

Human rights report exposes US abuse of immigrant detainees

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Human Rights Watch released a report Wednesday detailing how US authorities are indiscriminately transferring thousands of detained immigrants away from their attorneys and family members in order to prevent them from fighting deportation.

The report, “Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States” presents previously unreleased data that the human rights organization obtained under the Freedom of Information Act from the department of Immigration and Customs Enforcement (ICE). The organization also interviewed detainees, family members and immigration attorneys.

Since 2003, ICE—which was established under the aegis of the US Department of Homeland Security following the 9/11 attacks—has detained 1.7 million individuals in some 350 facilities, including for-profit prisons and state and local jails it contracts. This year, ICE officials say 442,000 immigrants will be detained, more than double its first year of operations.

Picked up for alleged immigration law violations or minor offenses, these so-called “criminal aliens,” including those seeking political asylum, are dumped into a Kafkaesque network of detention facilities where they wait months, if not years, for a decision on their deportation or “removal.”

Away from public view, immigrants face conditions as bad or worse than the criminal justice system, including physical abuse by guards, long periods of solitary confinement and unsanitary conditions (see report by the National Immigration Law Center, entitled, “A Broken System”). Little is ever known about the conditions and fate of the detainees, except when periodic news reports cover hunger strikes, riots or the deaths of immigrants who were denied medical care while in custody.

The new Human Rights Watch report noted that immigrants are often detained initially in a location near their place of residence, for example in New York or Los Angeles, where they have lived for decades and where their family members, employers, and attorneys also live. “Days

or months later, with no notice,” the human rights organization says, “many of these immigrants are loaded onto planes for transport to detention centers in remote corners of states such as Texas, California, and Louisiana (the three states most likely to receive transfers),” the report found.

An analysis of the data obtained by Human Rights Watch show that over the 10 years between 1999 and 2008, 1.4 million detainee transfers occurred. In the first six months of 2008, for example, 53 percent of detainees were transferred at least once, and one in four were transferred multiple times, a fivefold increase from 1999.

“The transfers are devastating, absolutely devastating,” Rebecca Schreve, an immigration attorney in El Paso, Texas, said. Detainees “are loaded onto a plane in the middle of the night. They have no idea where they are, no idea what state they are in. I cannot overemphasize the psychological trauma to these people. What it does to their family members cannot be fully captured either. I have taken calls from seriously hysterical family members—incredibly traumatized people—sobbing on the phone, crying out, “I don’t know where my son or husband is!”

While immigrants have the right to legal representation, the report noted many are swept away before they can inform their attorneys about their relocation. As a result, detainees remain “lost” for days or weeks before their lawyers can track them down. The loss of crucial time can lead to missed filing deadlines and misplaced evidence and witness lists.

“Once a transferred client is found,” the report noted, “the challenges inherent in conducting legal representation across thousands of miles can completely sever the attorney-client relationship.” In many cases, telephone communication is impossible, because most detention centers have few, if any telephones, few immigrants can afford long-distance calls, and detainees and their lawyers often do not speak the same language.

The report cited the case of one detainee, who fled to the US from Guinea to escape female genital mutilation, who

had been transferred 2,025 miles from Cleveland, Ohio, to Florence, Arizona. She had spent two years in detention at the time of her interview with Human Rights Watch. She explained that before she could meet with the lawyer her brother had found for her in Cleveland, “They transferred me here [to Arizona]. He couldn’t do anything for me here. I don’t have him anymore.”

There is clear evidence that immigration authorities are conducting the transfers explicitly to strip detainees of any legal defense. Analysis of the transfer data shows that the jurisdiction receiving the most detainees is the Federal Court of Appeals for the Fifth Circuit, covering Louisiana, Mississippi and Texas. The circuit court, the report notes, “is widely known for decisions hostile to the rights of non-citizens” and the “states within its jurisdiction collectively have the lowest ratio of immigration attorneys to immigration detainees in the country,” the human rights report said.

With fewer prospects of finding an attorney in a remote area, the human rights organization noted, it is not surprising that in 2008, 60 percent of non-citizens appeared in immigration court without an attorney. Having an attorney is the single most important factor during deportation hearings. Represented asylum seekers, for example, were granted asylum at a rate of 45.6 percent, almost three times as high as the 16.3 percent rate for those without legal counsel.

Although most detainees, the report states, “have the right to a timely ‘bond hearing’— a hearing examining the lawfulness of detention (a right protected under US law as well as human rights law)—our research shows ICE’s policy of transferring detainees without taking into account their scheduled bond hearings often seriously delay those hearings. In addition, transferred detainees are often unable to produce the kinds of witnesses (such as family members or employers) that are necessary to obtain bond, which means that they usually remain in detention.”

US citizens facing criminal charges have the right, protected by the Sixth Amendment of the US Constitution, to face trial in the jurisdiction where the alleged crime occurred. Non-citizens, however, have no such right. Instead, they are routinely transferred far away from key witnesses and evidence in their trials. In addition, the report notes, the transfer of detainees often literally changes the law that is applied to them. “For example, the act of sending a detainee from one jurisdiction to another can determine whether she may ask an immigration judge to allow her to remain in the United States.”

One case cited in the report involved a Jamaican New Yorker transferred to Texas after three months in detention in New York and New Jersey. Immigration authorities contended that he should be deported based on two prior

convictions for drug possession. In New York, his drug misdemeanors were not considered an “aggravated felony,” and based on the man’s 22 years of legal residency and strong family relationships in the United States, he would have been eligible for “cancellation of removal,” a form of relief from deportation. In Texas, he was barred from relief based on Fifth Circuit rulings and deported.

A report from the inspector general’s office of the Department of Homeland Security chiefly defended their policies, claiming transfers were needed to prevent overcrowding in the system and to make sure detainees were sent to facilities that met their medical and other needs. At the same time, it admitted ICE could improve the detainee transfer process, “especially when the detainee is represented by legal counsel and where immigration proceedings are ongoing.”

Last August, the Obama administration announced plans to overhaul the system and establish a “truly civil detention system,” in the words of ICE Director John Morton. Far from ending the brutal and unconstitutional treatment of immigrants carried out under the Bush administration, Obama has continued and accelerated the means to track, process and deport undocumented immigrants. This includes a program, known as Secure Communities, which will check the immigration status of virtually all people booked in local jails, even for the most minor offenses. The administration is expanding the program—which now operates in San Diego, Phoenix, Dallas, Miami and Durham, North Carolina—into a nationwide dragnet against immigrants by 2012.

The author recommends:

Obama continues brutal immigrant detention policies
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