

DETENTION & DUE PROCESS

Francisco Castaneda, an undocumented immigrant from El Salvador, was placed in immigration custody after serving an eight month state prison sentence on a 2005 drug conviction. While at the San Diego Correctional Facility, he notified immigration officials that he had a large, painful, growing lesion on his penis. **Despite recommendations from several doctors, immigration officials refused to test him for cancer, and he received no treatment except for pain pills during his 11 months in detention.** Castaneda was released in 2007, went to a hospital and was diagnosed with advanced cancer. He died in February 2008. A federal judge in March ruled that the alleged denial of medical treatment was “beyond cruel and unusual punishment,” and the federal government has since acknowledged that detention officials and doctors were negligent in causing Castaneda’s death. [U.S. Admits Negligence in Detainee’s Death, *San Francisco Chronicle*, Apr. 29, 2008.]

- >> Our government detains over 300,000 people in immigrant detention facilities per year.¹ The annual cost to the government is approaching \$ 2 billion.
- >> Detention, in contrast with imprisonment, is supposed to be short-term and temporary. A person cannot be sent to prison for being present in the U.S. without legal status because it is not a crime. It is a civil violation for which immigrants face only civil penalties, such as deportation.
- >> Two United States Supreme Court decisions in 2001 and 2005 declared that immigrants in detention could be held for up to 180-days only if they can be deported within that time. Longer detention times are allowed only if certain special circumstances, such as posing a threat to national security, are met.
- >> However, many immigrants are arbitrarily detained for more than 180 days. In particular, after 9/11, many Muslim and South Asian immigrants were detained without charge, denied bond, denied access to counsel, subjected to physical and mental abuse, and held for lengthy periods of time without trial.
- >> Because DHS does not have sufficient space in their detention facilities, DHS places 60% of immigration detainees in county and city prisons.² Other detainees are held in privately-run facilities by operated by contractors, such as the Corrections Corporation of America and the GEO Group, which are subjected to little government oversight.
- >> Despite the fact that many immigrant detainees should be in non-criminal custody, detainees are placed in general prison populations, endure inhumane detention conditions and suffer preventable deaths. Detainees complain consistently about the severe lack of access to basic medical care, no use of phones, physical and verbal abuse, inedible food, overcrowding, and limited access to fresh air.
- >> Detainees have virtually no access to religious counsel. Those with limited English proficiency have no access to translators.
- >> Immigrants in detention include many vulnerable individuals, including asylum seekers, asylees, victims of trafficking, the sick and elderly, the disabled, pregnant women, and children. Detention has been shown to contribute to these detainees’ depression, anxiety, and post-traumatic stress disorder. These immigrants are kept in detention despite the fact that they do not pose flight risks or any threat to society.
- >> Because immigration detainees are not criminal defendants, they have no right to a lawyer, and the reality is that approximately 90% of detained immigrants are not represented.³ Without legal representation, their chances of receiving a fair hearing with their rights protected are extremely low.
- >> At the end of 2006, the federal government began the practice of transferring detainees to different detention facilities often far away from a detainee’s home and without notice to their family members or lawyers. These transfers make it very difficult for immigrants in detention to seek or have access to counsel or to receive visits from family members.
- >> The majority of those held in detention are being held solely based on an immigration violation. These individuals are awaiting a determination of their right to be in the U.S. or their deportation.
- >> Many of the detainees awaiting a determination of their status or their deportation will not be given the right to a fair day in court. The opportunity for judicial review is limited, and the laws give judges little discretion to allow the undocumented a chance to remain in the U.S.

1. System of Neglect, *Washington Post*, May 11, 2008.

2. Critics Decry Immigrant Detention Push, *Washington Post*, June 24, 2006.

3. System of Neglect, *Washington Post*, May 11, 2008.

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In October 2001, Ahilan Nadarajah fled severe persecution and torture in Sri Lanka and attempted to make his way to seek refuge with family members in Canada. En route, he crossed the Mexico-U.S. border and was immediately apprehended and detained. **Despite being granted asylum repeatedly by two immigration courts and a rejection of the government's claims that Nadarajah posed a threat to national security, he was held in a federal detention center in San Diego from late 2001 until March 2006**, when the U.S. Court of Appeals for the Ninth Circuit ordered his immediate release. The Court ruled that the government cannot incarcerate immigrant detainees for an indefinite period of time. [Jailed Sri Lankan given asylum after 5 years; Court: Detention was "unjustified," *San Diego Union-Tribune*, Mar. 18, 2006.]

Discussion Questions

1. If being undocumented is not a crime, should the government be seeking to increase the numbers of immigrants held in detention facilities? Should detention be used as a first resort rather than as a method of last resort?
2. The government is concerned that without detention, these immigrants will disappear into our society. But many detainees are individuals who are neither a danger to the community nor pose a flight risk. Should they be held captive?
3. There are alternatives to detention that can preserve the liberty of these individuals while ensuring they are held accountable to our immigration laws:
 - DHS currently makes use of detention alternatives such as bonds, electronic monitoring devices (bracelets or anklets), or the Intensive Supervision Appearance Program (review the DHS Fact Sheet on Alternatives to Detention cited below for more information). What do you think of these methods?
 - These alternatives are far cheaper than holding an immigrant in a detention facility, but they have not been a policy priority for DHS. Should the government reallocate its resources towards these alternative programs?
4. What does the increased cost of detention mean for other policy priorities? Is detention a solution to our broken immigration system?
5. Is it fair that indigent immigration detainees have no right to free legal representation but are being held in detention? Are their basic rights being violated?
6. DHS has not set legal standards to guarantee safe and humane detention conditions for immigrants. What standards should be set for anyone being held in detention? Should immigrants be treated differently?

Additional Resources

News articles and reports

- >> Careless Detention, *Washington Post*, May 11-14, 2008. A four-part investigative series by Pulitzer Prize-honored journalists on medical neglect of immigrant detainees and the incompetence of health professionals and prison administrators.
- >> Few Details on Immigrants Who Died in U.S. Custody, *New York Times*, May 5, 2008. An in-depth report detailing significant concerns regarding the medical treatment of detainees and the lack of information surrounding detainees who die while in custody.
- >> The Business of Detention - www.businessofdetention.com

Videos

- >> The Death of Boubacar Bah, *New York Times*, video.on.nytimes.com/?fr_story=FRdamp271095. Video about the life and tragic death of a detainee who instead of receiving emergency treatment of a skull fracture and multiple brain hemorrhages was placed in solitary confinement.

Government Information

- >> DHS Fact Sheet, Alternatives to Detention, www.ice.gov/pi/news/factsheets/061704detFS2.htm

Organizations

- >> American Immigration Lawyers Association – www.aiala.org
- >> Detention Watch Network – www.detentionwatchnetwork.org/
- >> Breakthrough – www.breakthrough.tv

For information about local organizing initiatives please contact Rights Working Group Regional Coordinators, www.nightof1000conversations.org/coordinators