

Locked Up but not forgotten

opening access to family & community
in the immigration detention system



New York University School of Law Immigrant Rights Clinic
In cooperation with: American Friends Service Committee (AFSC)
New Jersey Advocates for Immigrant Detainees

april 2010

DETENTION CENTERS IN NEW JERSEY



Bergen County Jail (*Hackensack*)
Essex County Correctional Facility (*Newark*)
Elizabeth Detention Facility (*Elizabeth*)
Hudson County Correctional Center (*Kearny*)
Monmouth County Correctional Institution (*Freehold*)
Sussex County Jail [Keogh Dwyer Correctional Facility] (*Newton*)

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organizations

American Friends Service Committee (AFSC)

The American Friends Service Committee (AFSC) is a Quaker organization that has worked for over 90 years to uphold human dignity and respect for the rights of all persons. Since its inception, AFSC has worked on behalf of immigrants and refugees around the world, including relief and reconstruction work in Europe after World Wars I and II. In keeping with this history, AFSC's New York Metropolitan Regional Immigrant Rights Program, based in Newark, New Jersey, addresses the needs of the most vulnerable immigrants and promotes a vision of trust, fairness, and a deep regard for the dignity and rights of all people. The program provides legal counseling and advocacy services on behalf of immigrants in New Jersey, including those in detention; it provides leadership training to encourage members of immigrant communities to participate in actions to support more humane policies; and it addresses policy issues and root causes of migration.

For more information, visit: <http://www.afsc.org>.

New Jersey Advocates for Immigrant Detainees

New Jersey Advocates for Immigrant Detainees is a coalition of organizations and individuals, including American Friends Service Committee (AFSC) Immigrant Rights Program; Casa de Esperanza; the Episcopal Immigration Network; Lutheran Office of Governmental Ministry in NJ; NJ Association on Correction; NJ Forum for Human Rights; Pax Christi NJ; Middlesex County Coalition for Immigrant Rights; People's Organization for Progress- Bergen County Branch; the Reformed Church of Highland Park; Sisters of St. Joseph of Chestnut Hill ESL; Unitarian Universalist Congregation at Montclair; and First Friends.

NYU Immigrant Rights Clinic

The Immigrant Rights Clinic is a leading institution in both local and national struggles for immigrant rights. Students engage in direct legal representation of immigrants and community organizations, and in immigrant rights campaigns at the local, state, and national level. Students have direct responsibility for all aspects of their cases and projects.

authors & acknowledgments

Authors: Ruben Loyo & Carolyn Corrado

Ruben Loyo and Carolyn Corrado are J.D. candidates (2011) at New York University School of Law and are the primary authors of this report. They conducted this work as student advocates in the Law School's Immigrant Rights Clinic.

Contributors: Amy Gottlieb, Immigrant Rights Director, AFSC & Karina Wilkinson, New Jersey Advocates for Immigrant Detainees

Amy Gottlieb and Karina Wilkinson facilitated the fieldwork for this report, and provided valuable insight and assistance during the writing and editing process.

Layout/Design: E. Tammy Kim

E. Tammy Kim is a NYC-based social justice lawyer and freelance writer/illustrator, etammykim@gmail.com.

Photographs: Sterling Yee

Sterling Yee is a B.F.A. candidate (2010) at New York University Tisch School of the Arts.

Graphics: Géza Günther Schenk, GGS Communication, LLC

Acknowledgments

The authors of this report would like to acknowledge all of the detainees, former detainees, and families who had the courage to share their struggles and triumphs with us. We would also like to thank all of the New Jersey Advocates for Immigrant Detainees as well as the Sojourners Visitor Program for inviting us into their community and for their commitment to recognizing the humanity of all immigrants in detention.

The authors are grateful to Professor Nancy Morawetz of the Immigrant Rights Clinic for her guidance, direction, and support throughout this entire process.

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executive summary

The Obama administration has committed itself to reforming the nation's expansive and controversial immigration detention system. In August of 2009, Department of Homeland Security (DHS) Secretary Janet Napolitano and Immigration and Customs Enforcement (ICE) Assistant Secretary John Morton announced that the agency would be taking steps towards the creation of a civil detention system tailored to the agency's asserted needs and purposes, a plan that will likely take years to come into fruition. Details about what the system might look like have emerged in recent news stories, with the agency signaling that it is looking into converting hotels and nursing homes into immigration detention centers. As it works toward implementing its long-term plan, the administration must not lose sight of what it can do immediately for the people currently trapped in a system that is a complete failure and that does not consider the individual in each case and ask whether detention is necessary at all.

This report examines access to family and community, a part of the day-to-day immigration detention experience that is severely restricted in the current system yet can be improved *immediately*. For the thousands of people that ICE holds in jails and detention centers across the country—many of whom pose no flight risk or danger to the community—detention amounts to near total isolation from the outside world, often for prolonged periods of time. In a system where fighting against wrongful detention and deportation can take months and sometimes years, severing people from their homes and restricting access to family and community through unreasonable and inhumane rules contradicts the notion that the immigration detention system is civil or administrative in nature. In effect, immigration detention is punishment—not just for the immigrants in detention, but for their families and communities as well.

Facts for this report were gathered through visits to county jails and the Elizabeth Detention Facility in New Jersey, and dozens of interviews with current and former detainees, families of detainees, church members, advocates, and community groups that strive to provide detainees with companionship at the New Jersey facilities. Our fieldwork demonstrates that in the current immigration detention system, detainees fortunate enough

to have access to family and community rely on family and community visitors to fill critical gaps in the system and provide them with much needed moral support and advocacy. Detainees who have no one on the outside on whom they can rely, on the other hand, easily lose hope of staying in the country—regardless of the strength of their claims to remain in the U.S.

Key Findings

- Immigration detainees in state and local jails are given minimal access to family and community, and the degree of access is dependent upon the rules of the particular facility. Frequent and arbitrary transfers across facilities and exorbitant telephone rates further impair detainees' ability to maintain communication with family and community members.
- Visitation from family and community members boosts morale among detainees and provides them with the hope needed to pursue legitimate claims for relief. Visitation also promotes detainees' transition either back into their community in the U.S. or their country of origin.
- In cases where family members are too afraid to visit a loved one in detention for fear that they too may be detained, visitation by community groups provide detainees with a vital link to family.
- Restrictions of non-legal visits to brief periods of time (usually 30 minutes) are arbitrary and detrimental in a detention system where 84% of people are unrepresented. Detainees rely on visitors for tasks as diverse as articulating a theory of relief, securing letters of support from the community, and gathering funds for bond and relief applications.
- The current immigration detention system impairs positive community participation by relying on a detention standard that treats visitation as a security concern meriting substantial restriction.
- Visitors help detainees navigate complex and unclear grievance procedures. In a system that lacks accountability, visitors are an important source of information about day-to-day conditions at detention facilities.
- Family and community visitors help mitigate deficits in the level of care that detainees receive in facilities. Visitors help ensure that detainees are receiving appropriate medical care and pressure facilities to improve detention conditions.

From the experiences of family and community members in New Jersey, this report seeks to articulate a vision

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of what visitation with family and community should look like, and what ICE should do now in order to appreciably improve the day-to-day reality of detainees trapped in a system that deprives them of their basic dignity and humanity. It seeks to provide ICE with an opportunity to learn from the on-going struggles of detainees, families, and community members in attempting to maintain necessary social relations. ICE must abandon the conception of visitation as a privilege and adopt a conception of visitation that takes into account the emotional and legal needs of immigration detainees. We propose several immediate reforms and long-term legislative recommendations aimed at capturing the values that visitation serves in the immigration detention context and providing content for a new standard or regulation regarding visitation and access to family and community. We do not explore legal and religious visitation, which are much more established forms of visitation.

Key Recommendations

PROPOSALS FOR IMMEDIATE AGENCY REFORMS

- ICE should cease detaining immigrants in state and local jails, starting with those facilities that unduly restrict detainees' access to family and community.
- ICE should provide visitors at all facilities with at least one hour for general visits and more generous limits for families that have to travel long distances to visit a relative in detention.
- ICE should require all facilities to provide weekend and holiday visitation opportunities.
- ICE should prohibit the use of restrictive visitor lists and quotas and should monitor "shared-use" facilities to ensure that lists and quotas are not applied against immigration detainees.
- ICE should provide detained parents immediate access to contact visits and cease detaining people at jails that prohibit them or impose long waiting periods for contact visits.
- ICE should permit all family members to visit a relative in detention, regardless of their immigration status.
- ICE's visitation standard should recognize that unrepresented detainees need ample access to family and community members in order to build their legal cases.
- ICE should promote rather than impair participa-

tion by community and volunteer groups by pressing jails to relax restrictions on access.

- ICE should issue a new standard, to be followed up by a binding regulation, which captures all of the values and benefits of visitation explored in this report.
- ICE should issue a new standard, to be followed up by a binding regulation, which would mitigate the many disruptive effects of transfers. As a matter of policy, ICE should ensure that detainees are given advance notice of a transfer and ample opportunity to inform family, friends, and lawyers.
- ICE should ensure that detainees receive free or low-cost telephone access, which is necessary for the difficult tasks of self-representation and for maintaining communication with family and community.
- ICE should provide trainings for detention facility staff on the importance of access to family and community in the immigration detention system.
- ICE should use detention only where an immigrant poses a flight risk or danger to a community.

PROPOSALS FOR LONG-TERM LEGISLATIVE REFORMS

- Congress should repeal the mandatory detention law, which creates a culture that disregards and denigrates humanity and liberty.
- Congress should provide detainees with legal counsel.



introduction

In theory, immigration detention serves a limited purpose, distinct from the punitive function served by the criminal incarceration system—to “hold, process, and prepare individuals for removal.”¹ It is justified as a necessary means of ensuring the appearance of deportable immigrants at their removal proceedings, and protecting communities from immigrants who might pose a public safety risk.² The constitutionality of the most severe form of detention—mandatory detention without the possibility of an individualized bond determination—is premised on the idea that immigration detention is so limited in scope, purpose, and duration.³

The reality of immigration detention, however, is quite different—the image of a system limited in purpose and scope simply isn’t true. The current system holds people for extensive periods of time, while typically requiring them to defend themselves in complex legal and factual proceedings. Many people eventually win their cases and are released back into their communities in the U.S. But throughout this indefinite and challenging process, they are trapped in a system that isolates them from the public, their families, and their communities, often in facilities designed for punitive purposes.

In *Immigration Detention Overview and Recommendations*, a report meant to guide the overhaul of the immigration detention system, Dr. Dora Schriro notes that with only a few exceptions, the facilities that ICE uses for immigration detention were built or operate as jails and prisons for the confinement of pre-trial and sentenced felons.⁴ In Fiscal Year (“FY”) 2009, ICE held a majority of immigration detainees in “shared-use” county jails pursuant to intergovernmental service agreements (IGSA).⁵ As the stories in this report highlight, these “shared-use” facilities impose harsh and arbitrary restrictions on access to family and community that are not germane to the administrative, non-punitive purposes of detention and which greatly interfere with the tasks of self-representation. Frequent and arbitrary transfers to and from jails and detention centers further disrupt and limit detainees’ access to family and community.

Federal detention standards provide an opportunity to ensure that at the very least, the custodial setting provided immigration detainees mirrors the limited purposes of immigration detention and provides the type of access

needed for effective self-representation. The current federal detention standards, however, are themselves based on correctional incarceration standards meant to guide the operation of jails and prisons, standards that treat restrictions on access to family and community as an incident of punishment.⁶ In the current immigration detention system, visitation with family and community is treated both as a privilege that can be greatly curtailed and a security matter that merits substantial restriction. For the most part, the facilities we visited in our fieldwork only permit visits through no-contact visiting booths. Immigration detainees who want contact visits with loved ones must often wait months before they can get a contact visit, if contact visits are permitted. Visitation is typically limited to brief visits lasting half an hour or less. Further restrictions imposed on immigration detainees, such as the use of visitor lists that limit the number of approved visitors, impede the little access that immigration detainees have to the outside world. And in these facilities, immigration detainees face additional limitations on access to the outside world, including prohibitively expensive phone charges.

And if we look at *who* ICE detains in this system, the narrow justifications for immigration detention further lose their persuasiveness. ICE detains people with strong claims for relief against deportation; mothers and fathers of young children; people with U.S. citizen parents, children, and siblings; people who came to the U.S. in their youth and have little to no recollection of their country of birth; people who are long-time lawful permanent residents and may even be eligible for citizenship; people fleeing persecution who know no English and have no family or friends in the U.S.; people who work grueling jobs in order to support extended family—both in the U.S. and abroad; people who are valuable members of their communities; people who have served in the U.S. Armed Forces; people who have worked in the U.S. for many years, own homes, businesses, and pay taxes; people who suffer from medical and mental illnesses or support others who do; elderly people in need of regular medical attention; and countless others who pose no flight risk or danger to the community.

To the extent that ICE considers the individual, it mostly does so on the basis of criminal history.⁷ The current system distinguishes between three categories of immigrants— “non-criminal aliens, non-violent criminal aliens, and violent criminal aliens”—an illogical classification system considering the diversity of people ICE detains and the fact that a majority of them are classified as requiring a “low” level of custody.⁸ Even if viewed through the lens of criminal history, the immigration detainee pop-

ulation escapes easy classifications. Some detainees are taken straight into custody after serving a criminal sentence or when released on probation, while others are in detention for convictions incurred many years ago, convictions that may not have even carried any jail or prison time. ICE detains people who have been rehabilitated, accepted responsibility and completely transformed their lives after being convicted of crimes. Put simply, the current immigration detention system fails to take into account the experiences and circumstances of each person it detains and ask why they are being detained and whether they should be detained.

In spite of this dissonance—between who ICE says it detains and who it actually detains, and between how it says it will detain and how and where it actually detains—ICE officials continue to signal that the agency will “detain on a massive scale,”⁹ without any assurances that ICE will take significant steps in the interim to ensure that immigration detainees get fair treatment now as the agency moves towards the creation of a more civil system. In the last fifteen years, ICE has increased its daily detention capacity fourfold, from fewer than 7,500 beds in 1995 to over 30,000 in 2009.¹⁰ The share of ICE’s budget devoted to custody operations has also consistently increased. In FY 2005, ICE’s budget for custody operations was \$864,125,000, nearly a quarter of ICE’s total budget.¹¹ For FY 2010, ICE’s custody operations budget is \$1.77 billion, nearly a third of its total budget.¹² Such rapid growth has far outpaced actual administrative capacity, resulting in the agency’s over-reliance on excess capacity in penal institutions.

The disconnect between the asserted purposes of immigration detention and its reality imposes burdens on detainees beyond those they already have to contend with by virtue of being in detention. Detention deprives people of the social intercourse necessary to sustain mental health, families of a necessary source of income, and children of their parents’ affection and support. Detention disadvantages detainees who have no attorney—while there is a right to counsel in criminal proceedings, there is no right to counsel in immigration proceedings.¹³ Not surprisingly, an overwhelming majority of immigration detainees represent themselves. Trying to prepare one’s own immigration case while in detention, without a lawyer, without knowledge of immigration law, without sufficient access to an adequate law library, and without English language fluency, is an almost impossible task. Visitation from family, friends and community members can ameliorate the unfairness of this system, but the current immigration detention system fails to maximize the potential of visitation and fails to recognize the ways in

which the system’s “civility” is dependent on the degree of access to the outside world given to immigration detainees.

Structure of the Report

This report examines the way that visitation with family and community functions in the current immigration detention context and the way it should function in order to affirm the humanity and dignity of immigration detainees and maximize fairness and transparency in a system lacking in both.

Part I of this report examines how visitation with family and community alleviates the human costs of immigration detention. Immigration detention directly impacts the mental and physical health of the person being detained but it also carries unintended consequences for the relatives and communities of immigration detainees. Visitation helps both immigration detainees and their families cope and adjust to the harsh reality of detention. Visitation helps ease the transition from detention either back to one’s home in the U.S. or one’s country of origin.

We draw on social science literature about visitation in the criminal justice context, and its purposes and benefits. We then discuss how visitation serves these and other functions in the immigration detention context. Visitation helps address initial feelings of isolation, sadness, and trauma. For those who are granted relief and are released back into the community, visitation helps detainees maintain crucial ties to their community and provides a safety net. For those who will be deported, visitation helps detainees tie up affairs in this country and provides them with opportunities to say goodbye.

In **Part II** we look at the functions visitation serves in the absence of a right to counsel. Visitation gives detainees a way to gather documents, research legal theories, coordinate witnesses, and perform other necessary legal tasks. Restrictions on access to family and community are arbitrary and inhumane in a system where a vast majority of people are unrepresented. While Legal Orientation Programs (LOPs) provide detainees with information regarding the removal process and immigration court system, they do not provide detainees with the assistance needed to actually prepare their cases.

In **Part III**, we examine visitation as a means of promoting the values of accountability—oversight, transparency, and improvement. Visitation allows family, friends and community members first-hand access to the day-to-day conditions of detention. Because ICE has contracted

away so much responsibility, concerns about conditions of detention are currently at the forefront of the national dialogue. Visitors can help keep ICE and the community informed of what the conditions at detention centers actually are, help immigration detainees navigate complex grievance procedures, and improve detention conditions through advocacy.

We conclude with proposals for immediate and long-term reforms. National immigration detention standards (and regulations) provide an opportunity to address the unnecessary difficulties that immigrants in detention face. However, those standards must reflect the unique purposes of civil detention. In particular, the standards should recognize the value and urgent need for generous access to family, friends and community members. Standards should prohibit the use of restrictive visitor lists and quotas, provide for increased hours of visitation, and provide for more humane transfer procedures. In order to be effective, compliance with such standards must be mandatory for all facilities. ICE can take other immediate measures in order to eliminate barriers to family and community. ICE should ensure that detainees get access to free or low-cost telephone service, it should encourage jails to relax restrictive visitation policies that isolate detainees from the outside world, and it should encourage rather than impair participation from community groups. And in the long-term, Congress should repeal mandatory detention, a draconian measure that devalues humanity and liberty. It should also provide detainees with legal counsel—immigration detention imposes barriers on access to the outside world that make effective self-representation nearly impossible.



part 1 : visitation alleviates the human costs of immigration detention

“The ability to contact family or just to have someone to talk to, to hear that someone cares, is crucial. You are so dehumanized inside that you really need that human contact!”¹⁴

Amy Gottlieb, Immigrant Rights Director,
American Friends Service Committee (AFSC),
Newark

Lessons from the Criminal Justice Context

I. THE HUMAN COSTS OF CONFINEMENT

The confinement or detention of persons—in jails, prison, or detention centers—is a costly endeavor, both in economic and human terms. For taxpayers, confinement, incarceration, and detention amount to millions of dollars in discretionary spending—\$1.77 billion in FY 2010 for immigration detention.¹⁵ For the person being confined or detained, the experience is largely defined by near total isolation from the public, family, and friends.¹⁶ Reactions to confinement and incarceration “often encompass feelings of loneliness, isolation, guilt, anger, and despair.”¹⁷ Though people are confined for specific government purposes—administrative and punitive—all too often their confinement accomplishes much more than those objectives and produces unintended and counterproductive consequences, especially for the family and community members of those being locked up.

In the criminal justice context, social scientists have identified many “spillover effects” —incarceration “reverberate[s] through kinship and social networks by triggering psychological or physical changes, reducing economic opportunities, and altering social relations.”¹⁸ Economic strains, deprivation of socialization opportunities, and stigma in turn deplete the social capital of the children of incarcerated parents.¹⁹ Some have labeled families impacted by incarceration “survivor family members”—these are people who have to contend with a number of daily struggles, including emotional stress, social stigma, and financial strain.²⁰

Although immigration detention is not punitive in purpose, many have begun to explore its negative unintended consequences on “survivors” of the system—spillover effects that can be analogized to the vast “terrain of punishment” that has been explored in the criminal justice context.²¹ As is the case in the criminal justice context, the target of enforcement is rarely the only person impacted by that enforcement. The Urban Institute recently issued a report on the effects that immigration enforcement and detention has on children, for example. The children profiled in the Urban Institute study experienced significant hardships and behavioral changes triggered by immigration enforcement and detention.²² These concerns are also reflected in legislative proposals aimed at alleviating the harms that immigration enforcement exacts on families and particularly on children.²³

There is a rich body of literature that seeks to promote alternatives to confinement and detention, precisely because confinement and detention create so many intangible and unintended human costs, both for the person being deprived of liberty and for those in that person’s wider family and community network. A need for alternatives to confinement and detention has been identified in the context of juvenile delinquency, for example.²⁴ The detention or confinement of youths who commit or have committed serious crimes is justified as necessary for the protection of public safety.²⁵ However, locking up youths “may widen the gulf between the youth and positive influences such as family and school.”²⁶ Problems like overcrowding in facilities for juvenile offenders can create dangerous situations and compromise the successful rehabilitation and development of youths.²⁷ A need for alternatives has also been identified in the context of adult criminal offenders, where some have called for “decarceration,” questioning the efficacy of prisons in fulfilling fundamental purposes of the criminal law—the rehabilitation of offenders and protection of communities.²⁸ And increasingly, advocates are calling on DHS to use more humane alternatives to detention, pointing to the immigration detention system’s many shortcomings—its failure to provide adequate medical care, to prevent needless deaths, and to consider the individual circumstances of the people it detains.²⁹

II. VISITATION MITIGATES THE HUMAN COSTS OF CONFINEMENT

In the criminal justice context, scholars, social scientists, and prison and jail administrators have also recognized that promoting visitation with family and community provides a powerful and effective way of mitigating

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the many human costs associated with confinement. Confinement severs individuals from their families, communities, and friends. It makes sense that increasing access to the outside world would provide an antidote to some of the stresses that isolation and separation create both for those being confined and their families and communities.

Women's rights advocates, for example, have called attention to the emotional toll that incarceration exacts on imprisoned women and their children. Attention to the needs of incarcerated mothers has led to modifications of visiting rules that permit incarcerated mothers to spend quality time with their children.³⁰ The Children's Center at the Bedford Hills Correctional Facility for Women in Bedford Hills, New York, for example, offers a variety of programs aimed at alleviating the devastating impact of incarceration on families. These programs include summer week-long retreats for children that provide families with a temporary sense of normality.³¹

An important benefit of generous visitation policies is that visitation with family and friends allows inmates to sustain a "safety net" that will be valuable and available upon release, especially for tasks made difficult by the onus of a criminal record, like securing employment.³² Some studies have also found that "greater amounts of visitation . . . have greater effects in reducing recidivism," providing a powerful incentive to encourage the maintenance of social bonds through confinement.³³

Many, however, have noted that the criminal justice system has failed to maximize the potential of visitation with family and community. Various factors undercut this potential.

Logistically, the need for access to the outside world has to be balanced with the need to maintain security and discipline.³⁴ But facilities often err on the side of restriction, even where relaxing certain restrictions and regulations would not compromise objectives like maintaining security and order within a facility.³⁵ In fact, some restrictions are not germane to legitimate concerns regarding facility security and order, including restrictions that limit the number of people one can receive visits from. The administration of criminal justice is also very susceptible to politics, and visitation is often viewed as a "frill" or privilege in tough-on-crime jurisdictions.³⁶ Such attitudes ignore the broader benefits that the promotion of social and family ties in prisons and jails can have for communities, especially when inmates are released.

The process, time, experience, and regulations involved with visiting can also amount to a form of "secondary prisonization" for visitors.³⁷ Writing about wait-

ing periods at California's San Quentin State Prison that undercut the amount of time visitors get with inmates, Megan L. Comfort notes: "it is this disparagement of the sanctity of visiting time that wounds most deeply. Indeed, those who arrive hours in advance at the prison gates accept long waits as a logical precondition, part of the "agreement" that must be made when free people wish to enter the institutional walls."³⁸ For many people, visitation is a time and resource intensive process. Visitors must be "willing to travel, endure a financial burden, devote the needed time and energy, bring children to visit, and subject themselves to an expected amount of scrutiny to participate in a visitation program."³⁹ These considerable costs can outweigh the benefits of frequent visits.⁴⁰ Furthermore, visitation is often complicated by the fact that many facilities don't make information regarding visitation policies and schedules as accessible to the public as possible. One study of a random sample of local jails found that "a substantial number of jails did not make visitation information available."⁴¹

The research on visitation in the criminal justice context is instructive for two main reasons. First, it highlights the values that visitation serves for those confined and their family and community members, from which we can extrapolate what benefits and values visitation serves in the context of immigration detention. Second and more importantly, the shortcomings and concerns highlighted in the criminal justice context provide an example of what makes the administration's continued reliance on penal institutions and correctional standards for immigration detention so problematic. As Dora Schriro points out in her report, correctional standards impose more restrictions than are necessary for the purposes of immigration detention, a presumably limited, administrative, and more civil restraint on a person's liberty.⁴² (Some would argue that they impose more restrictions than necessary in the criminal justice context, a contention beyond the scope of this report). And as the research indicates, these restrictions have undeniable spillover effects not just for those being confined but for their communities and families as well. Social scientists see these effects as an unintended extension of the punishment imposed upon the offender. But where immigration detention only serves an administrative purpose, similar spillover effects call into the question the propriety of the administration's approach to immigration detention and the adequacy of its standards.

Indeed, the fieldwork and interviews done for this report reveal that detainees are denied an adequate level of access to family and community by rules that restrict the number of people they can visit with, restrict the number

of times they can modify visitor lists, restrict the number of visits they can get per day, limit the amount of time they can get with a visitor to 20 to 30 minutes, prohibit visits on weekends, and restrict opportunities for visits during evening hours. And, this restrictiveness carries over even into facilities that do not primarily function as jails, or were not built as correctional institutions. At Elizabeth Detention Facility, for example, though detainees are afforded more time with visitors than at the county jails, they still can only visit through glass and opportunities for contact visits for parents of young children are limited.

Family Visitation: Barriers to Maintaining Family Ties

Despite the benefits of visitation highlighted in scholarship from the criminal justice context—the stress-relief, the hope, and the safety net that visitors can provide—the reality of the current immigration detention system is that it impedes access to the outside world and fails to provide immigration detainees a level of access to family that can help them maintain the morale needed to withstand the human costs of immigration detention and pursue legitimate claims for relief against deportation. As these stories illustrate, visiting a relative in immigration detention is a time and resource intensive process, one that requires constant sacrifice, patience, good health, and the ability to persevere through the disappointment caused by harsh visitation policies. All of the families that we interviewed for this report attested to the emotional and spiritual benefits that visitation provided their detained relatives—even visits that were unreasonably difficult to obtain and short in duration—but they also attested that visitation and struggle often go hand in hand.

These stories also highlight that immigration detention is more than just a restraint on an individual's liberty, a means of ensuring appearance in immigration court or expediting deportation, or a tool necessary to protect communities from dangerous immigrants. In countless cases, detention amounts to the loss of a parent, a sibling, a partner, or of a source of income. For families living thousands of miles away in impoverished countries, it amounts to the temporary loss of a critical lifeline. For children, visiting a parent in detention can be a traumatic experience, particularly where visits are conducted through glass in a penal setting and there is no opportunity for contact. Immigration detention inflicts emotional costs that live with detainees and their loved ones for days, months, and sometimes years.

I. ANGELA JOSEPH'S STORY: THIRTY-MINUTE VISITS FOR THREE YEARS⁴³

For Angela Joseph, struggle and sacrifice were part of her family's daily reality for the three years that her brother spent in immigration detention before he was finally released back into the community.⁴⁴ A Trinidadian-American and a decorated veteran of the Persian Gulf War of 1991 who served in the Army for 8 years, Warren Joseph received weekly visits from his sister during the time that he was detained at the Hudson County Correctional Facility ("Hudson County jail"). "I started going two times a week, after a while three times a week. If I could have gone for the whole week I would have gone for the whole week," said Angela. A mother who worked a 9 to 5 job and took evening classes, Angela recalled that visiting her brother frequently—in order to provide him with hope and pray with him—always came at a cost to her and her family, a cost that she was willing to bear in order to provide her brother with much needed encouragement. "I used to miss a lot of school; I went to school in the evening, so that made it hard for me."

Like many veterans returning from conflict zones, Mr. Joseph suffered from post-traumatic stress disorder (PTSD) and depression. "He was depressed in the beginning and used to say 'This is the end for me and I'm going home.'" Beyond providing encouragement, Angela provided a necessary link to other family members. "My mom used to go, never twice or three times a week, but after a while she had problems walking so I said OK I will go for you. It was very sad for her because she always wanted to communicate in person and it was too expensive to phone from the jail." Angela would occasionally bring her young daughter, who "used to make jokes to him and always keep his hopes up. They have a very close bond and I know she felt it the most cause she would cry and ask 'When is uncle coming out?'" Unable to bring her daughter to every visit, Angela noted that her visits meant many missed opportunities to bond with her daughter at home. "By the time I finished at Hudson County and made it home it was 10 o'clock and my daughter was sleeping. During those days I would hardly communicate with her, it wasn't an easy thing."

During Mr. Joseph's detention, visits were not permitted on the weekends, and people who worked during business hours had to rush to the facility in order to get a visit before the end of the afternoon and evening session, which lasted from 3:00 p.m. to 7:00 p.m., Monday through Thursday. Visitors had to arrive by 6:15 p.m. in order to get a visit. Visits are usually capped at 30 minutes. "30 minutes is a short time, but we got a lot in, the

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prayer was the most important part. But there are times where they cut your minutes short. And sometimes the guards are nasty.” Though the visits were so brief, Mr. Joseph was keenly aware of how fortunate he was to have contact with the outside world. Angela recalled how Mr. Joseph asked her to visit a friend in detention who had no one visiting him. “He didn’t want his friend to feel left out, so he said ‘I will have my family come and you can see my sister and my mother,’” said Angela. “We both came down and we switched places—15 minutes with his friend and 15 minutes with my brother.”

Angela, who lives in New York City, remembered that the commute was often an ordeal, particularly on evenings when she had to rush from work in Manhattan. “From there I took a PATH train to Journal Square in New Jersey and waited for a bus. And if you miss the bus another one don’t come for another 45 minutes.” On evenings where she was cutting it close to the end of visiting hours or missed a bus, Angela would take a \$15 cab to the jail. “There was this one cab driver who I would always take and he had given me his cell number and I called whenever I was late. Sometimes I didn’t have money for the cab and I would tell him ‘can I pay you next week?’ and he said OK. And if my mother went I called him and asked him to drop her off at the jail and I paid him the next week.”

Three years after her brother was first taken into ICE custody and after an emotional hearing in which family, community members and other veterans packed the courtroom, Angela remembered getting a call from her mother. “She said, ‘Angie can you come home because there is somebody here to see you?’ When I got home, I was looking around and it was my brother and he hugged me and I started to cry because I was not expecting him to be released right then.” For the Joseph family it was a bittersweet victory—Mr. Joseph was not deported, but for three years he was needlessly detained and isolated from his family. Though the Third Circuit Court of Appeals ruled in October of 2006 that Mr. Joseph had not been convicted of an “aggravated felony,”⁴⁵ a category of crimes that triggers mandatory detention without the opportunity for an individualized bond determination, and was therefore eligible for cancellation of removal and naturalization, ICE continued to detain Mr. Joseph, who was not released until May of 2007.⁴⁶

* * * *

The Joseph family’s story highlights a fundamental difference between civil detention and criminal incarceration that makes the need for generous access to family

and community extremely urgent for immigration detainees—the indefinite and uncertain nature of immigration detention. In a system where the default rule is detention, where people are detained first and questions are asked later, immigration detainees can get caught up in protracted and intense legal battles in order to challenge the basis of their detention and defend against wrongful deportation. Like Mr. Joseph, many immigrants eventually emerge triumphant and are released back into their communities. Yet this is a process that can take months and sometimes years. Throughout the entirety of this process, families are forced to contend with restrictions that severely limit detainees’ opportunities to maintain contact with their families and communities.

In the case of the Joseph family, the restrictions on access imposed by a facility designed for criminal incarceration and pre-criminal trial detention—coupled with the restraints imposed by family, work and school obligations—meant that for three years, family interaction was typically limited to a mere hour to an hour and a half per week. This adds up to just a handful of days worth of time over the course of three years. For any person, much can change in three years—children grow up, relatives fall ill, pass away, or relocate. In a system where fighting against wrongful detention and deportation can take months and sometimes years, severing people from family and community and restricting access to family and community to just a few minutes per week contradicts the notion that the current immigration detention system is civil or administrative in nature. In effect, immigration detention is punishment—not just for the immigrant in detention, but for their families and communities as well.

II. PAULINE NDZIE’S STORY: RAISING CHILDREN WHILE IN DETENTION⁴⁷

For a parent in detention, restrictive jail visitation policies interfere with parenting responsibilities and force tough choices upon families. Detained for 5 months in the Hudson County jail, Pauline Ndzie spoke about how the jail’s visitation policy provided her with little opportunity to stay in touch with her children and caused her much indignity. Born in Cameroon, Pauline has lived in the U.S. for over 20 years and has three U.S. citizen children. Pauline was detained in the fall of 2008, “right when the kids were starting school.” Detained in a dormitory where visits ended in the evening and were only permitted on weekdays, Pauline was effectively cut off from her children, all of whom were attending school at the time. “I received visits from my oldest son who was in 12th grade but he couldn’t come quite often. Most of the

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time there is a lot of traffic after school, very heavy, and you can spend sometimes 1 or 2 hours on the bridge. If he went to pick up my other kids after school he would not make it to the jail on time." For Pauline, taking into account the needs of her children meant making tough decisions, including limiting her children's exposure to the immigration detention system and to an intimidating jail environment. "My little one, I was afraid for her to come because I know it would break her heart."

Pauline recalled that her son would always have to rush after school, "because they didn't have visits on weekends and I didn't want my kids to miss class to see me. He tried to come once every two weeks but it was not enough." Although the current federal detention standard on visitation provides for weekend and holiday visitation,⁴⁸ weekend visits were denied at Hudson County jail during the time Pauline was detained, a rule that imposed hardships on relatives who are busy with work or school during the week. "If they had weekend visits, he could come every weekend to see me—he could make all of them." As a result of increasing community involvement and advocacy against restrictive jail visitation policies, Hudson County now permits immigration detainees access to contact visits on Saturday evenings, 3:00 p.m. to 7:00 p.m.⁴⁹

Because she wasn't able to visit with her entire family, Pauline's oldest son provided her with a much needed connection to her family. "He told me how his siblings are doing and I encouraged him to be strong." But as other people interviewed for this report attested, the visits were always too brief, usually lasting no more than 30 minutes. "It was very, very quick. It feels like 5 minutes. I can't even tell him everything I have to tell him in that time." If she wanted more news from her family, Pauline had to pay the jail's exorbitant phone rate to give her children a call. "It was very difficult because for the phone card I have to charge \$25 and it's only 15 minutes. Very quick the money is gone, is finished. I tried to call them once, sometimes three times a week but each time it was \$25."

The most dehumanizing aspect of the jail's visitation policy was the requirement of a strip search after a contact visit, which was applied against Pauline the few times she had a contact visit with her oldest son. "The worst part of that is after the contact visit. They take you to a room and strip you naked. They make you feel like nothing. Why after a contact visit with your son they have to strip you down and remove everything? And then they make you bend down and cough!" The humiliation and indignity that she suffered deterred her from requesting more contact visits with her son. "It was torture," said

Pauline. "For a visit where they see you sitting down and the guard is right there! Why they make you go through that? When you go through that you don't even want that anymore because you know what you are going to go through after." The federal detention standard on detainee searches provides that strip searches should only be conducted where "there is reasonable suspicion that contraband may be concealed on the person, or when there is a reasonable suspicion that a good opportunity for concealment has occurred."⁵⁰ It also provides that searches of detainees should be conducted "in ways that preserve the dignity of detainees."⁵¹

Further deterring Pauline from requesting a contact visit with her son was the fact that contact visits were only made available in the mornings, meaning that her son would have to miss school in order to visit his mother in a more humane environment. "He's going to miss school and on top of that I have to remove all my clothes? Who would want their mother treated like that?" For Pauline, the visitation schedule, the brief 30 minute visits, the expensive telephone rates, and the requirement of a strip search after a contact visit were all symptomatic of a culture that fails to consider the individual and fails to consider the needs of parents especially—the need to hear from their children and provide them with reassurance and encouragement. "They know you have kids! And they know those kids need you. They should try to look at every case different because every case is not the same."



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FIGURE 1

In the current immigration detention system, the degree of access that detainees have to family and community members depends on the rules of the particular facility and not on guidance from ICE, as demonstrated by the figure below which samples visitation policies at four facilities in New Jersey. The federal detention standard on visitation sets a floor that is borrowed from restrictive criminal incarceration standards.⁵² The Elizabeth Detention Facility, a facility administered by the Corrections Corporation of America (CCA), provides a degree of access that meets the minimums in the standard. The shared-use county jails, however, tend to provide a degree of access that fails to meet the minimal expected outcomes of the standard and the emotional, psychological and legal needs of immigration detainees.

	ICE 2008 Performance-Based Detention Standard: Visitation	Elizabeth Detention Facility	Essex County Correctional Facility	Hudson County Correctional Center	Monmouth County Correctional Institution
General Visitation Policies	Requires a minimum duration of 30 minutes for visits ⁵³	Visits are limited to a duration of one hour	Visits are limited to a duration of 30 minutes and often fall short of that	Visits are limited to a duration of 30 minutes	Visits are limited to a duration of 30 minutes and often fall short of that
Weekends	Requires weekend and holiday visitation ⁵⁴	Permits weekend and holiday visitation, 9 am to 5 pm	11:15 am to 2:45 pm or 3:15 pm to 6:45 pm Saturday or Sunday depending on housing unit; visitor must arrive 45 min. before the end of the session	Does not provide general weekend visitation hours, but detainees can now receive contact visits on Saturdays, 3 pm to 7 pm	Provides limited weekend morning visitation hours
Evenings	Leaves evening visitation hours to the discretion of facility administrators ⁵⁵	Weekday visitation hours are 5 pm to 10 pm	Permits visits 11:15 am to 2:45 pm or 3:15 pm to 6:45 pm Wednesday or Thursday depending on housing unit	Various morning hours and 3 pm to 7:00 pm Monday to Thursday; visitor must arrive by 45 minutes before the end of the session	Does not provide evening general visitation hours
Visitor lists	Does not authorize the use of restrictive visitor lists and instead provides for visitation from immediate and extended family, children, and community service organizations ⁵⁶	Does not require detainees to compose visitor lists; visitors only need the immigrant's Alien registration number	Limits detainees to visits from people on their visitor lists (only 7 names permitted on a list)	Hudson recently abolished a policy of limiting detainees to visits from people on their visitor lists (up to 5 names were permitted on a list)	Does not require detainees to compose visitor lists; visitors only need the detainee's name or county ID number. But detainees are restricted to one visit per day and visitors can only visit one male and one female detainee in a day
Contact Visitation Policies	Leaves policies to the discretion of facility administrators ⁵⁷	Contact visits are permitted on Thursdays 5 pm to 10 pm, but only once per month	Does not permit contact visits for immigration detainees (except in extraordinary circumstances)	30 minutes contact visits were permitted on Tuesday mornings for people on detainees' visiting lists; in April the jail moved contact visit opportunities to Saturday evenings, 3 pm to 7 pm	Immigration detainees can request a contact visits after 90 days of detention, provided they have a clean disciplinary record

Community Group Visitation: Community Responses to Immigration Detention

“On the inside, without people on the outside, you feel totally lost, all alone. Those people want to sign the deportation papers and just go home, because they have no hope.”⁵⁸

Harry Pangemanan,
Reformed Church of Highland Park

An obstacle for many family members who have a relative in detention—indeed a deterrent—is fear of visiting a jail or detention facility, particularly if they have no immigration status. In our fieldwork, we learned of many families who reached out to others—community organizations and employers—in order to maintain a link to a relative in detention. At the Monmouth County Correctional Institution (“Monmouth County jail”), we met a man visiting a former employee in detention, while the detainee’s brother waited in the jail parking lot. Rita Dentino, a coordinator at Casa Freehold, an immigrant rights advocacy organization located just a few minutes away from the Monmouth County jail, works with many families looking for an update from a family member in detention. “The people in the jail need our visitation desperately,” said Dentino. “Some don’t have anyone who can visit them, and have family outside the jail that really need to know that they are OK.”⁵⁹

For countless other families, visiting a relative in detention on a regular basis is simply impossible. Families have to juggle many obligations—child care, school, and work—and visiting a relative in detention can require cutting back on commitments, by missing work or school, for example. Some immigrants are detained in facilities so far away from their families and communities that they don’t get any visits at all while in detention. Against this backdrop of family hardship and extreme isolation from the outside world, various community groups in New Jersey strive to provide immigration detainees with companionship through visitation programs. Community groups can serve a gap-filling role by providing “disaster relief”⁶⁰ for families who have lost a parent and a breadwinner. And community groups can provide a human connection to immigration detainees who have no one in the outside world.

One such organization is First Friends, which runs a volunteer visitation program at Elizabeth Detention Facility. Originally started in 1997 by the Jesuit Refugee Service, First Friends primarily provides companionship to immigrants detained at the Elizabeth Detention Facility, particularly asylum seekers who have no connections to local communities. “Visitation improves their morale,” said Greg Sullivan, the program’s current director. “It gives detainees someone they can explain their circumstances to without feeling threatened. It gives them some hope that the whole world isn’t against them. It counters the negative effects of detention, which causes depression, especially after four or five months in the detention center.”⁶¹ Unlike the county jails profiled in this report, the Elizabeth Detention Facility provides more generous visitation hours, including evening and weekend hours. Detainees get up to an hour per visit, unlike the 30 minute norm in the county jails. But for years, the Elizabeth Detention Facility has been a detention site for people claiming asylum at nearby ports of entry, and many of these people have no one that can provide companionship on a regular basis. Programs like the First Friends visitation program, through which volunteers go to the facility and visit with detainees for up to an hour, fill this gap and seek to remedy the isolating effects of immigration detention.

The coordinated efforts of community groups like First Friends and others profiled in this report, however, are the exceptional efforts of exceptional people. They require organizing, outreach, high community participation, and a willingness to devote considerable time, energy, and resources—in many cases on behalf of total strangers. It can require persistent attempts to get meetings and negotiate with both local government and ICE officials. Many families, on the other hand, do not have comparable resources or the time to coordinate a community response to a relative’s detention. Most families must accept the status quo—minimal access to the outside world for immigrants in detention. Instead of creating hurdles for positive community participation, ICE should actively promote community involvement, particularly by putting pressure on facilities to amend restrictive policies and provide community members with access.

I. THE REFORMED CHURCH OF HIGHLAND PARK: FAMILY “DISASTER RELIEF”⁶²

For Harry Pangemanan, visits from members of his church community helped him and his family survive the human costs of immigration detention. Daily visits from fellow church members boosted his morale and gave him the hope necessary to fight against imminent deporta-

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tion. Recognizing the void that detention had created in Harry's family, fellow congregants also helped his family survive and avoid the consequences of losing a father and a source of income. Exposure to the isolating and devastating effects of immigration detention in turn motivated church members to reach out to others in detention who had no similar source of moral, community, and economic support.

A father of two U.S. citizen daughters and a resident of the suburban town of Avenel, New Jersey, Harry immigrated to the U.S. from Indonesia in 1993. Along with tens of thousands of other men from predominantly Muslim countries, Harry was required to comply with the National Security Entry-Exit Registration System (NSEERS), a program created in the aftermath of 9/11. After years of unsuccessfully pursuing an application that would have given him permission to stay in the United States, Harry was taken into ICE custody at the Elizabeth Detention Facility in January of 2009. Though Harry had anticipated that ICE would take action on his case, nothing could have prepared him for the full range of emotions that he went through the first few weeks in detention. Foremost on Harry's mind was his family's welfare and his many financial obligations, which would now have to be met on his wife's earnings alone. "The first 24 hours were very difficult, trying to figure out, is this the end of my journey here? Thinking about my kids and my wife, how was I going to be able to support them, pay the bills, pay the rent?" Like hundreds of thousands of other immigrants in the U.S., Harry and his wife were supporting relatives back in their home country. "We support as many of our nieces and nephews as we can, and our parents, and siblings. The first week or month that I was detained was very hard, because I was worried about the financial stuff."

Compounding Harry's financial worries was the emotional toll that his detention had on his family, an impact that Harry witnessed during his family's first visit to the Elizabeth Detention Facility. The memory of that first visit is still vivid for Harry and his family, more than a year later. His oldest daughter, now a second grader, remembers the cold, impersonal process of visiting her father in the detention facility: "we had to choose a number and wait until the red thing says the number and then there was a door thing, which slides open, and then there was so many people we had to choose one spot."⁶³ Though the Elizabeth Detention Facility was not built as a correctional facility, the visiting area is not unlike visiting areas in many jails. Three glass walls separate the visitors from the detainees and visitors much choose one of over a dozen booths. Each booth has a telephone, set to a

low volume, through which visitors communicate with the detainees. Low barriers on either side of a booth provide little in the way of privacy, and conversations taking place in neighboring booths are often audible and clear to the room at large.

"I don't remember if it was the second or third day I was there, my family came to visit. Jocelyn tried to hug me through the glass. She knocked the glass so hard trying to hug me, or at least touch me. Everyone looked at us, shocked. She was hitting the glass hard. Through the telephone she said 'Daddy, why they put you in? I want to hug you.' That time was very hard for me, because a little kid, 7 years old, tried to break the glass to hug me. It was very hard, and very hard for her." Detained for approximately three months at Elizabeth Detention Facility, Harry received weekly visits from his family, always through the glass and the telephone.

In response to the crisis confronting the Pangemanan family, fellow congregants took immediate action. Franco Juricic, a RCHP congregant recalls the church's rapid response: "immediately we started daily visits, at least one person from church every weeknight. His wife wouldn't get to go often because they had two young kids so she went on the weekends."⁶⁴ The visits from his community provided Harry with the moral support necessary to overcome the toll that immigration detention had taken on him physically and mentally. "Since the church got involved, it got my spirit up, and I said, I have to fight for this. I have to stay here, not just for myself, but for my children." When church members noticed that detention was creating a lot of emotional and psychological stress for Harry, they encouraged him to do something inside the facility that would keep his spirits up. "So I started a Bible study group. After the first four weeks some friends and I started to pray and read the Bible together, to keep each other strong."

Outside of the Elizabeth Detention Facility, Harry's community stepped up to take care of his biggest source of stress in detention—his concern that his wife would have to meet their parenting and financial obligations on her own. "Without the church, I would have given up. Because they are the ones putting everything together, supporting me and my family, they paid the rent, took the children to play in the park, and watched them while my wife was working at night. I was not worried about my family because they were in good hands." His community made sure that he always had the means necessary to stay in touch with his friends and loved ones—by contributing money so that he could purchase expensive phone cards. As in countless other detention facilities and jails across the country, phone cards are a luxury at

the Elizabeth Detention Facility. “Like ten minutes for \$20,” Harry recalled. His community’s generosity in turn motivated Harry to do something for other detainees who had no one in the outside world that could provide similar forms of support. Harry received enough donations to be able purchase phone cards for other detainees trapped in a system that not only detains without providing legal counsel, but also charges a hefty price for communication with the outside world.

In Elizabeth, Harry also befriended asylum seekers who were put into detention as soon as they arrived in the U.S. One of these men spoke no English at all. Harry reached out to his church network to find out if there was a French speaking congregant. “At first it was really hard for him in detention, because he was not able to talk to anyone.” A fellow RCHP congregant answered Harry’s call and soon began to visit Harry’s friend. For Harry’s friend, the link to Harry’s community provided him with an important human connection. When he was released, the church provided him with shelter. “He learned how to go to the store, how to use the bus, take the train. The church helped him with those things. Now he is in Michigan and is living fine,” added Harry.

Harry’s community helped mitigate even some of the most disruptive aspects of the current immigration detention system. When he was transferred to a detention center in Tacoma, Washington on March 31, 2009, his church again took action. The transfer came as a complete surprise to Harry, who was not given any advance notice or opportunity, at the very least, to inform his family and community. Harry was instead woken up early in the morning and told that he had fifteen minutes to pack his belongings. Before he left, Harry was able to call Pastor Seth Kaper-Dale of the RCHP. “I said I don’t know where I am headed, but I am going to the airport right now.” The federal detention standard on transfers reflects a policy and culture that devalues the importance of access to family and community—it provides that “detainees shall not be informed of the transfer until immediately prior to leaving the facility” and that “specific plans and time schedules shall never be discussed with the detainee.”⁶⁵ Though Harry was fortunate enough to be able to make a phone call before the transfer, the standard further provides that “the detainee shall normally not be permitted to make or receive any telephone calls . . . until the detainee reaches the destination facility.”⁶⁶

The transfer to Tacoma, Washington could have brought Harry one step closer to “the end of his journey here”—he could have been deported without getting a chance to say goodbye to his family and church community. And thousands of miles away from his home state,

Harry’s last days in the country could have been incredibly lonely. Once Pastor Seth informed the congregation that Harry was being detained in Tacoma, Washington, however, several congregants got in touch with relatives and friends in Washington state and spread the word that a valuable member of their community was in immigration detention in Tacoma. “Within the first week they got someone to visit me over there. That made my spirit brighter and gave me more power. I cannot say the words or anything to describe that, but for someone totally lost, and no hope at all . . . it shows them it is not the end and that you can fight it.”

Back in New Jersey, Pastor Seth Kaper-Dale was busy advocating to ICE officials in order to bring Harry back to New Jersey and to his family. His persistence paid off—not only was he able to secure Harry’s release and return to the community, but he also obtained approval for a supervised release program in which other community members who had recently been detained could participate.⁶⁷ Harry and fellow congregants of the RCHP who were detained in Elizabeth who have benefitted from their community’s good will and generosity know that they were lucky. As Harry learned inside the Elizabeth Detention Facility, many people “inside” have no one “outside” on whom they can count on for their time, moral and financial support, let alone advocacy. And they spend “months without visitation, because they have no one.”

II. MIDDLESEX COUNTY FIRST FRIENDS: COMMUNITY VISITATION

“There was confirmation that there are decent people everywhere, that all of America isn’t evil, that they are not alone, that this is a terrible injustice that they are caught up in.”⁶⁸

Kathleen Feeney,
Middlesex County First Friends volunteer

Another New Jersey community achieved something that is rare and in fact routinely denied at detention centers and shared-use jails across the country—contact visits with members of the community. The genesis of the Middlesex County First Friends visitation program was the death of an elderly immigration detainee at the Middlesex County Adult Correction Center (“Middlesex County jail”) in March of 2008 that sparked heated de-

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bate and advocacy in the community.⁶⁹ “There were numerous protests at our county board meetings about the death and the lack of any independent investigations,” said Karina Wilkinson, an organizer and co-founder of Middlesex County First Friends. “We knew that the county was making over \$6 million per year from immigration detention, so we felt that we weren’t going to get the detention contract cut. But there were a number of us who thought that we needed access to be able to know more about what was going on in the jail.”⁷⁰

Despite failed negotiations with county officials and failed attempts at setting up a meeting with the ICE Field Office in Newark, the organizers of the program persisted and in May of 2009, got approval from county officials for a visitation program. Concerned about the many restrictions that county jails place on detainees’ access to the outside world—including strict quotas on the number of people that detainees and inmates can receive visits from and strict time limitations on visits—the organizers achieved a program that did not count against visits from family members or any quotas imposed on the detainees.

The set-up of the program afforded visitors and detainees a more personal and civil environment, distinct from the environment that is standard for most family and community members who visit people in immigration detention—booths that impose a physical barrier. The volunteers were given a classroom space in which they could meet and speak with detainees in an open setting. Twice a week for two hours, volunteers met with detainees and provided a space in which detainees could vent, voice their frustrations, or just speak about their lives and experiences outside of detention. “It felt like a gathering,” said Daniel Cummings, a high school history teacher and volunteer. “For about 50 minutes we met with one group of 10 detainees and then with a different group for the second hour.”⁷¹

Diana Melendez, a social worker who volunteered with the program, recalled that the program “provided [detainees] with a feeling that someone from the outside was interested in their story.”⁷² Melendez and many of the other volunteers were struck by how lonely and hopeless the detainees had become after months in detention, many without legal counsel. “So many of them give up hope, even if they have families here, and just say ‘you know what, deport me, at least there I’ll be able to call my family and write them freely.’ A lot of them had spent years and years in the U.S., had families and children here, had businesses, and they were driven to the point of desperation.” Kathleen Feeney, a lawyer who also volunteered with the program, recalled one detainee in particular who had been driven to the point of desper-

ation. “One Pakistani man’s father died while he spent months in detention, begging for deportation. He was deported to Islamabad, eventually made it to Karachi. By the time he made it home his mother did not remember him, she had suffered from some type of brain aneurysm. His neighbors told him that up until the moment his father died, he was looking for his son, asking for a hug from him,” said Feeney, who kept in touch with this man even after he had been deported.⁷³

Almost no topic was off-limits. Detainees and volunteers talked about the detainees’ legal cases, their home countries and families, music, languages, among other things. “It gave them a human connection,” added Melendez. “It validated their experience, made them feel that they weren’t alone and that somebody cared.” The visits even provided the detainees an opportunity to make light of what was an otherwise dehumanizing situation. “There was laughter about the clear and obvious profiteering, the expensive trash food that you could purchase from the commissary—slimy, obviously smashed cakes, worse than Twinkies. There was laughter about that,” said Feeney. “And there were often tears in those short encounters.”

The laughter, the conversations, and even the complaints about detention, relieved a lot of stress for the detainees and provide them with a brief but important respite from the everyday reality of detention. Roger Schwarzschild, a Middlesex volunteer and linguistics professor at Rutgers University, took a keen interest in the detainee’s home countries, languages and their intellectual interests. “I tried not to dwell too much on their cases, because that is the suit they are in all day long. I wanted them to be somewhere else for a few minutes,” said Schwarzschild.⁷⁴ Cathy Stanford, a union organizer with Rutgers AAUP-AFT (American Association of University Professors/American Federation of Teachers) and a lay leader of the Trinity United Methodist Church of Highland Park, added, “One guy was really funny. He said . . . after you guys come I just sleep like a baby.”⁷⁵

Just a few months after community activists achieved the Middlesex County First Friends visitation program, however, the program came to an abrupt end when Middlesex County officials voted to terminate its contract with ICE in October of 2009.⁷⁶ In the weeks following the termination of the contract, immigration detainees were transferred to other county jails in New Jersey, including Essex County Correctional Facility (“Essex County jail”), Hudson County jail, and Monmouth County jail. The bonds that the immigration detainees formed with members of the community were disrupted not just by the fact of the transfers to nearby county jails, but also

by the fact that the status quo of the current immigration detention system—minimal access to family and community—had been restored. Stanford, who corresponded with a number of the Middlesex detainees after they had been transferred to other facilities, commented that a former Middlesex detainee wrote her letting her know that the immigration detainees in Essex County were shocked when they learned about the Middlesex program and that “regular everyday American citizens are against putting immigrants in jails.” No similar programs existed at the three other jails, and just as at Middlesex County Jail, general visits were tightly regulated and limited.

* * * *

Taken together, the stories in this section call attention to the many challenges that immigration detainees face in attempting to maintain family and community ties—if they are fortunate enough to even have people on the outside that can provide support, moral or otherwise. In the current immigration detention system, the level of access to family and community afforded detainees varies widely across facilities. Families that have a relative detained at Elizabeth Detention Facility, for example, have the benefit of being able to visit for an hour on weeknights and also have the option of weekend visits. Working families with relatives detained at the county jails, on the other hand, are afforded half the amount of time per visit and must contend with unreasonable visitation schedules that often conflict with important commitments like school, daycare, and work. Unreasonable schedules make visitation a time and resource intensive process. Additional restrictions on access, such as prohibitively expensive rates for telephone service, further hamper detainees’ ability to maintain connections to the outside world.

The restrictiveness endemic in the current immigration detention system is disconcerting for a number of reasons. Harsh restrictions on access to the outside world create negative and often devastating consequences for families and communities that belie the narrow justifications for immigration detention—they call into question whether the current system truly is “civil.” Harsh restrictions on access to family and community are also troublesome given the indefinite and uncertain nature of immigration detention—detainees never really know how much time they will spend in detention, and some will get mired in complex legal cases that may not be resolved for years. Detainees face prolonged separation from family, friends, and the public, and this in turn diminishes their spirit and their humanity. Moral support is needed not

just to withstand the effects of being isolated from the world, but also the challenges of self-representation, the subject of the next section of this report. Moral support helps detainees pursue legitimate claims for relief and stave off deportation.

In light of the system’s excessive restrictions on access to the outside world, tapping into the many benefits of visitation often requires the mass mobilization of community members. Community members can organize to provide “disaster relief” for a particular family, or they can organize in order to provide companionship to detainees trapped in an isolating environment through volunteer programs. Both scenarios, however, require a lot of time, energy, resources, and a willingness to negotiate with government actors who may not be receptive to community proposals. Not all detainees belong to a community with the resources needed to mobilize on their behalf. Most detainees and their families are forced to accept a status quo that denies them a level of access inherent in the idea of “civil detention.”



part 2 : visitation mitigates the unfairness of immigration detention

Detainees Must Navigate a Complex Legal Maze

“I would find it hard to make a case for myself out of detention. I don’t know how I would do it from a detention center.”⁷⁷

Roger Schwarzschild,
Middlesex County First Friends Volunteer

Immigrants facing deportation confront enormous challenges in preparing what may be complex legal cases. Those with creditable attorneys can rely on their legal representatives to supply the building blocks required for their cases.⁷⁸ Among immigrants in detention, however, 84% do not have counsel.⁷⁹ They must find a way to represent themselves, undertaking every task a trained immigration attorney ordinarily would perform, and do so from within facilities that afford limited access to the outside world.⁸⁰ For many, particularly those not entirely comfortable in English, detention makes their self-directed casework a potential minefield.

The first question detainees must contend with is whether they are eligible for bond. This can be a complex legal question that depends on an analysis of why the person is detained and how his or her detention fits into the federal detention scheme.⁸¹ Those denied bond may be subject to mandatory detention based on certain criminal convictions. Or they may have a right to bond but not have been given a bond determination. Whether a detainee is subject to mandatory detention is often contested, so detainees need to determine whether they fall correctly into that category, or whether they want a hearing to contest that determination.⁸²

If a detainee is eligible for bond, the next step is to prepare for a bond hearing. Those seeking bond need to show that they are not a flight risk or a danger to the community. To make this showing, they typically need such things as letters of support from the community, family members and employers, as well as other documents showing ties to the U.S., such as tax records, marriage certificates, birth certificates and immigration

papers of family members, school records, or records of volunteer work.⁸³ Documents are very important in bond proceedings, both for the initial decision before an immigration judge and any appeal, since the record on appeal will consist of those documents. Many judges will also look to detainees’ eligibility for relief as a measure of their risk of flight. As we explain below, eligibility for relief is itself a highly complex legal issue. Thus, detainees must present a very global picture at this early stage—a picture that touches upon legal issues that will not be decided until much later on in this process.

Detainees also have difficult strategic choices to make in seeking bond. In immigration detention cases, ICE will set an initial bond, or determine that a detainee is subject to mandatory detention and thus ineligible for an individualized bond determination.⁸⁴ A detainee generally only has one chance to challenge a bond that was set or not set by ICE.⁸⁵ Bond can be increased after a hearing instead of lowered, so in some cases it is best not to request a bond hearing. For example, detainees may not see a particular crime listed on their Notice to Appear (the charging document issued to them by the government) but the government is likely still aware of that conviction, which may cause a judge to raise the amount of the bond.

The next issue detainees face is whether they are in fact removable and whether they should be in proceedings at all. There may be a question as to whether they are actually citizens. Whether one is a derivative citizen, for example, may be difficult to determine. It is influenced by such factors as whether a parent was a U.S. citizen, whether that U.S. citizen parent was the mother or father, whether the parents were married, and how long the U.S. citizen parent resided in the U.S.⁸⁶ There may also be questions as to whether a certain criminal history subjects the detainee to removal without the possibility of relief. This is a very complicated legal issue, which requires extensive research, and often leads to intense litigation involving multiple appeals at various court levels, including at the Supreme Court level.⁸⁷

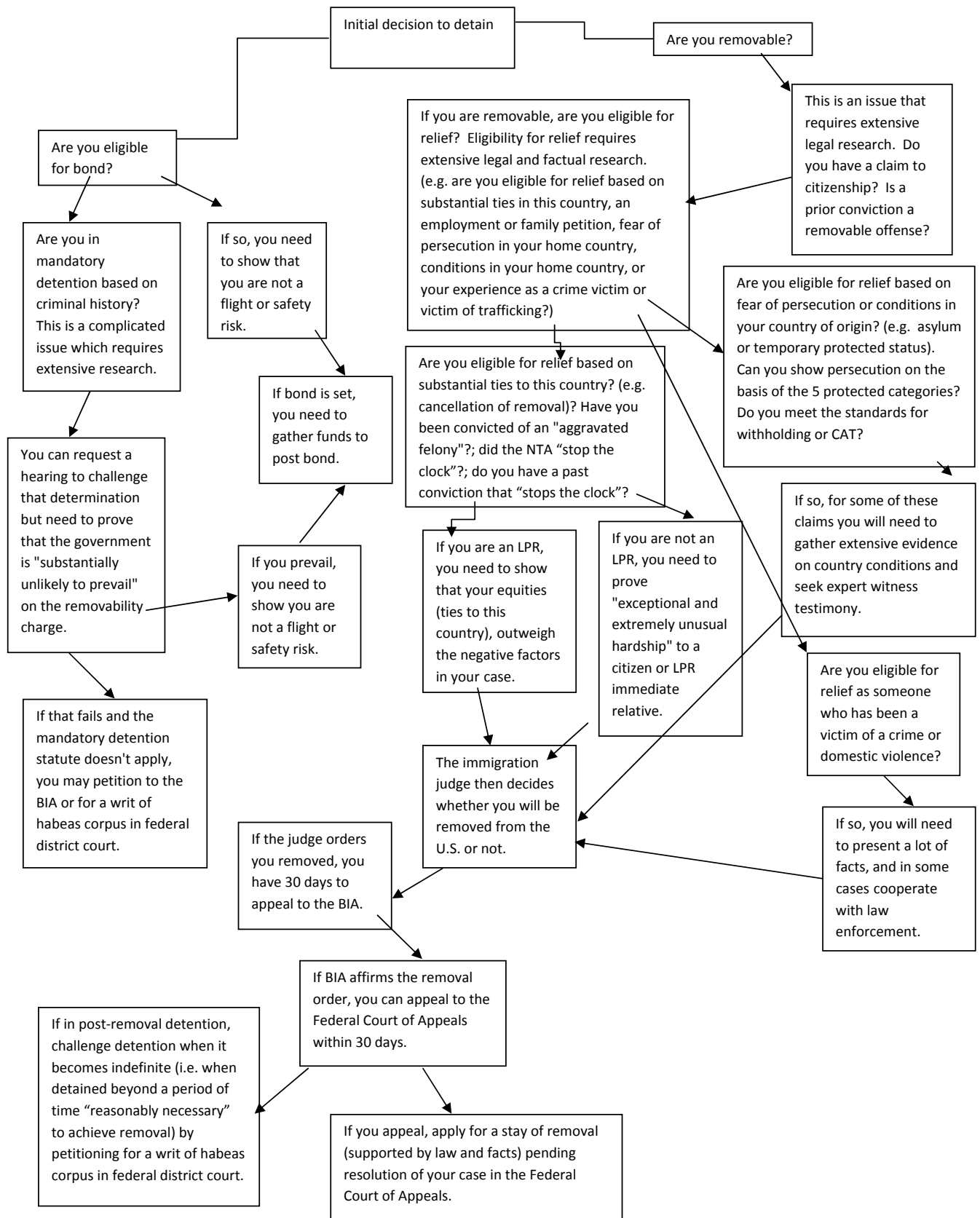
Detainees then need to determine whether they are eligible for relief from removal. Each type of relief requires an understanding of the legal issues involved as well as factual support for eligibility, and a demonstration of why the judge should grant relief. Respondents need to determine whether they are legally eligible for a certain type of relief and what type of evidence they need to show in support of those claims. They then need to gather documents and testimony to support their claims.

(continued on page 22)

FIGURE 2 (ON PAGE 21)

Unrepresented detainees with legitimate claims for relief against deportation must navigate a complex legal maze, undertaking all the tasks that an immigration lawyer ordinarily would perform. At every stage of the process, access to family and community is critical—from gathering money in the event that bond is set, to researching a theory for relief, to demonstrating substantial ties to the U.S. Restrictive jail visitation policies are arbitrary and unfair in a system where 84% of detainees are unrepresented—they interfere with the difficult tasks of self-representation and discourage detainees from pursuing legitimate claims for relief.

Locked Up But Not Forgotten



(continued from page 19)

Detainees who would be persecuted upon return to their home countries may have a claim to relief through asylum, withholding, or the Convention Against Torture (CAT). Asylum is available to those who would be persecuted in their home countries on the basis of their race, religion, nationality, membership in a particular social group, or political opinion, and can show that the government of their home country will not, or cannot, protect them.⁸⁸ Asylum is subject to some bars to relief, such as a prior conviction for a “particularly serious crime.”⁸⁹ Withholding of removal is similar to asylum, but has a higher burden of proof, and is also subject to certain bars.⁹⁰ CAT claims are for those who would be tortured upon return to their home countries, either by the government or with the acquiescence of the government.⁹¹

If eligible for one of these country-specific claims for relief, detainees must do legal research, gather the necessary documents and find expert witnesses. While expert witnesses are not required, they are often the determining factor in whether a detainee is granted one of these forms of relief. As Shifra Rubin, an attorney with Legal Services of New Jersey, notes: “expert witnesses are very important for these [country specific] claims. I would say most of these cases hinged on whether there is an expert witness. Without an attorney, I don’t know how detainees find [such witnesses].”⁹² Preparing for these claims also involves obtaining letters of corroboration, documents from one’s native country, and news articles about conditions in that country, all tasks that require ample access to the outside world.

Detainees may be eligible for a form of discretionary relief such as cancellation of removal, or the pre-1996 version of cancellation of removal called 212(c) relief. Each of these forms of relief requires detainees to first show that they meet the eligibility requirements for relief, and then that their equities, or ties, in the U.S.—family, a job, community service, etc.—outweigh any negative factors in their cases, such as a criminal history.⁹³ Although 212(c) relief was repealed in 1996, it remains available for many who were convicted prior to the date of repeal.⁹⁴ Legal permanent residents (LPRs) are eligible for cancellation if they can show that they have been an LPR for five years, have lived in the U.S. for seven years, and have not been convicted of an aggravated felony.⁹⁵ Non-LPRs are eligible for cancellation if they can show they have lived in the U.S. for at least 10 years, can demonstrate good moral character during those years, have not been convicted of certain offenses, and can show that their removal would result in exceptional and extremely unusual

hardship to a U.S. citizen or LPR spouse, parent or child.⁹⁶

Expert evaluations, from psychiatrists, health professionals, or other professionals, can be important in establishing these claims for relief. For example, an expert evaluation can be used to show that a respondent’s health needs will not be met in their home country. For those with a medical issue, a physical evaluation may supplement a claim for relief.⁹⁷ For those detainees who are fighting their cases pro se, finding someone to do a psychiatric or physical evaluation and arranging for the evaluation to be conducted in detention can be incredibly difficult.

Detainees may also be eligible for adjustment of status, or certain types of visas. For example, if an immigrant was a victim a certain crimes and can show that they cooperated with law enforcement officers, they may be eligible for a U-Visa.⁹⁸ They are victims of human trafficking, they may be eligible for a T-Visa.⁹⁹ If they are married to, or a child of, an abusive U.S. citizen or LPR, they may be eligible for a visa under the Violence Against Women Act (VAWA).¹⁰⁰

Some detainees have access to Legal Orientation Programs (LOPs).¹⁰¹ LOPs are funded by Congress and were created to provide detainees with a brief overview of deportation proceedings and possible forms of relief.¹⁰² They are conducted by nonprofit legal service providers. They provide a fundamental but necessarily limited overview of the complexities of immigration law. LOPs can include group orientations (which last a half an hour to an hour¹⁰³) and individual orientations, during which detainees can ask follow-up questions. They can also include self-help workshops, smaller gatherings for detainees who are handling their own cases, and referrals to pro bono attorneys for some detainees.¹⁰⁴ LOPs are helpful in informing detainees about what types of documents and witnesses to present, and what kind of research is particularly imperative for their cases. *But these orientations do not help detainees with the actual process of gathering and preparing documents and witnesses.* This makes detainee access to the outside world absolutely indispensable for gathering the information and materials necessary for their cases.

LOPs are not provided at all detention sites, and, furthermore, are not provided to all detainees at the sites which have LOPs.¹⁰⁵ The funding for LOPs is not tied to the actual need for LOPs or to the growth of immigration detention.¹⁰⁶ Furthermore, even if a detainee is held in a jail or detention center that provides access to an LOP, that detainee may not get access to the program. For example, a detainee may be transferred before the orien-

tation and at a time when they might need an orientation the most because of an upcoming court hearing. For those that do not receive an orientation, access to the outside world is especially crucial.

“ If I were detained without a background in immigration law, I would start with the jailhouse lawyers manual. But all of this presupposes a basic understanding and sophistication. For individuals who cannot read or write this is virtually impossible because they cannot prepare the application for relief and also are not able to read the documents that are served by the government.”¹⁰⁷

Staff Attorney, Immigration Law Unit,
The Legal Aid Society

Restrictions on Access Interfere with the Tasks of Self-Representation

Inside detention, immigrants facing deportation confront all sorts of restrictions on their liberty that obstruct access to the outside world, restraints above and beyond the fact of being locked up in a detention center or jail. They must contend with rules that limit the amount of time they can spend in the law library per day, that limit when phone calls can be made, that limit the duration of visits with family and community members, and that limit when detainees can receive visits. For self-represented detainees, such restrictions have the added effect of hindering access to the tools they need to navigate complex legal issues and reach people who may play pivotal roles in their cases.

Detention complicates something as simple as making a phone call. The federal detention standard on procedures for admission and release provides that upon admission into a facility, property is to be “checked for contraband, inventoried, receipted, and stored.”¹⁰⁸ This would include cell phones that contain the phone numbers of family, friends, employers, and other community members—people who may be instrumental in securing a detainee’s release through bond. Locating people can be difficult if a detainee does not know every person’s number by heart. Once detainees surpass the obstacle of obtaining the phone numbers they need, they then

must find a way to pay for phone service. A recent article by Nina Bernstein in the New York Times brought attention to the problem of prohibitively expensive phone calls in the immigration detention system.¹⁰⁹ Bernstein noted that in one of the jails in New Jersey that holds detainees from New York, calls cost \$1.75 to connect and 89 cents a minute for calls to New York.¹¹⁰ Detainees could not start making calls until they put \$25 into an account with a major credit card.¹¹¹ The New Jersey county jails use the same company, and rates are high across the board.¹¹²

Assuming the detainee can afford to call relatives and friends, the detainee’s contact might find it necessary to visit the detention center or jail in order to achieve a richer understanding of what is needed to assist a detainee. But the current visitation standard provides for only 30 minute visits.¹¹³ Half an hour is simply not enough time for detainees who need family and community visitors to help them gather information and documents for their cases, to get in touch with people, or arrange and prepare to have them testify on their behalf. Limits on the number of people a detainee can visit with per day further complicate and diminish the effectiveness of visits—from an emotional and a legal standpoint. At Essex County jail, one can wait up to two or two and half hours for a 20 to 30 minute visit. At times the visits are reduced to only 15 minutes, a scenario that might prove discouraging to even the most supportive of family members.¹¹⁴ Some facilities have visiting quotas, and most do not allow detainees to have more than one visitor per day. Some facilities require the use of visitor lists on which one’s name must first be placed before they can visit a particular detainee. Unless a detainee has informed a specific individual that they are on his or her list, family and friends must write to them to inquire if they are indeed on that person’s list, or, in an even more frustrating scenario, make a trip to the facility in order to see if they will be able to come back at a later date for an actual visit.

Transfers to and from jails and detention centers further aggravate an already exasperating and distressing experience. Transfers, which typically occur without advance notice to the detainee, interfere with the access detainees have to lawyers, friends, family, and community. It can be difficult to locate detainees after they have been transferred. This is not just the case with transfers out of state—even transfers from one facility to another in New Jersey, for instance, have made it difficult for community groups to keep track of the detainees they have been visiting. ICE must provide a detainee’s lawyer notice, but not advance notice, and they rarely if ever notify a detainee’s family of a transfer.¹¹⁵ Detainees, espe-

cially those without attorneys, may not have the money or the opportunity to inform their families of their impending transfer.¹¹⁶

In our fieldwork in New Jersey, we spoke to detainees who have been transferred as many as four times. Since each facility had its own unique policies on mail and phone access, and different resources in their law libraries, the transfers interfered with a detainee's ability to prepare their cases and keep in touch with people who were helping them with their cases. Community groups dedicated to the plight of detainees tried to keep track of detainees as they were transferred from one jail to another, but even they had trouble doing so. One detainee we met in our fieldwork was transferred from Middlesex County jail to Monmouth County jail to Hudson County jail and then to Essex County jail, all in the span of a few months. The immigration judge who heard his case ruled against him the day before his last transfer. Because of the transfer, he did not receive notice of the immigration judge's decision in a timely manner. In fact, he did not learn that he had lost his case until two weeks after his case was decided. This inordinate delay left him with only two weeks to prepare an appeal to the Board of Immigration Appeals, an appeal for which he would have had 30 days to prepare had he been immediately informed.¹¹⁷

Transfers also lead to long intervals between important visits. Visitors would first have to locate the detainee. If the new facility requires a visitor list, visitors must wait until detainees are given an opportunity to compose their visitor list. The visitors would then need to ascertain if they were indeed included on the detainees' official list at his new location, a chore which could require a separate trip to the new facility. As an example, when detainees were transferred out of the Middlesex facility in October 2009, it took months to find and be able to visit some of the detainees that had been in that program; in the meantime many of them were deported. Since detainees as a matter of policy are not advised ahead of time as to where they are being transferred, their regular visitors never had a chance to say so much as goodbye.

Access is Necessary for the Development of Legal Claims

Outside of detention, most people do not have to contend with similar restraints on their liberty. They can visit libraries at their own convenience, browse the internet for hours, and call as many people as they wish, whenever they wish. For detainees, access to people who do not face the same constraints they do—whether they be lawyers or fam-

ily members—is critical, and in some cases, can make all the difference. Family and community visitors can easily make phone calls on behalf of detainees, for example, and frequently do. Visitors can access news sources from around the world and research at their convenience without the time constraints imposed by jails. They can send and receive mail for detainees and compile important documents like tax records. They can reach out to lawyers and ask for advice. And they can get in touch with family and friends to help gather money for bond and application fees.

For detainees pursuing claims for relief that often hinge on the quantity and quality of evidence they present, ample access to family and community is needed for the collection of evidence. In our fieldwork, we spoke with visitors who accessed a diversity of news sources in order to supplement asylum claims, for example. Schwarzschild, a Middlesex County First Friends volunteer, recalled assisting one detainee develop a theory of relief.¹¹⁸ “He was afraid to go back to Guatemala because he had been in a gang.” Courts are beginning to recognize membership in a gang as “membership in a particular social group”¹¹⁹ for the purposes of asylum and withholding of removal. In a recent decision written by Judge Richard Posner, for example, the Seventh Circuit Court of Appeals held that an immigrant who was a former member of street gang in El Salvador and feared that he would be persecuted for refusal to re-join, was a member of a “particular social group” and should thus be able to make a case for withholding of removal.¹²⁰ Schwarzschild explained how he helped a detainee develop evidence for a similar type of claim. “I read a special report in *Prensa Libre*, a Guatemalan newspaper, about the gang problem there. The murder rate is now higher than it was during the civil war. I printed out the report and sent it to him.”¹²¹ The detainee did not have access to *Prensa Libre*, but this type of information was fundamental to his asylum claim. Another detainee asked Cathy Stanford, also a Middlesex County First Friends volunteer, for help finding articles about the persecution of Christians in his country. “I got a magazine from a religious organization . . . saying that in country where he is from there was persecution of Christians, so I mailed him the clipping.”¹²²

Even for those detainees with attorneys, access to family and community may make a case stronger. For those with country specific claims, family members and friends from a respondent's community may know more about conditions in their native countries than most attorneys would, or they can assist with the difficult task of locating experts. We spoke to an attorney pursuing a CAT claim on behalf of a detainee whose sister is helping her find an expert witness from their native country. The sister is part of the community, knows people, and has access to

networks that are particularly useful. In that case, Stanford, who formed a bond with the family through the visitation program at Middlesex, recalls “going to great lengths” to help the detainee and his lawyer “find an expert who could testify about the state of mental health services in Egypt. If [that detainee] were sent away from his family here he would not get the kinds of services that would help him not go off the deep end.”¹²³ Stanford added that, “it seemed like a tall order, especially for someone in New Jersey. But through networking I learned that there were some people in Texas who had testified in very similar case about Egypt.” Stanford noted that the detainee’s lawyer was “very grateful” for the outreach she performed on the detainee’s behalf.¹²⁴

Access to family and community is also important for some of the more mundane, but equally essential, tasks of self-representation. In the course of an immigration case, there are many instances in which family and community members play a central role. Paying the filing fees necessary to begin the application process can be daunting for those detainees who cannot afford the fees. If detainees are given a bond, they also need to come up with the money to pay it. For detainees who need to come up with the fees for applications or for bond, contact with family members and friends is crucial. When several members of the Reformed Church of Highland Park were detained at Elizabeth, congregants came up with the money for filing fees.¹²⁵

The testimony of a family member, employer, or friend is often a key factor in a relief application or bond hearing. But preparing forceful and compelling testimony or affidavits requires generous access to face to face visitation. Visitors can help detainees solicit letters of support through phone calls and letters, which may supplement relief applications. When letters are received by detention facilities, it can take a while for them to be cleared and actually received by detainees. Some detainees have told us that it can take up to two weeks for them to receive letters. Transfers can further complicate the reception of mail, as we saw in the case of the detainee who did not receive his mail in a timely manner and was left with only two weeks to appeal the decision in his case. It can be more efficient to have documents sent to one’s family or friends. But once family or friends receive a detainee’s mail, they then require ample access to visitation to share and discuss the mail received. Letters and other documents may also need to be translated, which visitors may also be able to help with, either by translating themselves or seeking out someone who can.

* * * *

Immigrants in detention face numerous obstacles in pursuing legitimate claims for relief. The 84% of detainees who do not have legal counsel must prepare these complex legal claims on their own. At various critical points in the process they confront difficult legal and factual questions, issues that require ample access to the outside world for resolution. Some detainees have access to LOPs, which provide a brief overview of the entire process. But in the end, unrepresented detainees are left to their own devices. They must do extensive legal research on eligibility for bond, removability, and eligibility for relief. Detainees need to gather letters of support, money to post bond and file certain applications, documents on country conditions, tax records, health records for themselves and their families, marriage certificates, birth certificates, immigration documents of family members, criminal records, records of volunteer work, and countless other documents. They must find expert witnesses on country conditions, character witnesses such as employers, and doctors to prepare and testify to psychiatric or physical evaluations. These are all tasks that the ordinary person would find difficult to accomplish outside of detention and yet detainees must do all of this from within facilities that afford limited access to family and community.

Family, friends, and community members are thus indispensable in accomplishing the necessary tasks of self-representation. Visitors can help detainees gather documents. They can make phone calls and find and coordinate witnesses. They can consult with lawyers and ask a few important questions to help detainees get started. They can gather news articles on country conditions. In no way do visitors take the place of legal counsel, but in the absence of a right to counsel, they mitigate some of the unfairness of the current immigration detention system. Harsh restrictions on access to family and community severely limit the extent to which family and community members provide assistance. And for many unrepresented detainees, restrictions on access to the outside world seal their fate—rendering them ineffective in putting together solid cases against deportation.



part 3 : visitation provides a source of accountability

“Visitors can communicate to the public at large whether these facilities truly are civil.”¹²⁶

Greg Sullivan, First Friends

In *Immigration Detention Overview and Recommendations*, Schriro noted that “accountability is the keystone to detention reform.”¹²⁷ Accountability, Schriro added, “encompasses government oversight, transparency, and a commitment to continuous improvement.”¹²⁸ This part examines accountability to the public—for how the immigration detention system treats our relatives, friends, neighbors and community members. More specifically, we examine how visitation promotes the values of accountability—oversight, transparency, and improvement. In our fieldwork, we learned that visitation, when encouraged and promoted by facilities, improves the conditions of detention for detainees, mitigates deficits in the level of care that detainees receive, provides a valuable source of information about day-to-day operations at the facilities, and facilitates advocacy and the pursuit of grievances on behalf of detainees. In recognition of the values served by increasing access to the outside world, ICE should create standards that promote rather than stifle access and communication—by providing for ample visitation opportunities, ensuring that detainees receive low-cost telephone access, and promoting community group participation.

Increasing accountability through civilian participation is an idea that has been widely explored in the criminal justice context. In light of high-profile cases of police abuse and over-reaching, for example, scholars have explored public concerns about whether “the police can police themselves,” concerns that have resulted in experimentation with forms of civilian oversight, like civilian oversight boards.¹²⁹ “The fact that any organization or agency with power always runs the risk of abusing that power provides a compelling reason for oversight and checks and balances,” said Oren Root, Director of the Center on Immigration and Justice at the Vera Institute of Justice.¹³⁰

A perennial obstacle to increasing transparency in the context of custodial systems, however, is the very insular and secure nature of custodial institutions. In an article about the values served by promoting transparency in prisons and jails, Michael Gennaco, Chief Attorney of the County of Los Angeles Office of Independent Review, the oversight body for the Los Angeles County’s Sheriff’s Department wrote: “Prisons and jails are inherently closed societies, largely shielded from public purview. Too often, however, under the rubric of “security,” managers of these institutions have fended off legitimate entreaties from “outsiders” who wish to learn more by physically exploring behind the prison walls.”¹³¹ Increasing access to the outside world, Gennaco argues, promotes best practices within facilities and ensures the public’s confidence.¹³² “It’s a benefit to a clear-thinking administrator,” said Ed Martone, Director of Public Education and Policy at the New Jersey Association on Correction, “who can then say ‘I happen to run a good facility and I want the public to know about it.’”¹³³

In addition to highlighting the benefits of formal oversight bodies in curbing abuse and promoting humane practices, criminal justice scholars, administrators, and others have also pointed to visitation—by family members and ordinary community members—as a source of increased accountability. For families, visitation provides a means to ensure that a relative is receiving an appropriate level of care and treatment.¹³⁴ “They believe that when a prisoner does not receive visits, it is a sign that no one cares about him, which gives prison personnel free license to treat him however they wish.”¹³⁵ “Part of the nature of being locked up is that people are deprived of a large number of opportunities to communicate with the outside world, so visitation provides a window into an otherwise very non-transparent world,” said Root. Opening doors to families, friends, volunteers, and religious organizations, however, requires a culture of transparency and a willingness to avoid being a “forress in the woods” by bringing in community members.¹³⁶

Visitation as a Source of Information: Documenting Detention Conditions

In the immigration detention context, multiple reports and stories about the system’s failure to ensure humane conditions of detention have underscored the need for increased accountability. Since ICE’s formation in 2003, over 100 people have died in immigration detention, in some cases as a result of a lack of medical attention.¹³⁷ A major source of accountability failures identified by the community groups profiled in this report is an overall lack of clarity about where responsibility lies. “It was very hard to get

any responses to our questions. The jail would say go to ICE and ICE would say go to the jail,” said Anne Barron, a co-founder of the Middlesex County First Friends visitation program who has pursued grievances and complaints on behalf of the detainees that participated in the program.¹³⁸ Such breakdowns in communication and accountability—and a “that’s not my job” culture—are reinforced by the lack of legally enforceable standards, and the omission of clauses in intergovernmental service agreements between the federal government and local facilities requiring the facilities to comply with the current federal detention standards.¹³⁹

In this system of unmet and unclear responsibilities, visitors have played and continue to play a crucial gap-filling role. “Visitors can communicate to the public at large whether these facilities truly are civil,” said Sullivan, “and constantly bring home to ICE when it’s apparent that the ICE standards are not being met.”¹⁴⁰ Indeed, many of the community members and visitors interviewed for this report are active in monitoring immigration detention in New Jersey, advocating for better conditions, and filling the accountability gap.

Filling the accountability gap begins with an awareness of the day-to-day conditions at the hundreds of jails and detention centers that make up the immigration detention system—facilities that are only periodically reviewed for compliance with federal detention standards. “Our experience has been that ICE is particularly feckless. They really don’t have their numbers straight, they are unreliable; they are flying by the seat of their pants,” said Sullivan, who through the First Friends visitation program at the Elizabeth Detention Facility and through his efforts to expand the program in Hudson County jail hears the concerns and complaints of detainees on a regular basis. At all facilities, family and community visitors establish a continuous presence. Through visits with detainees, they gain an awareness of how individuals are treated within a facility and what general conditions are like for an entire detainee population. As the chart below demonstrates, visitors provide a useful source of information—information that should provide a starting point for improvements in the system.

FIGURE 3

In a system lacking in accountability, family and community visitors provide a valuable source of information and can report to the public whether or not facilities truly are complying with federal detention standards. Figure 3 provides a snapshot of some of the most recent complaints from three different facilities gathered by family and community visitors, through visits at the facilities and through correspondence. The complaints were compiled by the Middlesex County Coalition for Immigrant Rights, a community group that works locally to promote humane immigration policies. As the chart demonstrates, the facilities that ICE uses to detain immigrants often fail to meet minimal standards borrowed from the criminal justice system. ICE should encourage and promote community participation in order to more effectively monitor day-to-day conditions at facilities. Making community relations a priority would in turn help ICE improve a deeply flawed and inhumane system.

Facility	Relevant 2008 Performance Based National Detention Standard	Brief Description of Complaints	Date of Reported Violation
Essex, Hudson, Monmouth County	Standard 31: Telephone Access	Excessive phone charges even though the standard provides for "reasonable and equitable" ¹⁴¹ access to phones: \$25 for 15 minutes to New York. In March, 180 Hudson County detainees signed a petition threatening a hunger strike as a result of the expensive rates. ¹⁴² In response, Hudson gave detainees 10 minutes free per week. The first week they did receive the 10 minutes (between Mar. 21 and Mar. 28).	November 2009 to March 2010
Essex, Hudson, Monmouth County	Standard 41: Transfer of Detainees	Former Middlesex County detainees (originally about 75 men) have been transferred an excessive number of times, some at least four times through Middlesex, Monmouth, Hudson and Essex.	October 2009 to March 2010
Essex, Monmouth County	Standard 41 & 8: Transfer of Detainees and Funds and Personal Property	Detainees report food and hygiene items are routinely thrown away after a transfer, even though the standard on transfers provides that personal property will be safeguarded upon transfer. ¹⁴³	October 2009 to present
Essex County	Standard 20: Food Service	Detainees report receiving little food, served in unsanitary conditions. An expected outcome of the standard is that detainees will receive "nutritionally balanced diets." ¹⁴⁴	November 2009
Essex County	Standard 22: Medical Care	Delay in medical attention of up to two weeks and delay in receiving medications. Jail ran out of prescription cough and cold medicine in flu season. Detainee was told they had forgotten to order it. The standard provides for "timely follow up" to health care requests. ¹⁴⁵	January 2010
Essex County	Standard 22 & 41: Medical Care and Transfer of Detainees	Two week delay in receiving needed psychiatric medications on arrival after a transfer. ¹⁴⁶	October 2009
Essex County	Standard 23: Personal Hygiene	Detainees report not having pillows even though the standard provides that "each detainee will have suitable, clean bedding, linens, blankets, and towels." ¹⁴⁷ Bedding is defined for Service Processing Centers (SPC) and Contract Detention Facilities (CDF) as "one mattress, one blanket, and pillow." ¹⁴⁸	April 2010
Essex County	Standard 23: Personal Hygiene	Detainees receive only one bar of soap and one roll of toilet paper per week. No more is supplied if they run out. Those who can afford to, buy from the commissary. The standard provides that "staff . . . shall replenish supplies as needed." ¹⁴⁹	December 2009 to present

Locked Up But Not Forgotten

FIGURE 3 (CONTINUED)

Facility	Relevant 2008 Performance Based National Detention Standard	Brief Description of Complaints	Date of Reported Violation
Essex County	Standard 23: Personal Hygiene	Detainees receive only one set of clothing and limited laundry soap. ¹⁵⁰	November 2009
Essex County	Standard 23: Personal Hygiene	Bathing and toilet facilities do not meet minimum ratio of toilets and wash basins per detainee in the standard, due to overcrowding—dorms that normally house 48, house 60 detainees. ¹⁵¹	January to present
Essex County	Standard 26: Correspondence and Other Mail	Detainees report delays of up to two weeks for mail even though the standard says that incoming and outgoing mail will be held for no more than 24 hours. ¹⁵²	November 2009
Essex County	Standard 32: Visitation by Family and Friends	Only 4 booths are available for visiting detainees housed in the overcrowded dorms. Weekend lines form outside well before the starting time for visiting and families are turned away as early as 20 minutes into the 3 hour visiting session, since no space is available. This results in visits that often fall below the 30 minute minimum in the standard. ¹⁵⁴	November 2009 to present
Essex County	Standard 32: Visiting by Family and Friends	Detainees' visitor lists are limited to 7 people. Restrictive visitor lists are inconsistent with a standard that provides for visitation opportunities for immediate family, extended family, minors, and community service groups. ¹⁵⁵	November 2009 to present
Essex County	Standard 32: Visitation by Family and Friends	Detainees are denied contact visits. ¹⁵⁶	November 2009 to present
Essex County	Standard 36: Law Libraries and Legal Materials	Inadequate law library hours. The standard provides for regular access to law libraries and legal materials. ¹⁵⁷	November 2009 to present
Essex County	Standard 36: Law Libraries and Legal Materials	Detainees forced to ask jail staff to make copies; staff member claims "it's not my job." The standard provides for access to printing and photocopying. ¹⁵⁸	November 2009
Essex County	Standard 40: Staff Training	Multiple complaints of abusive, racist and derogatory language by guards. The standard on staff training provides for orientation and training regarding cultural diversity. ¹⁵⁹	November 2009
Essex County	Standard 41, 26 & 36: Transfer of Detainees, Correspondence and Other Mail, and Law Libraries and Legal Materials	One detainee did not receive notification that he lost his case and lost two weeks out of the 30 days he had to prepare his appeal. ¹⁶⁰	March 2010
Hudson County	Standard 20: Food Service	No kosher or halal meals even though the standard provides for special diets for religious reasons – part of petition signed by 180 detainees. ¹⁶¹	March 2010
Hudson County	Standard 22: Medical Care	Inadequate medical care – part of petition signed by 180 detainees. ¹⁶²	March 2010

Locked Up But Not Forgotten

FIGURE 3 (CONTINUED)

Facility	Relevant 2008 Performance Based National Detention Standard	Brief Description of Complaints	Date of Reported Violation
Hudson County	Standard 23: Personal Hygiene	Only one set of clothing issued, women reportedly wash clothing in the showers. ¹⁶³	March 2010
Hudson County	Standard 32: Visitation by Family and Friends	No weekend visits even though the standard provides for visitation on weekends and holidays ¹⁶⁴ – this was also part of the March petition signed by 180 detainees. In April, Hudson finally provided detainee with weekend visitation hours—they can now receive contact visits, Saturday, 3 pm to 7 pm	October 2009 to April 2010
Hudson County	Standard 32: Visitation by Family and Friends	Excessive delays in creating visitor lists and updates were only permitted every 90 days.	January to February 2010
Hudson County	Standard 40: Staff Training	Detainees report a mentally ill detainee was pepper sprayed rather than given medical treatment.	March 2010
Hudson County	Standard 41: Transfer of Detainees	Detainee reports legal documents did not accompany him upon transfer from Varick St. to Hudson. ¹⁶⁵	February 2010
Monmouth County	Standard 5: Classification System	Female immigration detainees do not have a separate dorm from the criminal inmates. ¹⁶⁶	January to present
Monmouth County	Standard 19: Disciplinary System	A South Asian detainee reports guards have been racist towards him, and have called him a terrorist. ¹⁶⁷	March 2010
Monmouth County	Standard 20: Food Service	Inadequate amount of food—detainees complain of hunger. ¹⁶⁸	November 2009 to present
Monmouth County	Standard 22: Medical Care	Inadequate supply of medications. A visitor reports, "If you were on medications/ prescriptions before entering, you may not be able to continue taking those once detained." ¹⁶⁹	March 2010 to present
Monmouth County	Standard 32: Visitation by Family and Friends	Visit times vary but are usually 15 to 20 minutes- below the 30 minute minimum in the standard. ¹⁷⁰ Families, especially those from New York, don't usually visit because it's too long a commute for such a short visit.	November 2009 to present
Monmouth County	Standard 15,19 & 32: Special Management Units, Disciplinary System & Visitation by Family and Friends	Detainees must wait 90 days before they can get a contact visit and contact visits are denied if a detainee has had any "write ups." ¹⁷¹	November 2009 to present
Monmouth County	Standard 32: Visitation by Family and Friends	Husband of detainee reports denial of contact visit because detainee refuses to take H1N1 vaccine.	March 2010
Monmouth County	Standard 36: Law Libraries and Legal Materials	Law library is available one hour per week though the standard calls for no less than five hours per week. ¹⁷²	November 2009 to present
Monmouth County	Standard 36: Law Libraries and Legal Materials	Copying time-sensitive documents for legal cases takes four days. ¹⁷³	March 2010
Monmouth County	Standard 40: Staff Training	Verbal abuse of detainee. ¹⁷⁴	January 2010

Visitation as a Source of Improvement: Advocating for Humane Conditions

“Even volunteers who were there only to provide companionship and a sense of normalcy for the detainees were surprised at what they learned about conditions inside, and at times couldn’t resist offering whatever assistance they could. One of the most disturbing situations was when a detainee was punished with six days on suicide watch—no clothing, no bedding, no mattress, just a steel bed in a cold room. The volunteer had to go back twice before getting a visit. When he finally was able to visit, the detainee told him one more day and he wouldn’t have been able to take it.”¹⁷⁵

Karina Wilkinson, Co-Founder,
Middlesex County First Friends Visitation Program

Armed with information about day-to-day conditions at jails and detention centers, visitors can and do take action to remedy some of the shortcomings of the current immigration detention system. Visitors can advocate on behalf of an individual in detention, or they can push to improve conditions on behalf of an entire detainee population. As a result of information gained from visits and correspondence with detainees, visitors and community groups profiled in this report were able to resolve emergencies, remedy a number of standards violations and improve the day-to-day experience of detainees at various facilities, including:

- Ensuring that detainees were receiving necessary medication in light of ICE and facility negligence in providing timely delivery of medications
- Improving conditions at the facilities, from ensuring that detainees received proper bedding to putting pressure on facilities to provide more nutritious meal options
- Putting pressure on facilities to increase access to family and community. In Hudson County, visitors were instrumental in putting pressure on the county to amend the county jail’s restrictive and isolating visitation

policy, which imposed a strict quota of 5 approved visitors that could only be reviewed every 90 days

As the visitors profiled in this report attested, however, reporting standards violations and detainee grievances involved delicate considerations. Beyond verifying and corroborating complaints, visitors were often concerned that reporting grievances on behalf of specific detainees would result in retaliation. Such concerns reflect how in the current immigration detention system, visitors are a valuable source of information and at the same time are dependent on authorities for access and must strike a careful balance.

I. MEDICAL CARE: DELAYS IN THE PROVISION OF MEDICATIONS

The current immigration detention system’s disregard for the individual is often most salient in cases of detainees who have serious medical needs. For these individuals, detention disrupts medical treatment and other routines that are absolutely critical for their health. Maintaining these essential routines from jails or facilities that severely restrict access to the outside world presents a challenge above and beyond those they already have to contend with by virtue of being in detention. Detainees who suffer from serious medical conditions need access to doctors, relatives and others who know precisely what their medical needs are—from what medications they need to be taking on a regular basis to what types of food they should or should not be eating. For these detainees, visitors can and do play a crucial gap-filling role. In our fieldwork, we learned of inordinate delays in the provision of necessary medications, delays that compromised the health of detainees. In these cases, communication with family and community members played an instrumental role in the resolution of emergencies—but as the stories highlight, resolution required communication on multiple levels, especially in the face of ICE and jail inaction.

Middlesex County First Friends volunteers spoke about one detainee they visited at the Middlesex County jail who suffered from a debilitating heart condition that required special medications. Wilkinson explained that the detainee initially brought his heart medication with him but it was confiscated as contraband. As soon as they learned about the detainee’s struggles in getting his medications, volunteers reached out to the detainee’s health care provider to get more information. One volunteer, Daniel Cummings, spoke with a nurse who in turn followed up with the jail. When the volunteer visitors brought the problem to the jail’s attention, they remember

getting resistance from a jail official who could not believe that the volunteers had gotten information about the detainee's health record from his care provider. Even so, soon after the volunteers brought the problem to the jail's attention, the jail provided him with the necessary medication, albeit a generic version of the medication that the detainee tried to bring into the jail. "But he had been without his medications for perhaps 4 to 6 weeks," said Barron, who advocated on the detainee's behalf. "It took over a month of his requests for a doctor and intervention by a volunteer group before a doctor at the facility saw him and prescribed a generic version of his heart medication."¹⁷⁶

A number of the people we interviewed also spoke about one detainee who was denied his psychiatric medication for days in the wake of a transfer from Middlesex County jail to another jail in New Jersey. In his case, the concerted efforts of family and community visitors also made a difference. "Several of us peppered the system, calling everyone we could—we called ICE, his sister called as well; we felt it took forever," said Stanford, a community visitor and family friend who took action on this case. "His sister was really at her wits end. He finally did get his medications and he was OK, but he spent several days in agony and that made his sister feel really bad because there was nothing that she could really do. Here she was trying to navigate this system and getting a roadblock, but it required a whole lot of other people peppering them. Who knows which one of our calls made a difference?"¹⁷⁷ The federal detention standard on transfers provides that "[t]ransfer of detainees will be accomplished safely and securely, particularly those with special health care concerns including appropriate medical information."¹⁷⁸ Yet as this story highlights, this is not always the case and the health care concerns of detainees can go ignored. In these cases, access to the outside world is crucial.

II. ALLEGATIONS OF PHYSICAL ABUSE¹⁷⁹

For detainees who have suffered mistreatment or abuse, pursuing a grievance without the support of others can be an intimidating task. They may fear retaliation or feel that they have no voice. Here too visitors play a gap-filling role—visitation facilitates the pursuit of grievances and it can provide a check against abuse, or at the very least bring instances of abuse to light. Family and community visitors provide detainees with corroboration and with the confidence needed to take action on a complaint. They can also pursue advocacy on multiple fronts, in ways that are impossible from within a jail or detention

center—they can bring a complaint to the attention of a jail, to local government officials, to ICE, and to the media. More importantly, they provide detainees with validation—with a sense that someone actually cares about an indignity that they have suffered.

The Middlesex County First Friends volunteers interviewed for this report spoke about the difficulties the program faced in pursuing a grievance on behalf of a young man who was hit by a Middlesex jail guard. "He was put in lockdown, along with a friend, for throwing a roll of toilet paper as a football. They hadn't been given recreation that day so they were just clowning around in the dorm," said Barron.¹⁸⁰ The federal detention standard on recreation provides that detainees must have access to recreation on a daily basis.¹⁸¹ "When they were told to stop, one guard got in [his] face and then took him to another pod which had individual cells. That's where he hit him." Barron described how the jail stifled the pursuit of a grievance, even in the face of evidence. "The sergeant on duty had the wherewithal and the presence of mind to send him down to get his picture taken and down to the doctor's office. The nurse kept trying to tell him that it was a medical condition, due to an eye infection, that it was a sty. They were trying to get him to say it was something else. When he filed a complaint with internal affairs, the pictures disappeared, so we knew there was collusion going on."

Despite the documentation by detainee and the community visitors, Barron said that they hit a dead end with the grievance. "They said it was a case of 'he said-she said' despite the photos, and that there was no proof, so they closed the case." Nonetheless, the visitors took the complaint outside of the jail and ensured that at the very least the detainee's voice was heard. "I sent it everywhere, [he] sent it everywhere," said Barron. "We looked at the grievance procedure on the ICE website, and we sent the complaint to everyone—DHS, Scott Weber in the Field Office, Janet Napolitano, everyone. Now [he] is back in Jamaica, so it makes everything harder. The only thing we are really left with is to create public pressure at the county level, that we have these rogue guards beating people up." Such public pressure included submitting testimony to the New Jersey State Assembly, which recently considered criminal justice reforms, highlighting conditions at the jails and instances of abuse.¹⁸²

III. GENERAL CONDITIONS

As part of the Middlesex County First Friends visitation program, volunteers were encouraged to identify

violations or respond to detainees' concerns. Cummings remembers being shocked at learning that there were only 5 pillows available for over 100 immigration detainees. "They developed a seniority system," said Cummings, "where the most senior detainees got the pillows."¹⁸³ "And many of these things were provided for and mentioned in the National Detainee Handbook," said Barron, who collected complaints from the detainees and brought them to the attention of the jail liaison. "Like that they get proper bedding or that they get enough personal hygiene items."¹⁸⁴ After the visitors brought the complaint to the jail staff, all the detainees in the dorm got pillows, albeit for the brief period of time before the county terminated its detention contract. Melendez was struck by "how little things matter so much when you have nothing—the pillows and the little battles, meant a lot to them, they really appreciated it."¹⁸⁵

A complaint that we routinely got in our fieldwork—through visits with people detained at the jails profiled in this report, communication with relatives of detainees, and interviews with community groups—was about the lack of sufficient or nutritious food, the high cost of food sold in commissaries, and hunger among detainees who could not afford to purchase more food at commissaries. At Middlesex, "I think they were given bologna every day, some sort of really dry pasta, it sounded really nasty. We said something and we heard in a few days that they started serving chicken. That made a difference to them," said Melendez. "But religious differences were not really respected," added Melendez. "They had different color trays for different religious groups, but when they looked at the food it was the same food!"

When Middlesex County terminated its agreement with ICE in the Fall of 2009, Middlesex detainees were transferred to other jails in New Jersey. In the wake of the mass transfer, Middlesex County First Friends volunteers learned that at the Hudson County jail, detainees and inmates were restricted to a list of 5 pre-approved visitors, which could only be amended once every 90 days. To follow up with a former Middlesex detainee who had been transferred to Hudson County, volunteers, not knowing that Hudson County restricted detainees and inmates to 5 pre-approved visitors, sent him a letter the first week of November asking him to add their names to his visitor list. After months of waiting, one volunteer made it on to the visitor list and when she finally visited on February 3, 2010, she learned that she was the first person to visit him in the four months since the Middlesex County First Friends visitation program ended in September of 2009. "The volunteer told me that he described how lonely he was and how much he wanted

news of his family. He had kids, including a 10 year old daughter that he was desperate to see, so when Hudson had him fill out a visiting list limited to 5 names, he put his family down, even though he knew they probably would not visit him," said Wilkinson, who along with other MCFF members spent months trying to locate and follow-up with the Middlesex detainees after the transfer. Upon learning about this harsh 5 person quota, community members put pressure on the Hudson County jail and administration through media advocacy. In February of 2010, the Hudson County jail changed its isolating visitation policy for immigration detainees—detainees can now update their visitor lists whenever they want and add as many names as they wish.¹⁸⁶

* * * *

The stories and complaints gathered for this section highlight the nexus between community participation and promotion of accountability—oversight, transparency, and improvement. Visitation gives family and community members first-hand access to day-to-day conditions at detention facilities and thus provides a valuable source of information. Where visitors notice problems with conditions, they can inform jail staff or ICE officials and take action to remedy the situation. They can pursue advocacy on behalf of an individual detainee or take action on behalf of a larger group of detainees. They can inform the public at large whether the facilities fail to meet the objective of "civil detention" by subjecting immigration detainees to inhumane and substandard treatment and conditions. In these and other ways, communities help fill a major accountability gap in the current immigration detention system. If ICE is serious about promoting accountability and truly improving a deeply flawed system, it should make improving access to family and community and community relations top agency priorities. ICE Field Offices in particular could play a more proactive role in addressing the concerns of family and community members. Increasing accountability can begin with increasing access to the public—community members have a right to know what is going on in their backyard and family members a right to know how a relative is being treated in detention.

conclusion : policy recommendations

The Obama administration should be lauded for making long-term immigration detention reform a priority. But the truth is that immigration detainees deserve fair and humane treatment now and until meaningful reforms are enacted, thousands of people will continue to be trapped in a system that lacks fairness, accountability, and robs people of their humanity. Continuing to detain and deport people in a system so flawed, wasteful, and inhumane is inexcusable and at odds with the purposes of immigration detention and the agency's commitment to create a truly civil detention system.

We propose several measures that ICE can take immediately in order to increase the degree of access that immigration detainees have to the outside world. The degree of access to family, community and the public at large is a measure of any custodial system's "civility." Many of the facilities that detain immigrants, particularly state and local jails such as the ones profiled in this report, simply do not provide the degree of access to the outside world inherent in the idea of "civil detention." For immigration detainees and their loved ones, restrictive jail visitation policies effectively amount to punishment. Unlike a criminal sentence, immigration detention is uncertain and indefinite, and immigrants can languish in a jail or detention center if they choose to fight against detention and deportation. This is a process that can take months, sometimes years. And in the mean time, family and community members have to contend with arbitrary and inhumane rules that limit human contact to just 20 to 30 minutes at a time, provide unreasonable visitation hours, and limit the number of people that can visit—not to mention transfers to and from these facilities, which further disrupt family and community relations.

We also propose long term goals aimed at limiting the use of immigration detention, a drastic measure that should only be used in certain circumstances, and promoting fairness in what is currently an unfair and unjust system. Mandatory detention creates a culture that totally disregards the individual, resulting in the detention of people who do not pose a flight risk or danger to the community. It also creates a culture that disregards and denigrates liberty, a fundamental American value. Not all immigration detainees are deported and many are eventually released back into their communities after winning their cases. Yet throughout the process of challenging

deportation, immigrants can continue to be detained needlessly, resulting in prolonged separation from family and community and waste of taxpayer resources. In a truly civil detention system, liberty should be the default rule, and detention an option of last resort. For both interim and long-term reforms, ICE should set clear benchmarks in order to measure the progress of immigration detention reform.

Proposals for Immediate Reforms

>>>> As it transitions to the creation of a civil detention system, ICE should cease detaining immigrants in jails that unduly restrict access to family and community through harsh visitation policies. This would include jails that do not provide weekend or evening visitation hours, jails where visitation booths are so limited in number that visitors have to wait hours for a visit that may only last 15 to 30 minutes, and jails that require the use of visitor lists that limit the number of people that may visit a detainee.

For the reasons explored in this report, access to the outside world is extremely important in the context of immigration detention. Not only is immigration detention indefinite in nature, resulting in prolonged isolation from family and community, but it also creates substantial hurdles for people who have legitimate claims for relief against deportation. Jail rules that severely limit intercourse and communication with the outside world are arbitrary and inhumane in a system where an overwhelming majority of people have no attorney. Relief from deportation often requires proof of substantial ties to the U.S., work history, and other positive equities. For people who fear persecution in their home countries, relief can require the testimony of expert witnesses or proof of current country conditions or of other facts that may require communication across national boundaries. Gathering all of the facts necessary for a strong claim for relief requires generous access to the outside world. Visitation with family and community also improves the morale of immigration detainees, who can suffer mentally and physically after months of languishing in detention.

>>>> ICE should issue a new standard, to be followed up by a binding regulation, which captures all of the values and benefits of visitation explored in this report.

A new standard or regulation regarding visitation and access to the outside world should require facilities to: (1) provide weekend, evening and holiday visitation hours in order to accommodate the needs of working families and

school-aged children; (2) bar the application of restrictive visitor lists and quotas against immigration detainees; (3) provide at least one hour for general visits and more generous limits for families that have to travel long distances to visit a relative in detention and for detainees who have no attorney and are representing themselves; (4) provide immediate access to contact visits; (5) permit all family members to visit someone in detention, regardless of immigration status; and (6) encourage community participation, particularly in the form of visitation programs that can provide detainees with companionship and moral support. A new standard or regulation should also prohibit facilities from denying visitation privileges as a form of discipline.

>>> ICE should issue a new standard, to be followed up by a binding regulation, which would mitigate the many disruptive effects of transfers. It should also issue directives to jails that detain immigrants establishing clear protocols for transfers. In the event of a transfer, a detainee should be given advance notice and ample opportunity to notify attorneys, family, and community members. Furthermore, proximity to family, community, and legal counsel should be a primary consideration in every decision to transfer.

The current federal detention standard on transfers reflects a policy and culture that devalues family and community ties. The standard provides for after-the-fact notice of a transfer, denying detainees the opportunity to notify family, friends, and lawyers and depriving them of the opportunity to say goodbye. ICE should not leave detainees in the dark—there is no legitimate reason for doing so. Community members interviewed for this report attested that some detainees have been transferred as many as four times across different jails in New Jersey, each with different rules regarding access to the outside world. At Monmouth County jail, for example, there is no limit on the number of people that can visit a detainee, whereas at Essex County jail detainees are forced to fill out a visitor list that limits detainees to 7 pre-approved visitors and which can take a while to set up. Transfers disrupt family and community relations and result in other complications for detainees, such as delays in the provision of necessary medications and the loss of property and legal documents.

>>> ICE should take remedial measures to counter the negative effects of visitation policies at state and local jails. Thirty minute visits are just not enough to sustain the morale of immigration detainees and to provide them with the type of access needed in a system that does not provide legal

counsel. Furthermore, not all of the jails profiled in this report provide evening and weekend hours and opportunities for contact visits. For working families and for children, evening, weekend, and contact visitation opportunities are crucial.

Such remedial measures should include incorporating the cost of increasing visitation hours (adding a weekend shift, for example) into the cost of detention. ICE Field Offices should also take a more proactive role in improving access to the outside world for immigrants detained in jails. This could include issuing directives to the jails asking them to bar the application of restrictive jail rules against immigration detainees and provide more opportunities for communication with the outside world. As a party to countless agreements with jails, ICE should demand a level of care for detainees that at the very least meets federal detention standards. This would create more uniformity across facilities regarding access to the outside world. Some facilities, for example, do not permit detainees contact visits, a harsh rule for detainees who have sick relatives or young children, whereas others require a 90 day wait and a clean disciplinary record. Furthermore, some facilities limit detainees to visits from a few people only, whereas other facilities do not impose



limits on the number of people that can visit. The degree of access to family and community that detainees receive thus turns on where they are detained, which is unfair on its face. Transfers to and from facilities that have vastly different rules aggravate this unfairness and disrupt access to the outside world.

>>> ICE should ensure that immigration detainees truly have “reasonable and equitable” access to telephone services by incorporating the cost of telephone calls into the cost of detention. At facilities that detain immigrants pursuant to IGSA with the federal government, ICE should defray the costs of expensive phone rates negotiated by localities or require low-cost arrangements. At facilities that are managed by ICE, ICE should contract with service providers that charge reasonable rates or else subsidize the costs of phone calls.

Restrictive visitation policies at state and local jails that ICE uses for immigration detention make the need for reasonable, low-cost telephone access urgent. Many immigrants detained in these facilities cannot visit with family and community members on a regular basis, and visitation provides not only companionship and moral support, but also helps detainees who are forced to represent themselves in court. In a system where there is no right to counsel and where 84% of immigrants in detention have no attorney, expensive telephone rates are arbitrary, inhumane, and prejudicial. Pro se detainees need ample access to family and community members in order to work on complex legal cases that often require proof of deep family and community ties and work history. A tax on the ability to maintain communication with the outside world hampers detainees' ability to mount solid defenses to removal. Lastly, the availability of low-cost telephone services is important given the indefinite and uncertain nature of immigration detention. Immigrants can spend months, sometimes years in detention, as they fight complex legal battles. This amounts to prolonged separation from family members. Detained parents especially need to be able to communicate with their families and children on a regular basis.

>>> ICE should hold trainings for staff at state and local jails to educate them about the special needs of immigration detainees, the complexity of immigration law and the difficulties of self-representation from within detention. ICE can work in partnership with NGOs to provide these trainings.

Jail employees are often unaware of the differences between criminal incarceration and immigration detention, and of the unique legal hurdles and emotional trials

immigration detainees face. Detention is not meant to be punitive. And unlike people serving criminal sentences, immigration detainees are not facing a definite amount of jail time, after which they will return to their communities. Their fate is much more uncertain. Some will eventually be granted relief and will return to their communities, while many others will be deported. Some will spend months, even years in detention fighting complex legal cases, most likely without counsel. There is a good chance they will be transferred to another facility without advance notice before their case is resolved. They may have lived in the U.S. for many years and have strong ties to their communities here. They may be afraid to return to their countries because they may face persecution, torture, or death there. Trainings would help jail employees understand these and other issues.

>>> ICE staff should be available on a regular basis to address the concerns of family and community members visiting someone in detention. ICE Field Offices should make community relations an organizational priority. Increased community participation would in turn promote the values of accountability—oversight, transparency, and improvement.

If ICE is serious about increasing accountability in the immigration detention system, it needs to be more attentive to the day-to-day conditions at all facilities that it uses for immigration detention. This can be accomplished by promoting community participation—at the facility level by promoting the establishment of volunteer programs, and the organizational level by promoting dialogue between ICE Field Offices and community groups and local NGOs that have information about day-to-day conditions at facilities. Increased community participation will enable ICE to take speedy corrective measures in the event of emergencies and to ensure that detainees are receiving an appropriate level of care.

>>> ICE should assess for risk of flight or danger to the community at every step of the detention process—from the point of arrest, to admission to a facility, and in the event of a transfer. Evaluations of risk also need to be reviewable—by an immigration judge or another neutral party. ICE should operate under a presumption of liberty that is recognized across the board. No one should be detained unless there is a valid reason to detain.

Accomplishing meaningful detention reform first requires recognizing that detention—whether in a converted hotel or in a county jail—is a deprivation of liberty that creates countless and unnecessary hardships for detainees, their families, and their communities. Deten-

tion separates families for prolonged periods of time and creates additional unfairness in a system where there is no right to counsel, obstructing the pursuit of legitimate claims for relief. A commitment to reform is simply incompatible with a commitment to detaining on a “massive scale.” A numbers culture leads to the overuse of detention, in cases where it isn’t necessary or is inhumane. ICE should screen for risk of flight or danger at every stage of the detention process and ensure that in each case, detention is justified. Detainees should have the opportunity to seek review of such decisions and be provided with an opportunity to show strong ties to their community and positive factors or hardships that make liberty essential in their cases.

Proposals for Long-Term Reforms

>>> Congress should amend the Immigration and Nationality Act and repeal the mandatory detention provision, making liberty the default rule. No one should be detained who does not pose a flight risk or danger to the community. Mandatory detention without the possibility of an individualized bond determination is costly, inhumane, and at odds with American notions of liberty and fairness.

Unless a noncitizen poses a flight risk or danger to the community—and the government can prove that this is the case—he or she should be given the opportunity to prepare a defense outside of detention, either through an alternative to detention or from home and with access to the resources required to mount a successful fight against deportation. Furthermore, mandatory detention creates a culture that disregards the individual circumstances of every person that is funneled into the detention system. People with grave illnesses or with young children, for instance, are often detained—without regard to the circumstances that make liberty extremely urgent in their cases. Such a culture has also generated much controversy for ICE—more than 100 people have died in ICE custody and stories regarding inadequate access to medical care have garnered much media attention.

>>> Congress should provide counsel for immigrant respondents, starting with immigrants in detention. Preparing complex legal cases from within a facility that unduly restricts access to the outside world and that was designed for the confinement of people who do have a right to counsel, is a nearly impossible task. Self-representation requires ample access to the resources that immigration lawyers ordinarily rely on in representing clients.

For immigrants facing deportation, justice is both elusive and expensive. Not only do immigrant families have to be prepared to pay thousands of dollars for an attorney, but they also have to be ready to pay hefty fees for relief applications—akin to charging criminal defendants expensive fees for filing motions to suppress evidence obtained in violation of a constitutional right. For immigrants facing deportation while in detention, barriers to justice are even more pronounced. Detainees not fortunate enough to secure pro bono counsel must pay a private attorney if they want representation, and must do so without a steady source of income. The vast majority of immigrants in detention end up representing themselves, in a context that fails to provide them with the level of access to the outside world needed to prepare a strong legal case. Some detainees receive Legal Orientation Programs (LOPs) that provide an overview of the immigration court system and adjudication process, but when it comes to actually preparing an immigration case, every step of the process requires much more than an LOP—detainees need generous access to and communication with the outside world. Discretionary forms of relief like cancellation of removal, for instance, generally require a showing of substantial equities—long ties to the U.S., work history, among other things. In a system where successfully staving off deportation often requires proof of substantial equities, or of dangerous conditions in one’s home country, detaining people in a system that affords little access to the outside world makes no sense and runs contrary to American notions of fairness and due process. The best and most humane solution is to release those who are detained. But if they are detained, immigration detainees should receive free legal representation.

appendix : glossary of terms

Asylum

Protection by the U.S. government, available to those who would be persecuted in their home countries based on their race, religion, nationality, membership in a particular social group, or political opinion, and can show that the government of their home country will not, or cannot, protect them. Those granted asylum are allowed to remain in the U.S., become permanent residents, and eventually become citizens if they fulfill all of the requirements.

Bond

An amount of money posted to the court to secure the release of a detainee, and guarantee his or her appearance in court when required.

CAT

Convention Against Torture. CAT is an international treaty, under the review of the United Nations, which aims to prevent torture around the world. It does not allow states to return people to their home countries if there is reason to believe they will be tortured there. Non-citizens who are granted CAT claims cannot be deported to their home countries.

212(c)

A form of relief from removal, which was repealed in 1996, but is still available to some non-citizens who are removable because of convictions incurred prior to 1996.

Cancellation of Removal

A form of relief from removal. Lawful Permanent Residents (“LPR”) can apply for cancellation if they have been LPRs for at least five years, resided in the U.S. for at least seven years, and have not been convicted of an aggravated felony. Non-permanent residents can apply for cancellation if they have lived in the U.S. for at least 10 years, can show good moral character, have not been convicted of certain offenses, and can show that their deportation would result in exceptional and extremely unusual hardship to a U.S. citizen or LPR spouse, parent or child.

Civil Detention

Administrative detention intended to hold, process and prepare individuals for removal. It is not meant to be punishment, but meant solely to ensure that non-citizens

will show up for their immigration proceedings, and to protect the public from those who pose a safety risk.

Community Visitation

Visitation by members of the community or community based groups.

Contact Visits

Face to face visits. Most visits with detainees are conducted behind glass, with the detainee and visitor communicating through a phone or mesh in the glass.

“Criminal Aliens”

Often used to refer to all non-citizens with any type of criminal arrest.

Detention

See Civil Detention, above.

DHS

U.S. Department of Homeland Security. This is the third largest Cabinet department in the U.S. Federal Government, and includes 22 governmental organizations. In 2003 DHS absorbed the Immigration and Naturalization Service (INS) and created Immigration and Customs Enforcement (ICE), Customs and Border Protection; and Citizenship and Immigration Services.

IGSA

Intergovernmental Service Agreements. These are contracts between ICE or the U.S. Marshals, and state or local jails, authorizing those facilities to hold ICE detainees.

INA

Immigration and Nationality Act—the immigration law of the U.S.

Mandatory Detention

Detention without the possibility of an individualized bond hearing. Section 236(c) of the INA lists the categories of people who are subject to mandatory detention. Those who are subject to mandatory detention cannot challenge their detention, but may request what is called a “Joseph Hearing” to determine whether they are correctly included in the mandatory detention statute.

NTA

Notice to Appear. The document an immigrant re-

ceives from DHS ordering them to appear before an immigration judge on a certain day, and informing them of the nature of the proceedings against them.

PBNDS

ICE's "Performance Based National Detention Standards." They can be found at <http://www.ice.gov/partners/dro/PBNDS/index.htm>. ICE generates these standards, but they are not mandatory. The current standards were published in 2008.

Pro Bono

Free or reduced cost legal services done for the public good.

Pro Se

Self representation.

Relief

Relief from deportation. When a person who is removable (may be repatriated to their home country) is granted permission to remain in the U.S.

Removal

The involuntary repatriation of non-citizens.

Shared Use Facilities

Jails that hold both county prisoners as well as ICE detainees.

Status

Refers to immigration status, such as "citizen," "permanent resident," or "visa holder." "Without status" or "undocumented" refers to non-citizens who entered the U.S. without inspection, or overstayed their visas.

T-Visa

A type of visa available to victims of human trafficking.

U-Visa

A type of visa available to victims of certain crimes who meet the five eligibility requirements.

VAWA

The "Violence Against Women Act," which provides immigration relief for certain victims of domestic violence who are married to or are a child of a U.S. citizen or LPR who is abusive.

Visitor Lists

Restrictive lists required by some jails, which impose a quota on the number of people a detainee or inmate can receive visitors from.

Withholding of Removal

A status which is similar to asylum, but not as secure. It is available to people who can show that it is "more likely than not" that they would face persecution if returned to their home country. Withholding allows people to remain in the U.S. and work legally, but not to apply for permanent residence.

endnotes

1) Dora Schriro, Dep't of Homeland Sec., Immigration Detention Overview and Recommendations 2 (2009), available at http://www.ice.gov/doclib/091005_ice_detention_report-final.pdf. For an immigrant detained following a final order of removal pursuant to 8 U.S.C. § 1231, continued detention beyond the statutory "removal period" is lawful only where reasonably necessary to secure the immigrant's removal. *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001).

2) *Demore v. Kim*, 538 U.S. 510, 528 (2003) (explaining the purposes of pre-conclusion detention in the immigration context).

3) *Id.* at 528–29 (noting that detention pursuant to the mandatory detention statute is of short duration and that removal proceedings are completed at a median of 30 days).

4) Schriro, *supra* note 1, at 2.

5) *Id.* at 10.

6) *Id.* at 2–3.

7) *Id.* at 17. ("The primary basis for classification is criminal history.")

8) *Id.*

9) Jenna Greene, ICE Warms Up to Detainees, NAT'L L.J., Feb. 9, 2010, available at http://www.law.com/jsp/article.jsp?id=1202442848655&ICE_Warms_Up_to_Detainees (quoting John Morton, Assistant Secretary of Homeland Security for Immigration and Customs Enforcement (ICE)) (last visited Apr. 15, 2010).

10) Schriro, *supra* note 1, at 2.

11) U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, BUDGET FACT SHEET – FISCAL YEAR 2005 2 (2006), available at <http://www.ice.gov/doclib/pi/news/factsheets/2005budgetfactsheet.pdf>. (last visited Apr. 6, 2010).

12) U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, BUDGET FACT SHEET – FISCAL YEAR 2010 (2009), available at <http://www.ice.gov/doclib/pi/news/factsheets/2010budgetfactsheet.doc> (last visited Apr. 6, 2010).

13) See *Gideon v. Wainwright*, 372 U.S. 335, 342–45 (1963) (holding that there is a Sixth Amendment right to counsel in criminal cases for defendants who cannot afford their own attorneys).

14) Telephone interview with Amy Gottlieb, Immigrant Rights Director, American Friends Service Committee – New York Metropolitan Region (Mar. 19, 2010).

15) BUDGET FACT SHEET, *supra* note 12, at 2.

16) Alicia H. Sitren, Hayden P. Smith, Brandon K. Applegate, & Laurie A. Gould, Jail Visitation: An Assessment of Organizational Policy and Information Availability, 5 SW. J. CRIM. JUST. 207, 208 (2008).

17) Jill Gordon, Are Conjugal and Familial Visitations Effective Rehabilitative Concepts?: Yes, 79 PRISON J. 119, 120 (1999)

18) Megan Comfort, Punishment Beyond the Legal Offender, 3 ANN. REV. L. SOC. SCI. 271, 279 (2007). See also, Joyce A. Arditti, Jennifer Lambert-Shutte, & Karen Joest, Saturday Morning at the Jail: Implications of Incarceration for Families and Children, 52 FAM. REL. 195, 202 (2003) ("[I]ncarceration does social and economic harm that goes well beyond the individual inmate and extends to his or her family").

19) John Hagan and Ronit Dinovitzer, Collateral Consequences of Imprisonment for Children, Communities, and Prisoners, 26 CRIM. JUST. 121, 123 (1999).

20) Arditti, Lambert-Shute, & Joest, *supra* note 18, at 195.

21) Comfort, *supra* note 18, at 272.

22) THE URBAN INSTITUTE, FACING OUR FUTURE: CHILDREN IN THE AFTERMATH OF IMMIGRATION ENFORCEMENT viii (2010), available at http://www.urban.org/UploadedPDF/412020_FacingOurFuture_final.pdf.

23) See, e.g. Human Enforcement and Legal Protections (HELP) Separated Children Act, H.R. 3531, 111th Cong. (2009).

24) James Austin, Kelly Dedel Johnson, & Ronald Weitzer, U.S. Dep't of Justice, Office of Juvenile Justice and Delinquency Prevention, Alternatives to the Secure Detention and Confinement of Juvenile Offenders 2–3 (2005).

25) *Id.* at 1.

26) *Id.* at 2.

27) *Id.*

28) See generally, ANGELA DAVIS, ARE PRISONS OBSOLETE (2003).

29) See generally, AMNESTY INTERNATIONAL, JAILED WITHOUT JUSTICE: IMMIGRATION DETEN-

Locked Up But Not Forgotten

TION IN THE USA (2009), available at <http://www.amnestyusa.org/immigration-detention/immigrant-detention-report/page.do?id=1641033> (exploring the problems in the immigration detention system and promoting alternatives to detention and other release options).

30) Virginia V. Neto & LaNelle Marie Bainer, *Mother and Wife Locked Up: A Day with the Family*, 63 *THE PRISON J.* 124, 140 (1983) ("Contact visits have become the rule; visiting environments, both indoors and outside in picnic or play areas, have been developed or modified to provide a normalized atmosphere for mother-child interaction.").

31) Susan Elan, *Prison Brings Mothers, Children Together*, *J. NEWS*, August 30, 2009, available at http://www.docs.state.ny.us/NewsRoom/external_news/2009-08-30_BedfordHills_Alon.pdf (last visited Apr. 15, 2010) (profiling the Children's Center at the Bedford Hills Correctional Facility).

32) Reginald A. Wilkinson & Tessa Unwin, *Visiting in Prison*, in *PRISON AND JAIL ADMINISTRATION: PRACTICE AND THEORY* 281, 281 (Peter M. Carlson & Judith Simon Garrett eds., 2006).

33) William D. Bales & Daniel P. Mears, *Inmate Social Ties and the Transition to Society: Does Visitation Reduce Recidivism*, 45 *J. RES. CRIM. DELINQ.* 287, 306 (2008).

34) Richard Tewksbury & Matthew DeMichele, *Going to Prison: A Prison Visitation Program*, 85 *PRISON J.* 292, 296 (2005).

35) Sitren, Smith, Applegate, & Gould, *supra* note 16, at 217.

36) *Id.*

37) Megan L. Comfort, *In the Tube at San Quentin: The "Secondary Prisonization" of Women Visiting Inmates*, 32 *J. CONTEMP. ETHNOGRAPHY* 77, 78 (2003).

38) *Id.* at 92.

39) Tewksbury and DeMichele, *supra* note 34, at 308.

40) Jill Gordon, *Are Conjugal and Familial Visitations Effective Rehabilitative Concepts?: Yes*, 79 *PRISON J.* 119, 122 (1999) ("Many institutions are not located in close proximity to the inmates' areas of residence, so the families often spend more time traveling to the institutions than visiting with the inmates. Thus, for many, the cost outweighs the benefit.").

41) Sitren, Smith, Applegate, & Gould, *supra* note 16, at 213.

42) Schriro, *supra* note 1, at 2.

43) Telephone Interview with Angela Joseph, *Families for Freedom* (Mar. 18, 2010).

44) Mr. Joseph's story received some media coverage. See, e.g., Tina Kelley, *Veteran Facing Deportation Wins Hearing for Freedom*, *N.Y. TIMES*, May 23, 2007, available at <http://www.nytimes.com/2007/05/23/nyregion/23vet.html> (last visited Apr. 6, 2010).

45) *Joseph v. Attorney Gen.*, 465 F.3d 123, 129 (2006) (holding that a conviction for transporting or receiving firearms purchased or obtained outside respondent's state of residence was not an "aggravated felony").

46) See Kelley, *supra* note 44.

47) Phone Interview with Pauline Ndzie, *AFSC – Newark* (Mar. 23, 2010).

48) U.S. DEPT OF HOMELAND SECURITY, *OPERATIONS MANUAL ICE PERFORMANCE BASED NATIONAL DETENTION STANDARDS: VISITATION 6* (2008) ("Visits shall be permitted during set hours on Saturdays, Sundays, and holidays, and, to the extent practicable, the facility shall accommodate the scheduling needs of visitors for whom weekends and holidays pose a hardship.").

49) Interview with Karina Wilkinson, Co-Founder, Middlesex County Coalition for Immigrant Rights, in *New Brunswick, N.J.* (Apr. 15, 2010).

50) U.S. DEPT OF HOMELAND SECURITY, *OPERATIONS MANUAL ICE PERFORMANCE BASED NATIONAL DETENTION STANDARDS: DETAINEE SEARCHES 1* (2008).

51) *Id.*

52) U.S. DEPT OF HOMELAND SECURITY, *supra* note 48, at 2 (2008) (citing American Correctional Association 4th Edition Standards for Adult Local Detention as a source of content for the visitation standard).

53) *Id.* at 2 ("The minimum duration for a visit shall be 30 minutes.").

54) *Id.* at 6 ("Visits shall be permitted during set hours on Saturdays, Sundays, and holidays, and, to the extent practicable, the facility shall accommodate the scheduling needs of visitors for whom weekends and holidays pose a hardship.").

55) *Id.* ("Where staff resources permit, the facility may establish evening visiting hours.").

56) *Id.* at 6–7 (for family visits, the standard identifies three broad categories of persons that shall be allowed to visit—(a) immediate family, (b) other relatives, friends, and associates, and (c) minors). The standard also provides for visits by representatives of community service organizations. *Id.* at 15.

57) *Id.* at 8 (“Written procedures shall detail the limits and conditions of contact visits in facilities permitting them.”).

58) Interview with Harry Pangemanan, Congregant, Reformed Church of Highland Park, in Highland Park, N.J. (Mar. 7, 2010).

59) Interview with Rita Dentino, Coordinator, Casa Freehold, in Freehold, N.J. (Feb. 27, 2010).

60) See URBAN INSTITUTE, *supra* note 22, at x. The Urban Institute analogizes community responses and mobilization in the aftermath of immigration enforcement to disaster relief operations. We use the story of the Reformed Church of Highland Park as an example of what “disaster relief” looks like for a family impacted by immigration detention.

61) Phone interview with Greg Sullivan, Director, First Friends (Mar. 12, 2010).

62) Pangemanan, *supra* note 58.

63) Interview with Jocelyn Pangemanan, in Highland Park, N.J. (Mar. 7, 2010).

64) Phone interview with Franco Juricic, Congregant, Reformed Church of Highland Park (Feb. 19, 2010).

65) U.S. DEPT OF HOMELAND SECURITY, OPERATIONS MANUAL ICE PERFORMANCE BASED NATIONAL DETENTION STANDARDS: TRANSFER OF DETAINEES 3 (2008).

66) *Id.*

67) See Nina Bernstein, Church Works With U.S. to Spare Detention, N.Y. TIMES, Dec. 13, 2009, available at <http://www.nytimes.com/2009/12/13/nyregion/13indonesians.html> (last visited Apr. 15, 2010).

68) Phone Interview with Kathleen Feeney, Attorney, Feeney Law LLC (Feb. 22, 2010).

69) See Ken Serrano, Petition cites detainee’s death, HOME NEWS TRIBUNE, Mar. 15, 2008, available at <http://www.detentionwatchnetwork.org/node/1187> (last visited Apr. 15, 2010).

70) Interview with Wilkinson, *supra* note 49, in New Brunswick, N.J. (Feb. 27, 2010).

71) Interview with Daniel Cummings, Volunteer, Middlesex County First Friends, in New Brunswick, N.J. (Feb. 13, 2010).

72) Interview with Diana Melendez, Volunteer, Middlesex County First Friends, in New York City, N.Y. (Mar. 4, 2010).

73) Feeney, *supra* note 68.

74) Interview with Roger Schwarzschild, Department Chair, Linguistics Department of Rutgers University, in New Brunswick, N.J. (Feb. 17, 2010).

75) Phone Interview with Cathy Stanford, Organizer, Rutgers AAUP-AFT (Feb. 23, 2010).

76) See Gene Racz, Middlesex County freeholders vote to end contract with ICE for keeping detainees at jail, Oct. 1, 2009, mycentraljersey.com, <http://www.mycentraljersey.com/article/20091001/NEWS/91001066/Middlesex-County-freeholders-vote-to-end-contract-with-ICE-for-keeping-detainees-at-jail> (last visited Apr. 23, 2010).

77) Schwarzschild, *supra* note 74.

78) The major problem of bad, dishonest or incompetent immigration attorneys is beyond the scope of this report, but came up over and over again in our fieldwork.

79) AMERICAN BAR ASSOCIATION, REFORMING THE IMMIGRATION SYSTEM: PROPOSALS TO PROMOTE INDEPENDENCE, FAIRNESS, EFFICIENCY, AND PROFESSIONALISM IN THE ADJUDICATION OF REMOVAL CASES 7 available at: http://www.abanet.org/media/nosearch/immigration_reform_executive_summary_012510.pdf. These statistics are especially troublesome given how many immigrants in removal proceedings have meritorious claims to relief. Those in detention, even those with solid claims for relief, often have great difficulty presenting their cases without counsel. The City Bar Justice Center, a non-profit organization with the mission of increasing access to justice, published a report based on their experience running a know your rights program at Varick Street Detention Center in New York City. They found that 39% of the detainees they interviewed had possible meritorious claims to relief. CITY BAR JUSTICE CENTER, NYC KNOW YOUR RIGHTS PROJECT: AN INNOVATIVE PRO BONO RESPONSE TO THE LACK OF COUNSEL FOR INDIGENT IMMIGRANT DETAINEES 2 (2009) available at http://www.nycbar.org/citybarjusticecenter/pdf/NYC_KnowYourRightsNov09.pdf.

80) Immigration law provides that “[I]n any removal proceedings before an immigration judge and in any ap-

peal proceedings . . . the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose." Immigration and Nationality Act § 292, 8 U.S.C. § 1363a (2009). Unlike criminal defendants, immigrant respondents do not have a sixth amendment right to counsel at the government's expense. The principle behind the more robust right to counsel in the criminal justice context is that one should be entitled to an attorney when one's life and liberty are at stake. In most civil cases, physical liberty is not at stake. In immigration cases, however, the stakes are often just as high as they are for those facing jail time. Justice Brandeis famously said that deportation has the power to deprive an immigrant "of all that makes life worth living." *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922).

81) See IRA J. KURZBAN, IMMIGRATION LAW SOURCEBOOK 293 (11th ed. 2008) ("The INA provides for the release on bond of all persons except those deemed subject to mandatory detention under INA § 236(c) as criminals or terrorists, or 'arriving aliens.'").

82) See *In re Joseph*, 22 I. & N. Dec. 799 (BIA 1999) (holding that detainees have a right to a hearing to contest whether they are properly included within the mandatory detention provision). See also KURZBAN, *supra* note 81, at 304–05 (describing procedures under mandatory detention).

83) For criteria considered in a bond hearing, see KURZBAN, *supra* note 81, at 293. See also, Anna Marie Gallagher, 3 IMMIGRATION LAW SERVICE 2d § 13:118 (2010).

84) See 8 C.F.R. § 1236.1 (2009) (governing apprehension, custody, and detention prior to an order of removal). For the mandatory detention statute, see Immigration and Nationality Act § 236(c), 8 U.S.C. § 1226 (2009).

85) See 8 C.F.R. § 1003.19(e) (providing that in order for a respondent to get a second bond hearing, he or she must show that his or her circumstances have changed materially since the last decision). See also U.S. DEPT' JUST., EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, IMMIGRATION COURT PRACTICE MANUAL § 9.3(C)(iv) (2008).

86) KURZBAN, *supra* note 81 at 1301–05 (describing criteria for derivative citizenship).

87) For examples of cases where the BIA has been overturned on important issues regarding removability, see *Lopez v. Gonzales*, 417 F. 3d 934 (2006) (finding

that conduct made a felony under state law but a misdemeanor under the Controlled Substances Act is not a "felony punishable under the Controlled Substances Act" for INA purposes unless it proscribes conduct punishable as a felony under federal law); *Leocal v. Ashcroft*, 543 U.S. 1 (2004) (holding that a DUI is not an "crime of violence" "aggravated felony" if the statute of convictions lacks a mens rea element); *Joseph v. Attorney Gen.*, 465 F.3d 123 (3d Cir. 2006) (holding that a conviction for transporting or receiving firearms purchased or obtained outside respondent's state of residence was not an aggravated felony); *Gerbier v. Holmes*, 280 F.3d 297 (3d Cir. 2002) (finding that although alien pleaded guilty to a felony for a violation of a Delaware statute prohibiting "trafficking in cocaine," the conviction did not constitute an "aggravated felony" for purposes the INA since the offense did not contain a trading or dealing element and was not punishable as a felony under federal law).

88) INA § 208(b)(1)(B)(i) (2009) (describing what the applicant must establish for an asylum claim).

89) See e.g., INA § 208(b)(2)(A)(ii) (2009) (barring relief for immigrants who have been convicted of a particularly serious crime).

90) INA § 241(b)(3) (2009) (providing that the Attorney General may not remove an immigrant to a country where his life or freedom would be threatened); see also KURZBAN *supra* note 81 at 477–483.

91) See 8 C.F.R. §§ 208.18 (2009) (providing for implementation of the Convention Against Torture).

92) Phone interview with Shifra Rubin, Staff Attorney, Legal Services of New Jersey (Mar. 12, 2010).

93) Section 212(c) of the INA was repealed in 1996, but it provided: "Aliens lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation and who are returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted in the discretion of the Attorney General." The cancellation of removal provision, INA § 240A (2009), provides that "(a) The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien—(1) has been an alien lawfully admitted for permanent residence for not less than 5 years, (2) has resided in the U.S. continuously for 7 years after having been admitted in any status, and (3) has not been convicted of any aggravated felony. (b) cancellation of removal and adjustment of status for certain nonpermanent residents—(1) in general—The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted

for permanent residence, an alien who is inadmissible or deportable from the U.S. if the alien—(A) has been physically present in the U.S. for a continuous period of not less than 10 years immediately preceding the date of such application; (B) has been a person of good moral character during such period; (C) has not been convicted of an offense under section 212(a)(2), 237(a)(2), or 237(A)(3) subject to paragraph (5); and (D) establishes that removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the U.S. or an alien lawfully admitted for permanent residence.”

94) See generally, *INS v. St. Cyr*, 533 U.S. 289 (2001) (limiting the retroactive effect of 1996 amendments to the INA).

95) INA § 240A(a) (2009) (subject to rules that stop accrual of residence).

96) INA § 240A(b) (2009) (subject to rules that stop the accrual of time for physical presence in the United States).

97) Phone Interview with a Staff Attorney, Immigration Law Unit, Legal Aid Society of New York (Apr. 2, 2010).

98) INA § 101(a)(15)(U). See also SALLY KINOSHITA, *THE U VISA: OBTAINING STATUS FOR IMMIGRANT VICTIMS OF CRIME* 8 (2009) (describing the eligibility requirements for a U-Visa).

99) See INA § 101(a)(15)(T).

100) “Violence Against Women Act,” Violent Crime Control and Law Enforcement Act of 1994, P. L. No. 103-322, Tit. IV §§ 40001-40703. For an overview of the Violence Against Women Act immigration related provisions, see KURZBAN, *supra* note 81 at 22–23.

101) VERA INSTITUTE OF JUSTICE, *LEGAL ORIENTATION PROGRAM: EVALUATION AND PERFORMANCE AND OUTCOME MEASUREMENT REPORT, PHASE II* (2010), available at http://www.vera.org/download?file=1778/LOP%2Bevaluation_updated%2B5-20-08.pdf.

102) *Id.*

103) *Id.* at 20.

104) *Id.* at 12–13.

105) Peter L. Markowitz, *Barriers to Representation for Detained Immigrants Facing Deportation: Varick Street Detention Facility, A Case Study*. 78 *FORDHAM L. REV.* 541, 555 (2009).

106) VERA INSTITUTE OF JUSTICE, *supra* note 101, at iv.

107) Staff Attorney, Legal Aid Society, *supra* note 97.

108) U.S. DEPT OF HOMELAND SECURITY, *OPERATIONS MANUAL ICE PERFORMANCE BASED NATIONAL DETENTION STANDARDS: ADMISSION AND RELEASE* at 1 (“Upon admission, each detainee’s personal property and valuables will be checked for contraband, inventoried, receipted, and stored.”).

109) Nina Bernstein, *Move Across Hudson Further Isolates Immigrant Detainees*, *N.Y. TIMES*, Mar. 17, 2010, available at <http://www.nytimes.com/2010/03/17/nyregion/17detain.html> (last visited Apr. 19, 2010).

110) *Id.*

111) *Id.*

112) *Id.* See generally, DEPT OF HOMELAND SECURITY, OFFICE OF INSPECTOR GENERAL, *IMMIGRATION AND CUSTOMS ENFORCEMENT MANAGEMENT CONTROLS OVER DETAINEE TELEPHONE SERVICES* (Jan. 2010) available at http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_10-36_Jan10.pdf.

113) U.S. DEPT OF HOMELAND SECURITY, *supra* note 53.

114) Wilkinson, *supra* note 49 (April 8, 2010).

115) U.S. DEPT OF HOMELAND SECURITY, *supra* note 65 at 3 (2008) (“It is the responsibility of the attorney of record or the resident to notify any family members.”)

116) HUMAN RIGHTS WATCH, *LOCKED UP FAR AWAY* 37 (2009) available at <http://www.hrw.org/en/reports/2009/12/02/locked-far-away>.

117) Wilkinson, *supra* note 114.

118) Schwarzschild, *supra* note 74.

119) See INA § 208(b)(1)(B)(i).

120) *Benitez Ramos v. Holder*, 589 F.3d 426, 431–32 (7th Cir. 2009).

121) Schwarzschild, *supra* note 74.

122) Stanford, *supra* note 75.

123) *Id.*

124) *Id.*

125) Interview with congregants of the Reform

Church of Highland Park, Highland Park, N.J. (March 7, 2010).

126) Interview with Greg Sullivan, *supra* note 61, in Jersey City, N.J. (Mar. 9, 2010).

127) Schriro, *supra* note 1, at 28.

128) *Id.*

129) Merrick Bobb, Civilian Oversight of the Police in the U.S., 22 ST. LOUIS U. PUB. L. REV. 151, 152 (2003).

130) Interview with Oren Root, Director, Center on Immigration and Justice, Vera Institute of Justice, in Jersey City, N.J. (Mar. 9, 2010).

131) Michael Gennaco, Toward Increased Transparency in the Jails and Prisons: Some Optimistic Signs, 22 WASH. U. J.L. & POLY 195, 201 (2006)

132) *Id.* at 203

133) Interview with Ed Martone, Director of Public Education and Policy, New Jersey Association on Correction, in Jersey City, N.J. (Mar. 9, 2010)

134) Johnna Christian, Riding the Bus: Barriers to Prison Visitation and Family Management Strategies, 21 J. CONTEMP. CRIM. JUS. 31, 41 (2005).

135) *Id.* at 41.

136) Michael J. Ashe, Jr., Oversight and Accountability in Corrections, 22 WASH. U. J.L. & POLY 205, 209 (2006).

137) U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, Detainees who died in ICE custody October 2003 – present, available at <http://www.ice.gov/doclib/foia/media-requests/detaineddeaths2003-present.pdf> (last visited Apr. 21, 2010). See also Nina Bernstein, Officials Hid Truth of Immigrant Deaths in Jail, N.Y. TIMES, Jan. 9, 2010, available at <http://www.nytimes.com/2010/01/10/us/10detain.html> (last visited Apr. 19, 2010) (discussing results of FOIA request regarding the 107 detainees who have died since ICE's formation in 2003, including agency attempts to limit public scrutiny).

138) Phone Interview with Anne Barron, Co-founder, Middlesex County First Friends (Mar. 18, 2010).

139) Schriro, *supra* note 1, at 10. ("The majority of agreements with IGSA facilities do not contain the national detention standards.")

140) Sullivan, *supra* note 126.

141) U.S. DEPT OF HOMELAND SECURITY,

OPERATIONS MANUAL ICE PERFORMANCE BASED NATIONAL DETENTION STANDARDS: TELEPHONE ACCESS 1 (2008). An expected outcome of the standard is that "[d]etainees will have reasonable and equitable access to reasonably priced telephone services." *Id.*

142) See Nina Bernstein, *supra* note 109.

143) U.S. DEPT OF HOMELAND SECURITY, *supra* note 65, at 1 (2008) ("Transferred detainees' funds, valuables, and other personal property will be safeguarded.").

144) U.S. DEPT OF HOMELAND SECURITY, OPERATIONS MANUAL ICE PERFORMANCE BASED NATIONAL DETENTION STANDARDS: FOOD SERVICE 1 (2008) ("All detainees will be provided nutritionally balanced diets that are reviewed at least quarterly by food service personnel and at least annually by a qualified nutritionist or dietitian.").

145) U.S. DEPT OF HOMELAND SECURITY, OPERATIONS MANUAL ICE PERFORMANCE BASED NATIONAL DETENTION STANDARDS: MEDICAL CARE 1 (2008) ("Detainees will receive timely follow up to their health care requests.").

146) *Id.* See also U.S. DEPT OF HOMELAND SECURITY, *supra* note 65, at 1 (2008) ("Transfer of detainees will be accomplished safely and securely, particularly those with special health care concerns including appropriate medical information.").

147) U.S. DEPT OF HOMELAND SECURITY, OPERATIONS MANUAL ICE PERFORMANCE BASED NATIONAL DETENTION STANDARDS: PERSONAL HYGIENE 1 (2008).

148) *Id.* at 4.

149) *Id.* at 2.

150) *Id.* at 4 (providing for "at least twice weekly exchange of outer garments" and a "daily exchange of socks and undergarments").

151) *Id.* at 3 (provides for a minimum ratio of one toilet and one shower for every 12 detainees).

152) U.S. DEPT OF HOMELAND SECURITY, OPERATIONS MANUAL ICE PERFORMANCE BASED NATIONAL DETENTION STANDARDS: CORRESPONDENCE AND OTHER MAIL 2 (2008) ("Incoming and outgoing letters will be held for no more than 24 hours and packages no more than 48 hours before distribution, excluding weekends, holidays, or exceptional circumstances."). Speedy mail delivery is essential in a system where there is no right to counsel.

153) U.S. DEPT OF HOMELAND SECURITY, OPERATIONS MANUAL ICE PERFORMANCE BASED NATIONAL DETENTION STANDARDS: RECREATION 1 (2008) (expected outcomes include that “detainees will have daily opportunities to participate in leisure-time activities outside their respective cells or rooms” and that “detainees will have access to exercise opportunities and equipment, including at least one hour daily of physical exercise outside the cell, and outdoors, when practicable”).

154) U.S. DEPT OF HOMELAND SECURITY, *supra* note 48, at 2 (2008) (providing that the minimum duration for a visit shall be 30 minutes).

155) *Id.* at 6–7, 15.

156) The visitation standard leaves rules regarding contact visits to the discretion of facilities. *Id.* at 8 (“Written procedures shall detail the limits and conditions of contact visits in facilities permitting them.”) (emphasis added). This results in discrepancies across facilities and in an unfair system where parents in one facility may get opportunities to visit with their children in a more open environment but not parents detained at another facility.

157) U.S. DEPT OF HOMELAND SECURITY, OPERATIONS MANUAL ICE PERFORMANCE BASED NATIONAL DETENTION STANDARDS: LAW LIBRARIES AND LEGAL MATERIALS 1 (2008) (providing for no less than 5 hours per week of access to law libraries, legal materials, and related materials). Generous and frequent access to law libraries and legal materials is critical in a system where there is no right to counsel and 84% of people have no attorney.

158) *Id.* (providing for photocopying resources).

159) U.S. DEPT OF HOMELAND SECURITY, OPERATIONS MANUAL ICE PERFORMANCE BASED NATIONAL DETENTION STANDARDS: STAFF TRAINING 3–6 (2008).

160) See Immigration and Nationality Act § 240(c) (6), 8 U.S.C. § 1229a (2009) (providing that a motion to reconsider a decision that an immigrant is removable must be filed within 30 days of entry of a final administrative order of removal).

161) U.S. DEPT OF HOMELAND SECURITY, *supra* note 144, at 2 (“Special diets and special ceremonial meals will be provided for detainees whose religious beliefs require the adherence to religious dietary laws.”).

162) U.S. DEPT OF HOMELAND SECURITY, *supra* note 145, at 1 (2008) (“Detainees will receive timely follow up to their health care requests.”).

163) See *supra* note 147.

164) See *supra* note 48.

165) See *supra* note 143.

166) U.S. DEPT OF HOMELAND SECURITY, OPERATIONS MANUAL ICE PERFORMANCE BASED NATIONAL DETENTION STANDARDS: CLASSIFICATION SYSTEM (2008). The standard on classification provides for specific procedures designed to segregate detainees according to risk-level.

167) See *supra* note 159.

168) See *supra* note 144.

169) See *supra* note 145.

170) See *supra* note 154.

171) U.S. DEPT OF HOMELAND SECURITY, *supra* note 48, at 4–5 (2008) (circumscribing disciplinary action as it relates to visitation privileges).

172) See *supra* note 157.

173) See *supra* note 158.

174) See *supra* note 159.

175) Wilkinson, *supra* note 49.

176) Barron, *supra* note 138.

177) Stanford, *supra* note 75.

178) See *supra* note 146.

179) Barron, *supra* note 138.

180) *Id.*

181) See *supra* note 153.

182) Barron, *supra* note 138.

183) Cummings, *supra* note 71.

184) Barron, *supra* note 138. See generally OFFICE OF DETENTION AND REMOVAL OPERATIONS, IMMIGRATION AND CUSTOMS ENFORCEMENT, NATIONAL DETAINEE HANDBOOK (2009) (providing an overview of the programs, services, and rights that should be available to noncitizens in detention).

185) Melendez, *supra* note 72.

186) See Melissa Hayes, Hudson County jail changes its policy to allow immigration detainees to have more visitors, JERSEY JOURNAL, Mar. 1, 2010, available at http://www.nj.com/hudson/index.ssf/2010/03/hudson_county_jail_changes_its.html 9 (last visited Apr. 15, 2010).



Locked Up But Not Forgotten, April 2010



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