

Attorneys' Perspectives on the Rights of Detained Immigrants in Minnesota

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Introduction

Immigration and Customs Enforcement, also known as ICE, is the largest branch of the Department of Homeland Security. The ICE mission “is to protect national security by enforcing our nation's customs and immigration laws”¹, and their stated priorities include human trafficking and smuggling, violent transnational gangs, and sexual predators. In actuality, a substantial portion of its \$5.5 billion budget and 17,000-person workforce is dedicated to arresting and detaining non-violent, working immigrants.² There are approximately 12 million undocumented immigrants living in the US today, over 30,000 of whom are in detention on any given day.³ During the past five years there has been a dramatic increase in the kinds of immigration enforcement actions that lead to arrests and detentions.

Immigrants end up in civil immigration detention through various channels that include seeking asylum in the US⁴, arrests at worksites or homes, random stops for civil violations, such as a burned out taillights⁵, and convictions for crimes. Hispanic and human rights groups have expressed concerns about expanding immigration detention. “We understand the need for sensible enforcement” stated the immigration director of the National Council of La Raza, “but that does not mean expanding programs that have often led to civil rights violations.”⁶ In fact, immigration experts describe the immigration detention system as “the worst of all worlds.”⁷ In spite of this, in August 2009, Janet Napolitano, the Secretary of Homeland Security, stated that she “expects the number of detainees to stay the same or grow slightly”.⁸

Study Purpose

The present study is one of the first to systematically sample attorneys to get their reports of violations of the rights of detained immigrant clients. This perspective is important because immigrants themselves rarely understand the detention process or know their rights; thus attorneys are an important source of information on the process and how it impacts the rights of their clients.

¹ <http://www.ice.gov/about/index.htm>

² *Id.*

³ <http://www.detentionwatchnetwork.org/node/2381>

⁴ Article 14 of The Universal Declaration of Human Rights states: “Everyone has the right to seek and to enjoy in other countries asylum from persecution.” It defines asylum as “shelter from danger... a person might feel danger in times of war but also when threatened by intolerant governments. In such cases, a person might choose to leave their country and seek asylum, or become a refugee, in another country.”

⁵ INA Section 287(g) authorizes the U.S. Department of Homeland Security (DHS) to enter into agreements with state and local law enforcement agencies, permitting designated officers to perform immigration law enforcement functions.

⁶ Preston, J. (2009, August 3). Firm Stance on Illegal Immigration Remains Policy. *The New York Times*.

⁷ *Id.*

⁸ Bernstein, N. (2009, August 5). U.S. to Reform Policy on Detention for Immigrants. *The New York Times*. Retrieved from www.nytimes.com

Background

Regardless of their legal status, detained immigrants have certain basic rights in the United States. These rights stem from the U.S. Constitution and from local and federal laws. Constitutional rights include a right to counsel, a right to due process, a right to equal protection under the law, and protection from cruel and unusual punishment.⁹ A central issue within immigration detention is what standards govern the treatment of detained immigrants to ensure that their rights are not violated.

The federal government has national guidelines that “intend to set a standard of consistent care and fair treatment for detainees in immigration custody.”¹⁰ First created in 2000, these standards were updated and renamed the ‘ICE Detention Standards’ in 2008.¹¹ There are 42 detailed standards, which outline specific protocols related to such things such as dietary needs, medical access, telephone use and visiting hours. However, the ICE detention standards are not codified and have no force of law. The lack of binding guidelines curtails the agency’s accountability in protecting immigrant detainees’ rights.

In Minnesota, immigrants detained by ICE are held in five facilities that ICE directly operates: one facility in Bloomington that is used primarily for processing and immigration court hearings, and sub-contracts with county jails in Carver, Freeborn, Nobles, Ramsey, and Sherburne counties to house long-term immigration detainees. Each of these jails varies in its treatment of immigrant detainees. (PLACE MAP OF JAILS HERE)

Methodology

Our study focused on two groups of lawyers who represent immigrants in detention: immigration attorneys who provide private, non-profit, and/or pro bono immigration services, and public defenders who are appointed to represent immigrants in detention for criminal violations.¹² In the state of Minnesota we identified an initial list of 40 potential respondents whom we contacted by phone. Of these, 31 (78%) agreed to participate in an in-depth, face-to-face interview (see Table 1 below).

⁹ Constitutional rights stem from the 5th amendment’s “due process” clause, the 6th amendment’s “right to counsel” in criminal cases, the 14th amendment’s “equal protection” clause, and the 8th amendment’s prohibition against “cruel and unusual punishment”.

¹⁰ U.S. Immigration and Customs Enforcement. (2008, November). *ICE Performance Based National Detention Standards*.

¹¹ <http://www.ice.gov/about/index.htm>

¹² There were approximately 585 attorneys in these categories who represented detained clients in Minnesota between 2007 and 2009. To identify attorneys who practiced immigration law, we contacted large non-profit agencies providing legal services to immigrants and also sent emails to approximately 200 members of the Minnesota/Dakota chapter of the American Immigration Lawyers Association’s (AILA), describing the project and conveying our interest in interviewing attorneys who had represented immigrants in detention at some point during the past two years. To identify public defenders who had represented immigrants within the past two years we identified counties with immigrant detention centers (subcontracted jails) and areas with the highest immigrant populations: Ramsey, Nobles, Carver, Sherburne, Rice and Kandiyohi. In each county, the Chief Public Defender identified the public defenders that had represented the most immigrants in the past two years.

Table 1. Characteristics of Attorneys

	N	%
Type		
Public Defender	10	32%
Non-Profit Practice	7	23%
Private, Pro-Bono	14	45%
Total	31	100%
Gender		
Female	15	48%
Male	16	52%
Total	31	100%
Location		
Metro	22	71%
Non-metro	9	29%
Total	31	100%

Discussion and Results

In this section, we summarize the reports of attorneys regarding the characteristics of their detained clients and the detention conditions that impact clients' rights.

Characteristics of Clients

The government's policy of collaborating with state and local officials to identify undocumented immigrants has substantially increased the number of immigrant detainees in Minnesota. On any given day, there are between 200 and 300 persons in immigration detention in the state.¹³

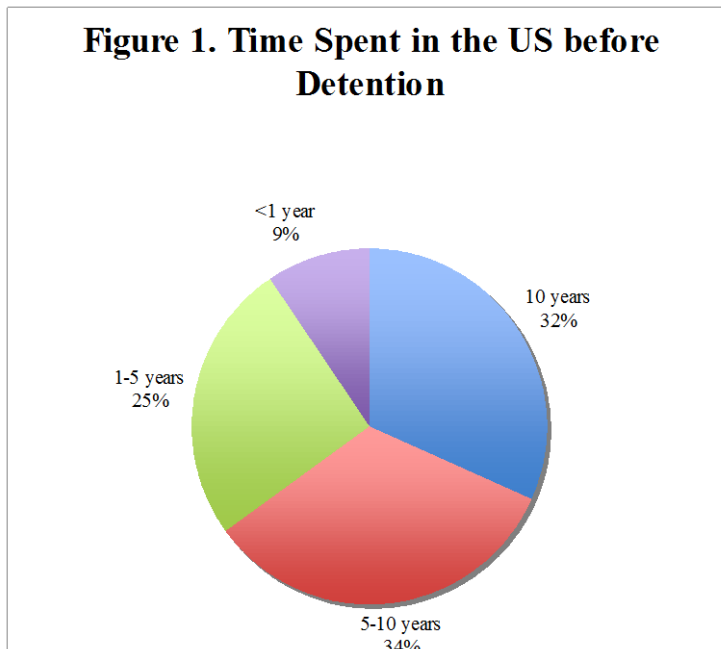
Some individuals are wrongly detained. ICE does not have the right to detain U.S. citizens, but 38% of the immigration lawyers in our study reported that, in the past two years, they had represented at least one US citizen who was in immigration detention.¹⁴ Some attorneys reported that they had clients who were detained even when credible claims to U.S. citizenship had been exerted, and one described a case in which a US citizen agreed to be deported in order to get out of detention.

In addition to cases of U.S. citizens, both public defenders and immigration lawyers had represented non-citizens who were in the country legally, i.e. with some form of legal immigration status. Of all the detained immigrant clients represented by attorneys in our study, just under one-third were legal permanent residents. The vast majority of detained immigrants had been in the U.S. for more than a year, and almost two thirds had been in

¹³ Schmickle, S. (2009, August 27) As Immigration Enforcement Tightens, System is Overwhelmed. *MinnPost.com*

¹⁴ Most of these cases involved individuals who were unaware that they "derived" citizenship as a result of having parents who were naturalized.

the U.S. for five years or more.¹⁵ Many detainees had family members who were either US citizens or lawful permanent residents.¹⁶



Because immigrants are frequently, and often times erroneously, labeled “illegal” or “undocumented”, it is easy to forget that many are contributing members of the community. In spite of this, in the current system, an immigrant can be swallowed up by an opaque detention system without being able to contact attorneys, family or friends.¹⁷ The lawyers who participated in our study reported that it takes, on average, six days before they are able to make initial contact with their detained clients. Without the ability to make this contact, the majority of immigrant detainees are deported or removed without ever seeing a lawyer.¹⁸

Right to Counsel and Barriers to Representation

The right to counsel is significantly different in civil immigration cases and criminal cases. Public defenders are appointed to represent detained indigent immigrants who are charged with criminal violations, while

¹⁵ The attorneys we interviewed indicated that the vast majority (91%) of their immigrant clients had been in the US for more than one year, and almost two-thirds (65%) had been in the U.S. for 5 years or more (see Figure 1).

¹⁶ 68% of the attorneys we interviewed reported that about of their clients had “a few” family members that were US citizens or legal permanent resident, 13% reported “many”, and 19% reported “all”.

¹⁷ Human Rights Watch. (2007, July 16). Families Separated and Immigrants Harmed by United States Deportation Policy. In *Forced Apart*. Retrieved from www.hrw.org

¹⁸ The fact that few of the clients had been in the US for less than a year may be due to the quick deportation of many immigrants who don’t have access to counsel and/or the preference of attorneys to take stronger cases. Furthermore, one attorney told of detained immigrants who reported being pressured into signing stipulated removal orders, rather than exercising their right to appear before an immigration judge and apply for relief from removal.

attorneys providing immigration law services are retained and paid by the detainees themselves.¹⁹ Ironically, immigrants who are charged with committing crimes are thus guaranteed counsel, while immigrants detained for civil infractions of immigration law may never get to see a lawyer.

The attorneys we interviewed identified numerous barriers, to providing representation to their immigrant clients. Some of those barriers, especially those pertaining to communication, were commonly experienced by both public defenders and immigration attorneys.²⁰ However, other barriers were unique to the type of representation provided. Public defenders were hampered in their representation by enormous case loads, a lack of expertise in immigration law and by immigration laws that prevent case resolution. Meanwhile, immigration attorneys were overwhelmed by the sheer number of detained immigrants seeking legal services, many of whom lacked resources to pay or were perceived as ineligible for relief under immigration laws.

a. Public Defenders and Barriers to the Representation of Detained Immigrants – “A whole other layer of complexity”

Over the past twelve years, the immigration consequences of criminal activity have continually grown more serious. Currently, the list of crimes that can result in removal ranges from relatively minor crimes, such as shoplifting, to more serious offenses.²¹ The fact that a criminal conviction can make an immigrant deportable creates problems for public defenders representing immigrants charged with a criminal violation. Indeed, every one of the public defenders we interviewed said that the immigration status of their clients complicated their roles in providing criminal defense. One explained the difficulty as follows:

On the one hand... the immigration matter should not affect the criminal case, and, from an intellectual purity standpoint, that makes a lot of sense. But [for the client], that makes no sense at all. It's part of their circumstances, just as much as if my client has chemical dependency issues. I have to be aware of that, and I need to give advice based upon what their circumstances are.”

Another public defender pointed out that the lingering question when providing counsel to an immigrant is: “*If my client pleads to this, is this going to be a problem with immigration?*” Answering this question requires that the public defenders have resources to consult an immigration attorney, or time to research the immigration

¹⁹See INA Section 240(b)(4) which the government has interpreted to preclude appointed counsel.

²⁰All attorneys reported barriers to communication that stymied representation. Furthermore, all attorneys reported spending time on issues such as family concerns, untreated medical conditions, and fears of abuse that were unrelated to the direct purpose of representation.

²¹See INA Section 101(a)(43), INA Section 237(a)(2), and INA Section 212(a)(2).

consequences of a plea – luxuries that they rarely have. The public defense system is overwhelmed with cases, with attorneys handling “*two times the case loads that would be permitted by the American Bar Association Standards.*”²²

Immigration law is complex, and pleas in a criminal case can have a direct impact on the outcomes of an immigration case, yet less than a third of the public defenders in our study reported working with immigration attorneys. Another issue is that ICE detention often impedes case resolution.²³ As one public defender put it, detention “*creates barriers to the process of negotiation.*” Such barriers are widespread throughout the criminal process. Seventy percent of the public defenders we interviewed reported representing an immigrant who failed to appear at a hearing because he or she was being held in ICE detention. One noted:

Oddly enough, sometimes people disappear and they are suddenly up in the Elk River [Detention Facility]. And I'm not told this and I may have gone through the hoops of making all the arrangements, and then they're not here. It adds a whole other layer of complexity.

The immigration consequences of criminal activity coupled with ICE detention policies significantly hampers the work of public defenders. The “criminalization” of civil immigration law is burdening an already strained public defense system.

b. Immigration Attorneys and Barriers to Representation

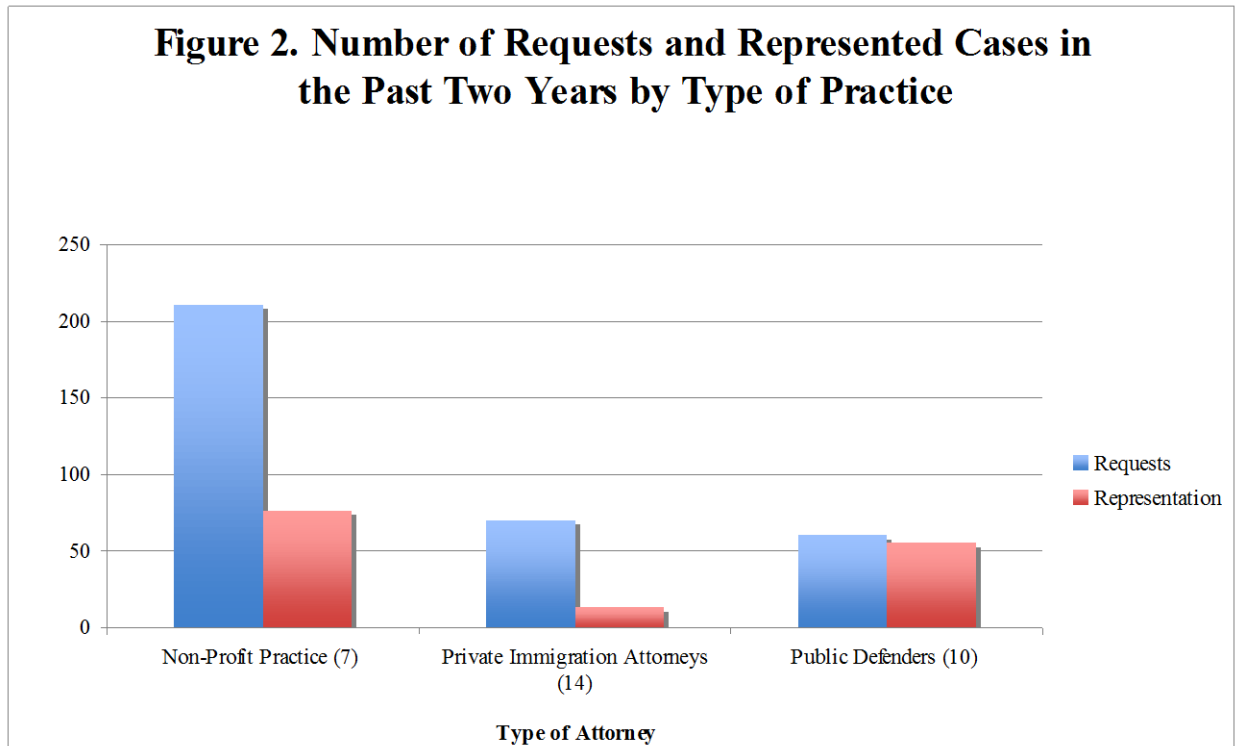
Unlike public defenders, immigration attorneys are not appointed to represent detained immigrants. Instead, immigrants in detention must find a non-profit, pro-bono attorney, or a private lawyer willing to take their cases, or forego representation. In fact, nation-wide the majority of immigrants go through immigration court proceedings without representation. In 2008 EOIR reported that only 40% of immigrants appearing in Court were represented.²⁴ The sheer volume of detainees presents its own barrier; attorneys report a large disparity between requests for

²² Interview with a public defender.

²³ ICE regularly places holds on immigrants facing criminal charges that prohibit their release from detention.

²⁴ See EOIR FY 2008, Statistical Yearbook. The representation rate for detained immigrants may be lower due to their lack of resources.

representation and their ability to accept cases (see Figure 2 below).



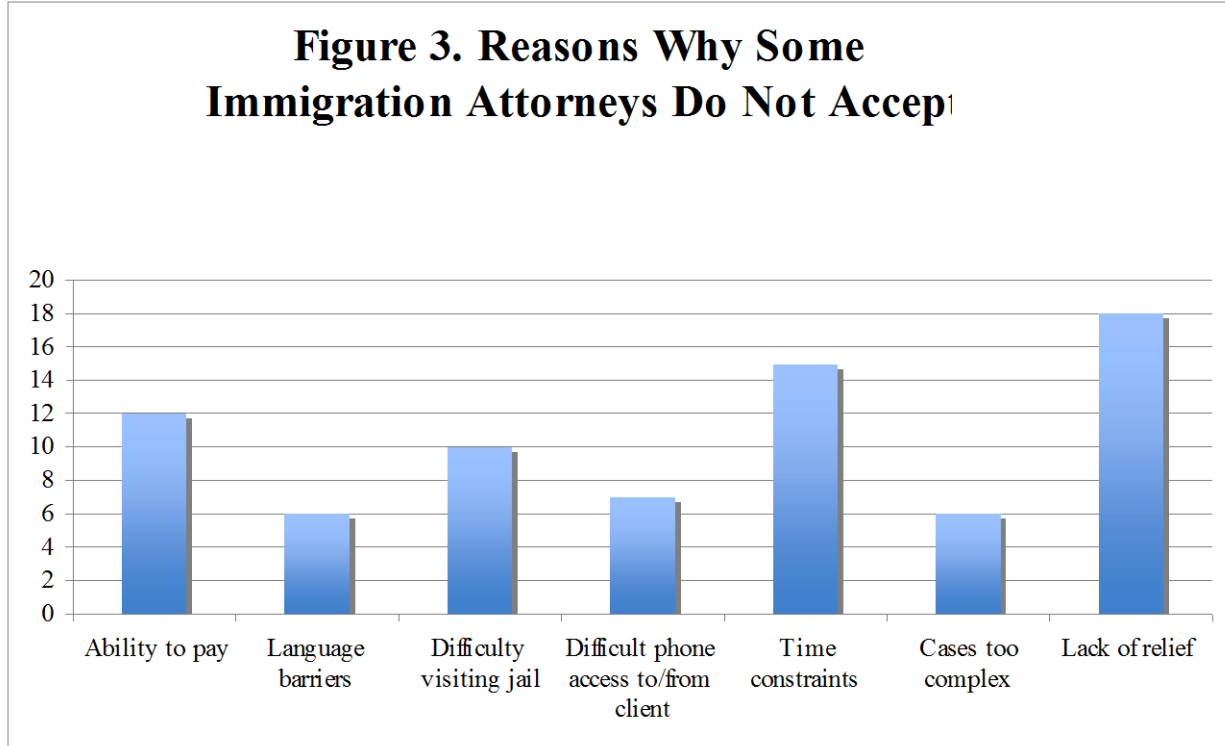
In the past two years, on average, private attorneys were only able to represent 20% of the detained immigrants seeking their services. Pro-bono lawyers working with the Immigration Court Detention Project were able to provide limited services to a higher percentage of detainees, but most of this consisted of very brief consultations in lieu of full representation.²⁵

In addition to the sheer volume of cases, there are other barriers to representation. The largest of these is lack of relief²⁶: eighty-six percent of the immigration attorneys we interviewed reported that a detained immigrant's inability to get out of detention or to remain in the U.S. was reason to decline representation. Another significant

²⁵ Non-profit and pro-bono lawyers briefly meet with detained immigrants prior to immigration court hearings to provide information and limited representation. The program's goal is to assist immigrant detainees with basic immigration court procedures and to review their cases for potential relief. The attorneys who participate in this program reported that requests for full representation significantly outstripped their capacity.

²⁶ At the conclusion of a removal hearing an immigration judge decides whether a detained immigrant should be removed or allowed to remain in the U.S. Applications for relief are often complex, requiring significant amounts of attorney time to fully develop a legal case. Without representation, detained immigrants try to navigate the system on their own, or *pro se*. The adversarial mismatch between government counsel and a *pro se* detained immigrant may result in the court missing important issues or incorrectly deciding cases, with devastating results for the immigrant.

barrier is detainee's ability to pay for counsel (see Figure 3 below).²⁷



All of these issues are interconnected with an immigrant's detention. The ability of attorneys to accept detained clients depends on the amount of time and resources available to them, which is, in turn, limited by the time they must spend on non-legal related activities, such as driving to a detention facility. Attorneys in our study estimated that they spent at least half of their case-related time traveling to detention facilities, collecting necessary documents, and dealing with detainee family issues. These burdens are serious impediments to representation.

The high bonds set for immigrants in detention is a separately but equally serious issue. In spite of the fact that most immigrant detainees have very limited financial resources, ICE and immigration judges frequently set much higher bonds than the minimum \$1,500.²⁸ According to one attorney:

Bonds have just skyrocketed in the past several years, both from ICE, as well as the amounts of bonds that immigration judges set at bond hearings. It's not been unheard of for an immigration judge to actually increase the bond amount, even in a bond reduction hearing. It's not atypical for us to see a \$10,000 minimum bond amount.

²⁷ The attorneys we interviewed indicated that cost was a significant barrier to representation since detained immigrants often have limited incomes or access to resources.

²⁸ See INA 236 (a)(2)

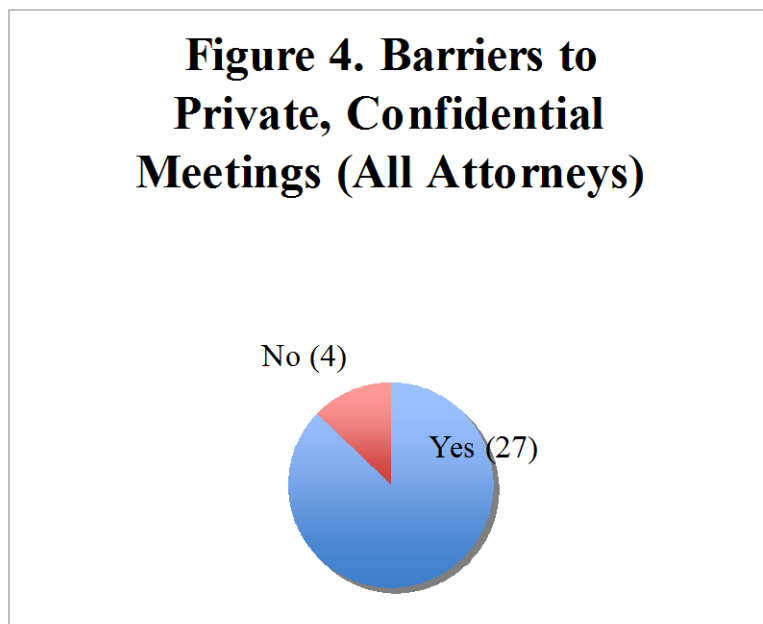
Barriers to Communication.

a. Barriers to Private, Confidential Meetings

Impediments to private, confidential meetings violate attorney-client privilege and significantly limit an attorney’s ability to gather critical case information. The ICE standard for “Visits by Legal Representatives and Legal Assistants” states that:

*In visits referred to as “legal visitation,” each detainee may meet privately with current or prospective legal representatives and their legal assistants... Visits between legal representatives and assistants and an individual detainee are confidential and shall not be subject to auditory supervision. Private consultation rooms shall be available for such meetings.*²⁹

In spite of this standard, 100% of the immigration attorneys and 60% of the public defenders said that they had encountered barriers to private confidential meetings with their detained clients (see Figure 4 below).



By far the greatest barriers to confidential communication were reported at the central ICE facility in Bloomington, where the physical space made it impossible to hold private meetings. One immigration attorney described the Bloomington facility as follows:

It’s a small, tiny room, it has a glass wall, two seats and two phones. The phone sometimes doesn’t work or there is an echo on it, so then there are two attorneys seated side by side, and

²⁹ Operations Manual, ICE Performance Based National Detention Standards (PBNDS), Part 5 – Section 32 – “Visitation”. Retrieved from http://www.ice.gov/pi/news/factsheets/detention_standards.htm

then the area for the detainees has two people. You can hear each other's conversations, you have to talk loud, and the people in the waiting room, [although] there is a door to close, can still hear.

There were also reports of breaches of confidentiality in other facilities, such as the following example:

In Ramsey County there is a button or a switch on the wall behind you, and if you don't notice it and know that you need to switch it, then your conversation is being listened to. So it's not confidential, and who knows even if you switch that button, if the conversation is private.

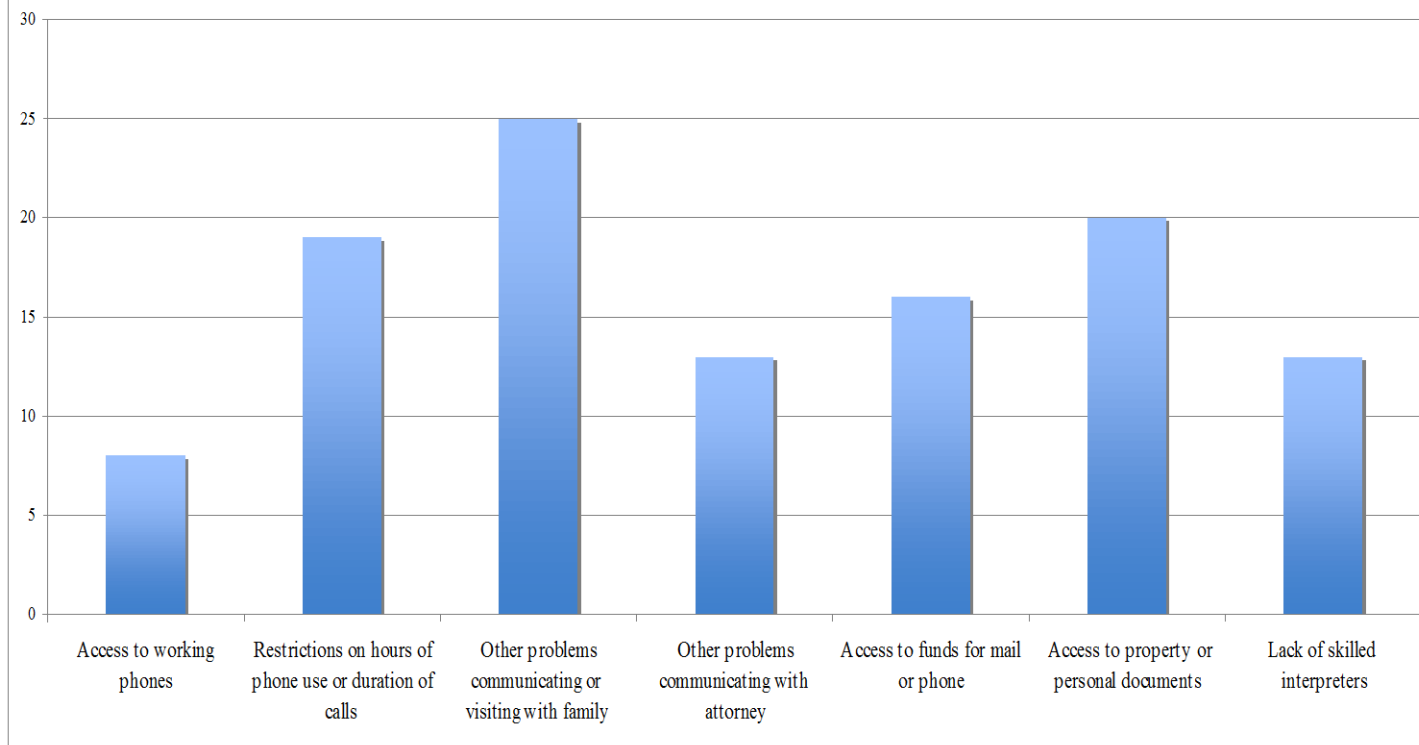
Authorities at some facilities refused to grant attorneys personal meetings with their clients, and only permitted video conferencing. Further impinging upon attorney-client meetings is the distance that attorneys need to travel to meet some detained clients. As shown in Map 1 and Table 1, because most immigration attorneys are located in the Twin Cities metro area, they have to drive distances of up to 200 miles to visit clients in some of the county jails.

b. Barriers to Telephonic Communication

ICE standards stipulate that direct phone calls to legal representatives shall be permitted, at no cost to the detainee, that free and direct calls must be easily accessible, and that calls to obtain counsel shall not be restricted. Calls to other parties are at the detainees' expense, but should be made available with a reasonably priced phone card³⁰. These standards were routinely violated. A majority of attorneys reported phone restrictions that negatively impacted their abilities to represent detained immigrants. These ranged from lack of free calls to arbitrary time limits (see Figure 5 below).

³⁰ PBNDs, Part 5 – Section 31 – “Telephone Access”

Figure 5. Attorneys whose Clients Mentioned Issues Faced in Detention



According to one attorney: *“most people have to call collect, and no one wants to take it because it costs so much money.”* One lawyer noted that, if it weren’t for the collect call system *“more lawyers would take those cases.”*

After the interviews we investigated the cost of phone cards for detainees being held at the Ramsey County Jail. For calls to cell phones of attorneys, friends or family members located more than 15 miles from the jail detainees are charged \$3.50 per call, plus .49 a minute. Thus a 25-minute call would cost \$15.73, more than the Qwest residential rate for an entire month of unlimited local telephone calls. Given the number of attempts that it often takes to reach someone at home or in the office, the \$3.50 per call charge poses a formidable barrier to communication for detainees.

Detainees’ abilities to locate counsel are also limited by the failure of detention facility to provide clear instructions on setting up phone accounts and by the high rates charged for phone service. Detainees are also unable to access phones during facility lock downs. One attorney reported that detainees held in Ramsey County jail

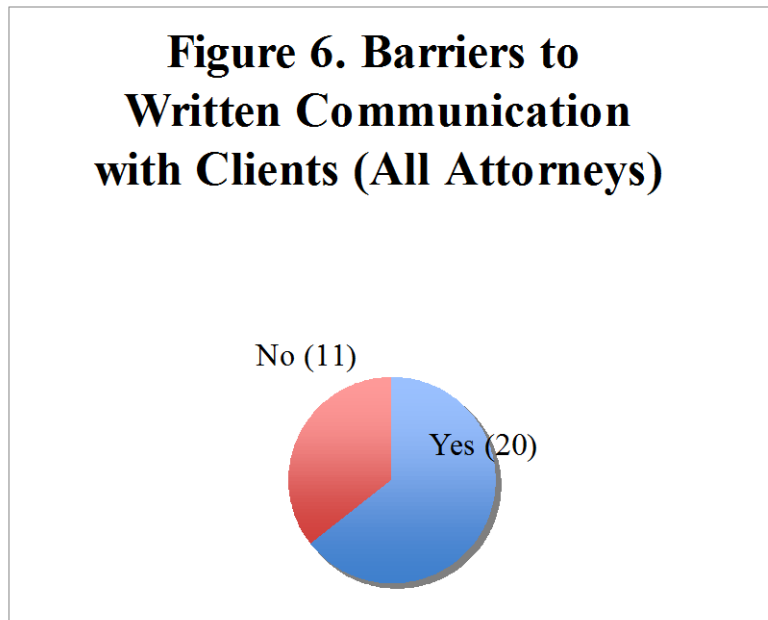
are actually in lock down for dozens of hours, I think there have been days when the inmates have been locked in their cells for up to 23 hours.

Some facilities do not deliver attorney phone messages to detainees, and in many cases calls are limited to short periods of time after which the phone service is cut off.

Finally, lack of translation services poses another serious barrier to communication. Attorneys reported that instructions for phone accounts and equipment were in English, making it difficult or impossible for clients to comprehend. In addition, several attorneys reported their own difficulties deciphering calls from their clients because of a lack of translation services.

c. Barriers to Written Communication

Barriers to written communication prevent lawyers from providing clients with important legal information and documents, and prevent clients from sending necessary documents to their attorneys. ICE standards state that incoming mail should be delivered to detainees within 24 hours of receipt, and that outgoing mail be sent within 24 hours. Furthermore, staff members are prohibited from reading or copying mail.³¹ Despite these standards, 65% of attorneys reported significant barriers to written communication, including late delivery, lack of privacy, and their clients' inabilities to access basic materials, such as envelopes and stamps (see Figure 6 below).³²



One attorney said:

³¹ PBNDS, Part 5 – Section 27 – “Correspondence and Other Mail”

³² Several attorneys reported that clients were unable to access envelopes and stamps. Another reported that clients were forced to hand write documents. “One big problem is that there is very little access to typewriters or computers in detention, especially here in Minnesota. So *pro se* respondents tend to try to do everything hand written and that makes it a lot more difficult to actually write a brief.” Immigration Attorney Interview.

The jail mail systems are notoriously bureaucratic, so you know if you send someone a letter on Monday, if you're lucky, it'll get into their hands on Friday.

In some instances, unreliable mail service forces attorneys to waste time and resources traveling to detention facilities to obtain signatures. Even more seriously, in many cases documents are returned because ICE has transferred the immigrant detainee from one facility to another, without notifying the lawyer. The sentiments of several attorneys are reflected in the following comment:

ICE won't tell us, and the client won't know until it happens, but if they are transferred from one county facility to another, we won't get any notice of it. I'll send documents to a client at Ramsey and, if they've been transferred to Albert Lea (Freeborn County), the client won't get the documents because they are at another facility. The documents get sent back and it causes delay in terms of us being able to then get it forwarded to the new facility where the client is being held.³³

d. Lack of Access to Personal Property

ICE standards recognize detainees' rights to access personal property, and documents held by ICE must be provided to the detainee upon request.³⁴ Despite these clear standards, many attorneys reported that their clients were unable to access important documents, either because the property was misplaced or because it was inappropriately withheld. The confiscation of cell phones is a particular problem, as described by one attorney:

That's a problem because most of what they bring in gets tagged, but they limit access to it, especially cell phones. Nobody knows anyone's number anymore because they are all programmed into cell phones, and when I say, "how can I get a hold of so- and- so?" they say, the number is in the cell phone. You can't do much with that.

e. Visitation with Third Parties

Visitation restrictions further impede detained immigrants' abilities to obtain important legal documents. ICE standards set forth procedures for visitation between detainees and their families, friends and legal representatives.³⁵ However, eighty-one percent of the attorneys we interviewed reported that their clients had difficulty communicating or visiting with family members and friends. Most attorneys reported that their clients did not receive visitors because they did not understand the rules and procedures for visitation, they lacked the required

³³ The unannounced transfer of immigrant detainees from one jail to another harms the attorney-client relationship in numerous ways beyond written communication.

³⁴ PBNDS, Part 2 – Section 8 – “Funds and Personal Property”

³⁵ PBNDS, Part 5 – Section 32 – “Visitation”

information, or family members and friends were too afraid to visit, for fear of being detained themselves.³⁶ In some cases families ask a family friend or employer to assist the detained family member. The problem in these cases is that the facility requires that the detainee provide specific information about visitors in advance, such as their dates of birth. One attorney commented:

They didn't know the birthdates and they couldn't get on the list. These are friends. Think of your closest friends, do you necessarily know, off the top of your head, their date of birth, month/date/year? Or, for that matter, an employer who is a friend? And you're stressed and you have a language barrier. So no, you're not going to get the people you need on the list.

When family members or friends are unable to visit a detained immigrant it may block access to funds and other important documents. It also creates emotional distress and impedes communication. Even when family members are able to visit, most detention facilities limit the visitation to short video meetings, rather than in-person visitation. One attorney described the limitations of video visitation: “It’s two days a week max for ten minutes. So, that’s really not enough time for a family member to discuss issues relating to a case.”

f. Lack of Interpreters

ICE standards stipulate that: “detainees shall have frequent informal access to and interaction with key facility staff members, as well as key ICE staff, in a language they can understand.”³⁷ However, almost all attorneys mentioned language barriers faced by their clients, and many reported that detention facilities lacked foreign language interpreters, making communication impossible. The inability to communicate with facility staff exacerbates immigrants’ difficulties using telephones, accessing funds and personal documents, receiving visitors, and obtaining medical care. A public defender commented on the lack of interpreters in the Sherburne County facility:

No one in the whole jail staff – and they have over 175 people that work in the jail, including the doctors, and they have an alcohol treatment program – speaks Spanish. So they (immigrants) don't qualify for alcohol treatment or any programming in the jail, because they don't speak English.

³⁶ The U.S. has 8.8 million members of households of mixed immigration status (i.e. households with a combination of U.S. citizens, documented immigrants, and/or undocumented immigrants). An estimated 6 million U.S. citizen children have an undocumented immigrant parent. See Severing a Lifeline: The Neglect of Citizen Children in America’s Immigration Enforcement Policy, a report by Dorsey & Whitney to the Urban Institute, March 2009 at: http://www.dorsey.com/probono_severing_lifeline/

³⁷ PBNDs, Part 2 – Section 16 – “Staff – Detainee Communication”

Other Conditions of Detention

Human rights groups have documented serious violations of rights that occur in immigration detention. Egregious violations pertaining to untreated medical conditions, some of which have resulted in deaths, have been widely documented.³⁸ Other grave violations include abuse from staff and/or criminal inmates, overcrowding, barriers to religious practices, and dietary problems.

a. Safety and Abuse Issues:

According to ICE standards, civil immigration detainees are to be housed separately from criminal inmates.³⁹ However, all of the attorneys reported that their immigrant clients were mixed in with the general prison population. When civil immigrant detainees are not housed separately from criminals, it blurs the line between criminal custody and civil immigration custody, and makes it difficult or impossible for facilities to follow ICE standards. Several attorneys reported that their clients were anxious and fearful of harm from criminal detainees. Worse, both public defenders and immigration attorneys reported official abuse of immigrant detainees.

I hear about abuse a lot. The abuse isn't simply physical abuse. There are a lot of correctional officers that will try to mess with an inmate's psyche, and a lot of them are already vulnerable. Oddly enough, some of the protection the immigrant has is that they don't speak the language, which may or may not be a good thing, but then of course correctional officers will resort to physical violence.

Some attorneys reported that mistreatment stemmed from the simple fact of being an immigrant.

I like to be positive and think that a lot of it stems from the language barrier. But a lot of the jail staff are [jerks] to immigration people. These clients have told me they weren't fed on time; they weren't given medical care when something's wrong. The rules weren't followed. They tend to be put in isolation more, put in segregation. I don't think they've done anything behaviorally wrong. I think it's a misuse of power.

Incidents in which immigrant detainees are punished for exercising their rights are particularly troubling.

In Bloomington, they get yelled at by the ICE officers sometimes. Sometimes they've been told, just because they are exercising their right to remain silent, that they are being uncooperative, and

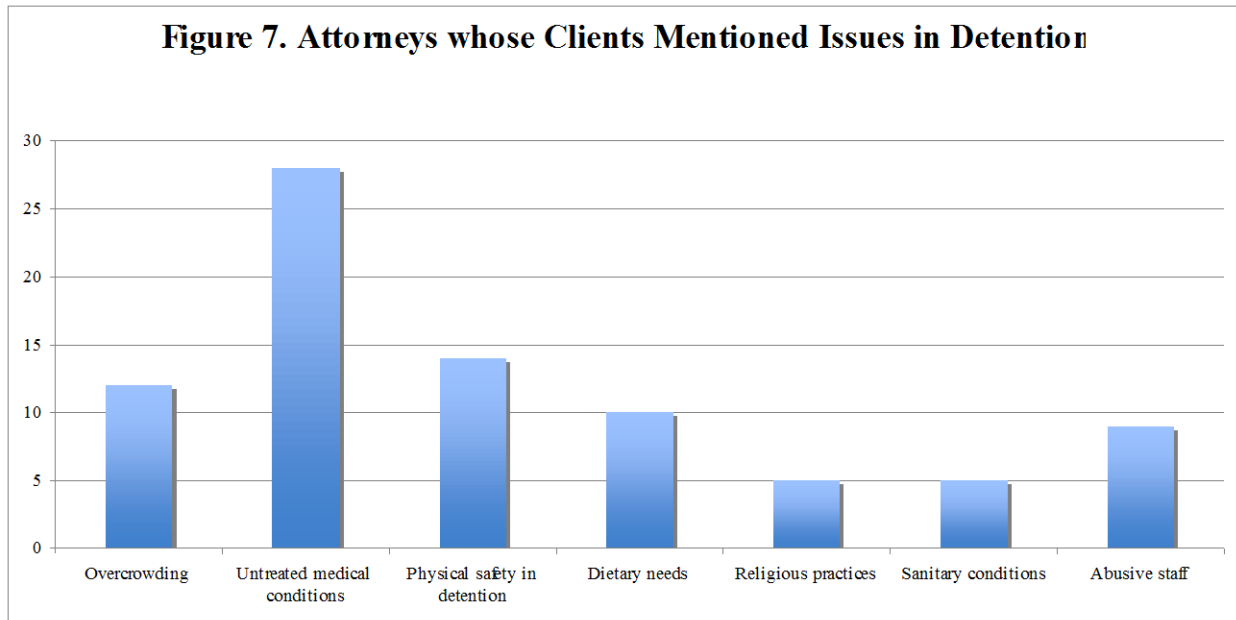
³⁸ See NY Times articles by Nina Bernstein

³⁹ PBND, Part 2 – Section 5 – “Classification System”

they (ICE) even write that down on their paper work, which makes the bond to be set at a higher level.

b. Medical Care

The ICE standard for medical care requires all detainees to have access to health care.⁴⁰ In spite of this, 90% (28) of all attorneys interviewed reported that they have immigrant clients who have had problems obtaining needed medical care (see Figure 6 below).



The most frequent complaint was that detainees’ medical concerns were minimized and dismissed. Untreated medical conditions ranged in type and severity from dental problems, to not receiving prescribed medications or treatments. Additional reports of untreated medical care were due to language barriers and lack of access to funds. Attorneys explained that if their clients did not speak English, they were unable to fill out the forms required for medical care.

Conclusion

Foreign-born persons deserve the same protections as U.S. citizens when they are arrested and held in detention. The Department of Homeland Security has issued ICE detention standards that address a detained immigrant’s right to safety and freedom from physical violence, right to access to medical care and needed medications, right to communication through mail and telephones, right to family visits, and right to representation,

⁴⁰ PBNDS, Part 4 – Section 22 – “Medical Care”

including the opportunity for private communication with attorneys. However, from the perspective of attorneys in Minnesota there are clear violations of even the most minimal standards. Furthermore, the proliferation of ICE sub-contracts with local jails facilities further complicates compliance.

These violations have serious consequences. They prevent attorneys from accepting immigrant clients, receiving information relevant to legal cases, meeting with or communicating privately with their detained clients. From the perspectives of immigrants in detention, violations of the voluntary ICE standards lead to prolonged and inappropriate detention, inability to secure legal advice and representation, or to access important documents, physical isolation from attorneys, family members and friends, inability to communicate with lawyers or corrections facility staff, instances of abuse from other inmates or staff, untreated medical conditions, and cumulated stresses that cause or exacerbate mental health problems. These issues are not only reprehensible; many are also flagrant violations of detainees' civil and constitutional rights. In October of 2009 the Obama administration announced that they would issue new ICE detention standards. We urge both federal and authorities to take immediate steps to make these standards mandatory for all regular and subcontracted facilities, to carefully monitor compliance, and to publish regular reports that list violations.

References

- Bernstein, N. (2009, August 5). U.S. to Reform Policy on Detention for Immigrants. *The New York Times*. Retrieved from www.nytimes.com
- Conk, G. (2009, September 7). Deportation Without Representation [Web log message]. Retrieved from *Otherwise: Commentaries on Law, Language, and Politics*: <http://blackstonetoday.blogspot.com>
- General Assembly of the United Nations. (1948, December 10). Article 14. In *The Universal Declaration of Human Rights*. Retrieved from <http://www.un.org/.../shtml#a14>
- GPO Access [Constitution of the United States]. (1787). Retrieved from <http://www.gpoaccess.gov/>
- Human Rights Watch. (2007, July 16). Families Separated and Immigrants Harmed by United States Deportation Policy. In *Forced Apart*. Retrieved from www.hrw.org
- Kremer, J. D., Moccio, K. A., & Hammell, J. W. (2009). *Severing a Lifeline: The Neglect of Citizen Children in America's Immigration Enforcement Policy* (K. Fennelly, D. B. Thronson, E. Wattenberg, & B. Johnson, Eds.). Retrieved from A Report by Dorsey & Whitney LLP to The Urban Institute website: <http://www.dorsey.com>
- Lendman, S. (2009, September 25). Police State Raids Against Immigrants. *Baltimore Chronicle*.
- Preston, J. (2009, August 3). Firm Stance on Illegal Immigration Remains Policy. *The New York Times*.
- Schmickle, S. (2009, August 27). As Immigration Enforcement Tightens, System is Overwhelmed. In *MinnPost*. Retrieved October, 2009, from www.minnpost.com
- U.S. Citizenship and Immigration Services [INA Section 101 (a) (2), Section 212 (a)(2), Section 236 (a), Section 237 (a)(2), and Section 240 (b) (4)]. (2006, February 4).
- U.S. Department of Justice. (2009, March). Executive Office for Immigration Review. In *Statistical Year Book*.
- U.S. Immigration and Customs Enforcement. (n.d.). *Alternatives to Detention*. Retrieved from www.ice.gov
- U.S. Immigration and Customs Enforcement. (1996, September 30). *Delegation of Immigration Authority Section 287(g)*. Retrieved from http://www.ice.gov/_g.htm
- U.S. Immigration and Customs Enforcement. (2008, November). *ICE Performance Based National Detention Standards*. Retrieved from http://www.ice.gov/detention_standards.htm