

IMMIGRATION INCARCERATION

**The Expansion and Failed Reform of Immigration
Detention in Essex County, NJ**

New York University School of Law Immigrant Rights Clinic
In cooperation with: New Jersey Advocates for Immigrant Detainees

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ABOUT THE NEW JERSEY ADVOCATES FOR IMMIGRANT DETAINEES

New Jersey Advocates for Immigrant Detainees is an alliance of civic and religious organizations (individual participation is also welcome). Its goals include bringing attention to the plight of immigrant detainees in New Jersey jails, working to improve the conditions in those institutions, and advocating for the reduction and elimination of the use of detention of immigrants.

Coalition Members include 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; Monmouth 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; IRATE & First Friends.

ABOUT THE NYU SCHOOL OF LAW 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 as well as in immigrant rights campaigns at the local, state, and national level. Students have direct responsibility for all aspects of their cases and projects and the opportunity to build their understanding of legal practice in the field of immigrant rights law and organizing.

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EXECUTIVE SUMMARY

This report takes a hard look at the outcome of detention expansion and so-called “reform” of immigration detention in Essex County, New Jersey. Although immigration detention has always been justified as non-punitive, and the rhetoric from the Obama Administration has emphasized a reform of the civil immigration detention system, in recent years there has been an expansion of immigration detention even while detention facilities fail to meet the 2008 and 2011 Immigration and Customs Enforcement Performance-Based National Detention Standards (PBNDS).

What is currently happening in Essex County is an example of what occurs when expansion of immigration detention fails to coincide with any meaningful review of the system currently in place. Every indicator of the conditions and treatment of immigrant detainees in Essex County shows a detention system that is failing to meet the bare minimum of humane treatment and due process. What’s more, the increase in the number of immigrants detained and the

conditions of their detention are contrary to promises for reform and prosecutorial discretion at the national level, as well as assurances of oversight at the local level.

After providing a history of the rise of immigration detention in Essex County, this report will delve into the experiences of detainees who are held in the two facilities—the privately owned and operated Delaney Hall and the Essex County Correctional Facility (hereafter “ECCF”).

Part I of the report chronicles the expansion of detention in the United States, specifically the expansion of detention in Essex County, NJ, including information about the two immigration detention facilities in Essex County: Delaney Hall and ECCF. Part II will focus on who is being detained in Delaney Hall and ECCF. Part III will present information about the conditions in Delaney Hall and ECCF for immigrant detainees. Part IV concerns access to legal services and due process for immigrant detainees in Essex County.

A. Methodology

The information about conditions in Delaney Hall and ECCF came from a variety of sources. The authors filed an Open Public Records Act (“OPRA”) request seeking all written grievances filed by ICE detainees in ECCF and Delaney Hall in 2011. Through this request, the authors obtained 204 written grievances from ICE detainees.

The authors also reached out to community members and advocates to learn more about the conditions in these facilities. Community visitation programs shared their experiences of visiting detainees with us, and the authors met with current and former detainees from ECCF

and Delaney Hall. The authors also had interviews with several attorneys who regularly represent immigrants in both ECCF and Delaney Hall. Through one of these contacts, the authors also received a copy of a petition, signed by 88 detainees at ECCF and dated Jan. 17, 2012, outlining a broad range of conditions problems in ECCF.

Finally, the authors examined various governmental, nongovernmental, and media sources that have documented recent developments and demographics regarding these facilities. The authors would like to acknowledge the bravery of the individuals who spoke to us about their experiences in

detention, though they were aware that they could be subject to retaliation by guards, staff, or ICE officials or that there could be a negative impact on their cases. When quoting detainees or advocates, we chose not to alter any language in respect for the

speaker. Any spelling or grammatical errors simply demonstrates the double vulnerability of a detainee who may not be able to communicate through a written grievance system but is desperate to receive help for their situation.

B. Key Findings

- The current conditions for immigrant detainees in Delaney Hall and ECCF do not fully comply with the ICE Performance-Based National Standards for 2008 or for 2011.
- Although the purported purpose of immigration detention is not punishment but rather ensuring the appearance of immigrants at removal proceedings, the lack of liberty and conditions of immigrant detainees in Essex County, NJ mirror those of inmates in prison facilities for serious crimes.
- In 2011, the number of immigration detention beds in Essex County increased by 150 percent from 500 to 1,250 detainees per day. Essex County now holds over half of all immigrant detainees in New Jersey.
- Immigrant detainees in Delaney Hall and ECCF are not treated with the human dignity and respect they deserve. Many reported verbal abuse and mistreatment from guards and jail staff.
- During 2011, immigration detainees in ECCF filed 158 written grievances. These grievances included allegations of mistreatment from ECCF staff, inadequate access to special diet meals, and delayed or unanswered requests for medical attention.
- According to written grievance records, ECCF has been in violation of at least five detention standards in 2011 concerning medical attention, food service, religious services, access to legal counsel, and visitation services.
- From October 2011 through December 2011, detainees in Delaney Hall filed 46 written grievances. These included allegations of mistreatment from Delaney Hall staff, cold dormitories and inadequate blankets during the winter, and unacceptable food quality.
- According to written grievance records, Delaney Hall has been in violation of at least five detention standards in 2011 concerning medical attention, food service, religious services, access to legal counsel, and visitation services.
- In both ECCF and Delaney Hall, violations of detainees' rights to due process and access to justice were reported including obstacles to detainees contacting their attorneys after transfers and the negative impact of video conferencing on attorney-client confidentiality and due process rights.
- These conditions underscore the need for oversight of ECCF and Delaney Hall, and lend support to the community's criticism of the lack of transparency through which ICE, Essex County, and Community Education Centers contracted to expand detention in these facilities.

C. Key Recommendations

In addition to the following recommendations, the authors urge ICE and Essex County to follow the recommendations that still remain unaddressed from our 2010 report, *Locked Up But Not Forgotten*.¹ While some NJ facilities have made improvements since 2010, including the facilitation of contact visits, many of the recommendations from our report have not yet been implemented.

- ICE should cease detaining immigrants in state and local jails, starting with those facilities that fail to meet the 2011 ICE Performance-Based National Detention Standards and that unduly restrict detainees' access to family and community.
- ICE officials should use alternatives to detention, such as supervised release.
- While there are immigrant detainees in Essex County, the Essex County administration and the Board of Chosen Freeholders should work in collaboration with community groups to create a Community Oversight Board, which would be responsible for monitoring conditions in detention facilities for compliance with basic human dignity, the NJ Administrative Code and the 2011 ICE Performance-Based National Detention Standards.
- To the extent Essex County continues to engage in ICE and private prison contracts, bidding processes for its county contracts should be more open and transparent and follow general government contracting practice.
- Essex County and corrections officials at Delaney Hall and ECCF should take immediate steps to bring their facilities up to the 2011 ICE Performance-Based National Detention Standards.
- Corrections officials at Delaney Hall and ECCF should implement a meaningful grievance process that safeguards detainees from retaliation.
- Corrections officials at Delaney Hall and ECCF should be trained in how to work with diverse detainees and be respectful of different cultures.
- Essex County and corrections officials should bring ECCF into compliance with existing standards by eliminating routine strip searches of detainees receiving contact visits.
- Essex County and corrections officials at Delaney Hall and ECCF should ensure that emergency medical treatment is immediately available to detainees 24 hours a day and that timely and effective medical treatment is provided to all detainees.
- Food served at both Delaney Hall and ECCF should be periodically reviewed for compliance with caloric requirements as well as adherence to special diets for medical and religious purposes.
- Unlimited clean drinking water should be made available to detainees at all times.
- All detention facilities should provide regular access to communal worship services and pastoral care as well as have a chaplain on staff.
- Soap for washing as well as laundry should be made available to detainees at all times.
- All dorms and cells should be kept at a comfortable temperature. Warm

blankets and jackets should be distributed to all detainees in the winter.

- Visiting hours and requirements for visitors should be clearly posted in the facilities and consistently followed.
- Telephone charges at Delaney Hall and ECCF should not be prohibitively expensive.
- The law libraries at Delaney Hall and ECCF should provide access to the most recent version of the

Immigration and Nationality Act as well as Board of Immigration Appeals cases.

- Attorneys and their clients should be able to appear in immigration hearings together in video conferencing rooms and should have adequate opportunity to consult together off-camera. The audio and visual quality of the video conferences should be assessed regularly for quality.

I. A RAPIDLY EXPANDING DETENTION SYSTEM

A. Expansion of Detention: A National Overview

In August 2009, the Obama Administration announced an overhaul of the U.S. immigration detention system, acknowledging the deep flaws in the current system and expressing a commitment to moving away from a penal model of incarceration for immigrants. Later that year, the Department of Homeland Security (DHS) issued a report recognizing that the detention system is too restrictive, relies too heavily on facilities designed for criminal incarceration, and fails to utilize risk assessment tools to determine whether and in what conditions people should be detained.² In light of these problems, DHS called for more federal oversight and an overhaul of the risk assessment tools, standards, and facilities used for immigration detention.³

The promise of reform was met with great anticipation by community residents, faith-based groups, and advocates across the country, who have been deeply troubled by U.S. immigration detention policies and practices. The immigration detention system was created with the express purpose of ensuring that detainees attend removal proceedings. However, it has evolved into something far more punitive than its original conception. Many immigrants who pose no risk for flight and have strong community ties are detained in deplorable prison-like conditions contrary to the original aim of civil detention.

Even though DHS itself recognized that the detention system is flawed and called for comprehensive changes, three years later, the expansion of detention and increased funding of detention facilities continues in communities across the country. The promise of reform has not meant that the expansion of detention has halted. In fact, a record number of

immigrants are detained across the country.⁴

ICE Assistant Secretary John Morton stated shortly after the announced reforms that “[t]his isn’t a question of whether or not we will detain people. We will detain people, and we will detain them on a grand scale.”⁵ True to his statement, the detention system has continued to expand exponentially over the years, with the average daily population in 2010 roughly 450% higher than in 1994.⁶ Immigration detention is the “most rapidly expanding segment of the American prison system.”⁷

ICE now detains nearly 400,000 individuals at a cost of over \$1.9 billion a year,⁸ and in many cases, alternatives to detention and community-supervised release are more appropriate and cost-effective. Despite the cost to the federal government, some local politicians see contracts with ICE as an opportunity to gain revenue by promising bed space for immigrant detainees. In 2012, more than \$2 billion will be allocated for detention, several million more than last year, and since 2009, ICE has entered into agreements to build or expand at least ten detention facilities.⁹ Despite the revenue it provides local governments and private detention companies, there is a high human cost for the increased number of individual immigrants detained in facilities across the country. The human cost is most evident in the thousands of separated families who spend weeks, months or years apart while also dealing with the stress of the potential deportation of a loved one.

The municipalities and local governments that contract with ICE are in essence trading revenue because the people they are incarcerating on behalf of ICE often have strong ties to their own communities. They are business owners,

laborers and consumers. Though the economic impact of removing them from the local economy is not factored into the decision process for entering into a contract with ICE, it is in fact dramatic. The hard cost of the U.S. citizen children and spouses of those in detention who are forced to rely on social services because the primary breadwinner or caregiver is detained is also not taken into consideration.

In addition, the public has little oversight of what happens in the jails that hold immigrant detainees. This is further complicated by ICE's increased use of facilities that are owned and run by private companies. Private prison companies house about half of the immigrants detained by ICE at any given time.¹⁰ Unlike government agencies, private prison

companies are not subject to public inquiry through Freedom of Information Act requests. These requests, which have been very helpful in the past in shedding light on conditions in detention, are frustrated by these private public partnerships. Even the contracts between ICE and the private prison companies, which should be subject to public scrutiny, are being heavily redacted in the interest of protecting "proprietary information."

Transparency and accountability for privately run detention facilities are limited for communities and advocates.¹¹ Individual detainees suffer from inhumane conditions, restrictive visitation policies, and limited access to legal materials or legal counsel—all within a system that is, according to its administrators, not supposed to be punitive.

B. Expansion Close to Home: The New Jersey Experience

The New Jersey experience sheds light on DHS's current approach to detention reform nationwide. At the time of DHS's announced reforms, thousands of immigrants from New York and New Jersey were being held in New Jersey through county-run penal institutions and a federal facility operated by Corrections Corporation of America (CCA), a private, for-profit prison company.¹² The conditions in these facilities failed to live up to DHS's own detention standards and fell far short of DHS's new vision for a civil system of detention.

As chronicled in the 2010 report, *Locked Up But Not Forgotten*, New Jersey detainees were facing difficult and often insurmountable barriers to family and community support due to the conditions and policies of the detention facilities that confined them.¹³ For these reasons, community residents and advocates called for immediate detention reforms.¹⁴

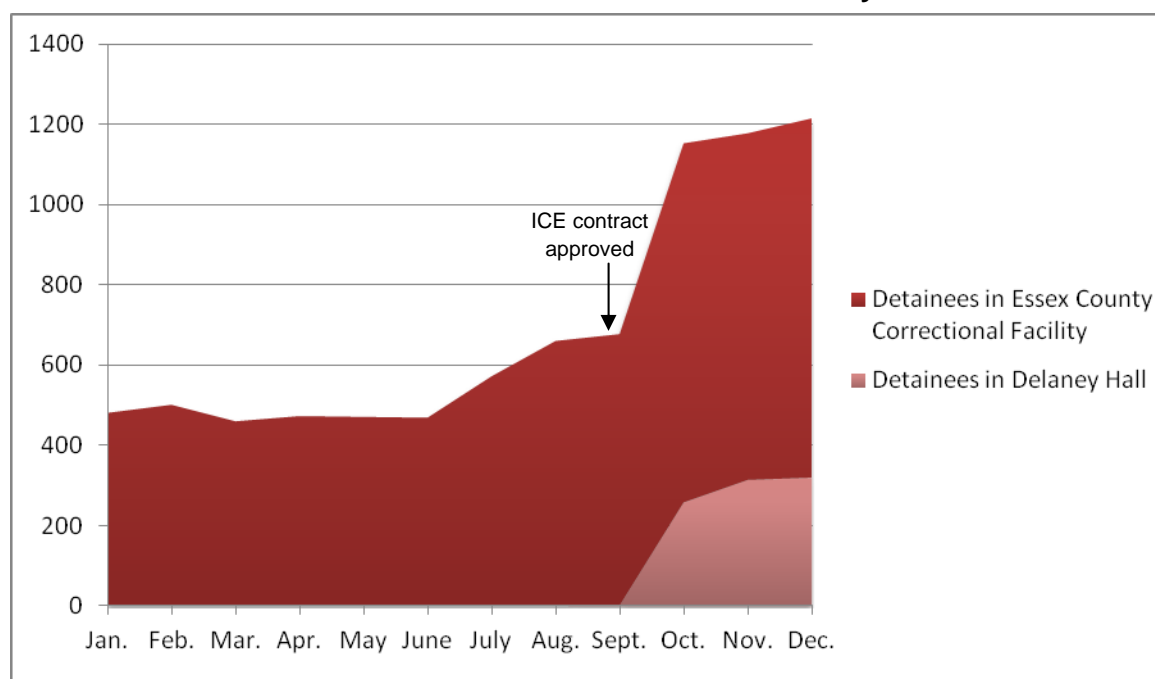
While making minimal changes to address these concerns, DHS announced a

massive expansion of immigration detention in New Jersey. On December 20, 2010, DHS announced that it would be funding an additional 2,250 beds in the New Jersey area—increasing detention by seventy percent.¹⁵

Hailing its plan as a "model" for detention reform, DHS expanded bed space in a penal institution, ECCF, and worked with the county to contract with a private prison company to run a separate facility, Delaney Hall.¹⁶

Community opposition was stiff and came from immigrant rights groups, community organizations, legal service providers, local clergy and other faith based groups. A petition in opposition to the plan received over three thousand signatures, but DHS, Essex County officials, and the private prison company executives went forward despite community concerns.¹⁷ The final contract provided for an additional 1,250 beds in Essex County, with the possibility of additional beds to come.¹⁸

Increase of ICE Detainees in Essex County in 2011



* Based on data provided from Essex County Department of Corrections on the total number of ICE detainees detained in per month from 1/1/2011 to 12/31/2011. Detainees began being housed in Delaney Hall on, 9/30/2011¹⁹

1. Negotiating Away Liberty: Essex County ICE Contract

Essex County first began incarcerating immigrant detainees on behalf of ICE in 2008, piggybacking on a contract with the U.S. Marshal's Service. At first the ICE detainees were held in the privately run Delaney Hall which is on the property immediately adjacent to the jail, but several months later all detainees were transferred to ECCF after a security breach.

The new contract, negotiated directly with ICE and signed in August 2011, nearly tripled the number of detainees in the county. Prior to 2011, the county held a maximum of 450 to 500 detainees in ECCF.²⁰

The new contract allows Essex County to house 1,250 immigrant detainees, holding up to 800 detainees in ECCF and subcontracting with a privately run facility to hold the other 450. The contract also provides that for the first year, ICE will pay

Essex County for a minimum of 700 detainees, an element that some advocates criticized as a quota system.

After questions about the bidding process for the subcontract were raised, the county decided to rely on an existing agreement through December 2011 with Education and Health Centers of America (EHCA), the non-profit affiliate of private corporation Community Education Centers (CEC). EHCA housed the additional detainees in Delaney Hall until a new bid subcontract was approved.²¹

Despite the absence of a specific contract between the county and EHCA to house immigrant detainees, the Essex County freeholders voted to approve the contract with ICE on September 7, 2011, and ICE detainees were transferred to Delaney Hall by the end of the month.

One then freeholder, Ralph R. Caputo, said the decision was made for fiscal reasons, even though he was not overjoyed to be in the detention business.²² However, the contract with ICE ignores the liability costs Essex County may face in light of poor conditions—problems that have required nearby Passaic County to spend millions on an overhaul of its county jail.²³

Essex County issued a “Request For Proposals” (RFP) in July, to elicit bids from subcontractors to house the remaining 450 detainees. Education and Health Centers of America (EHCA), the non-profit affiliate of for-profit CEC, made the only bid.²⁴ The county originally announced they were accepting the EHCA bid. One official stated that the detention center would be a model for other facilities across the country, and

Joe DiVincenzo said it was an “innovative” way to bring in money and keep taxes low.²⁵ However, the county later announced that they would reject the bid and issue a new request for bidders. This decision came after the media and community groups and Senator Frank Lautenberg questioned the legality of the subcontracting process.

Earlier in the year, State Comptroller Matthew Boxer had already begun to question the legality of the arrangement between EHCA and CEC, specifically EHCA’s subcontracting of state contracts to the for-profit organization CEC.²⁶ New Jersey doesn’t allow for-profit organizations to run their correctional programs, so EHCA bids for the projects, but CEC performs the services.²⁷ The two companies have some separate employees and board members, but John Clancy is the Executive Officer of EHCA and the president of CEC.²⁸

U.S. Senator Frank Lautenberg, advocates, and the media also argued that

the RFP was tailor-made for EHCA, a company with significant political connections. The county did not actively seek out other bidders, as is the common practice.²⁹ They also originally gave only 14 days for companies to submit bids, but later changed the deadline to 23 days, still an unusually short deadline for government contracts.³⁰ EHCA has been contracting



ECCF (Photo by Sterling Lee)

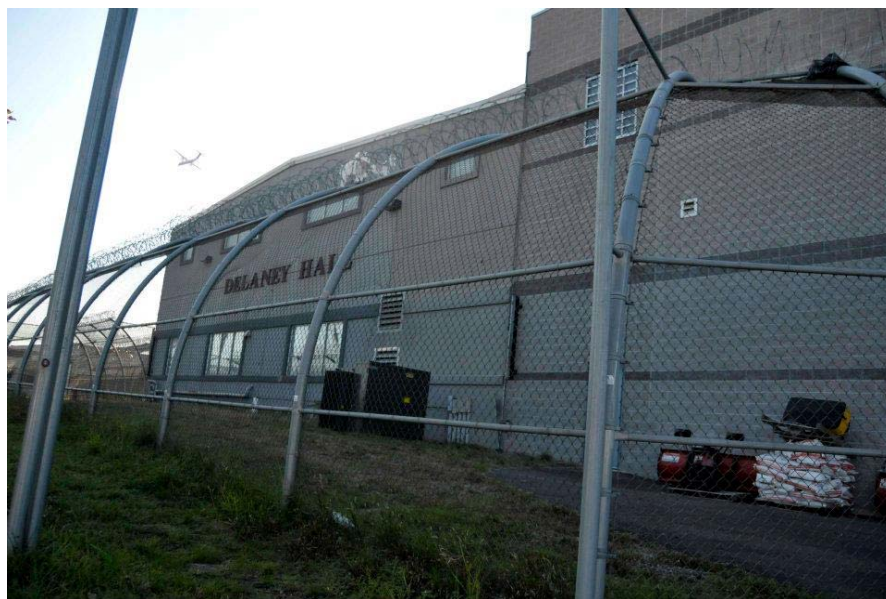
with Essex County for more than ten years, and has received about \$500 million from state and county Department of Corrections contracts since 1997.³¹

The Chief Executive Officer of CEC, and his senior officials and family members have donated to the political campaign of Essex County Executive Joseph N. DiVincenzo, Jr., with employees of CEC donating a total of \$21,600.³² In addition, the senior vice president of CEC, William J. Palatucci, is “one of [New Jersey Governor] Mr. Christie’s closest confidants and his former law partner.”³³ Prior to becoming US Attorney, Gov. Christie’s firm provided legal counsel and lobbying services to CEC.

In 2008, the year the previous contract with EHCA was signed, political donations from CEC employees increased from \$5,250 the previous year to \$29,400.³⁴ In total, CEC employees have donated \$104,675 to Essex County officials and

\$93,990 to other state officials, including \$6,800 to Governor Christie.³⁵

In addition, a number of the elements of the contract appeared to be specifically tailored to Delaney Hall. The contract required a facility that could house at least 450 detainees.³⁶ It had to be within 10 miles of ECCF.³⁷ It also required that the bidder have a facility that was already being used for correctional purposes.³⁸ As a result, the only facility which could arguably meet the specifications of the contract was CEC's Delaney Hall. Early on, the deal between Essex County and CEC appeared to be a foregone conclusion, as CEC placed for-hire ads for positions at Delaney Hall even before they submitted their bid to the county, although they defended it as common practice.³⁹



Delaney Hall

After allegations of preferential treatment to CEC in the media, Senator Frank Lautenberg wrote to ICE, asking them to review the subcontracting process.⁴⁰ He questioned whether the bidding process was “entirely fair, open and transparent,” and requested that ICE “carefully examine the terms and conditions of such an

agreement, as well as the manner in which Essex County intends to satisfy its obligations under the agreement in order to ensure that it fully complies with all applicable law.”⁴¹ ICE responded with a letter in August, stating that they lack the “authority to review or enforce procurement laws at the state and local levels,” but that they had received assurance from Essex that the subcontracting process was “conducted in a fair and reasonable manner.”⁴²

In October, Essex County put out a new Request for Proposals (RFP) that differed in some ways from the original, for example instead of requiring that the facility be within 20 miles of a major airport, it recommends that it be within a 90-minute drive.⁴³ It also allows the County to

consider more factors in evaluating the bids. Instead of choosing entirely based on price, it created a scoring chart where price plays 30 percent of the evaluation.⁴⁴ One of the factors which favorably increased the scoring of bids was the relative proximity to ECCF. (Delaney Hall is located approximately 800 feet from ECCF.) Even though the Kintrock Group expressed an interest in the contract, it

did not complete the bidding process after Essex County responded that it would not consider bids from companies that did not have an operational correctional facility with all 450 beds available on the day the contract was awarded. Once again, EHCA was the only company to submit a bid, and in December, the Essex County Freeholders unanimously approved their bid.⁴⁵

2. Opposition to the ICE Contract

In addition to the criticism of the EHCA subcontracting process, community groups opposed the general expansion of detention in Essex County. A petition on Change.org to revoke the ICE contract had garnered over 3,300 signatures from across the country as of February 2012.⁴⁶ The petition outlines the public concerns about the effect of immigration detention on communities and about the business of ICE contracting out the operation of detention facilities to private companies, which do not have the same accountability to the public as government agencies.⁴⁷

Beginning in December 2010, advocates and residents repeatedly gave public testimony at freeholder board meetings against expanding detention in the county, especially in light of the poor conditions of Essex County facilities. They also met privately with a number of freeholders. They spoke specifically about problems with conditions in the jail at a Freeholders meeting June 9, 2011. The Freeholders agreed to look into complaints by advocates about conditions prior to entering into a new contract.⁴⁸ At a penal committee meeting called later in June to address the issues raised, Joyce Wilson Harley, then County Administrator, disputed the advocates' complaints, and called them "almost histrionics."⁴⁹ One Freeholder said that she and the other Freeholders had toured the jail and were satisfied that they were conforming to state and federal regulations.⁵⁰ In December 2011, more community members and advocates again spoke about conditions and urged the freeholders to reject the EHCA subcontract. Several freeholders said they had made unannounced visits to the facility to



Protestors outside ECCF

investigate the complaints about conditions and were satisfied with what they saw.⁵¹

The Freeholders' conclusions conflict with the experience of community members and advocates, who have a different picture of conditions within the Essex facilities based on information from detainees and grievances such as those discussed in Part III. As a part of the Change.org petition against the expansion, community members and advocates urged the county to address several key problems, including the lack of evening visiting hours in ECCF, restrictions on visits and phone calls with attorneys and clergy, a lack of adequate mental and physical health care, a lack of healthy food that complies with dietary restrictions and religious observances, restricted access to communal religious services, and a lack of regular outdoor recreation free from exposure to hazardous environmental conditions.⁵² Advocates have also spoken out against subcontracting detention to a private company.

Finally, advocates have spoken out against the expansion of detention in Essex County in particular because of the history

of inhumane conditions in facilities run by CEC. Though hailed as a “model” for immigration detention, Delaney Hall has not been without its problems with human rights violations and inhumane conditions. In 2009, deadly conditions resulted in the death of inmate Derek West, not an immigrant detainee, who was killed in his cell by fellow inmates who beat him to death for \$20.⁵³ West was in custody for owing under \$800 in traffic violation fines but lost his life because of insufficient protection while at Delaney Hall. CEC has a checkered past⁵⁴ marred by jail-like conditions, shoddy buildings, and lack of oversight.⁵⁵ In McLennan County, Texas, CEC manages the Jack Harwell Detention Center, from which ICE recently removed 80 female inmates after complaints about medical care⁵⁶ and living in sewage after overflowing toilets were not repaired.⁵⁷

Following the approval of the 5-year contract with ICE, then Freeholder Ralph

Caputo expressed regret that Essex County would be in the business of detention but “said he was assured that there would be compliance with the detailed federal detention regulations and a lot of oversight.”⁵⁸ It is worthy of note that these comments were made at a time when the Freeholder Board was rejecting the idea of a community oversight board because of inaction by ICE.

The promise of adhering to detention standards has not come to fruition given the complaints concerning inhumane conditions presented in this report as well as the lack of community oversight and access to the facilities. The aforementioned violations of basic medical needs and requirements for humane conditions in CEC facilities are a somber reminder of the tragedies that can happen as the privatization of immigration facilities increases with the overall expansion of immigration detention without an expansion of accountability or oversight.

II. WHO IS BEING DETAINED?

Under current agreements with ICE, New Jersey holds more than 2,300 individual immigrants in detention each day,⁵⁹ but the current detention system does not allow for a meaningful review of whether they are flight risks or danger to the community in many cases. It is quite likely, however, based on a review of the types of charges people are facing, that in fact they should be candidates for release on bond or for prosecutorial discretion. Of the 1,250 individuals now held in Essex County, about 800 are held in ECCF, the Newark jail primarily used to detain immigrants who are facing deportation because of prior criminal

records. The other 450 individuals are held in Delaney Hall, a privately-run facility.

Delaney Hall was opened in 2000 as a facility that would provide “residential reentry treatment services” on property that was 800 feet away from the then unfinished ECCF which opened in 2004.⁶⁰ After inmates were moved to the newly opened ECCF, Delaney Hall was used as overflow to keep the ECCF from overcrowding as had the previous two facilities it replaced.⁶¹ Delaney Hall currently holds the three populations: immigrant detainees, criminal inmates and individuals in residential rehabilitation.⁶²

A. Charge Statistics

Many of the detainees being held in New Jersey are charged only with entering the country without inspection or another immigration violation. The charges are based on civil, not criminal violations, and in no way indicate that these individuals pose any threat to public safety. Rather than subjecting them to detention, many of these individuals should be considered for alternatives to detention, which are considerably less costly to the public, more humane and would allow them to reunite with their families.

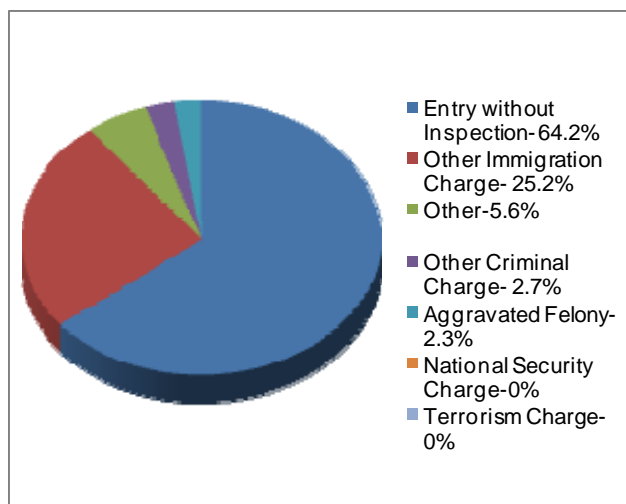
According to data from Transactional Records Access Clearinghouse (TRAC), the types of charges for which detainees are being held are overwhelmingly civil offenses for which ICE’s policy of prosecutorial discretion begs an examination of their detention.⁶³

Detainees in Delaney Hall and in Elizabeth Detention Center have their proceedings at Elizabeth Immigration Court.⁶⁴ Statistics demonstrate that the vast majority of people with cases in Elizabeth

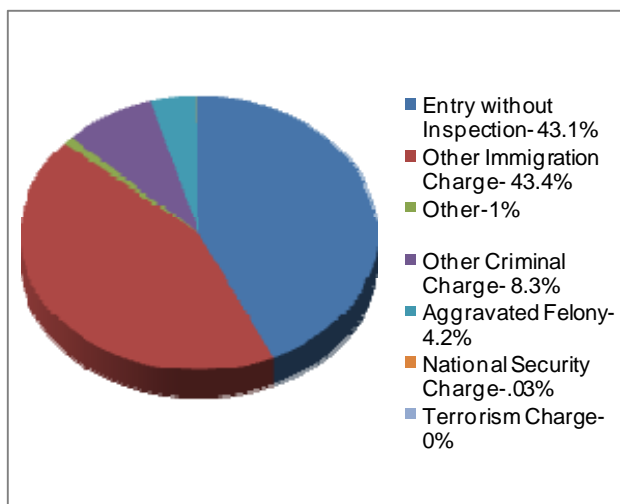
Immigration Court have non-criminal charges. In 2010 and 2011, more than 89 percent of the individuals in immigration proceedings in Elizabeth Immigration Court were facing removal on the basis of an immigration violation, not for any criminal charge.

Similarly, more than 86 percent of individuals faced immigration and not criminal charges in Newark Immigration Court, where ECCF detainees and non-detained individuals have their proceedings. In addition, no individual in either court faced terrorism charges, and only .03% in Newark and none in Elizabeth faced national security charges. There were 1,305 bond hearings held in Newark Immigration Court in 2010.⁶⁵ Only about 58 percent of the immigration proceedings in Newark Immigration Court actually result in removal, while 42 percent are granted relief or their cases are terminated.⁶⁶ About 15 percent of those who are removed agreed to voluntary departure.⁶⁷

Charges in Elizabeth Immigration Court



Charges in Newark Immigration Court



* Based on Transactional Records Access Clearinghouse (TRAC) data from 1/1/2010-7/26/11

B. Exercising Prosecutorial Discretion

On June 17, 2011, John Morton, the director of ICE, released a memo directed to ICE Field Officers around the country in which he laid out a new policy for the agency that prioritized certain immigrants for deportation while using prosecutorial discretion to de-prioritize certain groups with strong community ties and without criminal histories.⁶⁸ In the memo, Morton presents 31 factors that ICE officers should consider to be low priority when deciding whether or not to proceed with deportation.⁶⁹

The purpose of his prosecutorial discretion memo is to reassess deportations of immigrants who meet certain listed factors, such as young students, military service members, elderly people or close family of American citizens. It represents the government's viewpoint that the aforementioned groups are not a priority for immigration enforcement, and that "ICE must prioritize the use of its enforcement personnel, detention space, and removal assets to ensure that the aliens it removes represent, as much as reasonably possible, the agency's enforcement priorities and

resources should be not be devoted to the removal of these individuals."⁷⁰

According to the memo, if an individual meets the listed factors, ICE officials should consider exercising their discretion through methods such as declining to bring charges, considering alternatives to detention, or dismissing or deferring proceedings.

However, the policy presented in the Morton memo has not been consistently applied to grant discretion to the enumerated groups. The Obama administration has deported nearly 400,000 people in each of the last three years, more than any administration in history. Now, however, the Department of Homeland Security has proposed its own internal review of deportation cases which will halt deportation proceedings for those who meet the memo factors and are thus outside the priorities of the Agency.⁷¹

For those individuals in detention in Essex County, however, the mandate for prosecutorial discretion does not appear to be affecting their situation. Although these authors submitted a Freedom of Information Act request more than three months ago to

ICE for data relating to the number of detainees in Essex County who meet factors in the prosecutorial discretion memo, ICE has not released this data. However, we have learned anecdotally of many individuals who appear to fulfill the factors in the memo.⁷²

Even those who helped law enforcement prevent and solve crimes as informants are at risk of detention and deportation. Charbel Chehoud, a Lebanese immigrant detained in ECCF beginning in October 2010, was deported by ICE earlier this year as community members and at least one Jersey City police officer pleaded for his release.⁷³ From the end of December until his deportation on February 22, 2012, he was held in solitary confinement. His lawyer filed several complaints with ICE on his behalf regarding his treatment. Mr. Chehoud's lawyer and fiancé both maintain that ICE hired a private plane to deport him

just days after officials from DHS came to the ECCF to investigate the complaints his lawyer had filed.⁷⁴ Having arrived in New Jersey in 1989, Mr. Chehoud has the community ties and support that should negate the need for detention.

In addition, the authors spoke to several current and former detainees with US citizen children, who had community ties, and who enjoyed the support of church congregations. All were excellent candidates for discretionary alternatives to detention yet were incarcerated for long periods of time. In a letter and petition written on January 17, 2011 by 88 ECCF detainees (hereafter "ECCF Detainee Petition"), they reported that ICE was ***"trying to deport people who have been here since they were 7 months old and went to kindergarten here and high school even as far as college."***

III. HOW ARE IMMIGRANT DETAINEES BEING TREATED?

The conditions in the so-called reformed civil detention facilities are inhumane, prison-like, and even fall short of the requirements stipulated by ICE. Two years ago, in *Locked Up But Not Forgotten*, advocates raised concerns about conditions in New Jersey detention facilities. Since then, there has not been much improvement in conditions in Essex County even as the county was awarded over 1000 new beds.

Letters from immigrant detainees, information from visits, and conditions forms completed by visitors all reveal a detention system with deplorable conditions that fails to meet the lofty-goals of a “reformed” civil detention system. A New Jersey Open Records Act (OPRA) request submitted in January 2012 by the authors revealed written grievances from detainees who reported lack of medical attention, inadequate access to drinking water, unbearably cold cells, and mistreatment from guards among other complaints.

According to the ECCF-ICE Detainee Handbook, immigrant detainees who are concerned about the conditions of their detention are generally advised to make an oral complaint to their housing unit officer or appropriate staff member. According to Essex County’s response to the OPRA request, such oral grievances are not committed to writing by county, CEC, or ICE officials. Detainees also have the option of requesting a written complaint form from a housing officer and placing it in a collection box marked “Ombudsman” or “Grievance.” According to the Detainee Handbook, detainees also have the opportunity to seek a hearing from a Detainee Grievance

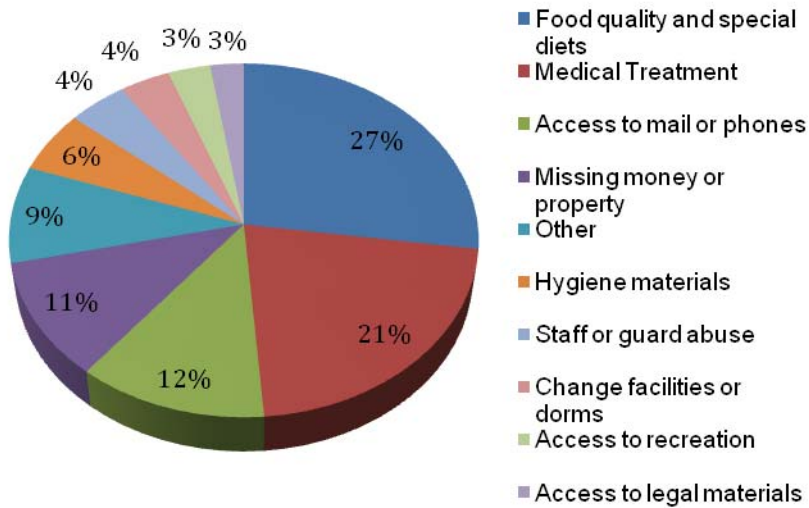
Committee. According to the county, the Committee had never convened as of February 15, 2012.⁷⁵

Our OPRA request revealed that detainees at ECCF filed 158 written grievances in 2011, and detainees in Delaney Hall filed 46 written grievances in October through December 2011. This number undoubtedly underestimates the number of grievances brought to the attention of county, CEC, or ICE officials because these officials keep no record of detainees’ oral grievances. Moreover, it is noteworthy that when the authors of this report reached out to detainees and attorneys to ask about conditions, the majority expressed a fear of targeting by guards if they shared their views about conditions. Lawyers and other service providers were also reluctant to assist in the gathering of information because of concerns about repercussions that detainees might face and the possibility of individuals or entire organizations being barred from the facilities.

These responses, in addition to some detainees’ lack of literacy or fluency in English, lead the authors to believe that the number of written grievances uncovered by the OPRA request represents only a small fraction of the overall complaints detainees may have about conditions in ECCF and Delaney Hall.

In this section, the actual conditions of immigrant detainees in Delaney Hall and ECCF are compared to the Performance-Based National Detention Standards (hereafter PBNDS) of 2011 released by ICE this year.

Formal Grievances by Essex County Correctional Facility Detainees

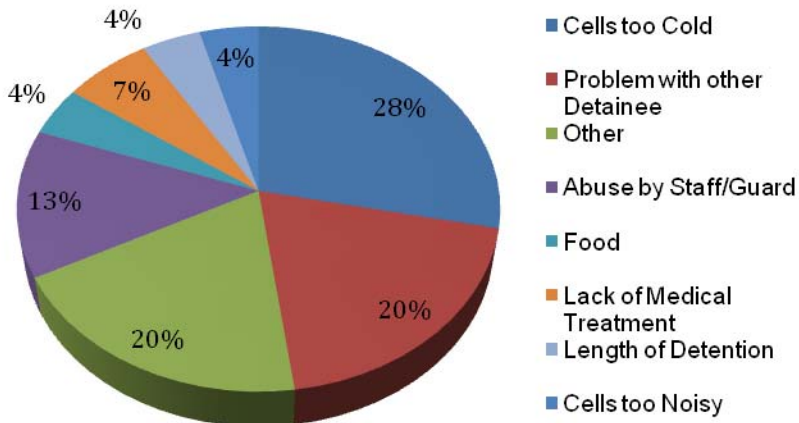


Complaints in the "other" category include:

- Changing classifications
- Unanswered complaints
- Lock down hours
- Problems with other detainees
- Failure to be notified of a visitor
- Marriage ceremony request
- Broken bunk
- Restriction of movement for religious reasons in dorms

* Based on grievances filed from 1/1/2011-12/31/2011

Formal Grievances by Delaney Hall Detainees



Complaints in the "other" category include:

- Denied use of phone to call lawyer
- Bleach used to clean cells burns eyes
- Mail not received
- No access to internet
- Inadequate clothing
- Confiscated property

* Based on grievances filed from 10/30/2011-12/31/2011

A. Misconduct by Guards and Other Staff at the Facilities

“One person up to last week was in lock up with his face swollen, and scratches all over he was kicked repeatedly and drug to lock-up and given medication until his bruises and cut’s healed. He wasn’t allowed to make phone calls until he’s fully recovered. We are crying out for help and concern for our health and well-being and life. Its like a third-world country in this facility and we lack proper judgment watching over us . . . Physical and verbal threats on a daily basis by staff must be stop.” ECCF Detainee Petition dated January 17, 2012

“Officer is very disrespectful and threatens us. He uses racial slurs towards detainees and other bad names. I feel his conduct is very unprofessional.” Detainee Grievance Received by ECCF on January 15, 2011.

ICE PBNDS- 6.2 Grievance System

- Facility staff must forward all detainee grievances alleging staff misconduct to a supervisor or higher level official and to ICE in a timely manner

ICE PBNDS- 2.13 Staff-Detainee Communication

- Detainees may submit written questions, requests, grievances or concerns to ICE staff and a staff member should respond within three business days

A disturbing number of detainees reported mistreatment from the guards while in detention. Seven of the written complaints from ECCF detainees complained of mistreatment by staff or guards.

Four of the written complaints by Delaney Hall detainees complained of guard or staff abuse. In addition, in an interview with the authors on February 5, 2012, a female detainee at Delaney Hall reported that guards were disrespectful and treated her “like a dog.” Transfer to more restrictive facilities like ECCF or Hudson County Correctional Facility was also used as a threat to detainees in Delaney Hall.

Another ECCF detainee said that they suffered a lot of verbal abuse from the corrections staff in the form of cursing threats, such as “I’m going to f--- you up,” according to a visitor from Sojourners. He also said that staff often told them they were “dirty, criminal, and were going to get

deported.” He also said that when ICE officials visited they often told detainees that they were going to lose their cases and be deported, which the detainee interpreted as an attempt to get the detainees to stop fighting their cases.

Detainees visited by the authors at Delaney Hall also spoke of being threatened with deportation even by the supervisor. Other former detainees told of the guards trying to coerce them into signing voluntary departure forms, and threatening to send them to ECCF if they didn’t sign.

In a December 2011 letter, a detainee at ECCF described to the authors mistreatment from staff while being transferred from Monmouth County to Essex County. Both his hands and feet were shackled and the vehicle was very hot (he was transferred in July) and dark. There were three women and fourteen men in a van made for only fourteen people. Since the metal benches were slippery, the

detainees slid around the back of the van when the drivers braked hard. The drivers also smoked in the vehicle and called the detainees “mother f-----ers.”

A number of individuals have also described abuse from ICE officials when detainees physically resist deportation. In the ECCF Detainee Petition, detainees describe a detainee with an injured jaw who **“held on to a pole at the airport. And, they re-broke his jaw and fractured his head and the handcuffs permanently fractured and scarred his wrist.”**

Similarly, a local church member reported that they visit a detainee who refused deportation and the guards threatened to drug him if he refused to be deported again.

Other detainees have complained about being held by ECCF staff in solitary confinement. One Delaney Hall detainee who was previously held in ECCF complained that he was held in solitary confinement in his cell for 23.5 hours per day.

Two former detainees in Delaney Hall said that when a fire alarm would go off, the detainees were unsure if there was a fire, but the staff would make them go into their dorms and lie on the beds. “This happened more than five times,” one said, “I think

were are going to burn in our beds like chickens.”

A number of detainees reported a lack of responsiveness from staff in response to their grievances or complaints. The ECCF Detainee Petition reported that **“our grievance system is a hoax... it’s 100% doesn’t work, it doesn’t get heard as if you never had wrote it. We wrote over 40 grievances and a whole year later we still haven’t received responses to any of them.”** Another detainee reported that ECCF detainees had written grievances about the medical care, but when an ICE official came and they asked about them, he said that he hadn’t seen any, and the detainees “felt as if their grievances were thrown in the garbage,” according to a visitor from Sojourners.

Finally, one former detainee said that staff failed to adequately care for the elderly detainees. She described one woman who was 70 or 80 years old who didn’t understand English and was given no assistance by staff members. Another detainee finally started feeding her and putting on her diapers. Sally Pillay, of IRATE & First Friends, was alerted and spoke to the lady and said she was crying all day because she didn’t understand what was happening to her.

B. Inadequate Mental and Physical Health Care

“As to my medical treatment, before been detained I suffered an auto mobile accident which left me with severe back problems. I suffered dislocated discs in my lower back, bulging in my neck, among other injuries, which have caused me to suffer from a mild case of scoliosis. On several occasions, I have sought medical treatment for pain only to be told by the orthopedic doctor to do exercise. I was told the medication that I used to take is too expensive for the jail to give me. [I] asked if not the medication to change my bedding by adding an eggshell sponge, only to be told this is given only to people with spinal problems. After relating to the doctor that I do suffer from spinal problems, and can furnish my medical records I was then dismissed. The mats that we sleep on are very thin; some have holes, and are just completely worn out... Let me however give credit for the attempts made upon my arrival during the 1st month, I was given some Tylenol medication only for (2) weeks. This was the extent of my medical treatment thus far.” - December 2011 Letter to the Authors from a Detainee at ECCF

ICE PBNDS- 4.3 Medical Care

- Detainees shall be able to request health services on a daily basis and shall receive timely follow-up.
- Twenty-four hour emergency medical and mental health services shall be available to all detainees.
- Each detainee shall receive a comprehensive medical, dental and mental health intake screening within 12 hours upon arrival at each detention facility.
- Prescriptions and medications shall be ordered, dispensed and administered in a timely manner and as prescribed by a licensed health care professional.

Inadequate mental and physical health care is one of the primary concerns facing immigrant detainees. 124 people have died in detention since 2003, six of them in New Jersey facilities.⁷⁶ In addition, the ACLU documented at least 200 allegations of sexual abuse by guards since 2007.⁷⁷ There are a number of documented cases of people dying from preventable or treatable conditions or whose suffering was increased or prolonged by inadequate, delayed or altogether denied medical care. It is also important to note that the detainee population includes asylum seekers who may be survivors of torture and who often suffer both physically and mentally from their experiences.

In the ECCF Detainee Petition from January 2012, the detainees describe the lack of medical attention and a wait of “sometimes days and weeks” for medical and dental appointments, even after submitting a slip requesting assistance. One detainee reported that it often took three weeks to see a doctor after filling out a slip and once it took a month, according to a visitor Sojourners. When the detainee finally went straight to a doctor because he had not been given an appointment, the doctor told him that the doctors were available but they were waiting on ICE to process and bring patients. The detainee also reported that a elderly man with high blood pressure and a diabetic man were brought straight to doctors by other detainee because they had not received appointments and were very sick, but the

doctors refused to see them since ICE had not approved the appointments.

The ECCF Detainee Petition also described an incident where an inmate “slipped on a puddle of water and fell and cracked the back of his head and blood gushed out.” The injured detainee was taken to the hospital and upon return was offered quick deportation as long as he kept quiet about the incident and didn’t sue.

In addition, thirty-six detainees filed individual formal complaints regarding medical treatment in ECCF in 2011. The majority of these (twenty) were made because the detainee requested medical attention or medication and did not receive it. Other complaints included inadequate dental treatment and lack of attention to special diet requests. In its first few months of housing immigrant detainees, two made formal complaints about a lack of medical treatment.

One local church member interviewed by the authors on February 5, 2012 reported that the guards injured the hand of a detainee in ECCF who he visits when the detainee refused to be deported. When the visitor spoke to the detainee eight days later, he still had not received any medical treatment.

ECCF detainees have complained that when treatment is given, the services and medications are not good. In one case, even an ear infection which can generally be treated in a few days dragged on for months. ***“[The medical treatment] helps but it don’t make it better. I’m being***

treated for an ear infection and for four months now am having the same severe pain.” -December 2011 Letter to the Authors from a Detainee at ECCF

A visitor from Sojourners reported that detainees IN ECCF were given Tylenol for everything, and sometimes were asked to pay for it.

Sally Pillay with IRATE & First Friends said that one man who was held in ECCF was schizophrenic but never received the proper medication. He was also told that he would be released with one week’s worth of medication but was dropped off at a bus stop with no medication and no coat in the middle of winter, despite the fact that he is mentally ill.

Another detainee at ECCF submitted an official complaint to ICE after being assaulted by staff members and denied medical treatment. ***“[S]taff members have locked me down in my room cell denying my request for medical attention, phone calls, and file charges; causing serious injuries into my body, head, face, neck. On May 25, 2010, staff members at Essex County Jail (ICE Detention) have me removed from dorm 1 to lock up. Where there I was beating up and denying from a medical attention, file charges and phone calls.”***

The January 2012 ECCF Detainee Petition shows the climate of fear that results when detainees hear others crying in pain and not receiving medical treatment. Their petition describes a number of medical issues, including a detainee with ***“a broken wrist and pins in his legs ... He hasn’t received any medical assistance since January 10th and he is in pain and cannot sleep at all and he is suffering in here.”***

A former Delaney Hall detainee who contacted IRATE & First Friends also complained about the delay to see a doctor. She said that any requests for medical treatment made on a weekend would have to wait until Monday, and even then there was no guarantee that you would get to see

someone. She also complained that after finally seeing a doctor “you will only get Motrin or something to make you sleep. That’s what they give everyone.”

Another former detainee from Delaney Hall complained about the poor quality of the medical care. She had a tooth removed while in detention, but some pieces of the tooth were left behind. “The doctors there are not qualified,” she said. She was also prescribed sleeping medication when she requested medical services, and she said that the staff told her if she didn’t take the sleeping medication she would be “put in jail.”

Both of these former detainees from Delaney Hall also told about a detained woman who suffered from seizures. They reported that doctors were overdosing her to get the seizures to stop, and the woman starting getting delusional and “losing her mind” until other detainees had to start washing her and caring for her because she was unable to. “We used to cry and pray for her and call her husband, but there was nothing we could do. Thank god she got asylum and got out,” one former detainee said.

During the author’s visit to Delaney Hall, a female detainee at Delaney Hall complained that during her first night in Delaney she was not given medication for her schizophrenia. She also had a biopsy before detention and was experiencing pain from it, but it took two days to see a doctor. She said that she was in so much pain that she cried all night. There was no procedure in place for an emergency, and she was told to wait until morning and fill out a slip.

As recently as March 2012, a community visitor reported that a detainee she met with at Delaney Hall was having cataract problems. He was given papers to sign, but requested assistance reading them due to his blurry vision. The supervising officer at Delaney Hall got upset with the detainee and was disrespectful towards him. The detainee is now fearful that the

officer's assertion that he was "noncompliant," for not signing forms that he could not see, will jeopardize his case.

However, some detainees and attorneys report that medical treatment is not one of the more significant problems at Delaney Hall. Some detainees do receive their medication and have regular access to doctors and psychiatrists. Clement Lee, a

Tom Steel Legal Fellow at Immigration Equality focusing on LGBT immigration detention issues, represents individuals at Delaney Hall. He said that so far, the two HIV positive detainees with whom he has spoken have received their medications and had access to doctors and psychiatrists while at Delaney Hall.

C. Inadequate Access to Healthy Food

"We are not given the proper nutrients that are stated in the record. The menu clearly shows that we get 3000 calories per day. We don't even get a mere 1000-[1500] calories daily. E.C.C.F. kitchen has put profits before our well being. If 3000 calories we would be gaining weight instead of losing weight. Maybe it's a plot to get us to buy more commissary, but most are indigent." January 17, 2012 ECCF Detainee Petition

ICE PBNDS- 4.1 Food Service

- Food service personnel shall provide nutritious and appetizing meals.
- Food service personnel shall accommodate the ethnic and religious diversity of the facility's detainee population when developing menu cycles. While each facility must meet all ICE/ERO standards and follow required procedures, individuality in menu planning is encouraged.
- Therapeutic medical diets and supplemental food shall be provided as prescribed by appropriate clinicians.
- Special diets and ceremonial meals shall be provided for detainees whose religious beliefs require adherence to religious dietary laws.

The accounts of detainees in ECCF and Delaney Hall show that the food service in the facilities does not meet the national standards of ICE. In the January 2012 ECCF Detainee Petition, detainees stated that food standards are "violated every single meal." They stated that they receive the food listed on the menu "seldom or almost nil." Particularly when the menu includes meat, they said that they receive "purified liquid" or "red sauce," which is passed off as meat. They also complained that they are served raw potatoes instead of hash browns and that they are provided inadequate hot water to cook their

commissary food.

According to a visitor with Sojourners, detainees often contracted parasites and other stomach problems after a couple of months in ECCF. She visited a detainee who discovered he had parasites that should have been treated through diet, but his diet wasn't altered.

Two former detainees in Delaney also reported that the food served to them on a daily basis was different than when visitors came into the facility. When video cameras came into Delaney, the detainees were served "hamburgers and French fries and allowed to receive seconds," which

otherwise never occurs. One former Delaney Hall detainee, who contacted IRATE & First Friends, worked in the kitchen while in detention and said that she was told to change the menu when visitors were coming. “They always know when visitors are coming, so they would do everything right,” she said.

On October 9, 2011 during a protest by members of New Jersey Advocates for Immigrant Detainees outside of Delaney Hall, the sister of a detainee told the crowd about the meal of one egg and a cup of hot water with sugar that he had received earlier that morning.

The written grievances from ECCF confirmed the verbal accounts of detainees. Out of 36 grievances categorized as “Kitchen,” five detainees reported cold food, 17 stated that their special diet needs were not being met, and 14 others were unhappy with the food quality or stated that there was not enough food.

Visitors to ECCF agreed that detainees stated there is a lack of adequate portions of food. One visitor said “The evening meal starts at 4:00. By 7:00 pm the men are

having hunger pangs, depending on the commissary to buy a plastic bag of rice to stave off hunger.” Attorneys with clients at ECCF also report hearing that the food is terrible. One attorney who has eaten the food at Delaney Hall (visitors and attorneys are not allowed to bring in food or water into the facility) described it as “horrid” and “not fit for people,” stating that the meals were “all yellow and orange, like hot dogs and white bread and fake yellow cheese or potato chips.” An attorney who visited her client at ECCF on February 27, 2012 confirmed that “the food was horrible, and they aren’t getting enough to eat.”

In addition, detainees complained that that the facilities have failed to comply with their religious or medical dietary restrictions. For example, a detainee grievance received by ECCF on December 2, 2011 stated, ***“I have requested the kosher meal approximately 3 weeks through Ms. X. I was told I’m gonna be served is 2-3 days after I’m still awaiting my request.”***

D. Inadequate Access to Drinking Water

“This same sergeant was told on a few occasions about our lack of drinking water, and was directed by the associate warden to ensure that we were given an igloo for drinking. It took him (2) weeks before doing so, forcing us to drink from the sinks where face washing and teeth brushing are done.” Detainee from ECCF, December 2012

ICE PBNDS—4.1 Food Service

- Clean, potable drinking water must be available

Access to clean drinking water should not be a luxury for immigrant detainees; however, reports for visitors and detainees themselves describe an inadequate amount of water available to them while detained.

Diana Stewart, a visitor from the Sojourners, presented the problem to the Freeholders on June 8, 2011. She had visited a detainee for over seven months, and he told her of lack of access to fresh drinking water and having to drink out of the bathroom sink.

On December 1, 2011, the authors received a letter from a detainee at ECCF, which stated that after telling his sergeant about the lack of drinking water in the cell, it took two weeks to provide an igloo [cooler] from which to drink. Meanwhile, the detainees were forced to drink from the

bathroom sinks, which were dirty with toothpaste, spittle, and mucous.

A visitor from Sojourners also said that a detainee she visited complained that the new Sergeant wouldn't allow them to use the kitchen for water after meal time, and they were forced to drink out of the bathroom sinks.

E. Access to Religious Services

ICE PBNDS—5.5 Religious Practices

- Detainees shall have regular opportunities to participate in practices of their religious faiths
- Each facility's religious program shall be planned, administered and coordinated in an organized and orderly manner
- Each facility's religious program shall be augmented and enhanced by community clergy, contractors, volunteers and groups who provide individual and group assembly religious services and counseling
- Adequate space, equipment and staff (including security and clerical) shall be provided for in order to conduct and administer religious programs
- Special diets shall be provided for detainees whose religious beliefs require adherence to religious dietary laws
- Detainees shall be provided information about religious programs at the facility, including how to contact the chaplain or religious services

In addition to some detainees not receiving the appropriate special meals required for their religious observance, community members also reported having problems with access to ECCF to conduct prison ministries. At a June 8, 2011, meeting with the Essex County Freeholders, Catherine Fink from Prison Ministry of the Roman Catholic Archdiocese of Newark described a six-week lockdown that occurred in ECCF in the spring of 2009. The lockdown prevented the holding of religious services, even for Easter. Instead, the ministry was forced to visit cell by cell, which does not constitute a "worship service."

At the same 2011 meeting, the Roman Catholic Archdiocese of Newark presented the Freeholders and ECCF Director Alfaro

Ortiz with a 5-page report about current issues with access to clergy in detention facilities. It made note of numerous violations of the NJ Administrative Code, as it related to how the ECCF was limiting clergy's access to inmates, inmates' access to pastoral care, and communal religious services of all faiths.

A visitor with the Sojourners reported that ECCF detainees were denied access to religious services as a form of punishment. She visited a detainee who was prevented from going to church because he said hello to a friend while waiting in line for the service.

Corrections staff also stopped detainees from going to church arbitrarily, according to a visitor with the Sojourners. One detainee

told her, “if a CO [corrections officer] does not like you, he stopped you from going to church.” He also said that they would sometimes restrict the number of people that could go to the service to ten, even

though this wasn’t a general restriction. He also reported that staff would sometimes call the detainees for church at 7:15 am, which is at the beginning of breakfast and kept people from attending.

F. Sanitation, Temperature, Comfort in the Facilities

***“The mats that we sleep on are very thin; some have holes, and are just completely worn out. When we make request for them to be changed our dorm sergeant, last name X, would tell us that ‘you are in f-ing jail, and not at the club-med, stop complaining so much mother f-ing immigrants.’”
December 2011 Letter to the Authors from a Detainee in ECCF***

“I’m very cold in this room. I have to sleep fully clothed. Truly blankets alone is not enough. The air in the room is cold. Only cold air is blowing in here. We have a corner room which is a lot colder with 2 windows. Please we need warm air this cold is unacceptable. We really need help.” Detainee Grievance Received in Delaney Hall 11/25/11.

“Please help. The nurse’s office is freezing even standing in line to get medication is hard. You have to wear a jacket to see the doctor and hope not to catch a cold. We really need someone to check the temperature to really see what its like on Unit X and in the doctor’s office.” Detainee Grievance Received in Delaney Hall 12/2/11.

ICE PBNDS—2.6 Hold Rooms in Detention Facilities

- Staff shall ensure that sanitation, temperatures and humidity in hold rooms are maintained at acceptable and comfortable levels

Of the 46 written grievances received by Delaney Hall between October 1, 2011 and December 31, 2011, thirteen were about how cold the dorms were and an inadequate supply of blankets. One former Delaney Hall detainee said that the side of the building with the visitor’s room was kept warmer but the rooms they slept in were very cold. She said that the detainees complained about the temperature, but nothing changed.

The problem with temperature is also prevalent at ECCF, where as recently as February 27, 2011, an attorney reported being very cold while visiting a client there.

A visitor from Sojourners also stated that a detainee she visited complained of a lack of heat in the dorms and a lack of clothing in the winter, when they didn’t have blankets, socks, or long sleeve shirts.

The shower facilities at ECCF are described as “filthy” and “the drainage runs slow, so the water collects on the floor. There are areas of mildew, peeling paint, and stagnant water smells. There also is an issue with flies around the urinals, and “the bathroom floors and toilets are always dirty...” (Letter to authors from detainee at ECCF dated December 1, 2011).

Five detainees in ECCF submitted written grievances requesting shoes that could be worn in the showers (stating that the ones given did not last very long), and three requested toiletries.

Detainees also reported a lack of toilet paper and soap in the ECCF Detainee Petition, stating that they receive toilet paper and soap "once a week (Monday or Tuesday) and never after that or otherwise."

What provisions they receive are not enough for the week, and the soap is not enough for washing laundry by hand.

Detainees have access to the facility's laundry services but also wash personal items by hand. They stated, "[The laundry] is piling up and we hear 'there isn't any detergent yet.'"

Two female former detainees in Delaney complained that they were given only one set of clothes to wear for four or five days. They had to wear those same clothes for recreation and for sleeping, and even after showering had to wear the same clothes. "It's not healthy," one former detainee said.

G. Outdoor Access and Recreational Activities

"There are people who haven't seen the sun for over two years and don't have any violations that are murder or heavy enough to not be granted fresh air and sun and outside privileges. No one deserves this type of treatment even criminals have more necessities and privileges than us." January 2012 ECCF Detainee Petition.

ICE PBNDS—5.4 Recreation

- Detainees shall have access to exercise opportunities and equipment at a reasonable time of day, including at least one hour daily of physical exercise outside the living area, and outdoors when practicable.
- Daily indoor recreation shall also be available. During inclement weather, detainees shall have access to indoor recreational opportunities, preferably with access to natural light.

Recreation is required by ICE's own detention standards, limited only by "the constraints of safety, security and good order." However, detainees at Delaney Hall visited by the authors in February 2012 reported that it was too cold to remain outside for long because the jackets provided by the facility were too thin. For indoor activity, there was a general gym area (also used for visitation), but the treadmills did not work as of February 5, 2012 and had not been working for weeks prior to that date.

"A former detainee reported that detainees at Delaney Hall are given only one set of clothes per week, so many of the women did not want to exercise and

perspire and then not have a clean change of clothes," said Sally Pillay of IRATE & First Friends. "When the detainees were initially transferred from the EDC to Delaney, some of the women had been inside for so long that their eyes could not handle the direct sunlight from outdoors."

At Delaney, detainees visited by the authors stated they had ample time for indoor activities (about one hour to 1.5 hours a day), while ECCF provided only about 30 minutes of recreation a day. Some indigent detainees who wanted to participate in recreational activities could not for lack of proper footwear. During 2011, five written grievances at ECCF requested recreational shoes.

Many detainees in Essex also complained about the amount of time they were required to spend in their cells. In the ECCF Detainee Petition, detainees complained that they were given only five hours a day outside their cells. They also

complained they were not allowed reading materials inside their cells to pass the time.

Community visitors also reported a vile smell from the nearby sewerage treatment plant when visiting Delaney Hall as recently as February 22, 2012.

H. Visitor Access

“We got [to Delaney Hall] around 3:15pm. Once we got into the gym there were family members and friends but no detainees. We sat there for 2 hours waiting to hear what was going on. With shift swaps and loss of communication we found out about an hour of waiting that detainees were on lock down. They made families wait for 3 hours before finally giving them the solid info that they were going to be able to have them come out... Many families had to leave because they had to go get their children or just couldn’t handle waiting.” Account from Amy Cortright, IRATE & First Friends about a visit in October 2011

ICE PBNDS—5.7 Visitation

- Facilities are encouraged to allow detainees to maintain ties to their family and friends in the community. Detainees shall be able to receive visits from legal representatives, consular officials and others in the community.
- Detainees shall be advised of their right to contact their consular representatives and receive visits from their consulate officers.
- Facilities are encouraged to provide opportunities for both contact and non-contact visitation with approved visitors during both day and evening hours.
- Information about visiting policies and procedures shall be readily available to the public.
- The number of visitors a detainee may receive and the length of visits shall be limited only by reasonable constraints of space, scheduling, staff availability, safety, security and good order. Generally visits should be for the maximum period practicable but not less than one hour with special consideration given to family circumstances and individuals who have traveled long distances.

ICE PBNDS 2.10 Searches of Detainees

- A strip search shall be conducted only when properly authorized by a supervisor where there is reasonable suspicion that contraband may be concealed on the person or when an officer has reasonable suspicion that a good opportunity for concealment has occurred or as may be outlined in facility procedures for post contact visits.

Family members, friends and community members attempting to visit ECCF described ever changing rules and requirements, depending on officers’ whims,

for entry. A member of the Reformed Church of Highland Park who visits detainees at Delaney Hall said, “The guards change the rules for visiting at the door.” At

times, they only accept a driver's license as ID, or sometimes they refuse to allow visitors to enter with pen and paper.

It is reported that the length of visits also depends on the guard that day instead of the actual policies in place. Members of Reformed Church of Highland Park reported being at the mercy of the guards regarding how long they could visit. Sometimes after 15 minutes, you would be told your time is up.

Several family members and community visitors also described dress code rules for visitors that changed without notice. The wife of a former detainee who was transferred from Elizabeth Detention Facility to Delaney Hall was told that she had to put on sneakers before she would be allowed to see her husband. She went to purchase sneakers but upon returning to the facility, noticed that all types of footwear were being allowed into the building.

In addition, a visitor to ECCF from Sojourners said that the staff denies the detainees visits as a form of punishment.

On a visit to detainees in Delaney Hall in early February, 2011 the authors experienced first-hand what family members have to go through to see detainees. Once in the visiting area, which is the gym, visitors have to attempt to get a chair if one is available and find a place to sit. The gym was very loud and it was hard to hear. There were noticeably many families and small children present.

Detainees were also previously denied access to a marriage clerk while in detention. Ruben Quinteros Barboza was picked up by ICE seven days before his wedding in September 2011. His fiancé, Neida Lavayen, and his lawyer, Heather Benno, sent a written request to the Newark municipal clerk to go to Delaney Hall to issue a marriage license, but the clerk's office said that clerks could not leave the office due to budget cuts. Benno also contacted the Newark ICE field office, but

they would not permit Quinteros Barboza to leave the detention facility and would not facilitate the marriage unless a clerk came to the facility. The marriage would have provided Quinteros Barboza with a basis for a green card application, but instead he was denied his right to marry and deported without the opportunity to establish a life with his fiancé or to apply for a visa.⁷⁸

The *Locked Up but Not Forgotten* report focused primarily on visitation issues. As described above, many of the problems described in that report are still prevalent. However, there have been some improvements. Essex County began allowing contact visits in October 2011. In January, after the press surrounding the Quinteros case, the Newark (municipal) clerk began going to ECCF and Delaney Hall to perform marriages once a month.

In addition, Essex County began allowing contact visits in October 2011. Before October, detainees in certain units in ECCF were only permitted non-contact visits in a small, shared room, where it was very difficult to hear.

However, when contact visits began, ECCF staff began regularly strip-searching detainees before and after contact visits, according to a visitor from Sojourners. She visited a detainee in ECCF twice in October 2011. The detainee reported that before and after each contact visit, corrections staff made him get undressed, turn around and bend over, and then they searched his clothes. He said that some detainees protested, but then were not permitted to have a visit. The visitor from Sojourners said that although the contact visits were a step up from the non-contact visits, although they were very closely watched during the visit and made to sit on opposite sides of the table with their hands on top of the table. "But once I found out about the strip-searching, I wasn't sure if I should visit anymore," she said.

I. Phone Calls

ICE PBNDS—5.6 Telephone Access

- Detainees shall have reasonable and equitable access to reasonably priced telephone services.
- Detainees and their legal counsel shall be able to communicate effectively with each other.
- Privacy for detainee telephone calls regarding legal matters shall be ensured.
- Detainees shall be able to make free calls to the ICE/ERO-provided list of free legal service providers for the purpose of obtaining initial legal representation, to consular officials, to the Department of Homeland Security (DHS) Office of the Inspector General (OIG), and to the ICE Office of Professional Responsibility (OPR) Joint Intake Center (JIC).
- Indigent detainees, who are representing themselves pro se, shall be permitted free calls on an as-needed basis to family or other individuals assisting with the detainee's immigration proceedings.
- Facilities shall strive to reduce telephone costs, including through the use of emerging telecommunications, voiceover and Internet protocol technologies.

Detainees in both Delaney Hall and ECCF report exorbitantly high cost for telephone calls even for calls to New York City. Out of eight written grievances about telephones from detainees in ECCF, six reported problems with their pin number or issues with phone usage.

A detainee in Delaney Hall visited by the authors stated that it was not only very expensive for her to call her family in Guinea but also to call her attorney in New York or a friend in New Jersey.

Another detainee complained that the reception on the phones was very bad and sometimes they did not work for entire days, according to a visitor with Sojourners. The detainee was never able to make an international call, even when he learned of his father's death and asked an ICE officer to let him call his family.

Privacy on phone calls is also an issue. Two former detainees from ECCF and Delaney Hall stated that although the phone card system was being phased out, when

using a phone provided in the office, the guard must know the name and phone number of the person being called. Detainees feared that this information would endanger their family members.

A detainee in Delaney Hall visited by the authors stated that it was not only very expensive for her to call her family in Guinea but also to call her attorney in New York or a friend in New Jersey.

An attorney representing a detainee recently transferred to ECCF told the authors that since there is no way to have a phone appointment with detainees, lawyers must travel to the facility to see their clients. She reported one incident with a client initially detained at Delaney Hall, then transferred to Essex when he tried to break up a fight. Upon arriving in Essex, he was not permitted to call his attorney and she was not even notified of his transfer. This particular detainee could also not afford to buy a phone card to call his family in Arizona and Texas.

IV. WHAT ARE DETAINEES' RIGHTS TO LEGAL SERVICES AND DUE PROCESS?

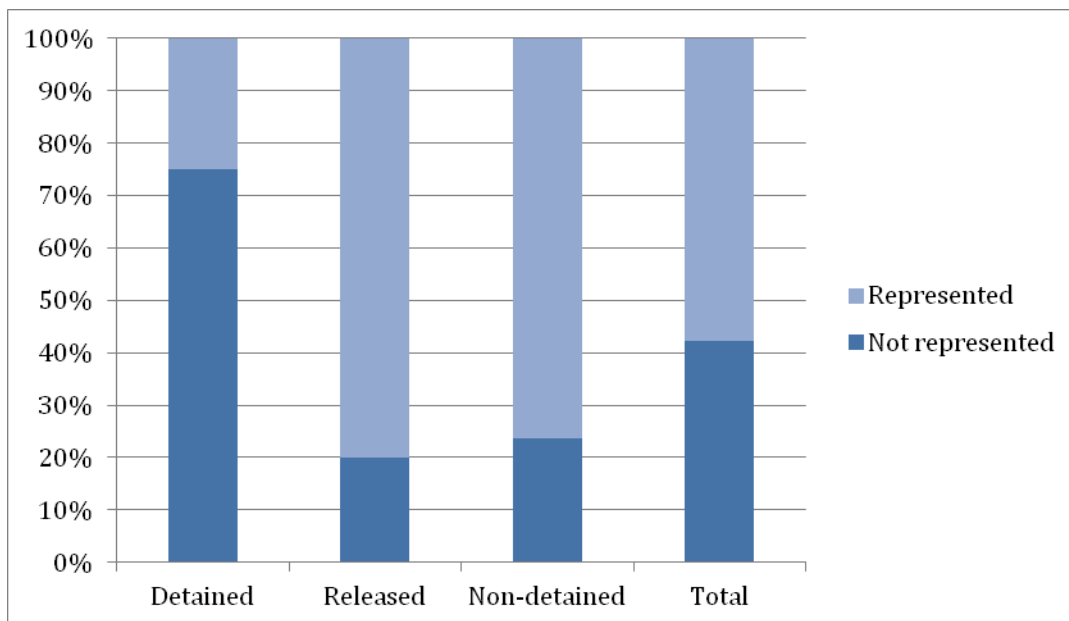
A. Legal Representation

Only 16 percent of immigration detainees nationwide have legal representation.⁷⁹ Though the conditions in detention are tantamount to incarceration, and detention and deportation logically amount to punishment, the Sixth Amendment has not been interpreted to afford a right to government provided counsel for immigrants in detention or deportation proceedings.⁸⁰ The high number of immigrants in New Jersey detention facilities without legal representation is troublesome. A report by the Katzmman Immigration Representation

Study Group conducted from mid-2010 to mid-2011 and released in 2011 found that 88 percent of immigrants from New York who had their cases transferred to Newark had no legal representation.⁸¹

In Newark Immigration Court in 2009 and 2010, 75 percent of detained immigrants were without legal representation.⁸² This is in sharp contrast to released individuals, where only 20 percent were without representation, and individuals who were never detained, where only 28 percent are without representation.⁸³

Newark Immigration Court Legal Representation Statistics (2009-2010)



*Based on 2009 and 2010 data from the Executive Office for Immigration Review

B. Access to Counsel

“For the past month there has been no free legal assistance in Essex County everyone asks and calls the legal services provided by Immigration and they simply hang-up. Inmates do not understand the Immigration rules and gets unreasonably mistreated when in front of...Judges in Elizabeth and Newark.” January 2012 ECCF Detainee Petition

ICE PBNDS—6.3 Law Libraries and Legal Material

- Detainees shall have access to courts and counsel.
- Detainees shall be able to have confidential contact with attorneys and their authorized representatives in person, on the telephone and through correspondence.

The dire consequences of immigration detention and removal proceedings—separation from family, job loss, deportation—show the importance of access to counsel. The Katzmman report referenced above also found that the outcome of immigration cases depended largely on access to counsel; “About 67 percent of all immigrants with counsel during that five-year period had successful outcomes in their cases, while only 8 percent of those without lawyers prevailed.”⁸⁴

It is noteworthy that with the huge increase in the number of detainees in Essex County, local legal service providers have not had a reciprocal increase in their resources. Detainees at ECCF and Delaney Hall express frustration with the lack of availability of pro bono counsel. Many call the numbers provided to them but do not get an answer. Though provided with a list of pro bono lawyers and organizations providing free legal representation, detainees at Delaney Hall reported not being able to get through to anyone using those numbers provided. Even if they are able to get through, there are simply not enough attorneys and resources to procure pro bono assistance for all who need it.

To call a private attorney, detainees must use their own funds. A detainee at Delaney Hall visited by the authors on February 5, 2011 described the difficulty of

reaching an attorney since he had to pay for the phone calls. An asylum seeker picked up by ICE at the airport, he had been in detention for two months and was unable to find an attorney to represent him pro bono.

Attorney Heather Benno, whose client was transferred to Delaney Hall soon after it began holding immigrant detainees, said that Delaney Hall was unorganized and unprepared for immigrant detainees. She said there was no detainee tracking system in place and so she was unable to confirm that her client had been transferred for two days. There was also no way for her to communicate with her client because there was no way to arrange a free legal call for the detainee, and “the telephone systems barely worked at all to enable counsel to communicate with the appropriate detention facility and ICE staff.”

Those with some money to pay a lawyer are sometimes taken advantage of. A former detainee at Delaney Hall who was detained for five months described how he had sought help from four different private attorneys. They each took hundreds of dollars from him but did nothing—even at times giving him bad advice that hurt his case. When his wife asked for money back from an attorney who had hurt his case, the lawyer screamed at her.

Legal interns and legal assistants have experienced repeated problems with access to ECCF. In May 2010, an attorney from

American Friends Services Committee (AFSC) was denied access to ECCF. In a letter to the ICE Field Office Director on May 11, 2011, AFSC submitted a formal written complaint about not only this most recent denial of access but previous instances of the same practice. In addition, Clement Lee, a Tom Steel Legal Fellow at Immigration Equality, was forced to provide his social security number as well as the social security number of the private psychologist accompanying him before he could see a detainee at ECCF.

In another written complaint to ICE Supervisor Madera on August 4, 2010, the aforementioned AFSC attorney barred from ECCF described her assistant being denied access to the facility although she had followed all the required protocols for entry prior to arriving that day. In Section 5.7(J)(1) of the PBNDS for 2011, the relevant provision states that “In visits referred to as ‘legal visitation,’ **each detainee may meet privately with current or prospective**

legal representatives and their legal assistants.”

Furthermore, the facility does not provide clearly posted notice of its legal visitation policy to guide practitioners. The PBNDS provide clear instructions regarding attorney visitation and access to counsel. Legal visits should occur 7 days a week for a minimum of eight hours a day during business days and 4 hours a day on weekends and holidays. Attorneys licensed and in good standing, BIA accredited individuals, legal assistants and law students under the supervision of attorneys are authorized to make legal visits.

The practice at ECCF has not followed ICE’s own Performance Based Standards. In June 2011, community advocates again presented these issues to the Essex County Freeholders reporting that ECCF was not in compliance with these standards for legal visitation. Their reports were again dismissed without investigation.

C. Access to Law Library

ICE PBNDS—6.3 Law Libraries and Legal Material

- Detainees shall have access to properly equipped law library, legal materials and equipment (including photocopying resources) to facilitate the preparation of documents
- Detainees shall be able to have confidential contact with attorneys and their authorized representatives in person, on the telephone and through correspondence.

Detainees and legal representatives have complained about the inadequacy of the law libraries in ECCF and Delaney Hall. One attorney who represents a number of clients in Delaney Hall said that computers in the law library didn’t have access to the internet, but instead had a closed circuit system with Lexis Nexis on disks. Unfortunately, that system contains no cases from the Board of Immigration Appeals, and so excludes the majority of immigration cases. She also said there is currently no consolidated information on particular issues, for example how to ask for

a bond hearing, although she is working on creating binders that the detainees can access. A Delaney detainee said that all the books in the library are out of date.

A former detainee from Delaney Hall reported that if certain guards saw that a detainee spoke some English and they thought that the detainee understood something about the law, because they printed materials or filed something, they would write down the detainee’s name and keep them from using the library again.

A private attorney with clients in ECCF said that detainees do have access to a law library with 3-4 computers and a printer. However, another attorney who represents clients in ECCF and does Know Your Rights presentations there, said that the law library

is really only accessible to detainees who are housed in the “dorm” area and have greater freedom of movement. The movements of detainees held in the “max” area are highly restricted and they are not able to get to the computer area.

D. Due Process Concerns

Detainees in Delaney Hall appear before an immigration judge at Elizabeth Detention facility via video (VTC) hearings, and detainees at ECCF appear in Newark immigration court via video.

One attorney who represents clients in Delaney said that the video situation presents two major problems. First, the quality of the sound on the video is “abysmal,” making it difficult for the client to hear and understand what is being said. If an interpreter is needed, the problem is compounded because, for all languages except for Spanish, the interpreter is called in via speaker phone, and then the client only hears what the video can pick up from the speaker phone. A pro se detainee at Delaney confirmed that the first time he saw the judge it was via video, and he couldn't understand anything. Fortunately the judge ordered that he appear in person the next time and he was able to understand much better.

The second problem that the attorney recounted is that the attorney has to appear in the courtroom while their client appears via video from the detention facility, so there is no opportunity for confidential communication with the client. She said she has physically tried to go to Delaney Hall to appear with her clients, but she was barred.

“This is an outrage,” she said, “a lawyer should be able to sit with their client physically, and it's an obvious violation of due process, but the facility won't let me. That room is essentially the courtroom, so the attorney is barred from the courtroom.”

The facility cited security as the reason for their denial of her request. The VTC room is in Dorm Two, which they consider a “non-secure” dorm, and so they do not allow non-detainees to access that area. Ironically, this attorney frequently walks around the facility unescorted and gives presentations to groups of 40 detainees at a time. The attorney said that she asked facility officials to move the VTC room, but they said it was too expensive and not possible.

Clement Lee, a Tom Steel Legal Fellow at Immigration Equality who often visits clients in Delaney Hall, agreed that “this raises serious due process concerns.” Lee primarily represents clients with asylum claims based on LGBT identity. He said that in these cases, not having the client present in the court can harm their case because the judge is making a credibility judgment about the client's claim. He also said that his transgender clients have to wear their unisex uniform during their hearing, which can also prevent the judge from perceiving them as transgender.

Another problem faced by attorneys representing detainees in Delaney is that the court in Elizabeth bars them from bringing in laptops, although the DHS attorneys are permitted to bring their laptops.

Although one attorney reports she has had some success when she requests that her client be brought to court for individual hearings, the officials at Elizabeth detention facility will not allow her to meet with her clients in the attorney visitation area

because the client is a Delaney Hall detainee. So the attorney still has to wait for the detainee to be taken back to Delaney and then drive there to meet with them.

In response to these problems some attorneys have made formal complaints

about the laptop policy. Another made a motion to the Immigration Judge to try to get access to the VTC room, but the Immigration Judge said they didn't have the power to grant her request.

CONCLUSION

In a letter to American Friends Services Committee (AFSC) dated September 9, 2011, Essex County Freeholder President Bonnie Watson addressed the concerns posed by AFSC at a Public Comment Session during a Town Hall meeting on August 17, 2011. AFSC representatives had previously asked 1) if any steps had been taken to improve conditions, access to and visitation for immigrant detainees at the Essex County Correctional Facility since the June 8, 2011 Freeholder meeting when many speakers raised concerns about those issues, and 2) if the Administration intended to establish an advisory board including members from the community to ensure detainees are held in humane conditions.

Ms. Watson conveyed ICE's assurances "in reference to improved conditions for detainees" the Essex County Department of Corrections was indeed "in compliance with National Detention Standards" as well as state standards and ICE inspections or audits.

Despite the assertions by ICE and the Freeholder's unquestioning acceptance of their reported compliance with detention standards, this report demonstrates that the conditions for immigrant detainees in Essex County, NJ falls far short of any measurable standard. Throughout the research and writing of this report, the authors heard stories from and about detainees and former detainees who were not being provided with basic needs or accorded

basic human dignity in their day to day lives while detained. The relevant standards governing how immigrant detainees should be treated vary widely from the reality.

Given the disparities between the national standards ICE claims to be in compliance with and the findings of this report, the Freeholders of Essex County should reassess ICE's assertions that there is not a problem with conditions in the facilities in their county. A Community Oversight Board would help to mitigate some of the disparities and provide much needed accountability and transparency to the community. Notwithstanding any attempts to alleviate some of the injustice and indignities of the civil detention system for immigrant detainees, there needs to be a reassessment of the bigger question: why detain members of our communities who pose no risk and have every interest in appearing in immigration court to challenge their removal in the first place?

The detainees and former detainees chronicled in this report were productive members of their communities prior to being detained. Inhumane conditions coupled with the collateral consequences of detention have changed their lives for the worse, and the impact may be long-term, if not permanent. Whatever the initial aims of non-punitive civil detention were, they are far from what is now the current state of affairs in Essex County.

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⁵ Jenna Greene, *ICE Warms Up to Detainees*, THE NATIONAL LAW JOURNAL, Feb. 8, 2010, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202442055920&slreturn=1>.

⁶ American Civil Liberties Union, *Banking on Bondage: Private Prisons and Mass Incarceration*, Nov. 2, 2011, available at http://www.aclu.org/files/assets/bankingonbondage_20111102.pdf (hereinafter “*Banking on Bondage*”).

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¹⁰ See *Banking on Bondage*, *supra* note 6, at 16, available at http://www.aclu.org/files/assets/bankingonbondage_20111102.pdf.

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¹² *Locked Up*, at ii.

¹³ *Id.* at 1-2.

¹⁴ *Id.* at 2.

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¹⁷ “Petition to Stop the Expansion of Immigration Detention in New Jersey,” available at <http://www.change.org/petitions/people-not-profits-stop-the-expansion-of-immigration-detention-in-new-jersey>.

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¹⁹ John Clancy, Statement to Essex County Freeholders at Freeholders Meeting, Dec 14, 2011.

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- ³² Carroll, *supra* note 26.
- ³³ Dolnick, *supra* note 24.
- ³⁴ Carroll, *supra* note 26.
- ³⁵ *Id.*
- ³⁶ Khavkine, *supra* note 31.
- ³⁷ *Id.*
- ³⁸ Khavkine, *supra* note 31.
- ³⁹ Carroll, *supra* note 26.
- ⁴⁰ Dolnick, *supra* note 24.
- ⁴¹ Khavkine, *supra* note 31.
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⁷⁵ Open Public Records Act (OPRA) Officer's email dated February 15, 2012 in response to the authors' OPRA request on February 7, 2012.

⁷⁶ Freed Wessler, *supra* note 7.

⁷⁷ Nina Bernstein, *Officials Hid Truth of Immigrant Deaths in Jail*, NY TIMES, January 10, 2010, available at http://www.nytimes.com/2010/01/10/us/10detain.html?_r=1&ref=incustodydeathshttp://www.nytimes.com/2010/01/10/us/10detain.html?_r=1&ref=incustodydeaths; Nina Bernstein, *Few Details on Immigrants Who Died in Custody*, May 5, 2008, available at <http://www.nytimes.com/2008/05/05/nyregion/05detain.html?pagewanted=all>; Steve Strunsky, *Ecuadorian Man Dies in Detention While Awaiting Deportation*, THE STAR LEDGER, available at http://www.nj.com/news/index.ssf/2011/09/ecuadoran_man_dies_while_waiti.htmlhttp://www.nytimes.com/2010/01/10/us/10detain.html?_r=1&ref=incustodydeaths.

⁷⁸ Julia Terruso, *Immigrant Detainee's Request to Stay in U.S. to Marry Denied*, THE STAR LEDGER, October 20, 2011, available at http://www.nj.com/news/index.ssf/2011/10/immigrant_detainees_request_to.html

⁷⁹ Freed Wessler, *supra* note 7.

⁸⁰ See *Aguilera-Enriquez v. INS*, 516 F.2d 565 (6th Cir. 1975), which found that the government is only required to provide counsel when the non-citizen is unable to adequately present their case. Unfortunately, at this time, judges have not found that individuals were unable to adequately present their cases except in the case of mentally ill (See *Franco-Gonzales v. Napolitano*).

⁸¹ Kirk Semple, *In a Study, Judges Express a Bleak View of Lawyers Representing Immigrants*, NY TIMES, December 18, 2001, available at http://www.nytimes.com/2011/12/19/nyregion/judges-give-low-marks-to-lawyers-in-immigration-cases.html?_r=2&scp=1&sq=judge%20katzmann&st=cse.

⁸² Data referenced from the Office of Planning, Analysis, and Technology report PJF/#11-70/2-7-11.

⁸³ *Id.*

⁸⁴ *Id.*