Attorneys’ Perspectives on the Violation of the Civil Rights of Immigrants Detained in Minnesota

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Undocumented immigrants wait to be transported during a pre-dawn raid by Immigration and Customs Enforcement.

U.S. Immigration and Customs Enforcement, also known as ICE, is the largest branch of the U.S. Department of Homeland Security. The ICE mission “is to protect national security by enforcing our nation’s customs and immigration laws,” and its stated priorities include human trafficking and smuggling, violent transnational gangs, and sexual predators. In actuality, a substantial portion of its $5.5 billion budget and 17,000-person workforce is dedicated to arresting and detaining undocumented immigrants, many of whom lawfully entered the U.S. According to the Department of Homeland Security, approximately 11 million undocumented immigrants live in the United States today. According to the Detention Watch Network, more than 440,000 of these individuals were in detention in 2009. During the past five years, the kinds of immigration enforcement actions that lead to arrests and detentions have dramatically increased. Undocumented immigrants, as well as some lawful permanent residents, end up in civil immigration detention through various channels that include seeking asylum in the United States, arrest at worksite raids or in homes, random stops for civil violations (such as a burned-out tail light), and arrests or convictions for crimes. Latino-rights and human-rights groups have expressed concerns about how immigration detention has expanded. The immigration director of the National Council of La Raza has stated, “We understand the need for sensible enforcement, but that does not mean expanding programs that have often led to civil rights violations.” In fact, immigration experts have described the immigration detention system as “the worst of all worlds.”

Despite this, in August 2009 Janet Napolitano, the U.S. Secretary of Homeland Security, stated that she “expects

1 For more information about U.S. ICE, visit www.ice.gov/about/index.htm.

2 Article 14 of The Universal Declaration of Human Rights states: “Everyone has the right to seek and to enjoy in other countries asylum from persecution.” It defines asylum as “shelter from danger … a person might feel danger in times of war but also when threatened by intolerant governments. In such cases, a person might choose to leave their country and seek asylum, or become a refugee, in another country.” UN General Assembly, The Universal Declaration of Human Rights, 1948.

the number of detainees to stay the same or grow slightly."4

The study that we present here is one of the first to systematically interview attorneys to get their reports of violations of the rights of detained immigrant clients. This perspective is important because immigrants themselves rarely understand the detention process or know their rights; thus, attorneys are an important source of information on the process and how it impacts the rights of their clients. We interviewed 31 attorneys to learn about their experiences communicating with their undocumented immigrant clients, and reports of the immigrants’ treatment during incarceration. Our research was supported in part through a grant from CURA’s New Initiatives program.

Background
Regardless of their legal status, detained immigrants have certain basic rights in the United States. These rights stem from both the U.S. Constitution and local and federal laws. Constitutional rights include a right to due process (Fifth Amendment), a right to equal protection under the law (Fourteenth Amendment), and protection from cruel and unusual punishment (Eighth Amendment). Immigrants also have a right to counsel, but the scope of that Sixth Amendment right is in contention. A central issue within immigrant detention is what standards govern the treatment of detained immigrants to ensure that their rights are not violated.

The federal government has national guidelines that “intend to set a standard of consistent care and fair treatment for detainees in immigration custody.” First created in 2000, these standards were updated and renamed “detention standards” in 2008.5 Forty-two detailed standards outline specific protocols related to issues such as dietary needs, medical access, telephone use, and visiting hours. However, the ICE detention standards are not codified and have no force of law. The lack of binding guidelines restricts the agency’s accountability in protecting immigrant detainees’ rights.

In Minnesota, immigrants detained by ICE are held in one of five facilities that are operated or subcontracted by the Department of Homeland Security. ICE subcontracts with county jails in Carver, Freeborn, Nobles, Ramsey, and Sherburne counties to house long-term immigration detainees (Figure 1). Each of these jails varies in its treatment of immigrant detainees. In addition, ICE operates a facility in Bloomington that is used primarily for processing and immigration court hearings.

Methodology
Our study focused on two groups of lawyers who represent immigrants in detention: immigration attorneys who provide private, nonprofit, or pro bono immigration services, and public defenders who are appointed to represent indigent immigrants detained for criminal violations. When these two groups were combined, we identified approximately 585 attorneys who represented detained clients in Minnesota between 2007 and 2009. To identify attorneys who practiced immigration law, we contacted large nonprofit agencies providing legal services to immigrants and also sent e-mails to approximately 200 members of the Minnesota/Dakota chapter of the American Immigration Lawyers Association, describing the project and conveying our interest in interviewing attorneys who had represented immigrants in detention at some point during the past two years. To identify public defenders who had represented immigrants within the past two years, we contacted counties with immigrant detention centers (the subcontracted jails as described above) and areas with the highest immigrant populations: Ramsey, Nobles, Carver, Sherburne, Rice, and Kandiyohi counties. In each county, the Chief Public Defender identified the public defenders who had represented the most immigrants in the past two years. In the state of Minnesota, we identified an initial list of 40 potential respondents, whom we then contacted by phone. Of these, 31 (78%) agreed to participate.

Figure 1. ICE Detention Facilities in Minnesota

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in an in-depth, face-to-face interview (see Table 1) in their offices. These were structured interviews of about 50 questions, with a few open-ended questions. Interviews lasted between 50 and 75 minutes. The tape-recorded interviews were then transcribed and labeled anonymously before being coded and analyzed using NVivo software.

**Study Results and Discussion**

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

**Characteristics of Clients.** The federal government’s policy of collaborating with state and local officials to identify and detain undocumented immigrants has substantially increased the total number of immigrants detained in Minnesota. On any given day, between 200 and 300 persons are in immigration detention in the state.6

Some individuals are wrongly detained. ICE does not have the right to detain U.S. citizens, but 38% of the immigration lawyers in our study reported that, in the past two years, they had represented at least one U.S. citizen who was in immigration detention.7 Some attorneys reported that they had clients who were detained even when credible claims to U.S. citizenship had been made, and one described a case in which a U.S. citizen agreed to be deported in order to get out of detention.

In addition to cases of U.S. citizens, both public defenders and immigration lawyers had represented immigrants who were in the country legally (i.e., with some form of legal immigration status). Of all the detained immigrant clients represented by attorneys in our study, just under one-third (29%) were lawful permanent residents. The vast majority of these detained immigrants (91%) had been in the United States for more than a year, and almost two-thirds (66%) had been in the United States for more than five years (Figure 2). Many detainees had family members who were either U.S. citizens or lawful permanent residents. More than two-thirds of the attorneys we interviewed (68%) reported that their clients had “a few” family members who were U.S. citizens or lawful permanent residents, 13% reported “many,” and 19% reported “all.”

In the current system, an immigrant can be swallowed up by an opaque detention system without being able to contact attorneys, family, or friends.8 The lawyers who participated in our study reported that it takes, on average, six days before they are able to make initial contact with their detained clients. Without the ability to make this contact, the majority of immigrant detainees are deported without ever seeing a lawyer. The fact that few of the clients had been in the United States for less than a year may be due to the quick deportation of many immigrants who do not have access to counsel and/or the preference of attorneys to take stronger cases. Furthermore, one attorney told of detained immigrants who reported being pressured into agreeing to deportation, rather than exercising their right to appear before an immigration judge and pursue relief that would enable them to lawfully remain in the United States.

**Right to Counsel and Barriers to Representation.** The right to counsel is significantly different in civil immigration cases and criminal cases. Public defenders are appointed to represent detained indigent immigrants who

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

8 Human Rights Watch, “Families Separated and Immigrants Harmed by United States Deportation Policy,” Forced Apart (By the Numbers) 19,3 (July 2007): 1–86.
are charged with criminal violations, whereas attorneys providing civil immigration law services must be retained and paid by the detainees themselves. Ironically, immigrants who are charged with committing crimes are thus guaranteed counsel, whereas immigrants detained for civil infractions of immigration law may never get to see a lawyer.

The attorneys we interviewed identified numerous barriers to providing representation to their immigrant clients. Some of those barriers, especially those pertaining to communication, were commonly experienced by both public defenders and immigration attorneys. All attorneys reported barriers to communication that stymied representation. Furthermore, all attorneys reported spending time on issues such as family concerns, untreated medical conditions, and fears of abuse that were unrelated to the direct purpose of representation. However, other barriers were unique to the type of representation provided. Public defenders were hampered in their representation by enormous caseloads, a lack of expertise in immigration law, and immigrants’ reluctance to go to court out of fear of the negative consequences of conviction. Immigration attorneys were overwhelmed by the sheer number of detained immigrants seeking legal services, many of whom lacked resources to pay or were perceived as ineligible for relief under immigration laws.

Public Defenders and Barriers to the Representation of Detained Immigrants. During the past 12 years, the immigration consequences of criminal activity have continually grown more serious. Currently, the list of crimes that can result in deportation from the United States ranges from relatively minor crimes, such as shoplifting, to more serious offenses. The fact that a criminal conviction can make an immigrant deportable creates problems for public defenders representing immigrants charged with a criminal violation. Indeed, every one of the public defenders we interviewed said that the immigration status of their clients complicated their roles in providing criminal defense. One public defender explained the difficulty as follows:

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

Another public defender pointed out that the lingering question when providing counsel to an immigrant is:

If my client pleads to this, is this going to be a problem with immigration?

Answering this question requires that the public defenders have resources to consult an immigration attorney, or time to research the immigration consequences of a plea—luxuries that they rarely have. The public defense system is overwhelmed with cases. One public defender we interviewed stated that attorneys are handling twice the caseloads that would be permitted by the standards of the American Bar Association.

Immigration law is complex, and pleas in a criminal case can have a direct impact on the outcomes of an immigration case, yet less than one-third of the public defenders in our study reported consulting with immigration attorneys. Another issue is that ICE detention often impedes case resolution by regularly placing holds on immigrants facing criminal charges that prohibit their release from detention. As one public defender put it, detention “creates barriers to the process of negotiation.” Such barriers are widespread throughout the criminal process. Almost three-fourths of the public defenders (70%) we interviewed reported representing an immigrant who failed to appear at a hearing because he or she was being held in ICE detention. One noted:

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

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

Immigration Attorneys and Barriers to Representation of Detained Immigrants. Unlike public defenders appointed to indigent immigrants charged in criminal cases, courts do not appoint immigration attorneys to represent indigent immigrants detained for civil immigration law violations. Instead, all immigrants in detention for civil immigration law violations must find a nonprofit, pro bono attorney or a private lawyer willing to take their case, or forego representation. In fact, the majority of immigrants nationwide go through immigration court proceedings without representation. According to the American Bar Association (ABA), only 16% of detained immigrants are represented in immigration court.9 The sheer volume of detainees presents its own barrier; immigration attorneys (both nonprofit pro bono and private) report a large disparity between requests for representation and their ability to accept cases (see Figure 3). In the past two years, on average, private attorneys were only able to represent 20% of the detained immigrants seeking their services. Pro bono lawyers working with the Immigration Court Detention Project were able to provide limited services to a higher percentage of detainees, but most of this consisted of very brief consultations prior to immigration court hearings to provide information and limited representation in lieu of full representation.

In addition to the volume of cases, other barriers to representation exist. Of the attorneys we interviewed, 86% reported that a detained immigrant’s lack of relief—that is, inability to win the case because of the provisions of current immigration law—was sufficient reason to decline representation. Another significant barrier is the detainee’s ability to pay for counsel (see Figure 4). The attorneys we interviewed indicated that cost was a significant barrier to representation, as detained immigrants often have limited incomes or access to resources. All of these issues are interconnected with an immigrant’s detention. The ability of attorneys to accept detained clients depends on the amount of time and resources available to them, which is, in turn, limited by the time they must spend on non-legal activities, such as driving to a detention facility. Attorneys in our study estimated that they spent at least half of their case-related time traveling to detention facilities, collecting necessary documents, and dealing with

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detainee family issues. These burdens are serious impediments to representation.

The high bond set for immigrants in detention is a separate but equally serious issue. Despite the fact that most immigrant detainees have very limited financial resources, ICE and immigration judges frequently set much higher bonds than the minimum $1,500. According to one attorney:

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

**Barriers to Communication.** This section summarizes our findings related to barriers that attorneys experienced in communicating with their clients. **Barriers to Private, Confidential Meetings.** Impediments to private, confidential meetings violate attorney-client privilege and significantly limit an attorney’s ability to gather critical case information. The ICE standard for visits by legal representatives and legal assistants states that:

In visits referred to as “legal visitation,” each detainee may meet privately with current or prospective legal representatives and their legal assistants.... Visits between legal representatives and assistants and an individual detainee are confidential and shall not be subject to auditory

![Figure 3. Attorney Responses about the Number of Requests for Representation They Received and the Number of Cases Represented in the Past Two Years, by Type of Practice](image)

![Figure 4. Number of Attorneys Who Cited Specific Reasons for Not Accepting Civil Immigration Cases](image)

Note: Number of private, pro bono attorneys interviewed ($n$) = 21. Attorneys could cite more than one reason.
supervision. Private consultation rooms shall be available for such meetings.

Despite this standard, 100% of the immigration attorneys and 60% of the public defenders that we interviewed said that they had encountered barriers to private confidential meetings with their detained clients. By far the greatest barriers to confidential communication were reported at the central ICE facility in Bloomington, where the physical space made it impossible to hold private meetings. One immigration attorney described the Bloomington facility as follows:

It’s a small, tiny room, it has a glass wall, two seats and two phones. The phone sometimes doesn’t work or there is an echo on it, so then there are two attorneys seated side by side, and then the area for the detainees has two people. You can hear each other’s conversations, you have to talk loud, and the people in the waiting room, although there is a door to close, can still hear.

Attorneys we interviewed also reported breaches of confidentiality in other facilities, such as the following example:

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

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

**Barriers to Telephone Communication.** ICE standards stipulate that direct phone calls to legal representatives shall be permitted, at no cost to the detainee, that free and direct calls must be easily accessible, and that calls to obtain counsel shall not be restricted. Calls to other parties are at the detainee’s expense, but should be made available with a reasonably priced phone card. These standards were routinely violated in Minnesota. A majority of attorneys reported phone restrictions that negatively impacted their abilities to represent detained immigrants. These ranged from lack of funds for phone calls to arbitrary time limits (see Figure 5). According to one attorney, “most people have to call collect, and no one wants to take it because it costs so much money.” Another lawyer noted that the collect-call system prevented more lawyers from taking immigration cases. After completing our interviews, we investigated the cost of phone cards for detainees being held at the Ramsey County Jail. For calls to cell phones of attorneys, friends, or family members located more than 15 miles from the jail, detainees were charged $3.50 per call, plus $0.49 a minute. Thus, a 25-minute call would cost $15.75, more than the Qwest residential rate for an entire month of unlimited local telephone calls. Given the number of attempts that it often takes to reach someone at home or in the office, the minimum $3.50 per call charge poses a formidable barrier to communication for detainees.

Detainees’ abilities to locate counsel are also limited by the failure of detention facilities to provide clear instructions on setting up phone accounts and by the high rates charged for phone service. Detainees are also unable to access phones during facility

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**Figure 5. Number of Attorneys Whose Clients Mentioned Specific Communication Issues Faced in Detention**

![Graph showing communication issues faced by detainees](image)

Note: Number of attorneys interviewed (n) = 31. Attorneys could cite more than one issue.
lock-downs. Some facilities do not deliver attorney phone messages to detainees, and in many cases calls are limited to short periods of time, after which the phone service is cut off.

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

**Barriers to Written Communication.** The attorneys we interviewed noted that barriers to written communication prevented lawyers from providing clients with important legal information and documents, and prevented clients from sending necessary documents to their attorneys. ICE standards state that incoming mail shall be delivered to detainees within 24 hours of receipt, and that outgoing mail shall be sent within 24 hours. Furthermore, staff members are prohibited from reading or copying mail. Despite these standards, 65% of the attorneys we interviewed reported significant barriers to written communication, including late delivery, lack of privacy, and their clients’ inability to access basic materials, such as envelopes and stamps. One attorney reported that clients were forced to handwrite documents:

> One big problem is that there is very little access to typewriters or computers in detention, especially here in Minnesota. So pro se respondents tend to try to do everything handwritten and that makes it a lot more difficult to actually write a brief.

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

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

The unannounced transfer of immigrant detainees represents the most basic and egregious impediment to legal representation. As one attorney reported,

> The last time I tried to locate an immigrant, the jail told me they couldn’t confirm if my client was there or not.

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

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

**Visitation with Third Parties.** Visitation restrictions further impede detained immigrants’ abilities to obtain important legal documents. ICE standards set forth procedures for visitation between detainees and their families, friends, and legal representatives. However, 81% of the attorneys we interviewed reported that their clients had difficulty communicating or visiting with family members and friends. Most attorneys reported that their clients did not receive visitors because they did not understand the rules and procedures for visitation, they lacked the required information, or family members and friends were too afraid to visit, for fear of being detained themselves. In some cases, families ask a family friend or employer to assist the detained family member. The problem in these cases is that the facility requires that the detainee provide specific information about visitors in advance, such as their date of birth. One attorney commented:

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

When family members or friends are unable to visit a detained immigrant, it may block access to funds and other important documents. It also creates emotional distress and impedes communication. Even when family members are able to visit, attorneys reported that most detention facilities limited the visitation to short video meetings, rather than in-person visitation, which does not allow enough time for family members to discuss issues relating to a case.

**Lack of Interpreters.** ICE standards stipulate that “detainees shall have one in the whole jail staff—and they have over 175 people that work

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10 The United States has 8.8 million members of households of mixed immigration status (i.e., households with a combination of U.S. citizens, documented immigrants, and/or undocumented immigrants). An estimated 6 million U.S. citizen children have an undocumented immigrant parent. See “Severing a Lifeline: The Neglect of Citizen Children in America’s Immigration Enforcement Policy,” a report by the law firm Dorsey & Whitney to the Urban Institute, March 2009 (www.dorsey.com/probono_severing_lifeline/).
in the jail, including the doctors, and they have an alcohol treatment program—speaks Spanish. So they [immigrants] don’t qualify for alcohol treatment or any programming in the jail, because they don’t speak English.

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

**Safety and Abuse Issues.**
According to ICE standards, civil immigration detainees are to be housed separately from criminal inmates. However, all of the attorneys we interviewed reported that their immigrant clients were mixed in with the general jail population. When civil immigrant detainees are not housed separately from criminals, it blurs the line between criminal custody and civil immigration custody, and makes it difficult or impossible for facilities to follow ICE standards. Several attorneys reported that their clients were anxious and fearful of harm from criminal detainees. Worse, in our interviews, both public defenders and immigration attorneys reported official abuse of immigrant detainees. One attorney said:

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

Some attorneys reported that mistreatment stemmed from the simple fact of being an immigrant. One attorney commented:

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

Incidents in which immigrant detainees are punished for exercising their rights are particularly troubling. According to one of our attorney-interviewees:

> In Bloomington, they [detainees] get yelled at by the ICE officers sometimes. Sometimes they’ve been told, just because they are exercising their right to remain silent, that they are being uncooperative, and they (ICE) even write that down on their paperwork, which makes the bond to be set at a higher level.

**Medical Care.**
The ICE standard for medical care requires all detainees to have access to health care. Despite this, 90% of all attorneys interviewed reported that they have had immigrant clients who have had problems obtaining needed medical care (Figure 6). The most frequent complaint was that detainees’ medical concerns were minimized and dismissed. Untreated medical conditions ranged in type and severity from dental problems to not receiving prescribed medications or treatments. Attorneys also reported that untreated medical care sometimes stemmed from language barriers or a lack of access to funds. Attorneys explained that if their clients did not speak English, they were unable to fill out the forms required for medical care.

**Conclusion**
Foreign-born persons deserve the same protections as U.S. citizens when they are arrested and held in detention. The U.S. Department of Homeland Security has issued ICE detention standards that address a detained immigrant’s right to safety and freedom from physical violence, right to access to medical care and needed medications, right to communication through mail and telephones, right to family visits, and right to representation, including the opportunity for private communication with attorneys. However, from the perspective of attorneys who handle immigration cases in Minnesota, clear violations of even the most minimal standards frequently occur. Furthermore, the proliferation of ICE subcontracts with local jail facilities further complicates compliance.

These violations have serious consequences. They prevent attorneys from accepting immigrant clients, receiving information relevant to legal cases, and meeting with or communicating privately with their detained clients. From the perspectives of immigrants in detention, violations of the voluntary

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ICE standards lead to prolonged and inappropriate detention; inability to secure legal advice and representation or to access important documents; physical isolation from attorneys, family members, and friends; inability to communicate with lawyers or corrections facility staff; instances of abuse from other inmates or staff; untreated medical conditions; and accumulated stresses that can cause or exacerbate mental health problems. These issues are not only reprehensible, but many are also flagrant violations of detainees’ civil and constitutional rights.

At a minimum reform must result in fundamental fairness, transparency, and accountability in the administration of immigration laws. Several of the attorneys interviewed made suggestions for how to achieve these needed reforms. Fairness would begin with regular Department of Homeland Security review of individual detention decisions to ensure that only those noncitizens who pose a danger to society are subject to ongoing incarceration, and that detainees are not subjected to abuse. In addition, the Department of Homeland Security must ensure that noncitizens are able to exercise their right to counsel. This would include access to free telephone services to contact an attorney and subsequently to communicate with him or her, as well as the opportunity for private, confidential, face-to-face meetings with an attorney with adequate translation services available. In no case should detainees be subjected to arbitrary time restrictions that limit interactions with counsel. Fairness also includes the adoption of binding medical standards that ensure that detainees receive appropriate treatment and needed medication, and binding standards for the safekeeping of a detainees’ property at the detention facility so that he or she can access important documentation.

There are promising signs. In October 2009, the Obama administration announced that it would issue new ICE detention standards, and on March 31, 2010, as this article was about to go to press, the U.S. Supreme Court issued a decision that recognizes immigrants’ rights to fair judicial treatment. In Padilla v. Kentucky, the Court held that criminal defense lawyers must advise their noncitizen clients about the risk of deportation if they accept a guilty plea. In its ruling, the Court acknowledged that “the importance of accurate legal advice for noncitizens accused of crimes has never been more important.” We hope that the Department of Homeland Security will follow the spirit of this decision by introducing transparency and accountability into the treatment of incarcerated immigrants. This can only be accomplished by making the ICE detention standards mandatory for all regular and subcontracted facilities, and by developing protocols for data collection and independent inspection of detention facilities. Furthermore, detainees should be provided with explanations of their rights in languages that they understand, and the government should work with stakeholders to establish an independent hotline for detained immigrants, their families, or their attorneys to report noncompliance with standards.

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