find ICE officers waiting for them. Still others are completely surprised by the circumstances of their arrest. Several people reported that their initial anxiety was exacerbated by inhumane conditions during transport.

- Rangsei was an infant when his family came to the United States as refugees. Like many

Cambodian families, his family resettled in Massachusetts. As a young adult, he was convicted of a misdemeanor but never served jail time. Years later, Rangsei had a good job, owned his car and home, and provided for his wife and children. One evening as he ate dinner with his family, there was a knock at the door. A uniformed officer asked Rangsei to step outside to ask him a few questions about an accident that occurred in the neighborhood. He agreed. When he stepped outside, the policeman immediately placed handcuffs on his wrists as local police and immigration officers surrounded his home. They first took him to the local police station where ICE took custody and moved him and several others to a number of different detention facilities until finally they relocated him to the Otero County Processing Center. Throughout this journey, Rangsei wore handcuffs on his wrists, a chain around his waist and shackles on his feet, and at no point was permitted to contact his family. Rangsei later learned that he and several others from the community were apprehended under the auspices of Operation Community Shield, a program leveraging collaboration between local, state, and federal law enforcement agencies to break up transnational gangs. Rangsei claimed that he was not and had never been involved with a gang. He spent several months in detention fighting his case and missed the birth of his child.<sup>17</sup>

Individuals transported by bus or plane from one facility to another were shackled and handcuffed. People were terrified that they would die in the event of an accident because of the restraints. Another common concern was inadequate nutrition during long travel days. A person brought from Connecticut to New Mexico reported that the bathroom facilities on the bus were not working so no one could use the bathroom for more than three and half hours. Several people stated that the handcuffs made it impossible to use the bathroom at all.

- Miguel was living in Massachusetts when ICE arrested him. He met with his immigration attorney, but two hours later he was told to pack up his things. He was not told where he was going. "I was told I would come back to [Massachusetts], but at 4 or 5 in the morning, we were put on buses for York, Pennsylvania.

We arrived at 6 or 7 at night and were shackled the entire time. For the bus ride between [Massachusetts] and York we were shackled for more than 9 hours. We were fed peanut butter and jelly the whole way, nothing else, just water."<sup>18</sup>

### **Physical and Mental Health are Compromised During Transfer**

The 2008 Performance Based National Detention Standards instruct the sending facility's medical staff to prepare a "Transfer Summary" for the immigrant. Part of the summary should include instructions for medications or other medically relevant information necessary while en route to the receiving facility.<sup>19</sup>

Despite this standard, detained immigrants report gaps in medical and mental health care as they are shifted from facility to facility. Several individuals were subject to traumatic experiences during transfer because of their inability to obtain necessary medications or accommodations for medical issues. Of the 42 detained immigrants with whom structured interviews were conducted, 15 were taking prescription medications prior to their transfer and all 15 reported interruptions in medication during transfer. Overall, detainees reported that they did not receive medication for chronic diseases such as diabetes, high blood pressure, and HIV. Detained immigrants also reported disruptions in important mental health medication.

- Javier H. is an older immigrant diagnosed with bi-polar disorder and schizophrenia. He stated that during the transfer from California to New Mexico he did not receive his medications. Javier was taking three medications to control his symptoms. He reported that because he went an entire week without medication, he could only remember that he was moved frequently on a series of buses and a plane. When asked about how his lack of medication affected him, Javier responded that "many bad things happened." The experience was so traumatizing that Javier did not want to talk about the details of what occurred.<sup>20</sup>

- Gustavo spent one night at Varick Street facility in New York (now closed) en route to New Mexico by way of York, Pennsylvania. At Varick he shared a holding room with several individuals scheduled to transfer with him. Among them was a man with a stomach tube that was very ill. The man's requests for treatment were ignored. The man then fell over. The other immigrants in the holding room began furiously knocking on the window to get help for the ill person. The officers looked in but did not respond. The man subsequently was not transferred with Gustavo. Gustavo didn't know what happened or if the man ever received help.<sup>21</sup>
- Christoffer, 45, was reportedly arrested for overstaying his Visitor's Visa. Lacking insurance, he managed his chronic back pain by taking care not to remain in the same position for too long and shifting his weight as necessary. Christoffer's pain became excruciating at Otero. He attributed this to the plane ride from California to El Paso en route to Otero in which he was shackled and not allowed to move. He had requested to be moved to a seat where he could shift weight from the area of pain. He was told by a correctional officer, "Shut up or I'll put a dirty sock in your mouth."<sup>22</sup>

### **Mandatory Detention and Due Process Violations**

ICE claims that on average a non-citizen remains in custody for 30 days.<sup>23</sup> At Otero the average length of stay in the first contract year, July 2008 through June 2009, was 36 days, but from July 2009 through May of 2009 this number jumped to 69 days.<sup>24</sup> However, the average length of stay varies greatly between individuals. Non-citizens fighting their cases before an immigration judge can spend a significant amount of time in detention. Those who lose their cases and appeal, particularly if they are mandatorily detained, will spend an even longer time in detention. As of the writing of this report, the 42 individuals with whom ACLU-NM conducted structured interviews stayed an average of 11.5 months in Otero. Among these 42 individuals, the shortest length of stay was two months and the longest was 43 months. Sixteen of those interviewed were still

in custody at the time of writing, including one individual who has been detained for more than 3½ years and another for more than 2 years.

Many of these people held legal permanent residency but were subject to mandatory detention for minor offenses committed years ago. Many never served jail time for these offenses. In 1996, Congress greatly expanded the categories for which an immigrant would be subject to mandatory detention while undergoing immigration proceedings, including non-violent misdemeanor convictions.<sup>25</sup> With few exceptions based on decisions in a few federal circuits, mandatorily detained immigrants do not have the opportunity to ask a judge to be released on bond, or to request that ICE consider other criteria such as length of time since the offense, family hardship, or serious medical conditions to make a determination about whether or not detention is necessary. This denial of an individual custody review and the ability to have each case reviewed on its individual merits impairs due process.

- At the age of seven, Ishmael came to the United States as a legal permanent resident. Despite living in the U.S. legally for more than 24 years, he was subject to mandatory detention for a credit card fraud charge. He had no prior engagement with law enforcement. ICE detained Ishmael for years as he fought deportation. Ishmael's physical and emotional health deteriorated rapidly during his detention at Otero. He developed high blood pressure, began taking medication for depression, and his teeth started to fall out. The strain on his family exacerbated his emotional deterioration. He explained: "This has taken a toll on my mother's health. She is distraught; worried about being a witness, that something she will say will cause me to stay longer. She thinks that I did something big. She keeps asking me to tell her the truth. She thinks I was denied bond because of some big crime."<sup>24</sup>

Immigration courts are overwhelmed with high caseloads and limited resources. Court hearings are often calendared months apart to accommodate the large number of cases. However, in some circumstances, delays in immigration court proceedings are avoidable.



Several detained immigrants reported that the government's attorney arrived unprepared for court and the judge postponed the hearing. Detained immigrants also report that courts sometimes lose important documents.

- Guillermo, 28, a legal permanent resident, appeared in court several times over the course of seven months. At his final hearing, the court was to decide whether to permit him to remain in the United States or order his deportation to the country he left when he was a child. He arrived in court and the Immigration Judge announced that Guillermo's paperwork had been lost and would need to be re-submitted. Guillermo struggled to recover important documents allegedly thrown out by correctional officers during a dormitory search. Two weeks later he appeared in court and again the hearing was delayed, this time because the government was not prepared. He was forced to remain in detention several more months waiting for a final hearing.<sup>27</sup>
- Chiumbo, an asylum seeker, endured more than two years of immigration detention. After an immigration judge ordered his removal, Chiumbo successfully appealed the ruling and the case was remanded back to the judge to be heard again. The court subjected Chiumbo to delay after delay, claiming that they were not ready to hear his case. He remained in detention for the nine months it took the court to reexamine his case. He then faced several more months of detention after submitting a second appeal. Chiumbo stated that his prolonged detention negatively affected his relationship with his wife and children, whom he had not seen during the entire duration of his detention.<sup>28</sup>

### **Changes in Parole Policy Improve for Asylum Seekers**

On January 5, 2010, new ICE guidance concerning parole of arriving asylum seekers went into effect.<sup>29</sup> Previously, all "arriving aliens," including asylum seekers who expressed fear of persecution upon return to their home countries at a port of entry to the United States, were mandatorily taken into detention and held throughout the

duration of their immigration proceedings. Under the new policy, asylum seekers who are found to have "credible fear" by asylum officers are eligible for parole. Although certain adjustments need to be made in implementation, several eligible individuals at the Otero County Processing Center have already been paroled and released to family, friends, or other community supports.

### **Immigrants with Final Removal Orders Remain in Detention for Prolonged Periods**

In 2001, in the case of *Zadvydas v. Davis*, the U.S. Supreme Court held that two immigrants, who had been ordered deported, retained a liberty interest strong enough to raise due process challenges concerning their indefinite—and possibly permanent—detention resulting from the government's inability to carry out the deportation order. The *Zadvydas* ruling stated, "Once removal is no longer reasonably foreseeable, continued detention is no longer authorized."<sup>30</sup> The Court determined that six months from the final order of removal was a presumptively reasonable period of detention, after which an immigrant may file a Writ of Habeas Corpus in federal court seeking review of his/her detention.

To ensure compliance with *Zadvydas*, ICE developed a post-order custody review process which requires that, in the failure to obtain travel documents within 90 days of an individual's final order of removal, a custody review must be conducted.<sup>31</sup> During this review, the reviewing officer evaluates certain criteria to determine whether the individual will remain in detention or whether he or she will be released on an order of supervision. Such criteria include the likelihood that travel documents will be procured in the near future, flight risk, and whether the individual poses a significant threat to community safety. If ICE determines to continue custody, they must conduct another review prior to reaching 180 days of custody past the order of removal. If ICE fails to remove a detained immigrant within the 180-day period, barring rare exceptions, the individual has a right to file habeas.

ACLU-NM began providing assistance to individuals who remained detained at the Otero County Processing Center past their order of removal shortly after the facility became

operational in June of 2008. At that time, there were several individuals who remained in ICE custody well beyond the statutory period allowed by *Zadvydas*.

- By the time ACLU-NM filed a *Writ of Habeas Corpus* challenging his detention, Tashi (pseudonym) had already been in detention six months *beyond* the presumptive six-month removal period, a full year past the date he was ordered removed. ICE attempted to send Tashi, a Tibetan national, to China, a country where he had never been and would surely face persecution. Four days after the *Habeas* was filed, Tashi was released from detention and allowed to return to his family.

While *Zadvydas* allows the government a six-month presumptive removal period, ICE *does* have the discretion to release individuals who are not removable in the foreseeable future as soon as this becomes apparent. For example, some non-citizens come from countries that do not have diplomatic relations with the United States (e.g., Cuba, Somalia), have limited repatriation agreements (Vietnamese nationals who entered the U.S. prior to July 1995, Cambodia), or have recently suffered natural disasters where DHS has decided to temporarily suspend repatriation (e.g., Haiti). Most individuals who fall into these categories are held at least for the initial 90-day removal period and several have received

---

Some of us detainees have seen the judge, and he set our next court dates 2 or 3 months later. The judge does not care about our qualifications, he denies 90% of our qualifications. There are a lot of detainees who have been ordered deported 5 almost 6 months ago, and are still being detained, when all they want is to go home. The

- Letter to the ACLU from Miguel R. (pseudonym)

---

- Yaozu (pseudonym) is a monolingual Mandarin-speaking native of China. Despite spending 11 months in detention after his final removal order, the government continued to detain Yaozu and fight his *habeas* claim for months even though as his length of detention increased, the foreseeability of his removal decreased. With continued pressure from the ACLU, ICE eventually released Yaozu.

ACLU-NM continues to encounter individuals who are unlikely to be removed in the foreseeable future but remain in detention. Recently, the number of individuals held past the six-month statutory limitation at Otero has been greatly reduced, and the process appears to be more streamlined. However, ACLU-NM presents recommendations at the end of this report for improving the process further.

decisions to continue custody, even though ICE itself recognizes that the individual cannot be removed. In one case, ICE admitted in the written decision to continue custody of a Cuban national that removal was not likely. Given that *Zadvydas* also held that immigration detention was for the sole purpose of effectuating removal and any other purpose is unconstitutional,<sup>32</sup> continuing to detain those whose removal will not be effectuated, in most instances, is a violation of constitutional rights.

#### **Immigration Court Proceedings Limit Due Process**

Until recently, Otero staff drove detained immigrants to the courtrooms at the El Paso Processing Center for their immigration court



appearances. There are four immigration judges in the El Paso immigration courts, one of whom is assigned the majority of the cases for individuals detained at Otero. Otero now has video conferencing capabilities for immigration court. According to legal advocates, the primary immigration judge for Otero sits in a courtroom in El Paso while the immigrant sits in a courtroom at the Otero facility in front of a television screen. Non-citizens assigned to the other immigration judges continue to be transported to El Paso for in-person court appearances.

Texas Appleseed,<sup>33</sup> a network of public interest law centers working to promote social and economic justice, recently published a report that highlights the disadvantages of video conferencing.<sup>34</sup> Attorneys must choose between being present with their client or being present in the courtroom with the judge and government counsel. If the attorney chooses to be in the courtroom, private attorney-client communication is rendered impossible. Individuals appearing on their own behalf are unable to present additional evidence or paperwork in the court. *Pro se* petitioners have limited opportunity to make the multiple copies of necessary court documents and then must rely on the mail room at the detention facility to send documents on time. They are not able to review the evidence presented by the government's attorney in the courtroom, though the government attorney has the advantage of reviewing information provided by the detained immigrant.

Technical difficulties arise with videoconferencing. The first participants in video conferencing at Otero reported interruptions in transmission during their hearings. One of these initial participants reported, "At the last court there was a bad signal and they had to keep calling back to the court in El Paso." Video transmission obscures the emotions and reactions of the immigrant, which is particularly detrimental in the final decision-making hearings of asylum seekers. In a report entitled, *Assembly Line Injustice: Blueprint to Reform America's Immigration Courts*, Texas Appleseed writes: "The judge cannot read the person's body language or demeanor, which can provide the richest information as to whether the immigrant is lying or telling the truth. Even more importantly, videoconferencing dehumanizes the immigrants." The report goes on to quote the Fourth Circuit U.S. Court of Appeals in the case of

*Rusu v. INS*, "Virtual reality is rarely a substitute for actual presence and ...even in an age of advancing technology, watching an event on the screen remains less than the complete equivalent of actually attending it."<sup>35</sup>

Poor translation also leads to damaging outcomes. This is particularly true for asylum seekers whose entire case rests on the credibility of their statements. Contradictions to those statements at a later point in the court proceedings can be misinterpreted. ACLU-NM met with individuals who reported that they did not receive interpretation services at immigration hearings, including a Somali asylum seeker and an immigrant from Costa Rica.

- Khalid fled civil war in his home country, embarking on a journey to the United States that would last months. He approached immigration officials at the U.S.-Mexico border, stating that he was seeking asylum. Khalid explains that he had seen television programs of the United States from home and knew only criminals to be placed in handcuffs in jails. He held up his wrists and mimed handcuffs, "I was unaware. They jailed me." ICE detained Khalid in New Mexico where an asylum officer found him to have credible fear. Khalid described the challenges of finding legal assistance, "The problem is Otero," he states, "No one will come help us. A refugee is a person who fled his country to flee fighting. No one will help us." In court, Khalid was exasperated because the immigration judge did not believe that his tribe was a minority tribe, subject to persecution by the larger tribes in his country. His attorney reportedly said nothing in court, even when directly addressed by the judge. "I did not understand the role of an attorney when I came here. My friends told me that the lawyer is there to defend me. She did not. She charged \$2,500 up front." Khalid ultimately lost his asylum case because he was not able to produce the evidence required by the judge. The judge asked for video footage of the incidents described by Khalid, as well as a birth certificate or passport. "I was not a reporter. I was not working for agencies. I did not have this information. I cried as I spoke to him." Khalid spent more than nine months in detention. He did not appeal his case stating, "If God has written me for asylum I will get

it. Everything is by the condition of Allah.” He was later released on order of supervision because his country does not have diplomatic relations with the United States.<sup>36</sup>

### Access to Legal Materials is Limited

Immigrants detained at the Otero County Processing Center expressed frustration with the inadequacy of the facility’s law library. In total, 28 of the 42 people who completed an in-depth interview with ACLU specifically spoke of the inadequacies. Only two people stated that the library helped them build their immigration case. Individuals report that the library lacks materials in languages other than English, has no

wait an entire rotation to look up information for his case or type his application.<sup>37</sup>

- “We don’t have a law library,” explained Abukar, an asylum seeker, “There are only books from the 1960s and 1970s. Many times we have asked ICE for information regarding country reports to assist with asylum cases but cannot get this information.”<sup>38</sup>
- Gustavo received a Notice to Appear, a charging document for appearing before the immigration court needed to prepare for his case. “I was told to go to the ‘so-called [law] library’” he stated, “It was my biggest disappointment.” He asked the officer in the library for assistance navigating the program

---

For the detainees who are defending themselves, the law library is not and does not provide sufficient law related materials. They put a detainee who was in my dorm in the “SHU” for simply explaining to a C/O that he needed to use the library to do some more research about his case.

- Letter to the ACLU from Miguel R. (pseudonym)

---

legal books, and only limited software and access to resources on the four computers. During the time ACLU-NM conducted these interviews, for example, the Lexis Nexis program to access legal resources on the computer remained down for more than a month.

- Abel explained that only five people are allowed to go to the library at a time. If all 50 people in the pod needed to use the library, he would have to wait his turn in the rotation once every 10 days. Abel explained that this could cause a person to miss important court filing deadlines. People were forced to bargain with one another if they had an approaching deadline and needed a closer time slot. Abel further explained that even if a person gained access to the library, they were not guaranteed a computer and could have to

on the computer. The officer allegedly did not know how to use the program. Gustavo couldn’t find any legal books in the library, and found that available books were old “from the 1940s, 50s, 60s.” Gustavo stated that there were no immigration or criminal legal books and that Lexis Nexis was restricted and difficult to use for people unfamiliar with the system. “I couldn’t get legal access at a crucial time.”<sup>39</sup>

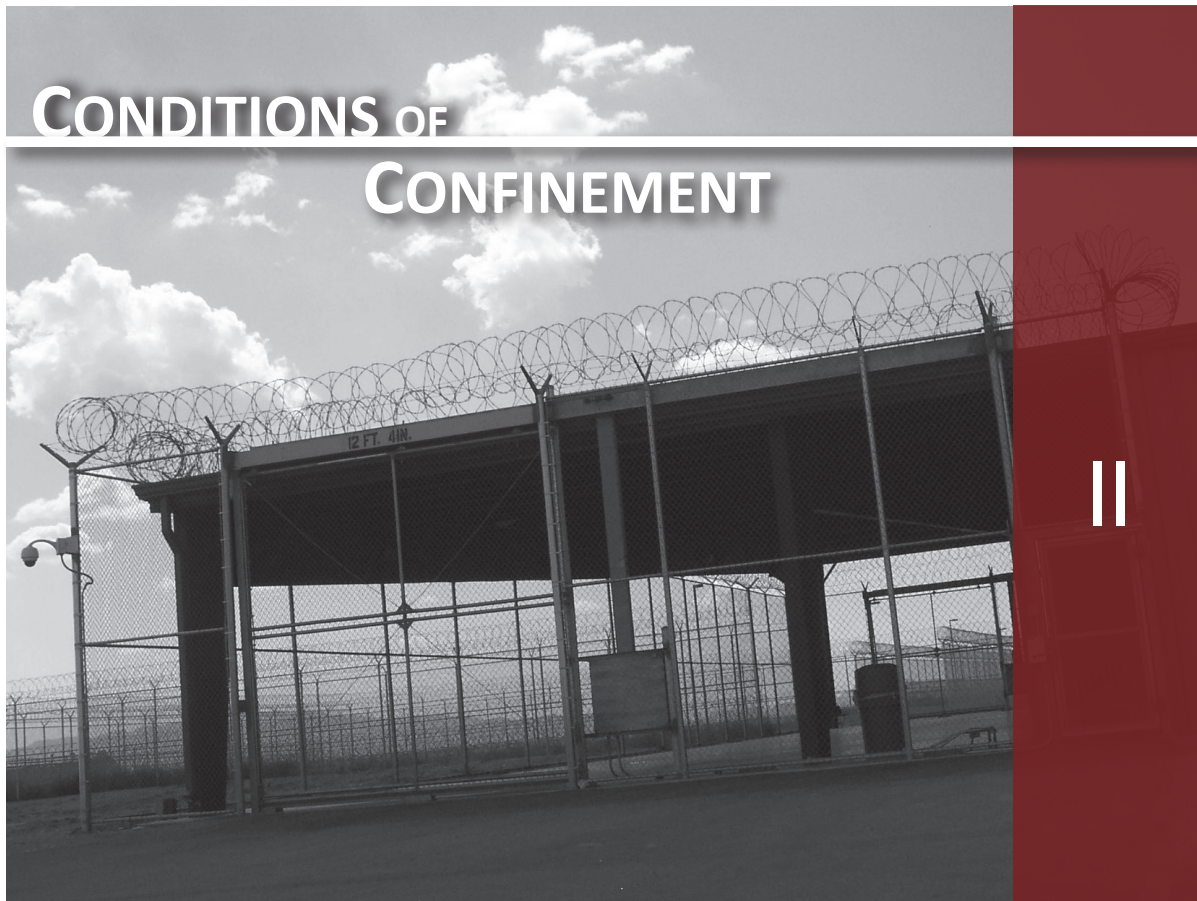
Time limits, as well as access restrictions, encumber immigrants’ efforts to prepare their cases. Immigrants reported that information cannot be saved on the computers; therefore, if a person cannot finish his work or access the printer, the work is lost. Individuals need several copies of their application packets for court and are dependent on the library to obtain these copies in a timely manner.

Many immigrants are not familiar with the U.S. courts and are forced to navigate this complex system in a language other than their native tongue. All of this must be accomplished without the assistance of an attorney. When access to the law library and legal materials is limited, individuals potentially face a deprivation of due process and access to justice.

## (Endnotes)

1. ACLU correspondence with Joseph Q. (Pseudonym), July 2009.
2. Human Rights Watch (December 2009). Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States. Retrieved from: <http://www.hrw.org/node/86789>
3. Immigration and Customs Enforcement. 2008 Performance Based National Detention Standards, Part 7 Administration and Management, 41 Transfer of Detainees. Retrieved from: <http://www.ice.gov/detention-standards/2008/>
4. ICE. 2008 Performance Based National Detention Standards, Part 7.
5. Letter from Phyllis Coven, Acting Director for U.S. Immigration and Customs Enforcement Office of Detention Policy and Planning to Alison Parker, Deputy Director, U.S. Program of Human Rights Watch. (2010, February 22). Retrieved from the Human Rights Watch website: <http://www.hrw.org/node/89408>
6. Vera Institute of Justice, Projects: Legal Orientation Program. Retrieved from: <http://www.vera.org/project/legal-orientation-program>
7. ACLU interview with Raul X. (pseudonym), Dec. 2009.
8. Human Rights Watch. Locked Up Far Away.
9. ACLU correspondence with Gustavo F. (pseudonym) Jan. 2010.
10. ACLU correspondence with Brian S. (pseudonym), May 2010.
11. ACLU interview with Javier M. (pseudonym), Nov. 2009.
12. ACLU interview with Chiumbo M. (pseudonym), Jan. 2010.
13. ACLU interview with James B. (pseudonym), Feb. 2010.
14. ACLU interview with Dominic A. (pseudonym), Feb. 2010.
15. ACLU telephonic communication with Sarah F. (pseudonym) April 2010.
16. Immigration and Customs Enforcement. (2010, July 23). Press Release: "ICE Announces Launch of Online Detainee Locator System." Retrieved from: <http://www.ice.gov/news/releases/1007/100723washingtondc.htm>. For information and brochures in multiple languages go to <http://www.ice.gov/news/library/factsheets/odls.htm>
17. ACLU interview with Rangsei C. (pseudonym), August 2008.
18. ACLU interview with Miguel R. (pseudonym), Nov. 2009.
19. Immigration and Customs Enforcement. 2008 Performance Based National Detention Standards. Part 7, Standard 41, Transfer of Detainees. Retrieved from: [http://www.ice.gov/doclib/dro/detention-standards/pdf/transfer\\_of\\_detainees.pdf](http://www.ice.gov/doclib/dro/detention-standards/pdf/transfer_of_detainees.pdf)
20. ACLU interview with Javier H. (pseudonym), Nov. 2009.
21. ACLU interview with Gustavo F. (pseudonym), Nov. 2009.
22. ACLU interview with Christoffer K.(pseudonym) April 2010.
23. Schiro. Immigration Detention Overview and Recommendations.
24. Immigration and Customs Enforcement Contract Performance Monitoring Instrument, Contract Years July 2008 through June 2009 and July 2009 through June 2010. Obtained through the Freedom of Information Act, on file with author.
25. American Civil Liberties Union. (July 2009). Issue Brief: Prolonged Immigration Detention of Individuals Who are Challenging Removal. Retrieved from: [http://www.aclu.org/files/images/asset\\_upload\\_file766\\_40474.pdf](http://www.aclu.org/files/images/asset_upload_file766_40474.pdf)
26. ACLU interviews with Ishmael M. (pseudonym) from Dec. 2008 to Sept. 2010.
27. ACLU interview with Guillermo M. (pseudonym), March 2010.
28. ACLU interviews with Chiumbo M. (pseudonym) Jan. 2010 to Sept. 2010.
29. U.S. Immigration and Customs Enforcement, Directive No: 11002.1 Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture. Effective Date: January 4, 2010. Retrieved from: [http://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole\\_of\\_arriving\\_alien\\_found\\_credible\\_fear.pdf](http://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_alien_found_credible_fear.pdf)
30. See *Zadvydas v. Davis*, 533 U.S. 678 (2001).
31. DHS, Memorandum for Officers in Charge regarding Post Order Custody Reviews Responsibilities and Guidance, (2007, September 17). Retrieved from: [http://www.ice.gov/doclib/foia/dro\\_policy\\_memos/rdercustodyreviewsresponsibilitiesandguidancesept172007.pdf](http://www.ice.gov/doclib/foia/dro_policy_memos/rdercustodyreviewsresponsibilitiesandguidancesept172007.pdf)
32. See *Zadvydas v. Davis*, 533 U.S., 699-700 (2001).
33. More information about Texas Appleseed can be found on their web site: [www.texasappleseed.net](http://www.texasappleseed.net)
34. Texas Appleseed and Akin Gump Strauss Hauer & Feld LLP. Justice for Immigration's Hidden Population. Retrieved from: [http://www.texasappleseed.net/index.php?option=com\\_docman&task=doc\\_download&gid=313](http://www.texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=313); Texas Appleseed. (May 2009). Assembly Line Injustice: Blueprint to Reform America's Immigration Courts. Retrieved from: [http://www.texasappleseed.net/index.php?option=com\\_docman&task=doc\\_download&gid=159&Itemid=](http://www.texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=159&Itemid=)
35. Texas Appleseed.(May 2009). Assembly Line Injustice: Blueprint to Reform America's Immigration Courts. Retrieved from: [http://www.texasappleseed.net/index.php?option=com\\_docman&task=doc\\_download&gid=159&Itemid=](http://www.texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=159&Itemid=)
36. ACLU interview with Khalid M. (pseudonym), Nov. 2009.
37. ACLU interview with Abel S. (pseudonym), Dec. 2009.

38. ACLU interview with Abukar A. (pseudonym), Dec. 2009.
39. ACLU interview with Gustavo F. (pseudonym), Nov. 2009.



# CONDITIONS OF CONFINEMENT

II

*“Sometimes I wonder if I’m still living in America or I’m living in some foreign country.”*

*- Chiumbo M. (pseudonym), a detained asylum seeker<sup>1</sup>*

## **Equal Access to Religious Practice is Questioned**

The struggle for equal treatment of religious groups at the Otero County Processing Center has been onerous. Progress has been made, but improvements are still needed. Several ICE facilities have agreements with non-profit, faith-based organizations to provide chaplaincy services. Groups such as Jesuit Refugee Service and Church World Service, have full-time representatives organizing services for immigrants of many different religious backgrounds. The non-profit model provides a neutral space for immigrants who find themselves turning to their faith for hope while detained. As JRS/USA explains, “[Chaplains] help detainees deal with

the emotional and spiritual factors associated with separation from family, loss of economic stability, and pending legal decisions. They encourage men and women to strengthen their religious beliefs and attitudes as they struggle to cope with the despair and uncertainty of detention.”<sup>2</sup>

The Otero County Processing Center chaplain, in contrast, is an MTC employee. Several of the immigrants felt that the chaplain did not respond to requests for religious services. The chaplain recruited religious leaders from outside of the facility to provide services for certain faith groups, but also reportedly performs several of the services himself. Transgender and gay detainees who attended the chaplain’s services



The muslims are not allowed to pray in  
The clean Rooms insted we are sent to pray  
in dirty kitchen fill with flies on wite  
and gresy and dirty floor without Prayer  
RUGS

We are only given one hour to pray and rest  
of religions they have more than one hour and  
more than one day insted we have only one  
day and one hour and that hour they came us  
three or four time to ask us or dorm and  
our bed and when frist we came we  
told them our dorms and numbers and the muslims  
when they pray they are not talking and the  
officers they came us in side our pray  
and they trouble our prayer ever friday  
when we go our prayer we came back  
New problem

Letter to the ACLU from a Muslim detainee.

were allegedly subject to discriminatory sermons based on gender identity and sexual orientation. One detainee reported that the chaplain stated, "I don't want to point any fingers, but homosexuality and transexuality is bad. You think you are pleasing God, but you are not."<sup>3</sup>

Muslim immigrants report the greatest concern with access to religious services. They report challenges recruiting Muslim religious leaders, known as Imams, to provide Friday services due to the remoteness of the facility. Generally, Muslim immigrants choose one of their own to serve in the role of Imam. Friday services are conducted in the multi-purpose room where other religious groups have their services. Monday prayer was previously conducted in the cafeteria. Muslim detainees, who conduct a process of ablution (religious cleansing) prior to prayer, found this particularly disturbing. In mail correspondence

with the ACLU, a Muslim immigrant reported that the Muslims were praying on the dirty kitchen floor without prayer rugs.<sup>4</sup> When they complained about the conditions for the Monday services, these were purportedly cancelled.<sup>5</sup>

Friday services were fraught with problems as well. Muslim immigrants complained that correctional officers consistently interrupted their services for population count. A Muslim detainee stated, "Muslim prayer is always interrupted by the COs. They take advantage of their authority."<sup>6</sup>

Ramadan is the Islamic month of fasting in which Muslims do not eat or drink between sunrise and sundown. The facility accommodates the needs of Muslim detainees by providing meals before sunrise and after sunset to those individuals registered as Muslim and on the "Special Diet"<sup>7</sup> list. During Ramadan, two detainees were taken



off the Muslim list as punishment for stealing bread from the cafeteria. Since they were taken off the list, they had to eat at 5:00 pm with the general population, but sundown—when the Muslims break the fast—was at 7:30 pm, reported a Muslim immigrant. When he complained about the treatment of Muslims, an officer responded, “You choose your religion.”<sup>8</sup>

Idrissa, an African immigrant, is a devout Muslim who strictly adheres to the *Salat*, or prayer, five times a day. He believes that conducting the *Salat* in an unclean area and/or interruption of the prayer causes it to be invalid. Idrissa reported facing significant challenges to his devotion in the dormitory, including a number of times in which he claimed his prayers were intentionally interrupted by correctional officers. On one occasion, he protested the interruption and was allegedly sent to the Special Housing Unit (segregation) for 35 days. He reported further interruption to his prayer while in the SHU because he was allegedly denied the ability to shower for several days and could not pray without conducting the ablution.<sup>9</sup> Idrissa reported that officers working in the Special Housing Unit harassed him, calling him “Taliban” and “Bin Laden.”<sup>10</sup>

### **Immigrants Report that Religious Dietary Needs are Not Met**

The Performance Based National Detention Standards established by ICE require facilities “to provide detainees requesting a religious diet a reasonable and equitable opportunity to observe their religious dietary practice within the constraints of budget limitations and the security and orderly running of the facility by offering a Common Fare Menu.” The standards further explain:

“Common fare” refers to a no-flesh protein option whenever an entrée containing flesh is offered as part of a meal. Likewise, a “common fare” meal offers vegetables, starches, and other foods that are not seasoned with flesh. This diet is designed as the “common ground” from which modifications can be made to accommodate the religious diets of various faiths.<sup>11</sup>

The Otero County Processing Center provides a common fare menu, referred to by the immigrants

as the “special diet.” A Kosher kitchen is on-site for preparation of Kosher foods in accordance with Jewish religious diet standards. Immigrants who practice Islam prefer a Halal<sup>12</sup> diet, however, their religion allows for the consumption of Kosher foods if Halal is unavailable.

When Otero first opened, immigrants from several faiths raised concerns of inadequate access to a religiously appropriate diet. Rastafarian immigrants alleged arbitrary suspension from the religious meal program. Muslim immigrants went through long periods of time without a religious diet. A non-citizen Muslim who arrived at Otero in October 2009, several months after the facility opened, stated that there were no religiously assigned diets at the facility. However, the few Jewish detainees housed at Otero were able to obtain Kosher food. Immigrants met with the chaplain on several occasions to discuss Halal

---

*“The last I can remember was that we all bleed the same red dye, and have basic humanitarian needs. How could all creed and race have an equal place if justice does not prevail? ...I am just one voice on the inside that yearns to be treated with morals and dignity at Otero County Processing Center. I assure you that there are many more souls among me that are ill treated and afraid to come out of the shadows.”*

*—Keron, a detained asylum seeker in written correspondence with ACLU<sup>13</sup>*

---

options. They provided cost information for Halal food, which they believed was provided by the ICE Processing Center in El Paso.<sup>14</sup> For a period of time these individuals were allowed to participate in the Kosher meal plan. Following an audit, Muslim immigrants were allegedly told the Kosher meals had run out and were returned to the regular diet, despite the fact that Jewish detainees reportedly continued to receive Kosher meals. A detainee from Lebanon severely restricted his diet and ate very little because he did not want to break his religious beliefs. At one point, according to detainee reports, Muslims in the facility held a hunger strike to demand an appropriate religious

diet. Two of the key leaders of the hunger strike were allegedly placed in segregation.

Calvin, a Rastafarian immigrant wrote, “Myself and other detainees are constantly been [sic] denied our religious rights and meals by MTC administration and when we tried to complain to staff members, we are being harassed and threatened with segregation time. As it is written in the U.S. Constitution, the practice of one’s religion is not a privilege. It is a right guaranteed by the United States Constitution.”<sup>15</sup>

Over time, Otero placed nearly all immigrants indicating religious dietary needs on the common fare meal program. Jewish detainees received Kosher food at most meals until recent months when immigrants reported that Kosher meals were reduced to only three times per week.

The Performance Based National Detention Standards state that, “To the extent practicable, a hot flesh-food entrée shall be available to accommodate detainees’ religious dietary needs. Hot entrees shall be offered three times a week.” MTC appears to have interpreted this standard to mean that hot meals need only be served three times a week and adjusted Kosher meals accordingly.<sup>17</sup>

*“My rights as a human being are challenged every day.”*

*—Joel in a letter to the U.S. President<sup>16</sup>*

Abel, a Jewish immigrant, stated, “There are days we cannot eat because we are not sure if it is Kosher. Yesterday they served Salisbury steak and we weren’t sure.” Abel reportedly asked MTC staff for information showing that the food was Kosher. Rather than providing him with this information, MTC staff allegedly told Abel that he had an option to not eat.<sup>18</sup>

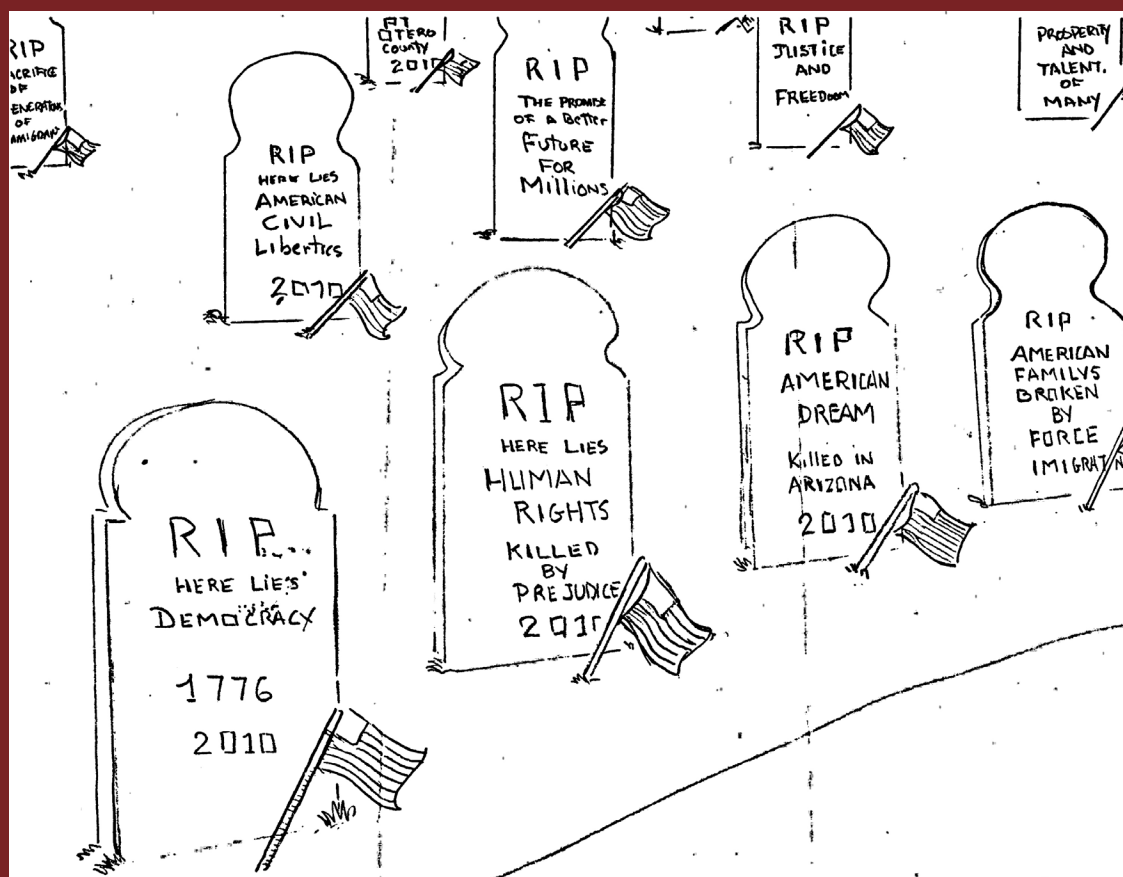
Concerns regarding the origin of the food in the common fare meal program, along with poor quantity led many immigrants to abandon their religious diets. Detained immigrants consistently reported a common fare plate comprised of sardines and rice, or a large scoop of peanut butter with four slices of bread and a scoop of rice. “When we have sardines,” stated one detained immigrant during an interview, “sometimes you don’t even get a sardine, just the juice from the can.”<sup>19</sup>

## Access to Recreation is Limited

Detained immigrants reported a lack of educational and recreational programming. Several immigrants reported increased depression over time. With little to keep their minds occupied, detained immigrants become anxious about their legal cases and pass the time thinking about partners, children, and other family members waiting for them on the outside. Those who fled persecution in their home countries and could not bring their families with them, constantly worry about the safety of their loved ones. One detained immigrant said, “I’m unable to sleep because all I think about is being sent back to [my country]. I can’t go back there. They think it’s a game. But it’s my life. I will die if I am sent back there.”<sup>20</sup>

Several detained immigrants described the uncertainty of the length of their detention as unbearable. In the criminal justice setting, a person knows the length of their sentence and has a release date. This allows the individual to psychologically prepare him or herself to serve their sentence. With an indeterminate number of court hearings scheduled far apart, delays of travel documents and deportation, individuals in immigration detention don’t know if or when their detention will end. The following represent responses provided by individuals when asked to describe a “typical” day in detention:

- “Get up, eat breakfast, lie down. Get up, watch T.V., have count, eat lunch, lie down. Count. I get sick of T.V. so tend to focus on my case for a few. Dinner. Come back. Count. Maybe take a shower. Redundancy. If you are not careful or a person of strong mind, you can lose your mind in here.”<sup>21</sup> —Damon, detained for more than a year
- “You wake up at 4:30 am to ‘chow.’ You wait until your dorm gets called. Even if the food [is] not good you are grateful for the breakfast. [You] head back to the dorm to shower. You are finished around 7:00 am. You go back to sleep. At 7:30 am there is count. There is one T.V. in Spanish and one in English. There are some games like dominos, checkers, chess, cards. You try to get through the day by trying to get tired so you can sleep.”<sup>22</sup> —James, length of detention unknown



Drawing by Gustavo F. (pseudonym), immigrant detained at Otero.

- “We are locked up for 22-23 hours a day. We have rec (recreation) for one hour, go to chow. It’s boring. There is nothing to do except watch T.V.”<sup>23</sup> –Miguel, detained by ICE for ten months.

Immigrants detained at the Otero County Processing Center have one hour of “outdoor” recreation per day. To get to the recreation area, immigrants walk through a hallway door and into a concrete courtyard. People commonly referred to the recreation space as a “cage” or a “little concrete box.” One person stated, “It is no recreation. [You] can’t look forward, there are walls, walls all around and a net above you. You are supposed to be in a yard where you can touch the grass, watch a bug walk by.”<sup>24</sup> Exercise equipment is not available. Handball and soccer are the only two activities available and teams must

rotate to accommodate the number of people. Immigrants with physical disabilities unable to play sports choose not to go to recreation. They reported a lack of accommodations for people with disabilities and feared injury. Many detained immigrants were frustrated by a lack of flexibility in the yard schedule. For example, detained immigrants in dormitories scheduled for outdoor recreation early in the morning reported being subject to the cold and the dark in winter, while those scheduled for recreation mid-day in the summer found the heat unbearable. Some stated that the walk from the dormitory to the visitation area (in a separate building) for the ACLU interview was the first time they had ever been outside.

### **Visitation Policy is Restrictive**

The ability to visit with family and friends contributes to a detained immigrant's emotional well-being and willingness to see legal claims through to the end. Immigrants with family members living nearby are allowed one half-hour visit per week. Physical contact with loved ones is not allowed, and the visitation space is a bank of stools on either side of a hard clear plastic barrier. People have to speak loudly to be heard. There is no privacy. Otero only permits friends and family to visit on days that correspond with their loved one's last name also restricting opportunities for visitation.

The large number of immigrants transferred from out of state means family members and friends must travel long distances to be with their loved ones. The Otero facility is 35 minutes by car from the closest airport in El Paso, Texas, and is inaccessible by public transportation. Family members who can afford to pay expensive airfare to El Paso must also rent a vehicle or pay costly taxi fees. It is difficult to find, even for those who are familiar with the region. According to facility staff, an immigrant may request a special visit from the warden for family members who travel a certain distance to visit. Special visits rarely exceed one hour in length, and may not exceed more than one visit per week. An immigrant from England reported that his brother flew to Los Angeles from London, rented a vehicle and drove to New Mexico. He was only granted two one-hour visits on separate days. Most families, faced with attorney costs and the loss of one principal income earner in the family, cannot afford to make the journey.

### **Detained Immigrants Face Challenges Communicating with Family, Friends, and Attorneys**

#### *Telephone Communication*

Individuals detained at the Otero County Processing Center reported that they must set up a phone account with a correctional service phone company. The cost of purchasing minutes is not as high as in other ICE facilities; however, for those without access to funds, the only option available is to call collect. Collect

calls are extremely expensive and burdensome. Detained immigrants reported that friends stopped answering their phone calls. The cost of phone calls creates barriers to communication with attorneys as well. Immigrants mentioned problems calling toll free numbers, including numbers for reporting concerns in the facility to the Office of the Inspector General and other entities. Detained immigrants reported regular phone outages and delays to servicing when broken. According to some, a recent change in telephone service provider has improved connection issues.

#### *Mail Service*

A person's entire immigration case depends on submitting applications and other evidence to court in a timely manner. According to the MTC Otero County Processing Center Detainee Handbook, indigent detainees are permitted to mail a "reasonable amount of correspondence related to a legal matter" at government expense.<sup>25</sup> Individuals with money in their accounts for commissary must purchase their own postage. Incoming and outgoing legal correspondence marked as such must be opened and sealed respectively in the presence of the immigrant. A number of detained immigrants reported that mail clearly marked "Legal Mail" was not opened in their presence. One person stated, "Legal mail is supposed to be opened in front of us, but some of the guys who are involved in the lawsuit [against the facility] have their legal mail not opened in front of them. They [MTC staff] put tape back over the envelope and then tear the top in front of them. When officers have been challenged about this, they just laugh in the detainee's face."<sup>26</sup>

### **Pod Conditions are Inadequate**

The Otero County Processing Center has 20 dormitories, or pods, each with the capacity to house 50 detainees. Each pod has high ceilings and is equipped with bunk beds in one corner of the room, two tables, two mounted televisions, and a low walled bathroom with four toilets and four showers. Each pod also contains an officer's desk, a small medical room, and four pay phones.

Statements regarding the cleanliness of the pods vary. The immigrants are responsible for keeping the dormitory clean. Each pod develops a set of rules and standards for ensuring that cleaning takes place. Several people stated that they were not provided with enough supplies, often forcing them to use their own limited supply of soap and shampoo to clean.

Construction on the Otero County Processing Center was not yet complete when ICE moved the first group of immigrants into the facility. The facility was prone to flooding when it rained. Immigrants described water coming into the dorms and correctional officers working to sweep the water away. Nearly a year later, in preparation for an inspection by the American Correctional Association, roof work was finally completed to mitigate this problem.

#### *Ventilation and Environmental Safety*

Detained immigrants also questioned whether the interior of the facility had been finished. Many people referred to exposed fiberglass insulation in the ceiling and attributed the prevalence of upper respiratory illness to particles of fiberglass and dust floating around the pod. One immigrant described, “There is dust everywhere...it feels like barbed wire in your throat...People are coughing and sneezing blood and dust.”<sup>27</sup> “I work in construction,” stated another person, “so I know how bad it is to breathe [fiberglass] and it can be itchy.”<sup>28</sup> Several immigrants described a layer of residue on surfaces in the pod. Several complaints filed with the Department of Homeland Security Joint Intake Center referred to this issue. Investigators administratively closed these cases without action.<sup>29</sup>

#### *Temperature*

Detained immigrants consistently reported feeling extremely cold in all seasons with the exception of when temperatures rose due to malfunctioning air conditioning units. Several immigrants believed that the cold temperatures, even in the summer, were making them ill. Another was convinced that the air conditioning was used intentionally to punish detainees. He claimed that correctional officers would turn up the air conditioning if a detainee “mouthed off.”<sup>30</sup>

#### *Lighting*

The pods have high ceilings and lack windows to bring natural light into the dormitory. Immigrants described the lights as “too bright,” “blinding,” and “football stadium lighting.” This bright florescent lighting affects the mental health of immigrants. One immigrant reported, “There is not enough real nature [sic] light to give you a sense of reality. There is a false perception of light.”<sup>31</sup> Another said, “The lights on all day make you feel really bad.”<sup>32</sup> Lights are turned out at night. However, the bank of lights over the bathrooms remains on. Those with bunks closest to the bathroom area reported inability to sleep.

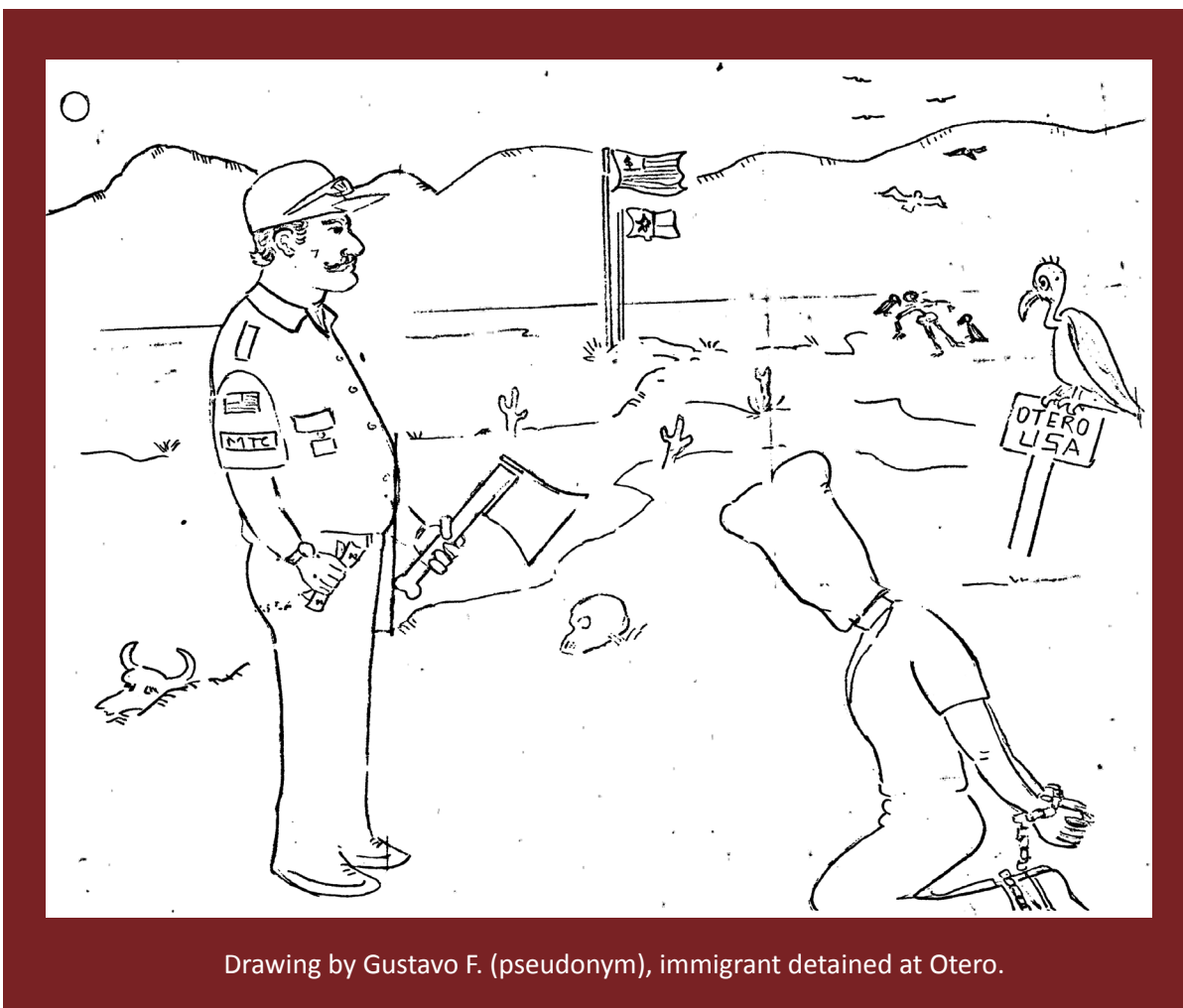
#### *Access to Sanitary Bathrooms*

The Otero County Processing Center was built specifically to house civil immigration detainees. Yet, the facility was heavily modeled on traditional penal institutions, including bathrooms with low walls and a lack of privacy. A wide range of immigrants highlighted showering and using the bathrooms as a source of stress. One person reported feeling uncomfortable that female correctional officers could see into the bathroom and shower area. Certain religious groups struggled with “exposing oneself” in contradiction to their beliefs.<sup>33</sup>

The immigrants in each pod maintain order and cleanliness with a strict set of rules. One detained immigrant explained that in his dormitory two toilets were reserved for bowel movements and two for urination. Dishes were not washed in the sinks designated for hand washing, but could be washed in the sinks used for the cleaning mops. Unfortunately, despite their efforts to keep the bathroom clean, fungal infections are reportedly common. Several immigrants reported and demonstrated fungal infections on their toes, but also indicated a high incidence of infections on feet, hands, and genitals. Asked about hygiene and sanitation, an individual responded, “Yes, of course. I have a rash in my private areas. Everyone is always scratching. People have athlete’s foot. In the showers, the first one has a pool of water and it doesn’t drain properly so no one can use it.”<sup>34</sup>

According to the detainees, they were previously able to obtain additional toiletries such as soap, shampoo or toilet paper when necessary. They report that currently, hygiene products





are distributed once a week and include a tiny bottle of shampoo, a tiny soap, a small tube of toothpaste, toothbrush, and two rolls of toilet paper. Razors are managed by the correctional officers. Deodorant, shaving cream, and other items must be purchased from the commissary. If an individual runs out of an item, that too must be purchased from commissary. "God forbid if you get diarrhea. You have to beg another detainee for toilet paper. Or you have to use newspaper or legal papers," said one detainee.<sup>35</sup> The shift in distribution of toilet paper from an "as needed" basis to once a week caused panic, because toilet paper has multiple purposes and goes quickly. "Toilet paper is not enough. Today is Tuesday and by tomorrow I will run out. The Somalis all share and put items together."<sup>36</sup> Another detainee described, "It's awful. We have no access to napkins so we have to use toilet paper for everything. By the middle of the week we

run out. People are stealing from one another."<sup>37</sup> According to reports, if correctional officers find more than the allotted amount of provided toiletries, even in cases where a portion was left over from the week before, it is taken away.

### Food Services are Deficient

Poor quality and quantity of food are consistent complaints at the Otero County Processing Center. Many immigrants go hungry because of small portions and must rely on goods bought from the commissary to curb hunger. In total, 29 of the 40 immigrants who responded to a question about changes in weight stated that they had lost weight. Only one person reported a weight gain. Reported weight loss ranged from a loss of 5 pounds to 50 pounds, depending on

length of stay, with an average loss of 22 pounds. “I feel really bad for the people who don’t have money or family support because they are starving,” reflected an immigrant. “Some of the detainees sneak back in line to try to get another tray. If it wasn’t for commissary, I would have lost more weight.”<sup>38</sup> Several of the people the ACLU interviewed had lost significant amounts of weight and continued to lose weight throughout the duration of their detention. One individual speculated, “Sometimes I think they give us food we won’t eat so we will buy commissary so they can make money.” He continued, “The food here you just eat to live. The food is so nasty but if you complain they threaten you with the SHU.”<sup>39</sup>

Complaints regarding religious meals are the most common. Another common concern reported is lack of access to a medically appropriate diet for those with diabetes or other chronic health conditions. The 2008 Performance Based National Detention Standards state that detention centers must provide therapeutic meals for “detainees with certain conditions—chronic or temporary; medical, dental, and/or psychological” if prescribed and authorized by medical staff. A provision also exists for a supplemental meal or snack for certain individuals as prescribed.<sup>40</sup> Immigrants detained in Otero have alleged that MTC staff have said that diets for medical purposes are not provided.

Andres managed his diabetes through diet for many years. At Otero, he struggled because of the high sugar and carbohydrate diet at the facility, characterized by pancakes and syrup in the morning and meals with large portions of bread and sugary drinks. Andres reported that the doctor gave him permission to choose between the regular and religious diet trays during meal time based on his health needs and the lack of a medical diet option. However, an officer allegedly took his permission away and he has not been able to reinstate it.<sup>41</sup>

Eduardo, an HIV-positive detainee, submitted several requests for supplemental snacks to take with his medication to curb the side effects. He reported that he never received approval.<sup>42</sup>

Roberto has documented gastrointestinal problems, which cause pain and require management with medication. He was provided with a special bland diet prior to his transfer to

Otero. Despite several requests, Roberto reported that Otero would not provide him with a bland diet. He stated having to relinquish food on several occasions to avoid painful consequences.<sup>43</sup>

### **Detained Immigrants Report Abusive and Discriminatory Treatment by Correctional Officers**

Correctional officers at the Otero County Processing Center exert a great deal of control over the immigrants in the facility. Immigrants report that everything—from the mood of the officer to personal bias—affects treatment of particular detainees or groups of detainees. While some immigrants noted that certain officers treated them with respect, the overwhelming

---

*“They try and treat you like children. They take away your dignity and pride. Kids looking after grown men.”*

- James B.<sup>44</sup>

*“It is a culture of harassment and intimidation.”*

— Gustavo F.<sup>45</sup>

---

majority agree that most officers exhibit a general lack of respect, using intimidation and threats of segregation to maintain rule over them. Most interview participants said that they refused to submit grievance forms or complaints exposing officer behavior because they feared retaliation. Immigrants felt that correctional officers provoked detainees to elicit a reaction, and then punished them for that reaction. Racially and ethnically charged language appears to be common, and in more than one case, physical abuse was reported.

Omar, an asylum seeker, felt correctional officers discriminated against Muslim detainees. “I ran from my country, from war. I don’t need discrimination. I know why I came. If I wanted war, I would have stayed.” He was allegedly placed in segregation on several occasions after a correctional officer provoked him.<sup>46</sup>

Hernan was detained for 15 months. In a letter to the ACLU he wrote, "I don't think it is fair that ICE/INS destroy [sic] our lives. They make us feel as low as possible and, they, destroy our families. We have no rights apparently we can't speak without a problem because the officers here bring their outside problems into the job, and we end up paying for things we did not do. The officers they tell us that we should not be or get depressed, but they do everything possible to make us depressed and try always insult or discriminated [sic] like we are trash."<sup>47</sup>

One morning at breakfast, Carl discovered his name was no longer on the list of detainees eligible to receive the common fare meal tray. He raised his concern to the officer in the chow hall who allegedly called him a "nigger" and threatened to poison his food. Carl called over a sergeant who confirmed that his name should be on the list. The original officer approached Carl's table after he had his food and reportedly stated, "Go ahead and eat your dog food nigger."<sup>48</sup> According to Joel, a correctional officer addressed him saying, "Shut the fuck up. Go sit your black ass down and beat the Congo drums." When he complained to a higher level official he was reportedly told, "You have no rights. You are immigrants."<sup>49</sup>

Another detained immigrant, Miguel, reports he was told by an officer, "You are not fucking American, if you don't want to be here sign the fuck out and go to your fucking country."<sup>50</sup>

In a letter to the ACLU Keron wrote, "At one period of time a detainee had words with an officer and as punishment was forced to walk the hallways in his underwear, being humiliated by laughing and gawking staff members. I immediately said, 'Please why can't you cover the young man' but was replied to with the remark 'Do you want to take his place'.<sup>51</sup>

Kennard explained that on rare days when the food is "decent," detainees will ask the officer in charge in the chow hall if they can clean tables or perform some other work for an extra tray. One day the food was "decent," so he approached an officer. According to Kennard, the officer responded in an "inappropriate manner," stating "I will drop you right here. Get the fuck out of my face." Provoked, Kennard challenged the officer. Several other officers approached. A Lieutenant allegedly threatened to send Kennard

to segregation, but Kennard responded that he had not done anything. He reported that he was grabbed by the arm and, when Kennard told the officer to let go, six or seven officers reportedly slammed him to the ground. He was kicked in the ribs and another officer stepped on his foot while yet another placed handcuffs on him. He stated that he had bruises on his arm, a footprint on his ribs, and was bleeding on his foot. He reports he was taken to segregation where he remained for 15 days.<sup>52</sup>

Detained immigrants often sensed that correctional officers treated certain groups of detainees with less respect than others. Non-Latino black detainees, and particularly black Muslims, reported inequality in their treatment from correctional officers. Several individuals also felt that racial, ethnic, and religious tensions between detainees were a direct result of correctional officer behavior and treatment. "If there is discrimination among the detainees, it is instigated by the COs."<sup>53</sup> Four of the individuals interviewed specifically reported that when disagreements arise in the dormitory, the correctional officers side with the Latino detainees. Questioned about an officer's response to incidents between detainees, one individual responded, "Depends on the race. Hispanic officers will turn a blind eye to abuses of non-Hispanics, and when it escalates they will place blame on the non-Hispanic detainee."<sup>54</sup> Another black immigrant also reported that officers made "African monkey noises" when they saw him and frequently called him "nigger."<sup>55</sup>

The gay and transgender population in Otero reports being subject to extreme forms of discrimination from both detainees and correctional officers.

Santiago, a gay asylum seeker, reported that correctional officers encouraged harassment of gay detainees. "I expect to be discriminated against by the other detainees. But what really gets me is when the officers encourage it and start it. They are adults and should be professional." He went on to explain that on his way to meet with the ACLU representative, a transgender individual was also being escorted to the visitation area by an officer. "The officer held his hands out to the side and walked funny to make fun of us."<sup>56</sup>

Margarita, a transgender asylum seeker, reported that she was sent to stay in the Special Housing Unit when she first arrived to the Otero County Processing Center. She was forced to walk everywhere in handcuffs. She did not understand why she was in segregation and finally spoke to a supervisor. The supervisor allegedly told her that she was in the SHU because of her prior charges for prostitution, therefore making it a threat for her to be in the general population. Offended by the assumptions and stereotypes implicit in the supervisor's statement, Margarita submitted a complaint to ICE and was eventually moved to the general population, though she continued to report discrimination from both MTC staff and other individuals in her dormitory.<sup>57</sup>

Lilia borrowed a hair band from another transgender woman at the facility to keep the hair out of her face during recreation. When she was leaving the recreation area she returned it to her friend. A female correctional officer noticed the missing hair band and asked Lilia about it. Lilia replied that she returned it to the friend who lent it to her, using the feminine term "amiga." The correctional officer reportedly responded that there were no "amigas" here, "Everyone is a man, there are only 'amigos'." The officer repeated this again in front of all of the other detainees, humiliating her. Lilia also stated that when she was searched, female officers tugged and pulled her hair. Officers would hear discriminatory comments aimed at her and do nothing to stop the abuse. According to Lilia, a correctional officer encouraged her to submit a complaint when she experienced officer misbehavior, but she was so frightened of retaliation she chose not to submit complaints.<sup>58</sup>

MTC's alleged failure to protect gay and transgender detainees reportedly results in sexual assault and sexual harassment by other detained individuals. In one incident reported to ACLU-NM, a correctional officer was the perpetrator. When gay and transgender immigrants do report incidents, instead of taking disciplinary action against the perpetrators, the victims of the abuse report being moved to a different dormitory. Several immigrants reported that starting over in a new pod was very stressful and anxiety provoking. It meant having to learn a new set of detainee created pod "rules" and quickly ascertain who posed a danger. An immigrant who does not identify as gay or transgender reflected

on the "weird" treatment of the gay detainees in his dormitory. He explained that detainees in his dormitory had created separate rules for gay detainees. For example, gay detainees had to shower at a separate time from the rest of the population to "avoid any problems."<sup>59</sup> In some of the dormitories gay detainees are assigned a specific toilet by others in the dormitory.

Groups of immigrants in the dormitories reportedly complained to MTC staff about having a gay, transgender, or HIV positive detainee in the dorm. In several of these cases, MTC staff tacitly endorsed the discrimination by removing the gay, transgender, or HIV positive individual to another dormitory where renewed harassment was likely. Some individuals reported being offered the option of "protective custody" in the Special Housing Unit. This would subject them to the same conditions and restrictions as those who are placed in the SHU for disciplinary reasons.

Detained immigrants report several other concerns regarding correctional officer behavior. These range from officers talking with one another on the facility phones all day and ignoring the needs of the immigrants, to having intimate relationships with detainees.

Many detained immigrants also felt it unfair that the entire pod was punished for the behavior or actions of one individual. "I would like these people to be fair and deal with people on an individual basis and not as a group. If one person does something, penalize that individual, not all," said an immigrant detained in Otero, "I came here by myself. I would like to be dealt with by myself."<sup>60</sup>

The lack of consistency between correctional officers increases anxiety. Immigrants who believed they understood and were following the "rules," would find that the "rules" were constantly shifting. One immigrant attributed this to inadequate officer training. "The inexperienced officers often make up rules as they go along and cause problems with the detainee's daily routines. When problems arise they are quick to make up stories and cause problems for the detainees. They lack experience and courtesy, and professionalism."<sup>61</sup>

## Immigrants Report Arbitrary Placement in Segregation

The Special Housing Unit (SHU), otherwise known as segregation, “el pozo” (the well), or “el hoyo” (the hole), is a constant threat reportedly held over immigrants at the Otero County Processing Center. The SHU is utilized for disciplinary purposes, but often doubles as a space for those who want to be in protective custody because they fear harm in the general population. The SHU is also allegedly utilized to house individuals with mental illness. Despite standards that differentiate between administrative and disciplinary segregation, those placed into segregation for administrative purposes report the same treatment as those who are placed into segregation for disciplinary reasons. They report that the few privileges which do exist are restricted. All movement within the facility is

---

*“Segregation is a weapon used to frighten people for anything.”*

- Gustavo F.<sup>62</sup>

*“Sometimes they call us animals... You are not supposed to be here cause you are [an] animal. If you talk to them, ‘why did you say that?’ They will take you to the SHU. And they will tell you, ‘we can make you disappear and nobody will know anything about you.’”*

- Omar, an asylum seeker, in a letter to the ACLU<sup>63</sup>

---

conducted in handcuffs. Individuals are confined to a small cell for 23 hours a day and must receive meals in the cell. Immigrants who experienced the SHU described the space as “a tiny dirty room” and a “small cell, just big enough to fit a bunk, a toilet and sink.” Immigrants reported limited access to showers and clean laundry while in the SHU. Several immigrants chose not to shower because it required stripping down to their underwear and walking to the shower area in handcuffs. For transgender immigrants, this was particularly traumatic.

An asylum seeker was placed in the Special Housing Unit for seven days for allegedly fighting

with another detainee. He stated that the “lights [are] on all day” and that he was on the “verge of going crazy.” “We’re not in prison,” he states, “You treat a dog better.”<sup>64</sup>

Omar, another asylum seeker reports he was sent to the SHU for 15 days after having a loud conversation with his cousin that was perceived as an argument. He stated that he had no access to the law library, did not go to the “yard” for two days, and did not shower for three days. He also reported that while in the SHU he was not allowed access to religious services. Yet he said of the correctional officers, “We pray for them, even if they don’t talk [about] us good [sic].”<sup>65</sup>

Gustavo, a long-time legal permanent resident picked up for a petty misdemeanor decades ago for which he never served time, reports being placed in the SHU for 48 hours. According to Gustavo, the accusations that led to him being placed in the SHU were dropped and he was returned to the general population. He described the cells as humid and small, with a toilet and a table. Meals are brought to a hole in the door and left there for two minutes and then taken away. He explained that if you are sleeping when the meal comes you don’t eat. “If you want a shower you have to call the CO and let them know. Then you have to put your hands through the hole to be handcuffed while you are stripped to your underwear then move against the wall when the officer enters to escort you to the shower. When I saw that, I said, ‘I am not going to take a shower while I am here.’” He reported lack of access to the library. “You are detained there without rights.” Gustavo also reported that each cell in the SHU has an intercom through which the correctional officers allegedly play music and call detainees names. His experience in the SHU was so traumatic that he requested mental health services when he was returned to the general population.<sup>66</sup>

When the ACLU first began meeting with immigrants in Otero, several of those who had spent time in the SHU described “bright fluorescent lights” that were constantly turned on, even at night. Immigrants stated that the lights affected their mental health and ability to sleep. ACLU-NM wrote a letter to the warden expressing concern that bright lighting 24 hours a day, 7 days a week—which deprived one of sleep and affected mental well-being—was tantamount to



cruel and unusual punishment. Though ACLU-NM never received an official response, immigrants subsequently placed in the SHU report that MTC staff now dim the lights at night.

Immigrants reported that MTC staff often arbitrarily place people in the SHU. Even individuals who felt they had meticulously attempted to follow the rules would find themselves placed in the SHU. According to the MTC detainee handbook, an individual accused of an infraction must have a disciplinary hearing. He is allowed to call upon witnesses and produce evidence *to prove his innocence*. Immigrants sentenced to time in the SHU consistently reported “hearings” where it seemed a decision had already been made before the immigrant could produce evidence. Immigrants were unaware of a process for appealing a decision. One detained immigrant remarked, “Everything leads to the SHU. If you talk back to an officer, for example, if the officer says ‘move’ and the response is, ‘I can’t move fast enough’ you will go to the SHU.”<sup>67</sup> Another detained immigrant explained, “People are put into segregation for small situations.” He explained that, for example, he asked to be placed on the religious diet when he first arrived to Otero. One day, staff gave him a meal that was not religiously appropriate, so he refused to eat it. He reports that in response, the officer told him, “You eat what I give you or I put you in the hole for refusing.”<sup>68</sup>

During a tour of the facility, the warden admitted to the ACLU representative that he relied on the use of segregation as a disciplinary measure more than he did when working for the Bureau of Prisons because there were fewer privileges that could be taken away as an alternative form of discipline.

“There’s no standard for why someone is taken to segregation,” said Edward, a detained immigrant in Otero. He related two incidents of others in his dormitory allegedly sent to the SHU for minor infractions or no reason at all. Reportedly, one detained immigrant refused medication during “pill call” because he wanted to wait to take it with food at meal time. He was sent to segregation. Another was purportedly sent to segregation for taking an extra toothbrush.<sup>69</sup>

“If the COs tell you to be quiet or to go to sleep and you do not, they will send you to ‘el hoyo,’”

Hernan explained. He reported that another detainee in his pod had extra shampoo left over from the prior week. This was not allowed. All of his shampoo and soap was taken away from him. The other detainees in the pod felt bad and gave him a portion of their own soap and shampoo to get him through the week. The detainee was reading his bible on his bunk when a correctional officer passed by and saw the replenished supply of toiletries. The officer reportedly took the items away. The detainee referred to the Detainee Handbook to assert his innocence. The detainee reported that, in response, the officer sent him to segregation.<sup>70</sup>

An ACLU-NM representative met with Jeffrey, a detained immigrant with communication difficulties. He explained that he was sent to the SHU for 15 days for “stealing” an apple that another detainee had willingly given to him in the chow hall.<sup>71</sup>

---

*“I personally thank my [religious faith] for being healthy but it does affect me to see other peoples [sic] plight, I may not have a paper that says that I’m an American Citizen, but let me tell you this is not the America I came to love and believe, on the verbal abuse, the humiliating strip searches, the impunity on which they are constantly carried...”*

– Gustavo F., in a letter to the ACLU<sup>72</sup>

---

### **Immigrants Report Being Subjected to Invasive Searches and Unnecessary Lockdowns**

Detained immigrants reported that searches of both body and property are routine in the Otero County Processing Center. During searches, MTC staff often confiscates important legal documents, medications, items purchased from commissary, photos, religious materials, and other items allowed by special permission. One immigrant had to resubmit court paperwork after the court lost his file. He kept a complete copy of his application to the court, but MTC staff allegedly confiscated it during a dormitory search and never returned it. This was devastating to the immigrant given the time and resources it had already taken him to obtain evidence and conduct research with limited resources and

library time. Muslim detainees reported being upset that correctional officers disrespected their Korans during searches. Immigrants also reported routine searches when leaving the “chow” hall. Several detainees reported that MTC staff made them pull their pants down in front of other detainees and officers when leaving the “chow hall,” searching for any food they may have removed from the cafeteria.

Searches are purportedly conducted to look for “contraband,” which is defined so broadly that it could refer to a detainee possessing too many phone cards or bottles of shampoo. If a domino or playing card is missing, the entire dormitory is reportedly searched, including locked drawers and beds. One detained immigrant described an incident in which a shaving razor went missing. Generally, correctional officers manage distribution and collection of razors. On this occasion, immigrants reported that everyone was forced to stay on their bunks for four hours while MTC staff searched the entire dormitory. They ultimately discovered the missing razor in the correctional officer’s own desk.<sup>73</sup>

The manner in which MTC staff allegedly conducts some searches raises serious concerns of rights violations. According to reports from several detained immigrants, one morning, staff moved the entire pod to an empty pod where they were left alone. One of the relocated individuals became upset and destroyed the correctional officer logbook left on the desk. When the officer returned and saw what happened, he called for backup and a large number of officers stormed into the dormitory. The immigrants reported being forced to strip down to their underwear in the presence of several female officers and told that they would not be released until they produced the person responsible for tearing the logbook. Correctional officers then turned up the air conditioning to make the room extremely cold. The immigrants remained in their underwear in the frigid room for over two hours. After the officers finally returned the immigrants to their own dormitory, they allegedly threatened the entire pod with loss of television, outdoor recreation, commissary and other privileges if the person who destroyed the book did not come forward.

ACLU-NM received a report that in late September 2010, the correctional officers allegedly entered

one of the dormitories around 7:00 pm to search the bunks. According to the witness, six officers came through the emergency door and six officers through the main entrance to the pod. The officers then ordered everyone to strip down to their underwear. The officers made the immigrants in the pod stand up in the large area by the bunks facing the wall while they individually searched each bunk. Among the items allegedly confiscated were letters and drawings intended for the ACLU. The immigrants were reportedly made to stand against the wall in their underwear for nearly an hour.<sup>74</sup>

## (Endnotes)

1. ACLU interview with Chiumbo M. (pseudonym), Jan. 2010.
2. Jesuit Refugee Services, What We Do: Detention Chaplaincy, Retrieved from: [http://jrsusa.org/we\\_do\\_programs\\_chaplaincy.php](http://jrsusa.org/we_do_programs_chaplaincy.php)
3. ACLU interview with Santiago R. (pseudonym), Feb. 2010.
4. ACLU correspondence with Hussein I. (pseudonym), August 2009.
5. It is our understanding that Monday services have been reinstated and are now conducted in a more appropriate space.
6. Interview with Miguel R. (pseudonym), Nov. 2009.
7. Immigrants at the Otero County Processing Center refer to the religious diet as the “special diet.” A description of the religious diet follows in the section on Religious Dietary Needs.
8. ACLU interview with Nabid N. (pseudonym), Jan. 2010.
9. ACLU correspondence with Idrissa (pseudonym), date unknown.
10. ACLU interview with Idrissa (pseudonym) June 2009.
11. ICE 2008 Performance Based National Detention Standards, Part 4: Care, Standard 20: Food Service. Retrieved from: <http://www.ice.gov/detention-standards/2008/>
12. The immigrants claim that the cost of a Halal plate of food is \$2.00-\$2.50 per plate as compared to the \$6.00 or \$7.00 cost per plate for the Kosher meal.
13. ACLU written correspondence with Keron (pseudonym), Sept. 2009.
14. The term “Halal” means lawful or permitted. The Islamic diet is Halal if it does not contain, among other things, pork, carnivorous animals or birds of prey, animals slaughtered incorrectly or dead prior to slaughtering, and anything contaminated with the aforementioned products. In the absence of an Islamic specific diet, Muslims are allowed to have Kosher foods. (Information obtained from the Islamic Food and Nutrition Council of America <http://www.ifanca.org/halal/>)

15. ACLU correspondence with Calvin (pseudonym), Feb. 2009.
16. Letter to the President of the United States from Joel P. (pseudonym), Sept. 2009.
17. ICE 2008 Performance Based National Detention Standards, Part 4: Care, Standard 20: Food Service. Retrieved from: <http://www.ice.gov/detention-standards/2008/>
18. ACLU interview with Abel S. (pseudonym), Dec. 2009.
19. Abel S. (pseudonym).
20. ACLU interviews with Jean-Philippe (pseudonym), Nov. 2009-March 2010
21. ACLU interview with Damon M. (pseudonym), Nov. 2009.
22. ACLU Interview with James B. (pseudonym), Feb. 2010.
23. ACLU Interview with Miguel R. (pseudonym), Nov. 2009.
24. ACLU Interview with Damon M. (pseudonym), Nov. 2009.
25. Management and Training Corporation, Otero County Processing Center Detainee Handbook. (Revised: Oct. 23, 2009). On file with the author.
26. ACLU interview with Miguel R. (pseudonym), Nov. 2009.
27. ACLU interview with James B. (pseudonym), March 2010.
28. ACLU interview with Jesus I. (pseudonym), March 2010.
29. Information obtained through a FOIA request to ICE. On file with author.
30. ACLU interview with Damon M. (pseudonym), Nov. 2009.
31. ACLU interview with James B. (pseudonym), March 2010.
32. ACLU interview with Julian G. (pseudonym), May 2010.
33. ACLU interview with Damon M. (pseudonym), Nov. 2009.
34. ACLU interview with Javier M. (pseudonym), Nov. 2009.
35. ACLU interview with Damon M. (pseudonym), Nov. 2009.
36. ACLU interview with Khalid M. (pseudonym), Nov. 2009.
37. ACLU interview with Gustavo F. (pseudonym), Nov. 2009.
38. ACLU interview with Kennard D. (pseudonym), Jun. 2010.
39. ACLU interview with Chiumbo M. (pseudonym), Jan. 2010.
40. 2008 Performance Based National Detention Standards, Part 4: Care, Standard 20 Food Service.
41. ACLU interview with Andres B. (pseudonym), August 2010.
42. ACLU interview with Eduardo G. (pseudonym), July 2010.
43. ACLU interview with Roberto R. (pseudonym), July 2010.
44. ACLU interview with James B. (pseudonym), March 2010.
45. ACLU interview with Gustavo F. (pseudonym), Nov. 2009.
46. ACLU interview with Omar B. (pseudonym), Nov. 2009.
47. ACLU correspondence with Hernan A. (pseudonym), Date Unknown
48. ACLU interview with Carl L. (pseudonym), Jan. 2009.
49. ACLU interview with Joel P. (pseudonym), Sept. 2009.
50. ACLU interview with Miguel R. ([pseudonym), Nov. 2009.
51. ACLU written correspondence with Keron K. (pseudonym), 2009
52. ACLU interview with Kennard D. (pseudonym), Jan. 2010.
53. ACLU interview with Sergio S. (pseudonym), April 2010.
54. ACLU interview with Carl L. (pseudonym), Jan. 2009.
55. ACLU interview with Jean Philippe (pseudonym), Nov. 2009.
56. ACLU interview with Santiago R. (pseudonym), Feb. 2010.
57. ACLU interview with Margarita (pseudonym), Nov. 2009.
58. ACLU Interview with Lilia (Pseudonym), April 2010.
59. ACLU interview with Ishmael M. (pseudonym), Nov. 2009.
60. ACLU interview with Damon M. (pseudonym), Nov. 2009.
61. Letter to ICE written by Jorge S. (pseudonym), Jan. 2010.
62. ACLU interview with Gustavo F. (pseudonym), Nov. 2009.
63. ACLU correspondence with Omar B. (pseudonym), date unknown, 2010.
64. ACLU interview with Efrain H. (pseudonym), Jan. 2010.
65. ACLU interview with Omar B. (pseudonym), Nov. 2009.
66. ACLU interview with Gusatvo F. (pseudonym), Nov. 2009.
67. ACLU interview with Damon M. (pseudonym), Nov. 2009.
68. ACLU interview with Abel S. (pseudonym) Dec. 2009.
69. ACLU interview with Edward M. (pseudonym), Nov. 2009.
70. ACLU interview with Hernan C. (pseudonym), Nov. 2009.
71. ACLU interview with Jeffrey B. (pseudonym), Feb. 2010.
72. ACLU written correspondence with Gustavo F. (pseudonym), date unknown.
73. ACLU interview with Ishmael M. (pseudonym), Nov. 2009.
74. ACLU interview with Gustavo F. (pseudonym), Nov. 2009.





*“Please: even if is saving [sic] money, not like this, people are dying from lack of medical [care]...”*

– Omar, a detained asylum seeker<sup>1</sup>

*“As soon as you enter this facility, you’re dehumanized.”*

– Carl L., a detained asylum seeker<sup>2</sup>

Failure to provide adequate medical care to immigrants in detention has been in the limelight since the widely publicized deaths of several detained immigrants.<sup>3</sup> In 2007, Boubacar Bah, a West African immigrant, fell and hit his head in a New Jersey detention center. Staff viewed his agitation and incoherence—symptoms of inter-cranial bleeding—as disciplinary problems and sent him to solitary confinement where his condition deteriorated. By the time he was taken to a hospital, his health was severely

compromised. He slipped into a coma and passed away four months later.<sup>4</sup> In January of 2010, reports surfaced of attempts by high level officials in DHS to cover up the circumstances surrounding his death, including considerations such as sending him back to Guinea.<sup>5</sup>

On July 20, 2007, Victoria Arellano, a 23-year-old transgender woman, died as a result of alleged inadequate medical treatment for her HIV while at the San Pedro Processing Center in California.



Victoria became so weak that she could not even lift her head back onto her pillow. An official finally came in to see Victoria and used his foot to lift her head back onto the pillow, then left. Despite a great deal of discrimination against the transgender population, detainees in Victoria's dormitory reportedly held a strike and would not line up for the population count until Victoria received medical attention. When she was finally taken to a hospital it was too late.<sup>6</sup>

From October of 2003 to July 27, 2010, 113 immigrants died while in ICE custody.<sup>7</sup> On this list is Hadayatullah Saylab, an Afghani immigrant who died while in custody at the Otero County Processing Center. In the fall of 2006, Young Sook Kim died while in ICE custody at the Regional Correctional Center Facility in Albuquerque, New Mexico. The medical care provider at that facility was Physicians Network Association, the same provider for the Otero County Processing Center.<sup>8</sup>

#### **Allegations of Inadequate Medical Treatment: Physicians Network Association**

Medical and mental health care services at the Otero County Processing Center are subcontracted by MTC with the private medical provider Physicians Network Association (PNA). According to their website, PNA provides health services to more than 17,000 inmates in 24 facilities throughout Arizona, Texas, and New Mexico.<sup>9</sup>

Physicians Network Association has a history of alleged negligent and inadequate medical care practices. For example, PNA is subcontracted by GEO Group, Inc. to run medical services at the Reeves County Detention Complex in Pecos, Texas. Reportedly, immigrants at that facility staged a protest in response to the untimely death of an inmate who not only did not receive treatment for his epilepsy, but was placed in segregation and died following a seizure.<sup>10</sup>

The Santa Fe County Adult Detention Center (SFCADC), like Otero, was managed by MTC with health care services subcontracted to PNA. Three PNA employees, in addition to other facility officials, were sued by the family of Tyson Johnson, a pre-trial inmate at the SFCADC who committed suicide in January of 2001 despite being placed on

a suicide watch. The lawsuit alleges gross neglect on the part of medical staff as well as MTC.<sup>9</sup> A March 6, 2003 report released by the Justice Department revealed startling findings relating specifically to medical care within that facility. The investigators noted that the CEO of PNA was also the only supervisory physician for the Santa Fe Detention Facility. Located in Lubbock, Texas, he visited the facility every six weeks, seeing only a few patients during his visits. Investigators concluded, "While he is available by telephone for consultation, he does not visit the Detention Center frequently enough to provide adequate supervision."<sup>12</sup> They write:

The [Santa Fe County] Detention Center, through PNA, provides *inadequate* medical services in the following areas: intake, screening, and referral; acute care; emergent care; chronic and prenatal care; and medication administration and management. *As a result, inmates at the Detention Center with serious medical needs are at risk for harm.*<sup>13</sup> [emphasis added]

The report goes on to state:

The [Santa Fe County] Detention Center fails *to provide adequate mental health services* to inmates who need this care. Specifically, the Detention Center fails to provide appropriate intake screening and referral and access to mental health care.<sup>14</sup> [emphasis added]

#### **Immigrants Report Lack of Adequate Medical Treatment**

The majority of immigrants detained for long periods reported negative changes in health. Almost 84 percent of those immigrants who participated in the in-depth interviews with the ACLU reported negative health changes. Reported changes included the development of allergies and other upper respiratory problems, increased depression and anxiety, weight loss, weakness and physical fatigue, stomach cramps and diarrhea, skin irritations and fungal infections, and exacerbation of pre-existing health problems.

To access non-emergency medical care in the Otero County Processing Center, detained

immigrants must fill out a “Medical Request” or “Sick Call.” These requests are dropped in a box on the way to the “Chow Hall.” Immigrants stated that appointments are only scheduled Monday through Friday. In many detention facilities, immigrants wait weeks to be called to the clinic. Immigrants at the Otero County Processing Center reported a lapse of two or three days on average, but they also noted that the response time depended greatly on the nature of the request and could take up to a month. In several cases, immigrants reported never receiving a response.

Immigrants reported that the time lapse between the submission of a “sick call” and the point at which a person is actually seen by medical staff can be hard on their health. They do not have access to basic over-the-counter medications and must depend on the medical staff for *all* of their medical needs. Individuals often suffer greatly while waiting two or three days to meet with medical staff in order to obtain something as simple as an ibuprofen. As one immigrant explained, “There is a system in which a medical request must be put in to see a doctor. But it takes so long to see a doctor that the problem could get worse. The system is problematic.”<sup>15</sup> Immigrants reported waiting, sometimes for hours, in a small and cold holding cell for clinic appointments. After waiting for two or three hours, people stated that they abandoned their appointments.

The greatest complaint reported to the ACLU with regards to medical care is not the time it takes to see medical staff, but the inadequate treatment provided. Immigrants reported being “seen” by medical staff, but not being “treated” by them. Immigrants stated that ibuprofen and a little yellow pill, what some believe to be an antihistamine, appear to be the solution to all maladies. They feared that in the event of an emergency, medical treatment would not be available.

- “If you are sick at night it would take a whole lot of time to get here [to the dormitory]. If it is a life and death situation you would be dead,” Damon stated. He often noted officers asleep at night and felt that officers would not be alert if an emergency arose.<sup>16</sup>
- Nabid spoke of another detained immigrant in his dormitory who was ill and so weak he could not get up and could not control

his bowels, causing him to defecate in his clothes. He reported, “The COs didn’t care and they just told him to change his clothes and throw them in the pile of dirty clothes in the corner.”<sup>17</sup>

- Jesus reported that everyone receives the same two pills, a red one and a yellow one. He says that the detainees refer to them as the magic pills “because no matter what your problem is you get them. One time I went to medical and before I told them why I was there they gave me the red and yellow pills. Red is Ibu-something. The yellow one really knocks you out.”<sup>18</sup> Another person similarly stated, “They [clinic staff] try to give everyone the least amount of meds. The yellow pill, the ‘wonder pill’ is given for everything.”<sup>17</sup> And another, “They just give you something to please you even though it’s not what you need.”<sup>20</sup>
- An asylum seeker recalled that during the holy month of Ramadan, another Muslim immigrant “had an attack of some sort” and was sent to medical. According to his report, 20 minutes later this individual was returned to the dormitory and had only been given a blanket. The asylum seeker remarked, “Blanket, I guess, can be medicine.”<sup>21</sup>
- In a letter to the ACLU, Jose Antonio wrote that he had been very ill and vomiting with excruciating stomach pain for two or three days before being seen by the clinic staff. He stated the clinic gave him Pepcid and ibuprofen and sent him back to the dormitory. He writes, “But I knew it was more than the stomach flu, but none of the Doctors or nurse took me serious about my complaints, on the fourth day I was in medical pale looking and my eyes yellow and very dazing, then I went to the hospital for three weeks and the doctor over [there] said [I] barely made it. One day short I would have died.”<sup>22</sup>
- Cristoffer reported experiencing excruciating pain in his back and side. He was taken to an off-site hospital. The doctor reportedly informed him that he needed testing for what appeared to be a tumor on his liver. He returned to Otero but reported he did not receive follow-up care. Cristoffer claimed he wrote a complaint every day regarding his medical situation. He was

threatened with segregation. He eventually received a medical scan that confirmed a large mass on his liver. After months of pain and begging for assistance, Cristoffer was approved to be taken to a hospital in El Paso for a biopsy. The biopsy was not performed. Cristoffer refused treatment at the hospital because he was terrified that something would happen to him during the procedure, and he had not been given an opportunity to notify his family or his consulate despite requests to do so. Cristoffer also feared that he would not receive unbiased treatment from medical staff. He stated that the two armed correctional officers with him made disparaging comments to medical staff which he felt jeopardized the quality of treatment.<sup>23</sup>

- Abel slipped and fell when he stepped in water that had leaked from the ceiling onto the floor of the dormitory. He injured his arm in the fall, causing unbearable pain. Concerned that his arm might be broken, Abel went to the correctional officer in the dormitory for assistance. The officer reportedly told him to fill out a “sick call,” though Abel now thought it obvious that his arm was broken. He filled out a sick call, but had already missed his last opportunity to submit it on the way to dinner. He didn’t want to wait until morning. He approached the medical staff when they came around to distribute medications and asked if he could have something to mitigate his pain. Abel reported that the medical staff required him fill out a sick call. He reported waiting three days for an appointment. According to Abel’s report, when he was finally seen, the doctor immediately recognized that the arm was broken. Abel was taken to hospital in El Paso and ultimately needed surgery to repair the damaged arm. Following the surgery, Abel reported that he did not receive adequate follow-up care. At the time the ACLU met with Abel, he claimed that his arm was still very painful but luckily not infected. ICE eventually released Abel, but he reported that his injury has affected his mobility and ability to find work.<sup>24</sup>
- Sergio experienced chest pains. He stated that he reported his concerns to the staff, but was not taken to the clinic until nearly 24 hours later. Medical staff reportedly performed an EKG and he returned to the

dormitory. A short time later, Sergio reported that medical staff came to the dormitory to get him. An ambulance took him to the hospital. It was only then that he learned his EKG had been abnormal. He remained in the hospital for five days. The hospital performed a heart procedure and prescribed medication. Sergio claimed feeling humiliated while in the hospital because two correctional officers were with him the entire time and he was chained to his bed following the heart procedure. He noted that he was in good health before his detention in Otero.<sup>25</sup>

The number, credentials, and qualifications of clinic staff were largely unknown to the majority of immigrants. Many believed there to be one or two doctors who were rarely at the facility and a number of nursing assistants or nurses who provided the bulk of the medical care. Several immigrants questioned their professionalism. A Freedom of Information Act request submitted to ICE on May 10, 2010, returned information on medical staffing in September of 2010. According to the response, in the course of a full week (24 hours for 7 days) there is one physician available less than full time for a facility with the capacity to hold 1,086 detainees. Current staff at the time of the request also included three registered nurses, a number of licensed vocational nurses and certified nursing assistants, and a nursing director.

- “The medical staff is not properly trained to deal with emergency conditions,” Anibal stated. He went on to explain that a detainee in his dormitory had a seizure and other detainees reportedly had to instruct the staff on how to handle the situation.<sup>26</sup>
- “If I get sick, I can’t get any help. We don’t have any doctors, only nurses. If I put in a medical request it takes four or five days to be seen. Then only nurses see you and say that there is no problem, give you an Ibuprofen and send you back.”<sup>27</sup>

### **Immigrants Report Mechanisms to Access Medical Care Delay Treatment**

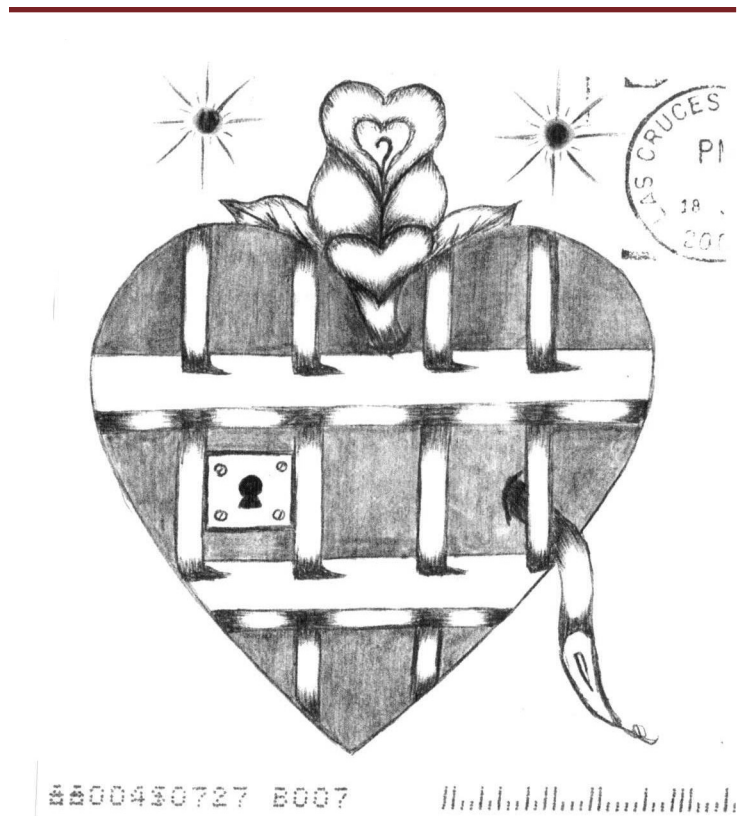
The complex system for accessing medical care can delay or impede proper treatment. At

the time the ACLU-NM conducted interviews, the process to approve “non-routine” care, including approval of particular medications and medical equipment, off-site medical visits, exams, and hospitalization, required submission of a “Treatment Authorization Request” (TAR) to the Department of Immigration Health Services (DIHS) in Washington, D.C., for approval. This process is tedious and interferes with the timely delivery of care. Like the detention system itself, medical services are built on the assumption that individuals will not be detained for long periods of time. Those who seek immigration relief before the courts are likely to be detained for longer periods of time, and are therefore at a disadvantage.

Recently, DIHS changed its name to the ICE Health Services Corps (IHSC). According to advocates, IHSC has been in the process of overhauling the reimbursement procedures for medical care of detained immigrants. The new system should greatly reduce the delays in medical treatment under the TAR system by relying more heavily on the judgment of medical professionals for reimbursement as opposed to a restricted set of covered services.

The greatest barrier to adequate medical services at Otero County Processing Center appears to be the subcontract with a private, for-profit company. Greater profit is gained by cost savings in services. This could translate into hiring medical staff with fewer qualifications, cutting back on supplies including medications and medical equipment, and delaying certain types of medical treatment. This reality did not escape the attention of the immigrants who stated things such as, “They’re not here to help us. They’re just here to get paid.”<sup>28</sup>; “[They] don’t seem to care about the detainees. It is a job for them.”<sup>29</sup> and “They are after money while people are suffering.”<sup>30</sup>

PNA’s performance with the Reeves County Detention Complex (RCDC) in Pecos, Texas, is a prime example of cost-cutting behavior. A reporter researching medical treatment provided by PNA at the RCDC noted a dramatic decrease in medical costs when Reeves County sought an outside provider (in this case PNA) for medical services as opposed to relying on local resources. He wrote:



- Drawing by detained immigrant Miguel R. (pseudonym)

...as reported in the Pecos Enterprise (11/25/02) a [medical] provider not accustomed to dealing with inmates would inadvertently provide the inmate with medication and other medical provisions that he doesn’t necessarily need. For the county commissioners, worried about health care expenses, the decline in surgeries, outside medical visits, and x-rays was impressive. As [Warden] Franco explained, in the first four months of the PNA contract, compared with the previous seven months, the number of outside medical visits dropped from 59 to four, the number of surgeries decreased from 15 to two, and the total incidents of medical services declined from 3,148 to 222.<sup>31</sup>

This alleged decline in services begs the question of whether or not this was achieved by dramatically reducing basic care to immigrants. At the Otero County Processing Center, for example, detainees have reported sharing a wheelchair.



- Adebayo had trouble walking for years, but always managed with a walker. He claimed his ability to walk significantly declined in detention. Eventually he needed a wheelchair. Medical staff allegedly gave him permission to “borrow” the Otero wheelchair, but told him that he had to share it with a detained person in another pod. Adebayo reported that if he needed to use the restroom during a time when he was not in possession of the wheelchair, he had to use the officer’s chair with wheels to move from his bunk to the bathroom. Adebayo also needed daily medication for a life-threatening illness. He reportedly never received certain

on cold cell floors. [You have] been on a flight across the country in handcuffs, and by the time you get to medical you are numb and oblivious and just want to go to sleep.”<sup>34</sup>

Even when immigrants reported alerting officials of the exact medications they needed, the facility allegedly required proof before it would issue a prescription. Medical records must be requested. Once received, some medications must be approved and ordered. All of these steps create delays in distribution of medication which can have long-term and/or life-threatening effects on an individual’s health. This is particularly true for HIV-positive individuals. Long delays or

---

*We do not get a fair amount of food, we do not get attended by medical staff when we are in need, the C/O's take everything as a joke, they think we are lying. When inspectors stop*

- Letter to the ACLU from Miguel R. (pseudonym)

---

medications throughout his entire detention at Otero. He stated medical staff told him that ICE would not provide the funds for all of the medications.<sup>32</sup>

### **Immigrants Report that Continuity of Care is Compromised by Detention**

Detained persons are required to undergo an initial medical and mental health screening within 12 hours of entering a facility, and a full health appraisal must be conducted within 14 days of arrival.<sup>31</sup> The Otero County Processing Center conducts both actions upon entry. Because medical records allegedly often don’t accompany people during transfer, screening and assessment relies heavily on self-reporting. The trauma of detention and transfer can leave individuals disoriented and impair their ability to immediately answer questions about their present medical conditions, medical history and prescriptions. An immigrant explained, “By the time you get to processing you have spent time

gaps in treatment can lead to significant health complications. Consistently, ACLU-NM found that people with HIV experienced breaks in treatment during transfer, processing, and transition to Otero County Processing Center. Of the 11 people who disclosed to the ACLU that they were HIV-positive, seven reported taking HIV-related medications prior to detention and one was taking supplemental vitamins. All eight people reportedly experienced interruptions in receiving medications; the longest lapse was 3 months. The three people who were not previously in need of medications allegedly did not receive blood tests in a timely manner, despite declines in health.

- An asylum seeker detained at the Otero County Processing Center reported taking anti-retroviral medication and vitamins consistently for four years, a regimen which contributed to her continued health. During initial intake processing, she reported that she informed medical staff of her condition and her treatment plan. The facility allegedly failed to administer her medications. She reportedly submitted requests to see



medical staff nearly every day, and received no response. She also reported submitting requests for assistance to ICE. By the time an ACLU representative met with her, she had allegedly been without her HIV medication for more than 20 days. She reported a marked decline in health.<sup>35</sup>

Detained immigrants reported long delays in obtaining prescription refills as well. To address this problem, the facility developed a system that allows immigrants to administer their own medication. Detainees punch pills out of a sheet that includes a reminder to request a refill when the pills run low. Detained persons simply peel off a sticker, place it on a medical request form, and send it to medical with enough notice to obtain the refill and avoid any interruptions. Despite this precautionary measure, immigrants still report delays in medication.

- Nicolas requires medication and constant monitoring for a life-threatening condition. When he arrived to Otero he possessed a three-month supply of medication, but clinic staff allegedly refused to let him use it. Nicolas reported they instead gave him a package with a month's worth of self-administered medication. He consistently requested a refill at least nine days prior to running out of medication, but reported that he consistently went without medication for up to five days when the supply ran out. According to Nicolas, his life depends on this medication. Three months after being processed into the Otero County Processing Center, Nicolas reportedly met the doctor for the first time. Nicolas reported that the doctor expressed surprise and stated, "How come I haven't seen you?" Despite a commitment from the doctor to provide new dosages of medication, on the day of his immigration court hearing, Nicolas alleged he had been without his blood pressure medication for eight days and the medication for his serious condition for five days.<sup>36</sup>
- Cornelius required medication for a heart condition in addition to insulin and regular snacks to control his diabetes. Some detained immigrants reportedly have a paper referred to as a K.O.P. (Keep On Person), which provides permission for detained persons in the facility to keep certain items with them

for health reasons that otherwise would not be permitted. Cornelius claimed he had a K.O.P. that allowed him to administer his own heart medication. He also possessed a K.O.P. authorizing snacks as needed to control his diabetes. On several occasions correctional officers allegedly took away his K.O.P. for snacks, and on one occasion they purportedly confiscated his K.O.P. for heart medication. Cornelius had to wait until he was able to secure a clinic appointment to try to obtain a new K.O.P. and more heart medication. As Cornelius entered into his 90-day post order custody removal period, he exhibited extreme depression and repeatedly expressed fears of dying in the facility. He stated that he could not imagine surviving another 90 days of detention.<sup>37</sup>

According to detainee reports, clinic staff at Otero did not share follow-up care information or lab results with immigrants sent off-site for exams or tests. This lack of information caused anxiety. Detained persons questioned whether or not they were receiving the medical treatment they needed or that had been ordered by off-site medical professionals. In several instances, the ACLU helped these individuals obtain copies of their medical records. In some of these cases, immigrants discovered that a particular medication was not being administered because it wasn't necessary. For example, one man had been diagnosed with HIV prior to detention but did not have the opportunity to receive education on how to manage his HIV and what to expect. He was very stressed, afraid that he needed medication and wasn't receiving it. The clinic drew blood for lab work, but failed to share the results with him. His medical records revealed that he was in good health and did not need medication. If medical staff had shared the blood work results and spent a few minutes providing health education, he would have been spared the stress of not knowing.

In another case, an immigrant took the same medication for a number of years, but when he arrived at Otero his medication changed. Facility staff prescribed three separate medications causing him to submit several requests to remedy the situation. The original medication is composed of three different chemicals. Instead of providing the chemicals in one pill, the facility prescribed three pills for the same effect. Again, a brief explanation could have alleviated his anxiety.

- Prior to detention, Ishmael was reportedly in good health. After two years of detention, he developed high blood pressure, a chronic ulcer, a concerning blood condition, and his teeth began to fall out. The medical staff at Otero allegedly became concerned enough to send him for off-site testing. The doctor reportedly ordered an extremely painful medical procedure. According to Ishmael, the MTC officer called a Lieutenant from the hospital to ask if the handcuffs could be removed during the procedure. The request was denied. Ishmael was handcuffed during the entire test. The test results came back abnormal. According to Ishmael, follow-up tests were not performed and the facility clinic drew blood, but he never received the lab results. He began to lose weight and feel dizzy. Months later the Otero doctor called him down to the clinic. The doctor purportedly exclaimed, “Oh my gosh! You are still here! What are you doing here? I thought you were gone.” He ordered blood work. Ishmael reported he was later called back for more blood work because the facility had never sent the initial blood samples to the laboratory and they had expired. He claimed he never saw the results of the lab tests and never learned the source of his condition.<sup>39</sup>

*“People are taken to a special medical unit or they are given pills that make them sleep.”*

—Abukar A., a detained immigrant in response to a question on services for individuals with mental illness<sup>38</sup>

### **Detained Persons Report Insufficient Dental Care**

According to the 2008 Performance Based National Detention Standards, routine dental care “may be provided to detainees in ICE custody for whom dental treatment is inaccessible for prolonged periods of time because of detention over six (6) months, including amalgam and composite restorations, prophylaxis, root canals, extractions, x-rays, the repair and adjustment of prosthetic appliances and other procedures required to maintain the detainee’s health.”<sup>40</sup> Immigrants at the Otero County Processing Center

reported that it was a challenge to obtain dental care beyond the pulling of painful or infected teeth. Even those people subject to prolonged detention reported having to fight for a dental cleaning a year into their detention. Nabid, a detained immigrant explained, “Dental health is not taken seriously and rather than filling a cavity, they will pull the teeth.”<sup>41</sup> Another person stated that he was in need of dental care but chose not to see the dentist because he didn’t want his teeth pulled. The facility employs a dentist at less than half time and one dental assistant for the entire facility.<sup>42</sup>

- At the time of the ACLU interview, Ishmael was detained at the Otero County Processing Center for more than 17 months. He had not yet received any dental care. His tooth hurt but he didn’t want to have another one pulled. Ishmael allegedly spoke to an official at the facility and explained why he believed he qualified for dental care. Ishmael reported that the official informed him that he was eligible for a root canal, fillings and a deep cleaning. Ishmael explained this to the dentist, but was allegedly told that in order for the dentist to provide any additional care, approval was necessary from the Health Services Administrator. After many months of struggling for dental care, he reported that he was granted a deep cleaning and fillings. A root canal was not approved. He stated feeling that the long delay resulted in the loss of several teeth.<sup>43</sup>
- Abukar, an asylum seeker, suffered from a dental infection which caused a great deal of pain. He was concerned because he felt “the facility does not offer treatment or even cleanings,” but merely pull the tooth when there is a problem. He wanted to keep the tooth but eventually decided to have it removed because of the pain.<sup>44</sup>
- Chiumbo reportedly was told that he needed to be in the facility for a year to obtain dental care. He had been in the facility for nearly two years and stated that he did not receive adequate dental care. He had six teeth pulled during his detention in Otero.<sup>45</sup>

### **Mental Health Care**

Immigrants with mental illness are particularly vulnerable in the detention setting. The range of mental health concerns is vast, from individuals who develop depression and anxiety as a result of their detention, to asylum seekers and others who may have experienced torture or trauma prior to detention, to those with significant mental illness. Physicians for Human Rights report that asylum seekers subject to detention experience increased levels of depression and anxiety.<sup>46</sup> Those with more significant needs may be unable to control symptoms of their mental illness. Facility staff often views their behavior as disobedience or aggression and allegedly send mentally ill individuals to segregation. Texas Appleseed, in conjunction with the law firm Akin Gump Strauss Hauer & Feld LLP, recently issued a report on the challenges faced by persons with mental disabilities in the immigration court and detention system. They write, “Immigrants with mental disabilities are unnecessarily detained in a system ill-equipped to care for them, sometimes arbitrarily transferred away from their communities, often denied basic due process in a complex immigration court system, and all too frequently released from detention or removed from the United States with little concern for their safety or well-being.”<sup>47</sup>

Persons detained at the Otero County Processing Center access mental health care services through submission of a “sick call.” Those who sought mental health services reported longer delays between the time of submitting a mental health request and receiving an appointment than for regular clinic appointments. Information obtained from a Freedom of Information Act request reveals that mental health care staff consists of one mental health professional and one mental health worker (credentials unknown), a psychologist contracted for consulting one time per week, and a psychiatrist who offers consults once a month.<sup>48</sup> Detained immigrants who met with the counselor spoke highly of their interactions. Some people, however, had a very difficult time getting to the initial appointment. Several detained immigrants said that medication for depression and anxiety were prescribed regularly, yet the ACLU-NM representatives encountered individuals who appeared depressed or expressed feelings of severe depression. Some of these individuals who exhibited signs of suicidal ideation reported that they were told that medications could not be prescribed because there was no previous diagnosis of depression.

Detention can have profound effects on mental health. The majority of individuals interviewed reported symptoms of depression and anxiety including insomnia, loss of appetite, and decreased desire to get out of their bunks during the day.

- “It’s really frustrating being in my dorm 24 hours a day. Especially with rec at 6:30 in the morning. I get desperate. There are things I want to do and I just can’t. I want to work and do something productive, but all I can do is wait.”<sup>49</sup>
- Nicolas described a fellow detainee who needed mental health medication and repeatedly told staff that he felt irritable and was starting to hear things. The detainee eventually snapped and slapped a correctional officer in the face. Instead of taking him for medical attention, MTC staff allegedly took him to the Special Housing Unit.<sup>50</sup>
- Miguel’s family brought him to the United States when he was only three years old. He has two younger siblings with a terminal illness who he had been supporting financially. His daughter was born while he was in detention. “It hurts. I’ve had a lot of problems. Everything’s just gone down the drain. We know we’re locked up 24 hours a day. Make a Wish Foundation came out to grant my brother and sister their wishes already. I want to be with them and I can’t. I wasn’t there when my daughter was born. She’s going to be eight months and I won’t be there when she turns eight months. I’m afraid I won’t be there when she turns one. Me and my girlfriend aren’t together anymore because of this. Because I’m in here.”<sup>51</sup>
- Marco stated that since his detention in Otero he could not retain information. He began to lose track of things and found that he was talking to himself.<sup>52</sup>
- Omar reported that he didn’t sleep at night because he was thinking about the family he left behind when he fled his war-torn country. He lost his appetite as well. He reportedly submitted 10 requests to see mental health care staff. Instead they gave him a worksheet on relaxation techniques. He was afraid to take medication. He stated, “The medication

that they give can make you crazy. There are pills but they damage the brain.” He stated that he witnessed another detainee who was really groggy from pills and couldn’t wake up easily.<sup>53</sup>

- Horace was sent to the Special Housing Unit along with several other black detainees, who protested because they felt they were being treated differently than other detainees by correctional officers. He reportedly spent 30 days in an isolated cell. He requested to see the mental health staff on two occasions during his time in the SHU and was allegedly denied an appointment in both instances. He was later diagnosed with depression and placed on anti-depressants.<sup>54</sup>
- When Guillermo first met with an ACLU representative he had dark circles under his eyes, a slouched posture, and an averted gaze. He felt anxious and depressed and reported that his anxiety had worsened with the length of his detention. Prior to his detention, he took medication for anxiety, but at Otero staff allegedly told him that without a documented past diagnosis of depression, medication would not be administered. Guillermo met with the counselor on several occasions, but stopped putting in requests for assistance because he felt that he wasn’t improving. For more than a month, he mostly stayed on his bed all day and listened to his radio. He was worried about his ability to control his actions around others. He lost his appetite and did not sleep at night because of thoughts spinning in his mind. He stated that he used to be able to read but was suddenly “not in the mood.” Calls to family became infrequent as money became scarce. He indicated that he had thoughts of ending his own life, but was terrified of telling the mental health staff for fear of being placed in the Special Housing Unit or on suicide watch where he would be left in a bare cell by himself nearly 24 hours a day.<sup>55</sup>
- Ediberto survived a number of traumatic events since childhood and suffered from a serious illness. His physical and mental health deteriorated rapidly at the Otero County Processing Center. He experienced nausea, dizziness, diarrhea, and vomiting with blood. According to Ediberto, he was sent to

segregation for two months after refusing a tray of food. He reported that he began to hear voices, constantly urging him to end his life. He reported that he tried to take his own life on one occasion and was placed naked in a solitary cell. A significant amount of time passed before Ediberto finally received mental health care services.<sup>56</sup> Ediberto ultimately abandoned a claim to asylum and signed an order of deportation. He could not bear the thought of spending more time in detention.

Access to individuals with significant mental disabilities was challenging for ACLU-NM representatives. The few referrals received came from advocates and other detainees who believed a pod mate was mentally ill and in need of services. Detained immigrants who did not seek mental health services believed that those with mental health issues were commonly housed in the general population without adequate care. They observed other detainees who would “be spaced out like zombies and suddenly will have a violent outburst.”<sup>57</sup> Another detained immigrant reported that an individual in his dormitory with severe mental health issues “attempted to choke another detainee and tried to escape.” He stated that such individuals are “given sleep medications but no treatment.”<sup>58</sup> Detained immigrants reported that Otero staff used segregation as a short-term solution to control behaviors associated with mental illness. Once released from segregation, they reportedly placed these individuals back into the general population in a new dormitory. The ACLU-NM could not confirm these reports without greater access to individuals with mental health issues.

Several of the detained immigrants interviewed by the ACLU witnessed an attempted suicide in the dormitory. An asylum seeker, who himself had been subjected to trauma, ran over to help the individual. According to reports, this individual was taken to the hospital but returned a short time later. When the ACLU attempted to meet with him, we learned he was deported.

The lack of information surrounding care and treatment for detained immigrants with significant mental illness is concerning. The ACLU met with a person with mental illness who was detained in the Special Housing Unit for months. ICE detained this particular person well beyond



the six months after his order of removal. He could not communicate details about his situation to the ACLU and on one occasion refused to meet with a representative. Texas Appleseed writes, “In some cases, unnecessarily lengthy detention is caused by ICE’s failure to consider the inability of an immigrant with mental disabilities to cooperate with the removal process...”<sup>59</sup> It is difficult to know how many immigrants with mental illness languish indefinitely at Otero because they are unable to participate in their immigration court proceedings.

## (Endnotes)

1. ACLU correspondence with Omar B. (pseudonym), Aug. 2009.
2. ACLU interview with Carl L. (pseudonym), Jan. 2010.
3. Priest, Dana and Goldstein, Amy. (2008, May 11). System of Neglect, Careless Detention. *The Washington Post*. Retrieved from: [http://www.washingtonpost.com/wp-srv/nation/specials/immigration/cwc\\_d1p1.html](http://www.washingtonpost.com/wp-srv/nation/specials/immigration/cwc_d1p1.html)
4. Bernstein, Nina. (2008, May 5). Few Details on Immigrants Who Died in Custody. *The New York Times*. Retrieved from: <http://www.nytimes.com/2008/05/05/nyregion/05detain.html?pagewanted=1&r=1>
5. Bernstein, Nina. (2010, January 9). Officials Hid Truth of Immigrant Deaths in Jail. *The New York Times*. Retrieved from: <http://www.nytimes.com/2010/01/10/us/10detain.html>
6. Interview with Former Detainee at the San Pedro Processing Center; Sandra Hernandez. (2008, June 1). A Lethal Limbo: Lack of Healthcare Turns Federal Detention into a Death Sentence for Some Immigrants. *Los Angeles Times*. Retrieved from: <http://articles.latimes.com/2008/jun/01/opinion/op-hernandez1>
7. ACLU. (2009, August 17) DHS Announces 11 Previously Unreported Deaths in Immigration Detention. Available online at: <http://www.aclu.org/immigrants-rights/prisoners-rights/dhs-announces-11-previously-unreported-deaths-immigration-detention>
8. Immigration and Customs Enforcement. List of Deaths in ICE Custody October 2003-July 27, 2010. Retrieved from: [www.ice.gov/doclib/foia/reports/detaineedeaths2003-present.pdf](http://www.ice.gov/doclib/foia/reports/detaineedeaths2003-present.pdf)
9. Physicians Network Association, [www.pnamedical.net/about.php](http://www.pnamedical.net/about.php)
10. Barry, Tom. (2009, February 13). Medical Claims and Malpractice in West Texas Immigrant Prison. Center for International Policy Transborder Project. Retrieved from: <http://borderlinesblog.blogspot.com/2009/02/medical-claims-and-malpractice-in-west.html>
11. Grimm, Julie Ann. (2003, August 12). Family Files Lawsuit After Jail Suicide. *The New Mexican*. Retrieved from: <http://www.psc.org/privatization/privatization%205/49.htm>
12. Letter to Mr. Jack Sullivan, County Commission Chairman, Santa Fe County, from Assistant Attorney General Ralph F. Boyd, Jr. (2003, March 6). Re: Santa Fe County Adult Detention Center. Retrieved from: [http://www.justice.gov/crt/split/documents/santa\\_fe\\_findings.pdf](http://www.justice.gov/crt/split/documents/santa_fe_findings.pdf)
13. Letter to Jack Sullivan. Re: Santa Fe County Adult Detention Center.
14. Letter to Jack Sullivan. Re: Santa Fe County Adult Detention Center.
15. ACLU interview with Abel S. (pseudonym), Dec. 2009.
16. ACLU interview with Damon M. (pseudonym), Nov. 2009.
17. ACLU written correspondence with Nabid N. (pseudonym), August 2009.
18. ACLU interview with Jesus I. (pseudonym), March 2010.
19. ACLU interview with Benson R. (pseudonym), Jan. 2010.
20. ACLU interview with Nicolas C. (pseudonym), March 2010.
21. ACLU interview with Khalid M. (pseudonym), Nov. 2009.
22. ACLU written correspondence with Jose Antonio (pseudonym), February 2010. An ACLU representative went to meet with this individual upon receipt of his letter. He had already been deported.
23. ACLU interviews with Cristoffer K. (pseudonym), Jan. 2010-April 2010.
24. ACLU interview with Abel S. (pseudonym), March 2010.
25. ACLU interview with Sergio S. (pseudonym), April 2010.
26. ACLU interview with Anibal E. (pseudonym), May 2010.
27. ACLU interview with Abukar A. (pseudonym), Dec. 2009.
28. ACLU interview with Carl L. (pseudonym), Jan. 2009.
29. ACLU interview with Miguel R. (pseudonym), Nov. 2009.
30. ACLU interview with Omar B. (pseudonym), Nov. 2009.
31. Barry, Tom (2009, February 13). Medical Claims and Malpractice in West Texas Immigrant Prison Part I. Center for International Policy Transborder Project. Retrieved from: <http://borderlinesblog.blogspot.com/2009/02/medical-claims-and-malpractice-in-west.html>
32. ACLU interview with Adebayo P. (pseudonym), April 2010.
33. Immigration and Customs Enforcement 2008 Performance Based National Detention Standards, Medical Care Standard. Retrieved from: <http://www.ice.gov/detention-standards/2008/>
34. ACLU interview with James B. (pseudonym), March 2010.
35. ACLU interview with “Veronica” (pseudonym), date undisclosed.
36. ACLU interviews with Nicolas C. (pseudonym), Jan. 2010-August 2010.
37. ACLU interview with Cornelius E. (pseudonym), May 2010.



38. ACLU interview with Abukar A. (pseudonym), Dec. 2009.
39. ACLU interviews with Ishmael M. (pseudonym), Sept. 2009-Sept. 2010.
40. Immigration and Customs Enforcement 2008 Performance Based National Detention Standards. Standard 22 Medical Care. Available online at: <http://www.ice.gov/detention-standards/2008/>
41. ACLU interview with Nabid N. (pseudonym), Jan. 2010.
42. Otero County Processing Center Physician's Network Association, Professional Medical Provider Positions, obtained in a Freedom of Information Act response to Immigration and Customs Enforcement. On file with author.
43. ACLU interview with Abukar A. (pseudonym), Dec. 2009.
44. ACLU interviews with Chiumbo M. (pseudonym), Jan. 2010-July 2010.
45. ACLU interview with Abukar A. (pseudonym), Dec. 2009.
46. Physicians for Human Rights. (June 2003). From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers. Retrieved from: <http://physiciansforhumanrights.org/library/report-persprison.html>
47. Texas Appleseed and Akin Gump Strauss Hauer & Feld LLP. Justice for Immigration's Hidden Population: Protecting the Rights of Persons with Mental Disabilities in the Immigration Court and Detention System. Retrieved from: [http://www.texasappleseed.net/index.php?option=com\\_docman&task=doc\\_download&gid=313&Itemid=](http://www.texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=313&Itemid=)
48. Otero County Processing Center, Physician's Network Association, Professional Medical Provider Positions, information obtained through a Freedom of Information Act Request to Immigration and Customs Enforcement. On record with the author.
49. ACLU interview with Santiago R. (pseudonym), Feb. 2010.
50. ACLU interview with Nicolas C. (pseudonym), Feb. 2010.
51. ACLU interview with Miguel R. (pseudonym), Nov. 2009.
52. ACLU interview with Marco R. (pseudonym), Feb. 2010.
53. ACLU interview with Omar B. (pseudonym), Nov. 2009.
54. ACLU interview with Horace F. (pseudonym), Nov. 2009.
55. ACLU Interview with Guillermo R. (pseudonym), March 2010.
56. ACLU interview with Ediberto R. (pseudonym), date undisclosed
57. ACLU interview with Kennard D. (pseudonym), Jan. 2010.
58. ACLU interview with Chiumbo M. (pseudonym), Jan. 2010.
59. Texas Appleseed and Akin Gump Strauss Hauer & Feld LLP. Justice for Immigration's Hidden Population: Protecting the Rights of Persons with Mental Disabilities in the Immigration Court and Detention System.

## EFFECTS ON FAMILY & COMMUNITY

DEAR SIR

EVERYDAY throughout the U.S. there are thousands of people being arrested for not having paperwork or having past crimes that they have served time for. Families are separated, children lose their parents, married couples are separated all in the name of immigration reform and the law. We ask you sir, the leader of this country is this fair? Is this what "Life, Liberty and Prosperity" stands for? Is this the cost of the "American Dream"? Is this the price for "Freedom"?

IV

LEFT: Letter from a detained immigrant to the U.S. President

*"It is a very sad experience. It is a very demeaning experience. We have become very tense and very anguished. I have become depressed. The first couple of months were really bad. We keep in touch regularly... I just feel awful. They are not treated like humans. They took him away really fast and they took him and within days he was in New Mexico. But we're hopeful. We have family."*

— Caterina, wife of an immigrant detained at the Otero County Processing Center<sup>1</sup>

The hidden costs of detention extend beyond the detained individual and reach into the families and communities from which they have been separated. The financial, emotional, and physical toll on family and friends is enormous. Many immigrants in detention were the sole financial supports for their family members and now must rely on the help of others to keep their families afloat.

- Now 23 years old, Kennard was only two when he first came to the United States. He stated

that his detention was an enormous financial burden on his family, particularly on his father who helped to support his children and his girlfriend while also paying for Kennard's legal assistance and sending money for items from the commissary. His current girlfriend moved four times because of financial hardship and had problems finding childcare. She became depressed and was ultimately hospitalized. She also developed physical health issues, which Kennard attributed to stress. The

mother of his son was unable to find work and depended solely on Kennard for financial support. Kennard was his mother's source of financial support as well. After ICE detained Kennard, his mother began to have a difficult time paying bills. Kennard worked for his father and worried about his father taking on the extra physical burden and turning down jobs because he didn't have the extra help. Kennard was extremely close to his little sister who developed depression because of his detention. While in detention, Kennard missed the birth of his child.<sup>2</sup>

- The father of an immigrant detained at the Otero County Processing Center expressed his frustration over his son's situation. "It disrupted everything," he stated, "A severe

---

*'I don't know why they are playing with us, with our feelings, taking us far from our children and our wives. When we came to this country we lost a part of our family and now we suffer the separation from the family we have formed in this country, two blows. And we suffer, in the end not knowing from where we have come or to where we will go.'*

– Gabriel D., immigrant detained at the Otero County Processing Center<sup>3</sup>

---

strain on financial resources. Everyone is stressed out. Everyone is obsessed with the fact that it has been one year that ICE has been holding my son. I can't see for the love of god if we have such concern for family why we are using tax dollars to hold people and disrupt families." He spoke of the financial strain of having to pay for plane tickets to attend hearings, as well as money for his son to purchase commissary, phone cards, and to pay for lawyers. He stated, "This is a conspiracy of robbery. A bunch of people decided to get together and rob minorities - the legal system, the airlines, the phone company." He continued, "I am so frustrated and agitated. I feel totally let down. I used to be proud of this place but I am not anymore. ...What good is it to build a life here and then

to have it pulled out? Everyday there is some problem. I am at my wits end. I need someone to help me understand."<sup>4</sup>

The effects on emotional health of minor children can be profound. Immigrants are often transferred far away from the location of their arrest. Increased financial strain impedes the ability to visit and may also create difficulties with telephone communication. The wife of a detained immigrant reflected that their oldest child was having a particularly difficult time emotionally with his father's detention. She stated, "Children do not understand the difference between jail and detention." She expressed that her children are now 100 percent emotionally and financially reliant on her for support. The 10-year-old developed anger issues and the oldest, a teenager, is "going through a lot of things and could use a male point of view. My biggest fear," she remarked, "is that he will be deported and I won't know."<sup>5</sup>

- Overnight, Kathy's world changed. She stated, "I became a single parent in one day, an entire change in lifestyle in one day." She dotes on her two young children. Several times she repeated, "My kids are number one." Her daughter has managed to maintain straight As, and her son has been writing stories. Kathy sends the report cards and stories to her husband. She states, "He hasn't written to them [the children] in a long time. The last time was a birthday card. He used to call more frequently, but now it is more stretched out." She tried to imagine what it would be like not to see the children. "When the kids are gone for a weekend at their aunt's house, I miss them. I don't know what it must be like for Brian (pseudonym) to not see them for so long." The financial strain has been very difficult on Kathy and the kids. She has been a single mother for almost two years. She had to pull her son from an after-school program because it became too expensive. Kathy says she feels lucky that her sister can help her by picking the kids up after school. She begins to cry as she speaks about not being able to afford presents or vacations for her children. Her son's birthday is coming up, and he wants a bike for his birthday but she can't afford to buy him one. "There is no financial support. I have given up. It is like bleeding blood from a turnip. I would love to take the kids to Sea

---

I don't think it is fair that ICE/INS, separates families for reasons like, an overstayed visa, or because someone did not renew their green card in time, or what about those people who have no convictions, who have been here for 10 years or more. It is not fair, someone needs to do something about this.

- Letter to the ACLU from Miguel R. (pseudonym)

---

World, but I have to buy them clothes and shoes...I just don't want to disappoint my kids anymore. I am a good person and my kids are great kids. I don't know what I would do without them. It must be hard for Brian, but it is hard for us as well.”<sup>6</sup>

Adult children are not immune to the emotional effects of having a parent in detention and at risk of deportation.

intense psychiatric and psychological illness that has prompted his admission into a rehabilitation home, where he stayed for seven straight months of treatment and at the moment he is still mentally unstable and undergoing treatments, but all this trauma is stemming from the knowledge and fear that I would encounter if I am deported back to [my country of origin].”<sup>8</sup>

- Hannah is in her 20s, but her father walked with her to work nearly every day. On the day he was arrested she waited for him and he never came. “I miss him being a part of my life. I always felt very safe with him. It took a lot to adjust. I really miss him.” She explained that her supervisor at work put her on probation because she was always late and having a hard time focusing since her father’s arrest. Hannah was able to attend his court hearing in El Paso. The officer allowed Hannah to speak with her father during a 30-minute recess, “but I wasn’t allowed to hug him,” she states.<sup>7</sup>
- Samuel, an asylum seeker, sought relief under the Convention Against Torture. He lived with mental illness for a number of years but managed symptoms with medication. His son was also diagnosed with mental illness and requires constant support. In a letter to the ACLU, Samuel wrote, “...my stay here [in the United States] will privilege me to take care of my son. I am all that he has and ever since my incarceration he has been going through difficult situations, he suddenly developed

#### (Endnotes)

1. ACLU telephone interview with Caterina F. (pseudonym), April 2010.
2. ACLU interview with Kennard D. (pseudonym), Jan. 2010.
3. ACLU correspondence with Gabriel D. (pseudonym), Aug. 2009.
4. ACLU telephonic interview with father of an immigrant detained at the Otero County Processing Center, March 2010.
5. ACLU interview with the wife of an immigrant detained at the Otero County Processing Center, Feb. 2010.
6. ACLU interview with the wife of an immigrant detained at the Otero County Processing Center, May 2010.
7. ACLU telephonic interview with daughter of an immigrant detained at the Otero County Processing Center, April 2010.
8. ACLU written correspondence with Samuel D. (pseudonym)





# OVERSIGHT, ACCOUNTABILITY & ICE REFORM EFFORTS



**T**he use of private contractors and subcontractors to operate immigration detention facilities creates barriers to oversight and accountability. In a report focused on the immigration system's deficiencies in dealing with individuals with mental illness, Texas Appleseed writes, "The deficiencies in enforcement and oversight of immigration detention are compounded by the many contractors and sub-contractors in the ICE detention system, which has created a system rife with inefficiencies."<sup>1</sup>

As mentioned earlier in this report, on October 6, 2009, the Department of Homeland Security and ICE released a document outlining immediate reforms, short-term benchmarks, and long-term goals for overhauling the immigration detention system. These announcements came on the heels of a comprehensive review of the detention system and set of recommendations released by Dr. Dora Schriro, the former director of the ICE Office of Detention Policy and Planning. Several

of the measures implemented to date begin to examine and address deficiencies in oversight. Reform efforts will be discussed in greater depth later in this section. ACLU-NM is encouraged by these actions, but cautions that there is still much work needed to put a system of truly meaningful oversight in place. The ACLU-NM hopes that ICE leadership will continue to work with advocates in this process to remedy systemic shortcomings such as those raised below.

Improving accountability and oversight requires focus on three key items: (1) an improvement and standardization of detainee grievance procedures, (2) an assessment and improvement of facility inspections and reviews to create meaningful oversight and (3) an evaluation of the use of private contractors and the development and implementation of accountability mechanisms.

## Grievance Procedures Fail to Provide Resolution for Detained Immigrants

The use of private contractors appears to confuse processes for seeking redress and submitting grievances. For example, there are several avenues for a detained immigrant to file a grievance or complaint to national agencies tasked with oversight. A person may lodge a complaint with the Department of Homeland Security Office of the Inspector General (OIG) or with the DHS Office for Civil Rights and Civil Liberties (OCRCL), but these channels are complicated for even those few immigrants who speak English fluently and have a cultural and intellectual understanding of U.S. legal systems. More often than not, complaints to these agencies do not end in resolution, or the complaint finds its way back to the desk of the offending agency. Complaints are often reviewed individually, with patterns of consistent issues being more difficult to track. Immigrants can also file claims of civil rights violations with the district courts, but the steps involved are onerous if the detainee is unrepresented.

At a local level, each facility has its own grievance procedure in addition to a grievance procedure initiated by the local ICE Field Office, or developed by the private contractor on behalf of ICE. The detainee handbook issued by Management and Training Corporation encourages informal resolution. It then explains the formal grievance procedure where informal resolution is “unattainable” or “impractical.” There is a two-step process for submitting grievances. The first goes to the unit grievance coordinator. If one is not satisfied with the result, a grievance may be submitted to the warden. The bottom of the Step 2 grievance form specifically states that decisions made by the warden cannot be appealed. The handbook, however, mentions that a grievance can be submitted to the ICE officer in charge at any time.

Transparency within these processes is further complicated because it appears to be in the best interest of the private contractor to “resolve” grievances before they reach ICE management. At Otero, some grievances and requests “disappeared.” Facility inspections and subsequent follow-up reviews in 2009 and 2010 report that staff failed to log all detainee requests and grievances. In June of 2009 the inspectors wrote, “All written detainee requests

are not maintained in a logbook.”<sup>2</sup> Nearly a year later, an April follow-up review to a March 2010 inspection still found the facility deficient in this area. The report states, “The facility staff did not maintain request logs from November 1, 2009 through March 31, 2010. Request logs for detainee requests submitted directly to ICE were not maintained by ICE/DRP.”<sup>3</sup> The annual Contract Performance Monitoring Instrument reflects an extremely low number of grievances filed with MTC compared to the size of the population, with only 242 grievances from July 2008 through June 2009 out of a population of 10,348 detainees and only 32 grievances filed from July 2009 to May 2010 out of a population of 9,340 detainees.<sup>4</sup> Based on the number of grievances shared with the ACLU-NM, we believe it is unlikely these numbers reflect the actual number of requests and grievances submitted.

The MTC detainee handbook specifically states that “no harassment, punishment, or disciplinary action will result to a detainee for seeking resolution of legitimate complaints in good faith.”<sup>5</sup> Yet, many immigrants reported being afraid to file grievances. Some individuals even expressed concern that speaking to the ACLU might result in harassment or retaliation.

- Idrissa reported that he was called to a meeting with the MTC warden and a captain. He was ordered to refrain from submitting grievances or encouraging others to submit grievance forms to the ICE officers. According to Idrissa, the captain threatened grave consequences and stated that Idrissa would be put in a place “where I would not see the daylight for a long time.”<sup>6</sup>
- Miguel filed a civil rights complaint against the facility with the New Mexico courts. “They know who is filing the lawsuit and they [the officers] put more pressure on us but try to be discreet. They try to act like we don’t know.” He also filed several grievances. On one occasion Miguel was filling out a grievance form and an officer reportedly reacted. “You can write whatever the hell you want. You think you can challenge me? You’re acting like a bunch of little girls.” Another detained individual laughed at the officer’s comment. The officer allegedly responded by saying, “I am going to deal with this little faggot outside.” When asked if any of his grievances

were resolved, Miguel responded, “I see we file grievances and they get a promotion and there is nothing we can do or say.”<sup>7</sup>

Immigrants detained at Otero who were not afraid of potential retaliation were frustrated with the process and, like Miguel, rarely saw resolution to their grievances. Some individuals reported never even receiving a response to their grievance. Others felt that small easy issues were handled, whereas larger issues were ignored. The process was described as a “waste of time” by another. In the ICE Inspection conducted from September 16-18, 2008, of the 227 grievances filed from July to September, zero grievances were resolved in favor of the detainee.<sup>8</sup>

One immigrant filed a grievance regarding the inefficiency of the grievance procedure, stating that ICE referred him back to MTC staff who claimed

### **Facility Inspections and Reviews Fail to Ensure Adequate Oversight**

The Statement of Work for the Otero County Processing Center states that the “PROVIDER is required, in units housing ICE detainees, to perform in accordance with the most current editions of the ICE National Detention Standards...”<sup>11</sup> These standards are not legally enforceable and therefore serve only as suggested guidelines. Without adequate oversight it is impossible to ensure compliance with detention standards. ICE facility inspections consist primarily of filling out worksheets with checkboxes, reviewing paperwork, and looking for written policy. Documents obtained in a Freedom of Information Act request indicate follow-up reviews to determine if corrective actions were taken in deficient areas. The first inspection at Otero resulted in a “Deficient” rating. Subsequent

When inspectors stop by for inspection they do not let us get close to them because they don't want us to <sup>tell</sup> them what we feel. When ICE/INS come to our dorms and we ask questions, they usually don't have a response for us or they tell us that they can not do anything about the situation being brought before their attention.

- Letter to the ACLU from Miguel R. (pseudonym)

to never have received his complaints. He stated concern with the lack of “accountability, absence of procedures, and no available remedy.”<sup>9</sup> Several detained immigrants had the same dissatisfaction with the endless cycle of being referred by MTC to ICE and vice versa. One immigrant reported an incident to ICE which they claimed was MTC’s responsibility. The MTC lieutenant reviewing the grievances became upset and, according to this individual, “lectures people for an hour for filing the grievance. It’s frustrating. No one is on our side at all.”<sup>10</sup> Responsibility shifting impedes any attempt to seek redress. The process becomes more complex when grievances reflect concerns about mental or medical health care, adding another agency, PNA, into the already confusing mix.

inspections raise the rating to “Good.” Yet, several deficiencies persist throughout the existence of the facility in the absence of corrective actions. Discrepancies exist in findings based on the agency conducting the inspection. For example, in March of 2009, Creative Corrections conducted a review of Otero and did not find any deficiencies in standards. Three months later, the Office of Detention Oversight (ODO) conducted a Quality Assurance review and identified 29 deficiencies including: Access to Legal Material, Admission and Release, Key and Lock Control, Food Service, Religious Practices, Security Inspections, Staff-Detainee Communications and Use of Force. In March of 2010, a review worksheet does not reveal any deficiencies, but one month later an

ODO follow-up review to the June 2009 Quality Assurance Review found that 10 of the 29 deficiencies identified in June had not yet been remedied.

Additionally, inspections and reviews often refer back to the existence of a written policy to affirm compliance with a standard. Inspections and reviews do not appear to reflect the experiences of the individuals detained in the facility. It is worth noting that the June 2009 inspection team interviewed 50 detainees as part of their process. It is also worth noting that issues raised by the detainees were deemed “without merit.” According to the report, medical concerns were not addressed because of staff shortages.<sup>12</sup>

The facility was granted accreditation by the American Correctional Association following an official audit from November 2-4, 2009. These reports are not yet publicly available. However, ACLU interviews with detained persons in the Otero County Processing Center reveal a stark inconsistency between policy and practice. For example, the Assistant Field Office Director informed a representative of the ACLU that Otero received two awards for superior medical care. This comment came after the ACLU intervened on behalf of an individual who allegedly had not received his HIV medication for weeks. When a person is first processed into a facility he receives an initial medical screening. A full health appraisal is required for all detainees within 14 days of arrival. Otero reportedly received an award for increased efficiency by conducting the full health appraisal during the processing period. However, efficiency in policy does not necessarily reflect provision of adequate treatment once initial screening and exams are conducted.

The contract with MTC indicates that ICE will conduct “periodic unscheduled inspections.” In reality, inspections and audits are conducted with advance notice to facility officials. A detained immigrant at Otero reported that when people come to perform an inspection everything is cleaned ahead of time, the food improves for a brief period and dormitory searches are limited. He reported that those conducting the inspection don’t allow contact with the detainees. “After the inspectors leave,” he states, “the things go back to the way they were.”<sup>13</sup> In a letter to the ACLU, Gustavo F. wrote: “Let me tell you on the day you came by there were some visitors from

Washington, D.C., so they window dress the place nicely. They fed us as they should, the guards treated us with nice but no soon they left, they went back to the same old thing abusive guards, nasty food, pront [sic] punishment for minor things....”<sup>14</sup>

ACLU representatives noted fresh paint, repairs, and extensive cleaning in the weeks before the American Correctional Association (ACA) came to conduct the facility audit for accreditation. For example, the roof leaked for more than a year, flooding parts of the facility every time it rained. Shortly before the ACA audit, the facility appeared to have undergone extensive roof repairs.

### **ICE Makes Efforts to Improve Oversight and Accountability**

Dr. Dora Schiro, in her report on immigration detention released October 6, 2009, writes, “Accountability is the keystone to detention reform.”<sup>15</sup> She provided several recommendations for improving oversight and accountability over the web of facilities and contracts utilized by ICE including: (1) hiring on-site detention administrators at locations holding the largest populations of ICE detainees; (2) establishing Office of Detention Oversight (ODO) teams to “conduct routine and random inspections and investigate for cause;” (3) revising and periodically reassessing the Performance Based National Detention Standards; and (4) creating a current detainee locator system. Secretary Napolitano established one-year benchmarks to implement several of these recommendations. Action steps included reviewing existing contracts for renegotiation or termination and revising and regularly reassessing the immigration detention standards. Effective immediately, ICE was to “aggressively monitor and enforce contract performance” and to find solutions for deficiencies where applicable. ICE headquarters also moved to centralize contracts.

ICE has made some progress in improving oversight and accountability and continues to engage in discussions for advancing meaningful inspections, reviews, and grievance procedures. The acting director of the Office of Detention Policy and Planning toured several of the largest facilities housing ICE detainees to review



conditions and recommend areas for immediate compliance with the reform goals. ICE consulted with non-governmental organizations on several of the Performance Based National Detention Standards. The revised standards have not yet been released, but imminent release is anticipated. ICE has also made a commitment to develop a set of civil detention standards more reflective of the care and needs of a civil detention population. Detention service managers (DSM) were hired and trained. Currently 53 facilities have access to a permanent or shared DSM, including the Otero County Processing Center. Detention service managers report directly to ICE headquarters and are tasked with monitoring facility compliance with detention standards, tracking patterns of abuse, and seeking immediate resolution where available. Because the program is brand new, program evaluations have not yet been conducted. Reports submitted by DSMs to headquarters are not publicly available. ICE launched an online detainee locator system on July 23, 2010. This system allows advocates and family members to locate an individual in ICE custody.<sup>16</sup> Previously, family members had to call every local and federal detention facility in search of a loved one.

Several policy changes have also gone into effect. In response to criticism on lack of transparency surrounding deaths of individuals in ICE custody, ICE issued a directive, effective October 1, 2009, for the Notification and Reporting of Detainee Deaths. This directive requires officials to report a detainee death within 24 hours, to several parties, including the Office of Civil Rights and Civil Liberties, the Office of Professional Responsibility, Congress, and the individual's consulate and family.<sup>17</sup> ICE also revised the policy of mandatory detention for arriving asylum seekers. Effective January 4, 2010, individuals who establish credible fear with an asylum officer are eligible for a parole interview and subsequent parole if they meet certain criteria and do not pose a security threat.<sup>18</sup> ICE Assistant Secretary John Morton issued a memorandum highlighting ICE Civil Enforcement Priorities. The memorandum included a mandate for ICE officials to exercise prosecutorial discretion "when conducting enforcement operations, making detention decisions, making decisions about release on supervision pursuant to the Alternatives to Detention Program, and litigating cases."<sup>19</sup>

## (Endnotes)

1. Texas Appleseed and Akin Gump Strauss Hauer & Feld LLP. Justice for Immigration's Hidden Population: Protecting the Rights of Persons with Mental Disabilities in the Immigration Court and Detention System.
2. Management Inspections Unit Detention Facilities Inspection Group, Quality Assurance Review: Detention and Removal Operations, El Paso Field Office, Otero County Processing Center June 16-18, 2009. Obtained through a Freedom of Information Act Request. On file with the author.
3. Immigration and Customs Enforcement, Office of Detention Oversight Follow Up Inspection: Otero County Processing Center, April 13-15, 2010. On file with the author.
4. Immigration and Customs Enforcement, Contract Performance Monitoring Instrument, Contract Years July 2008 thru June 2009 and July 2009 thru June 2010. Obtained through a Freedom of Information Act Request. On file with the author.
5. Management and Training Corporation Otero County Processing Center Detainee Handbook (Revised: Oct. 23, 2009).
6. ACLU interview and written correspondence with Idrissa (pseudonym), June 2009.
7. ACLU interview with Miguel R. (pseudonym), Nov. 2009.
8. Department of Homeland Security Immigration and Customs Enforcement Detention Facility Inspection Form, Otero County Processing Center September 16-18, 2008 available online at: <http://www.ice.gov/doclib/foia/dfra-ice-dro/ocountyprocessingcenterchaparralnmseptember16182008.pdf>
9. ACLU interview with Brian S. (pseudonym), date undisclosed, 2010.
10. ACLU Interview with Nabid N. (pseudonym), Jan. 2010.
11. ICE Office of Detention and Removal Detention Acquisition Support Unit Request for Contract Action Statement of Work, Otero County Processing Center.
12. Management Inspections Unit Detention Facilities Inspection Group, Quality Assurance Review, Detention and Removal Operations, El Paso Field Office, Otero County Processing Center, Chaparral, NM June 16-18, 2010. Information obtained through a Freedom of Information Act Request. On file with author.
13. ACLU interview with Javed E. (pseudonym), April 2010.
14. ACLU written correspondence with Gustavo F. (pseudonym), November 2009.
15. Schiro, Dr. Dora (2009, October 6) Immigration Detention and Overview and Recommendations, available online at: [www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf](http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf)
16. U.S. Immigration and Customs Enforcement (Press Release: July 23, 2010) ICE Announces Launch of Online Detainee Locator System.
17. U.S. Immigration and Customs Enforcement. Directive No: 7-9.0, Notification and Reporting of Detainee Deaths. Retrieved from: [http://www.ice.gov/doclib/pi/dro/notification\\_and\\_reporting\\_of\\_detainee\\_deaths.pdf](http://www.ice.gov/doclib/pi/dro/notification_and_reporting_of_detainee_deaths.pdf)
18. U.S. Immigration and Customs Enforcement. Directive No: 11002.1: Parole of Arriving Aliens Found to Have Credible Fear



of Persecution or Torture. Effective January 4, 2010. Retrieved from: [http://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole\\_of\\_arriving\\_alien\\_found\\_credible\\_fear.pdf](http://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_alien_found_credible_fear.pdf)

19. U.S. Immigration and Customs Enforcement. (2010, June 30). Memorandum from John Morton, Assistant Secretary, regarding Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens.

# CONCLUSION & RECOMMENDATIONS

---





# CONCLUSION



LEFT: Otero County Processing Center

The ACLU-NM recognizes ICE for taking concrete steps towards reform of the immigration detention system. The findings in this report draw attention to the issues that continue to plague the Otero County Processing Center and other similarly situated facilities. The intent is to appeal to ICE to consider the consequences of private contracts both on the rights of detainees and the implementation of authentic system reform. ACLU-NM recognizes local ICE officials who have responded swiftly and appropriately in several cases brought to their attention. Positive practices should be recognized, standardized, and implemented in all field offices. The proper treatment of detained immigrants should not be left to the whim of facility leadership at a given moment in time. A system-wide change of culture is crucial to true reform.

Otero County Processing Center is not an exception, but rather appears to be emblematic of the problems that arise when the civil

detention of immigrants is placed in the hands of private companies with a profit motive. Both the complex web of private contracts that impede transparency and the challenge of implementing reforms developed in Washington, D.C., in the field must be overcome by ICE leadership in order to adequately address these issues. As ICE continues to move towards intended reform, ACLU-NM is concerned about several crucial areas including the continued reliance on private contractors for detention facility management, lack of due process in custody determinations, lack of a standardized grievance procedures, and inspection and review processes that heavily rely on paperwork and policy and lack mechanisms for holding providers accountable when deficiencies are noted.

The following section proposes several recommendations and considerations for ICE, U.S. Department of Justice and members of Congress.





# RECOMMENDATIONS

## TO THE DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION AND CUSTOMS ENFORCEMENT, AND THE DEPARTMENT OF JUSTICE:

- **Continue work to expand and utilize the Alternatives to Detention Program.** Release individuals who pose no danger to national security or risk to community safety. Individuals should be released under the least restrictive requirements and with the appropriate case management services to ensure program success.
- **End unnecessary and unconstitutional prolonged detention of immigrants who pose no risk or danger.**
  - DHS and DOJ should ensure that detainees have the opportunity to appeal decisions regarding their custody and to have these decisions reviewed by the immigration court.
  - Individuals who have received a final order of removal, who are unlikely to be removed in the reasonably foreseeable future and who pose no threat to the community, should be released as soon as possible following their final order. If the goal of detention following a final order of removal is to effectuate removal, and removal is not possible because of lack of diplomatic relations between the United States and the country of origin, any further detention of the individual is prolonged and unnecessary.
  - Individuals who have been granted withholding of removal, who are unlikely to be accepted by an alternative country and who pose no threat to the community, should be released as soon as possible following the judge's decision.
  - DHS and DOJ should work with Congress to expand resources for immigration court proceedings to eliminate prolonged

and unnecessary detention of individuals based on lack of capacity to calendar hearings in a timely manner.

- **Apply and enforce detention standards for all facilities housing immigration detainees.**

- The dissemination of codified, *legally* enforceable detention standards to all facilities housing ICE detainees is a priority.
- In the absence of standards that may be legally enforced, ICE should ensure that contractors who do not comply with detention standards are held accountable for a breach of contract by administering penalties and terminating contracts where necessary.
- A comprehensive training protocol should be established and implemented for all personnel in facilities that hold ICE detainees. This training should be augmented by periodic updates and include, but not be limited to, guidance on detention standards, investigation of grievances, use of force, civil and human rights obligations, CPR and First Aid, working with vulnerable populations, and cultural competency. Personnel should pass certification requirements before working directly with detainees.

- **Phase out the use of private, for-profit prison contractors to manage civil immigration detention.** Centralizing contracts and maintaining control over the daily operations of immigration detention facilities will greatly improve oversight, accountability, and transparency.

- **Engage independent monitors and non-governmental organizations in the review of existing contracts.** DHS and ICE expressed intent to review contracts for all detention facilities “to identify opportunities for improvement and move forward with renegotiation and termination of contracts as warranted.”<sup>1</sup> As part of this process, ICE field offices were asked to complete a survey of facilities in their area of service. Industry also had the opportunity to address their ability and willingness to make changes. However,

NGO groups offer another perspective important for contract review.

- **Streamline the facility inspection and review process to ensure appropriate follow up and remedy of deficiencies.**

- Provide adequate resources for the Office of Detention Oversight (ODO) to properly inspect and review all facilities housing ICE detainees. Inspections and reviews cannot occur in a vacuum and should take into account previous inspections and reviews to monitor compliance and track patterns of consistent repeat offenses.
- ODO inspection teams should consist of multi-sector partners, including the NGO community.
- Inspections and reviews should incorporate interviews with willing detainees and advocates.
- Processes should be put into place to ensure correction of deficiencies and to penalize those facilities that repeatedly fail to address deficiencies.
- All inspection reports, reviews, detention service manager reports, and other documents relating to facility conditions and treatment of detainees should be publicly available.

- **Establish local ICE-NGO Working Groups in each field office area.** Local advocates should play a role in working with the local field offices to discuss implementation of reform measures, particularly those that can be implemented immediately.

- Local working groups with representation from the NGO community, DHS, and DOJ should be formed to develop detailed plans for implementation of reform measures.
- These groups should be required to submit recommendations and reports to ICE headquarters to ensure a uniform flow of communication from headquarters to field offices and vice versa.

- **Develop clear and uniform grievance procedures for detained persons with an option for third-party grievances filed by advocates on behalf of a detained individual.**
  - DHS, DOJ, and the Office of Civil Rights and Civil Liberties should establish a uniform and clear grievance procedure for detained immigrants. Currently, complex contractual structures, a lack of legally enforceable detention standards, and challenges for limited-English or illiterate detainees to file grievances, limits access to effective remedy.
  - Complaint procedures should include meaningful protections against retaliation.
  - Each grievance should be reviewed and responded to on its own merits. However, grievances should also be monitored for patterns of practice and there should be a mechanism that responds to emerging patterns.
- **Increase Oversight and Accountability of ICE Detention.** Recent exposure of ICE detention policy and practices reveals an urgent need to increase oversight and accountability of the department.
  - Pass legislation to develop strong oversight and accountability mechanisms, including codified, legally enforceable detention standards.
  - Require non-federal prisons and correctional facilities holding federal prisoners under contract with the federal government to comply with provisions under the Freedom of Information Act. This would include expanding FOIA provisions to private contractors responsible for managing the care and treatment of ICE detainees.
  - Allocate increased DHS resources for the Office of the Inspector General, the Office of Civil Rights and Civil Liberties, the Office of Detention Oversight, and the Office of Professional Responsibility to support oversight and conduct regular reviews of detention facilities, personnel, and administrative functions.
  - Establish local ICE-NGO Detention Advisory Groups and a federal Immigration Detention Commission to increase opportunities for advocates to contribute to the meaningful review of existing detention facilities and contracts as DHS moves forward with implementation of reform measures. Both local and federal groups with representation from the NGO community, DHS, ORR, DHS, and DOJ should be tasked with developing detailed plans for implementation of reform measures and hold investigatory powers to ensure compliance in facilities. Local groups should submit regular reports to the Commission. The commission should submit annual reports to Congress.

#### TO MEMBERS OF THE U.S. CONGRESS:

- **Restore Due Process and Maintain Constitutional Protections.** The Illegal Immigration Reform and Immigrant Responsibility Act as well as the Anti-Terrorism and Effective Death Penalty Act of 1996 expanded the categories of deportable crimes, decreased the discretionary powers of immigration judges, and effectively stripped immigrants of key due process rights. These rights should be restored.
  - End unnecessary and unconstitutional prolonged detention of immigrants who pose no risk or danger. DHS and DOJ should be mandated to ensure that detainees have the opportunity to appeal decisions regarding their custody and to have these decisions reviewed by the immigration court.
  - Restore judicial discretion to eliminate mandatory detention and deportation laws.
  - Limit the overly broad definition of aggravated felony to actual felonies, preserve meaningful judicial review and repeal summary procedures that deny fair hearings to immigrants.
- **Guarantee Humane Immigration Detention Conditions.** Increased outsourcing of immigration detention to private, for-profit prison management companies in the absence of legally enforceable detention

standards creates complex structures which are costly to the government, limit transparency, and increase possibilities for human and civil rights violations.

- End the use of private, for-profit prison contractors in civil immigration detention.
- Implement penalties for those facilities that do not comply with detention standards.
- Guarantee basic standards for medical and mental health care by establishing a set of legally enforceable standards specifically related to medical and mental health care for individuals in ICE custody.
- Support legislative policy changes to ensure humane treatment and due process of individuals detained by DHS.
- Require the DHS Secretary to establish an administrative appeals process for denials of medical and mental health care requests. Ensure that detainees are provided with information regarding this process as part of the detainee orientation and handbook.
- Establish independent on-site monitors. Monitors should be required to submit regular reports to ICE headquarters regarding the progress of detention reform measures and recommendations. ICE shall submit aggregate data in annual reports to Congress. Detention service managers are a positive step towards improving oversight but many are ICE employees who may not have an objective lens. Independent monitors provide an additional, much-needed layer of accountability.
- Independent inspections, audits, and monitoring of facilities by the OIG or other entities must require criteria beyond review of paperwork to include interviews with legal advocates, Legal Orientation Program providers, and detainees. Expand access for community organizations and media representatives.
- Federal agencies as well as local and state law enforcement agencies involved

in immigration enforcement should be provided with training that includes: (1) immigration law (2) civil rights law (3) medical and mental health needs and treatment (4) due process protection and (5) humanitarian guidelines.

- **Support Alternatives to Detention and Release Policies.** The goal of detention is to ensure individuals appear for their civil immigration court hearings. Vulnerable populations such as women and children, transgender persons, asylum seekers, and individuals with special health care needs who do not present a flight risk or a threat to society should not be subject to detention. Alternatives to detention can vary from issuance of bond or intensive supervision to community-based case management programs that cost less than \$8 a day as compared to the \$99 to \$120 dollars a day it costs to detain individuals. Alternatives have yielded a 93 percent appearance rate.<sup>2</sup>
  - In the past, Congress earmarked funds for alternatives to detention and specifically directed that the money must be used to “promote community-based programs for supervised release from detention such as the Vera Institute of Justice’s Appearance Assistance Program or other similar programs.” Congress must ensure funds to expand alternative to detention programs.
- **Ensure ICE compliance with the U.S. Supreme Court decision in *Zadvydas v. Davis* ruling which deemed indefinite detention unconstitutional and established a post order custody review process for immigrants in detention.**
- **Ensure Access to Justice and Effective Remedy for Immigration Detainees**
  - Extend the right to court-appointed counsel for indigent individuals undergoing immigration proceedings and expand funding for legal services to non-profit organizations offering free or low cost immigration legal services.
  - Allocate resources for the expansion of the DOJ Executive Office for Immigration

Review in areas with the highest immigration caseload to eliminate prolonged and unnecessary detention of individuals due to lack of court capacity.

#### (Endnotes)

1. U.S. Department of Homeland Security. (October 6, 2009). Fact Sheet: ICE Detention Reform: Principles and Next Steps. Retrieved from: [http://www.dhs.gov/xlibrary/assets/press\\_ice\\_detention\\_reform\\_fact\\_sheet.pdf/](http://www.dhs.gov/xlibrary/assets/press_ice_detention_reform_fact_sheet.pdf/)
2. American Immigration Lawyers Association. Position Paper: Alternatives to Detention. Retrieved from: <http://www.aila.org/content/default.aspx?bc=6755%7C25667%7C33497%7C25874>; Detention Watch Network, About the U.S. Detention and Deportation System, Retrieved from: <http://www.detentionwatchnetwork.org/aboutdetention>





REGIONAL CENTER FOR  
BORDER RIGHTS

P.O. Box 727  
Las Cruces, NM 88004  
Tel: (575) 527-0664  
Fax: (575) 527-0111

