

Detention of Asylum Seekers in New Jersey

In October 2016 Human Rights First visited the Essex County Correctional Facility, Hudson County Correctional Facility, and Elizabeth Detention Center, the three principal facilities used by U.S. Immigration and Customs Enforcement (ICE) to detain immigrants in New Jersey. The Elizabeth Detention Center, operated by Corrections Corporation of America (CCA), has the capacity to hold 304 people (275 men and 29 women). The Essex County and Hudson County facilities, county jails that rent space to ICE, have capacity to hold up to 700 and 476 ICE detainees, respectively, and generally hold only men, though Essex County has in the past held immigrant women as well. A fourth facility, the Delaney Hall Detention Facility, held primarily immigrants with low-level criminal charges until it was closed in June 2016, reportedly due to a dispute over staff wages.¹

Over the course of fiscal year 2015, more than 5,000 people passed through the Essex County, Hudson County, and Elizabeth facilities combined, and an additional 1,100 were detained at the former Delaney Hall facility.² Many were seeking asylum or other forms of humanitarian protection. While ICE has failed to provide timely data on its detention of asylum seekers, the most recent data indicates that nearly 2,500 asylum seekers were held in New Jersey detention centers in 2014.³ That number has likely increased, based on trends observed by Human Rights First and other legal organizations serving immigrants detained in New Jersey.

¹ Jessica Mazzola, "122 workers at immigration detention facility get \$4.8 million settlement" NJ.com, Oct. 5, 2016. A \$4.8 million settlement was reached between the U.S. Department of Labor (DOL), Essex County, and the company it contracted with to operate the facility—Community Education Center, Inc., due to the fact that employees who were categorized as "operations counselors" were paid a fraction of the wage they were entitled to, according to the DOL. According to ICE, the facility had been designed to provide more appropriate detention conditions for civil immigrant detainees with no criminal histories, or only low-level prior criminal offenses.

² Syracuse University's Transactional Records Access Clearinghouse, New Data on 637 Detention Facilities Used by ICE in FY 2015, April 12, 2016.

³ U.S. Immigration and Customs Enforcement, Detained Asylum Seekers: Fiscal Year 2014 Report to Congress, September 9, 2015.

Human Rights First has provided pro bono legal representation to asylum seekers detained in New Jersey for over twenty years. Based on pro bono legal representation experience, as well as monitoring visits to the three facilities and in-depth research on detention of asylum seekers in the United States, we report the following:

- ICE rarely grants parole to arriving asylum seekers, even when they appear to meet the criteria outlined in ICE's 2009 Asylum Parole Directive, and often fails to properly implement required procedural steps, such as conducting parole interviews within seven days of a positive credible fear finding and issuing a written decision. Moreover, arriving asylum seekers are denied access to immigration court custody (bond) hearings.
- Immigrants detained in New Jersey who do have access to immigration court custody reviews are often required to pay bond amounts they cannot afford as a condition of release.
- Many asylum seekers remain in prolonged detention—often for six to eight months or more—due to their lack of access to viable release mechanisms.
- Access to counsel remains a challenge, particularly at the Essex County facility, where various barriers impede attorney-client communications; many asylum seekers and other immigrants lack legal counsel, though recent initiatives have improved representation rates in New Jersey.
- The conditions in the three facilities—one operated by a private prison company and the other by counties—are essentially identical to those in many criminal correctional facilities, with asylum seekers and other immigrants made

to wear prison uniforms, strip-searched when permitted contact visitation (at two of the facilities), and denied meaningful outdoor recreation.

Arriving Asylum Seekers Are Denied Parole

In December 2009, the Department of Homeland Security (DHS) issued a directive entitled, “Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture.” It states that an arriving asylum seeker determined to have a credible fear of persecution should generally be paroled from detention if his or her “identity is sufficiently established, the alien poses neither a flight risk nor a danger to the community, and no additional factors weigh against release.”⁴ (An “arriving” asylum seeker is someone who seeks protection after arriving at a U.S. port-of-entry, such as an airport or official land crossing.)

Human Rights First’s clients in New Jersey are feeling the harmful effects of changing parole policies and practices. For the past two years, pro bono attorneys have reported a significant change in the Newark ICE Field Office’s implementation of the parole directive: many arriving asylum seekers who appear to meet the parole release criteria and would have typically been granted parole are now remaining in detention for months. This shift mirrors a nationwide decline in adherence to the parole directive. Human Rights First’s June 2016 report concluded that parole grants had decreased significantly following two high-level policy changes by DHS: a deterrence-based approach to detention directed at Central Americans and Secretary Jeh Johnson’s 2014 enforcement priorities memorandum, which has been interpreted to treat asylum seekers “apprehended at the border or at ports of entry attempting to unlawfully enter the United States” as top enforcement priorities.⁵

The asylum seekers we met with during our October visit expressed distress over what they observed as a pattern of unfair parole denials. “There is no parole in New Jersey,” said a man from Venezuela. Other asylum seekers in prolonged detention said they had seen very

few, or no, parole grants. Among 11 clients held at New Jersey facilities who were represented by Human Rights First and our pro bono attorneys over the past 18 months, none was granted parole from New Jersey facilities. Instead, they spent an average of eight months detained in New Jersey correctional or similar facilities before being granted asylum or other relief. Some were held longer, including one who has been held in a New Jersey detention facility for over one year. American Friends Service Committee, which represents a large number of immigrants held in New Jersey detention facilities, reports that only three out of the 80 arriving asylum seekers it has provided services to between February 2015 and September 2016 were granted parole and subsequently released. Of the 40 cases resolved favorably (many others are pending a decision), asylum seekers spent an average of six months in detention. All 40 of these individuals were forced to remain in detention for the duration of their immigration court cases.

Moreover, many asylum seekers wait for months without even receiving a parole interview, despite the fact that under the parole directive ICE is required to conduct parole interviews within seven days of a positive credible fear finding. Some do not even receive a response from ICE to their parole request. Over the past two years, Human Rights First attorneys have regularly asked detained arriving asylum seekers whether they had been interviewed in relation to their eligibility for parole. Nearly all have said they had not had an automatic interview. Moreover, those who had proactively sought out the parole process and—as they did not have legal representation—filed pro se requests for parole were rarely provided with any reason for the parole denial, despite a requirement in the directive that ICE issue a written decision. For example:

- **An unrepresented West African asylum seeker has been held in a correctional facility in New Jersey for nearly one year without a parole interview despite repeatedly submitting materials in support of his parole.** At the Hudson County Correctional Facility, Human Rights First met with an unrepresented asylum seeker from West Africa who had submitted his parole application three times, beginning in early 2016 after he passed his credible fear interview. ICE has never issued a response. Even though his application included

⁴ ICE Policy Directive No. 11002.1, “Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture,” (Dec. 8, 2009).

⁵ Human Rights First, *Lifeline on Lockdown: Increased U.S. Detention of Asylum Seekers*, June 2016; see also Jeh Charles Johnson, Secretary, U.S. Department of Homeland Security, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*, Nov. 20 2014.

his national identity card, his birth certificate, and a sponsor letter from his U.S. citizen sibling, he remains detained. We contacted ICE multiple times to follow up on his *pro se* parole requests. ICE's reply was that it was reviewing the request and would interview him soon.

- **A Syrian torture survivor has been held at the Elizabeth Detention Facility for over a year,** despite having provided 13 documents to establish his identity and a letter of support from First Friends, a social service organization that has a long history of supporting and housing asylum seekers paroled from New Jersey detention centers. ICE denied parole, citing an alleged failure to establish identity and a flight risk. In July 2016, he was found credible by the immigration court, which concluded that he faced a risk of torture if returned to Syria, yet he continues to be held in detention.
- **A Togolese asylum seeker was held in detention for two-and-a-half years in New Jersey and only released after an immigration judge ruled he was entitled to protection.** “Emmanuel” sought U.S. asylum after suffering torture in his home country of Togo due to his political opinion. He fled Togo and arrived by plane in the United States in March 2014, requested protection at the airport, was classified as an “arriving alien,” and was sent to the Elizabeth Contract Detention Center. After Emmanuel was found to have a credible fear of persecution, his *pro bono* attorneys at a local nonprofit organization helped him prepare a parole request with supporting documents, including his passport and affidavits from community members who knew him. ICE denied his parole request, stating, “After a thorough review of all factors in his case it has been determined that your request for release from ERO custody will be denied at this time.” After spending two and a half years in detention, Emmanuel was determined by an immigration judge to be a refugee and his removal was withheld.

Under federal regulations, arriving asylum seekers sent to detention centers after requesting protection at formal

border entry points or airports (“ports of entry”) are not provided prompt access to immigration court custody hearings—known as “bond hearings.” By contrast, immigration judges review ICE custody decisions for immigrants in detention not classified as “arriving aliens,” such as those encountered near the southern border between ports of entry. For arriving aliens, however, ICE effectively acts as both judge and jailer. If ICE denies parole, the decision cannot be appealed to a judge—even an immigration judge.

Some Asylum Seekers Are Required to Pay Prohibitively High Bonds

Both ICE and the immigration courts often require monetary bond payments as a condition of release from detention. Bond payments are meant to secure appearance at hearings or appointments—not to keep people in detention due to their economic circumstances. In practice, however, ICE and the immigration courts leave those with fewer financial means locked up. For example:

- **A Salvadoran refugee was held in detention for nine months because he couldn't afford bond and was only released after asylum grant.** Human Rights First represented “Felipe,” an asylum seeker who fled El Salvador after being persecuted because of his sexuality. The immigration judge held that Felipe was eligible for release from detention upon payment of a \$5,000 bond. Lacking such funds, Felipe was forced to endure nearly nine months in detention at the Delaney Hall Detention Facility and later at Essex County, until he won his asylum case. In detention, another detainee sexually assaulted Felipe. His claim was investigated and corroborated, but he was never given further information about the crime or about his legal rights.

Over the past year, bond rates have grown increasingly high in New Jersey, particularly those set by visiting judges (who rotate in from other jurisdictions to assist those based in New Jersey). For example, in October two of the visiting judges set bonds from \$10,000 to \$15,000. The judges who regularly hear New Jersey cases most often set bond at \$7,500, still too high for many indigent asylum seekers to afford. While some asylum seekers are

asked to pay unaffordable amounts, some have been denied bond altogether. For example:

- **Human Right Firsts provided pro bono representation to “Jorge,” an asylum seeker who fled El Salvador after gang members attempted to kill him.** A visiting immigration judge at the Elizabeth facility denied bond despite Jorge’s eligibility, a strong letter of support from a U.S. relative, and a letter from the mayor of his hometown attesting to his character and lack of criminal history. Jorge is the sole provider for his elderly mother and wife in El Salvador, who continues to receive threats from Jorge’s persecutors. Without bond Jorge will be detained throughout his asylum case, which will likely take months, leaving him and his family in continued danger and uncertainty. The visiting immigration judge who denied Jorge’s bond declined to set bond in numerous other cases during her two weeks at the Elizabeth facility, even though the permanent judges set bonds in similar cases.

Increased Legal Counsel in New Jersey is a Positive Step Forward, Though Barriers to Counsel Persist

While Human Rights First and other nonprofit legal organizations have for years provided rights orientations and legal representation to asylum seekers and other immigrants detained in New Jersey, the need for legal counsel has *far exceeded* the supply of pro bono services. In 2015, the American Friends Service Committee (AFSC) launched a pilot program to increase representation of detained immigrants in New Jersey. Since its launch, the program has provided counsel to nearly 500 detained immigrants at the Elizabeth Detention Center and Delaney Hall.

However, many asylum seekers and other immigrants still appear unrepresented before ICE and the immigration court, severely lowering their chances of being granted relief. A recent report found that immigrants detained in New Jersey who had attorneys were three times more likely to prevail in their court cases.⁶ Many organizations, as well as judges and other stakeholders, have called for

full expansion of “universal representation” programs, such as the pilot launched by American Friends Service Committee, to provide counsel to all individuals held in immigration detention.⁷

But even when immigrants have secured legal representation, access-to-counsel problems persist. At the Essex County facility in particular, pro bono lawyers and local nonprofits report multiple barriers to attorney-client communications. For example, the facility operators have a policy of requiring lawyers to have a New Jersey state attorney card to meet with a client. Since many attorneys representing immigrants at Essex are licensed in other states, including neighboring New York, this poses a barrier. Human Rights First and others have raised this issue with ICE and the facility’s management, but staff at the front desk continue to require New Jersey attorney identification.

Telephone communication is also severely hampered at Essex, where detained immigrants must have all phone numbers—including the phone number of their attorney—cleared before they can dial out. Sometimes this clearance procedure takes three to four days, or even longer. While Human Rights First has raised this issue with the facility as well, the problem has not been resolved. Finally, the facility has very limited meeting spaces, sometimes forcing attorneys to meet with clients in hallways where multiple people pass by, hindering confidentiality and open communication on sensitive topics, which is necessary to prepare an asylum case.

Conditions of Detention are Harsh both in Facilities Operated by a Private Prison Company and by Local County Jails

The Elizabeth Contract Detention Facility is run by Corrections Corporation of America (CCA), recently rebranded as CoreCivic, the largest prison contractor in the country, and Essex and Hudson are local county jails that rent bed space to ICE. There have been many complaints about conditions at these facilities, particularly at Hudson and Essex. For example, the Essex County and Hudson County facilities subject all individuals to the

6 Nessel, L. A. & Anello, F. R., Seton Hall Law Center for Social Justice. Newark, NJ, “Deportation without Representation: The Access-to-Justice Crisis Facing New Jersey’s Immigrant Families,” 14 (June 2016).

7 National Immigration Law Center, Blazing a Trail: The Fight for the Right to Counsel in Detention and Beyond (March 2016).

degrading and humiliating practice of a full strip search after every contact visit with a friend or relative. At the Elizabeth Detention Center, so-called “outdoor recreation,” required under the ICE 2011 detention standards, consists of an activity, such as table tennis, in a small room with no windows and a skylight that allows some natural light into the otherwise dark and claustrophobic space.⁸ In May 2016, 61 immigrants detained at the Hudson County Correctional Facility in New Jersey filed a complaint with the DHS Office of Civil Rights and Civil Liberties alleging substandard medical treatment, including one instance in which a man with a brain tumor was denied medication needed to shrink the tumor.⁹ At all three facilities, detained immigrants are required to wear prison uniforms and subjected to other conditions identical those in criminal correctional facilities.

Recommendations

- DHS and ICE should clarify in written guidance that the 2009 directive—Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture—remains in full force and must be followed, including in the wake of DHS Secretary Johnson’s 2014 enforcement priorities memorandum.
 - The Executive Office for Immigration Review and DHS should issue guidance instructing immigration judges and ICE officers to consider ability to pay in cases where bond is required for release.
 - The Department of Justice (DOJ) and DHS should revise regulatory language in provisions located mainly at 8 C.F.R. §1003.19(h)(2)(i) and §212.5, as well as § 208.30 and § 235.3, to provide arriving asylum seekers and other immigrants the opportunity to have their custody reviewed in a bond hearing before an immigration court.
- Congress and DHS should end their over-reliance on immigration detention and instead implement community-based alternatives in cases where additional supervision is determined to be needed based on an individualized assessment.
 - In reducing and ultimately ending unnecessary detention, DHS should end contracts with private prisons and stop using county and local jails or other facilities that do not provide conditions appropriate for civil immigration detention, as detailed in the American Bar Association’s Civil Detention Standards.
 - DHS and DOJ should champion access to counsel by, among other steps, asking Congress to fully fund legal representation for immigration detainees and legal orientation presentations at all detention facilities, and removing impediments to access to counsel in detention facilities

⁸ The “outdoor recreation” space at Elizabeth Detention Center may violate the ICE 2011 detention standards, which states, “Outdoor recreation space shall support leisure activities, outdoor sports and exercise as referenced and defined by the National Commission on Correctional Health Care Standards, provided outside the confines of the housing structure and/or other solid enclosures.” See PBNB 2011, 5.4 (II), available at <https://www.ice.gov/doclib/detention-standards/2011/recreation.pdf>.

⁹ Nina Bernstein, “Health Care at New Jersey Immigrant Jail Is Substandard, Watchdog Groups Say,” *New York Times* (May 11, 2016).