
The Conditions of Immigration Detention in Nevada

A Report on the Henderson
Detention Center
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I. INTRODUCTION

The most recent statistics on Immigration and Customs Enforcement (ICE) activity show that ICE detained 429,247 individuals during the 2011 fiscal year.¹ Compared to the number of immigrants detained in the last twenty years, this represents an enormous expansion of efforts to physically contain immigrants.² Indeed, from 1995 to 2009, ICE expanded its daily detention capacity by 400%.³ During the same timeframe, ICE removals skyrocketed by more than 700%.⁴ In other words, ICE has paired a massive expansion of detention with a focus on aggressive efforts to carry out deportations.⁵ This sudden and unprecedented expansion of ICE's power and responsibility has placed immigrants in a particularly vulnerable position.⁶

Aggressive prosecution and expanded use of detention has simply added to the well-documented vulnerabilities that tend to characterize immigrants as a group. In the United States,

¹ John Simanki & Lesley M. Sapp, Office of Immigration Statistics, Department of Homeland Security, *Immigration Enforcement Actions*, in ANNUAL REPORT 4 (2012).

² See Strategic Plan Working Group, Bureau of Immigration and Customs Enforcement, Department of Homeland Security, *Situational Assessment*, in ENDGAME: Office of Detention and Removal Strategic Plan, 2003-2012 2-5 (2003) ("detained population has grown in both numbers and diversity in recent years.").

³ Dr. Dora Schriro, Immigration and Customs Enforcement, Department of Homeland Security, *Immigration Detention Overview and Recommendations 2* (2009) ("ICE's detention capacity [expanded] from fewer than 7,500 beds in 1995 to over 30,000 today.").

⁴ Office of Immigration Statistics, Department of Homeland Security, *Yearbook of Immigration Statistics: 2011* 102 (2012).

⁵ U.S. Immigration and Customs Enforcement, News Release, *ICE Unveils Sweeping New Plan to Target Criminal Aliens in Jails Nationwide: Initiative Aims to Identify and Remove Criminal Aliens from All U.S. Jails and Prisons* (Mar. 28, 2008) ("Last year under CAP, ICE charged a record 164,000 aliens in law enforcement custody with immigration violations and removed approximately 95,000 aliens with criminal histories. ICE estimates that approximately 300,000 to 450,000 convicted criminal aliens who are removable are detained each year at federal, state and local prisons and jails."); John Morton, *Memorandum Re: Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens* (Mar. 2, 2011) (by 2011, ICE had the resources to remove 400,000 immigrants per year).

⁶ Mark Noferi, *Cascading Constitutional Deprivation: The Right to Appointed Counsel for Mandatorily Detained Immigrants Pending Removal Proceedings*, 18 MICH. J. RACE & L. 63, 63 (2012) ("Today, an immigrant green card holder mandatorily detained pending his removal proceedings, without bail and without counsel, due to a minor crime committed perhaps long ago, faces a dire fate. If he contests his case, he may remain incarcerated in substandard conditions for months or years. While incarcerated, he will likely be unable to acquire a lawyer, access family who might assist him, obtain key evidence, or contact witnesses. In these circumstances, he will nearly inevitably lose his deportation case and be banished abroad from work, family, and friends.").

immigrants are more likely than those born in the U.S. to lag behind in education,⁷ have trouble speaking English,⁸ and to be in or near poverty.⁹ Moreover, immigrants are less likely to report when they are the victims of criminal and civil violations.¹⁰ These attributes are exacerbated by the fact that most immigrants in detention do not have ready access to counsel because they are often detained some distance from their homes (and population centers generally), and the U.S. removal system does not provide indigent detainees with counsel.¹¹

ICE's rapid and aggressive expansion of detention and removal, combined with the inherent vulnerabilities of the undocumented population, has led to grave concerns about the treatment of detained immigrants.¹² As a result, ICE's Office of Detention Oversight (ODO) has audited correctional facilities where immigration detainees are housed.¹³ Yet these efforts have not resolved concerns about immigration detention.¹⁴ This report represents an effort to examine

⁷ STEVEN A. CAMAROTA, CENTER FOR IMMIGRATION STUDIES, IMMIGRANTS IN THE UNITED STATES, 2010: A PROFILE OF AMERICA'S FOREIGN-BORN POPULATION 20 (2012), available at <http://www.cis.org/articles/2012/immigrants-in-the-united-states-2012.pdf> (28.1% of immigrants have not completed high school, compared to only 7.2% of the native population).

⁸ *Id.* at 40 (30.3% of immigrants do not speak English well or at all; in the case of Hispanic immigrants, 46% do not speak English well or at all).

⁹ *Id.* at 48 (42.4% of immigrants are in or near poverty while 28.7% of the native population are in or near poverty).

¹⁰ Underreporting victimhood re: crime and civil violations: Michael J. Wishnie, *Immigrants and the Right to Petition*, 78 N.Y.U. L. REV. 667, 673-79 (2003).

¹¹ Steering Committee of the New York Immigrant Representation Study Report, *Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings New York Immigrant Representation Study Report: Part 1*, 33 CARDOZO L. REV. 357, 363-65 (2011) (finding that 60% of detained immigrants from New York did not have counsel and that detainees were substantially more likely to avoid removal when they have counsel and were not detained during the removal process); 8 U.S.C. § 1362 (2006) (any person in a removal proceeding "shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose.").

¹² See, e.g., *Frontline: Lost in Detention* (Public Broadcasting Service Oct. 18, 2011).

¹³ News Release, Immigration and Customs Enforcement, ICE Announces Major Reforms to Immigration Detention System (Aug. 6, 2009), available at <http://www.ice.gov/news/releases/0908/090806washington.htm>; see e.g., OFFICE OF DETENTION OVERSIGHT, IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY, COMPLIANCE INSPECTION: ENFORCEMENT AND REMOVAL OPERATIONS: SALT LAKE CITY FIELD OFFICE, HENDERSON DETENTION CENTER: HENDERSON, NEVADA (Oct. 2011) [hereinafter *2011 ODO Report*].

¹⁴ See, e.g., *Expose & Close: Executive Summary*, DETENTION WATCH NETWORK, <http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/ExposeClose/Expose-Executive11-15.pdf> (last visited Nov. 18, 2013) (noting "at all ten of the [ICE] facilities, people reported waiting weeks or months for medical care; inadequate, and in some cases a total absence, of any out - door recreation time or access to sunlight or fresh air; minimal and inedible food...") and *Expose & Close: One Year Later*, DETENTION WATCH NETWORK,

immigration detention conditions in Nevada and determine whether improvements have occurred at the Henderson Detention Center (HDC) since ODO performed its audit of HDC in 2011.

With the exception of seventeen immigrant detainees in the Washoe County Jail, all ICE-detained immigrants in Nevada are held at HDC.¹⁵ In early 2011, after spending \$29 million to expand and renovate its facilities,¹⁶ HDC contracted with ICE to house immigration detainees.¹⁷ Currently, three hundred total beds are available for ICE detainees at HDC,¹⁸ up from the 80 beds originally planned for when the newly expanded HDC opened.¹⁹ During the 2013 Fiscal Year, HDC maintained an average daily population of 254 immigrant detainees, or 85% occupancy.²⁰

The lack of up-to-date, reliable information on HDC's facilities,²¹ coupled with the 2012 death of a Las Vegas resident in ICE custody,²² point to a need for more data about the treatment of immigration detainees in Nevada. This report, published by the Immigration Clinic at the University of Nevada, Las Vegas, William S. Boyd School of Law, sheds light on these detention conditions. Specifically, the report analyzes the conditions for immigration detainees regarding access to counsel and other legal resources, signings of legal documents, physical and

<http://www.detentionwatchnetwork.org/ExposeAndClose> (last visited Nov 18., 2013) (noting significant delays in detainee access to medical care in numerous detention facilities, in addition to inadequate legal resources for detainees).

¹⁵ ENFORCEMENT REMOVAL OPERATIONS DET. MGMT. DIV., DHS, 249 AUTHORIZED FACILITIES – FY13 ADP (2013) [hereinafter ERO FY13]. ,

¹⁶ Tovin Lapan, *Immigrant Detention: Is Henderson's Financial Boom a National Boondoggle?*, LAS VEGAS SUN, (forthcoming Nov. 19, 2013).

¹⁷ Lynnette Curtis, *ICE Utilizes New Beds*, LAS VEGAS REV. J., Feb. 26, 2011, at B1.

¹⁸ *2011 ODO Report*, *supra* note 13, at 1.

¹⁹ Lynnette Curtis, *ICE Utilizes New Beds*, LAS VEGAS REV. J., Feb. 26, 2011, at B1.

²⁰ *See* ERO FY 131, *supra* note 15.

²¹ Indeed, the 2011 ODO Report appears to be the only audit performed regarding the treatment of ICE detainees in Nevada, and it was merely an in-house audit (performed by ICE officials), the observation period lasted only two days, and it was completed nearly one and a half years ago. *2011 ODO Report*, *supra* note 13, at 1.

²² Antonio Planas, *Mexican Resident Dies While in Custody of Immigration Officials in Las Vegas*, Las Vegas Rev. J., Jan. 19, 2012, at B8 (Miguel Sarabia-Ortega died while being transported by van from ICE offices to “an overnight facility.”).

verbal treatment, and access to healthcare. The report also provides recommendations for improvement.

A. Methodology

This report is based on twenty-nine interviews with detainees in the custody of HDC. Student attorneys certified under Nevada Supreme Court Rule 49.5 conducted all of the interviews between February and April 2013.²³ Although two follow-up interviews were done in early November 2013, others could not be completed because the student attorneys were denied access to the detention center after sending a draft of this report to ICE and HDC, as discussed further in Part II.E below. The detainees who were interviewed included nineteen men and ten women. A 2011 ODO report evaluating HDC's facilities included twenty-one interviews with detainees (fifteen male, six female).²⁴ This report therefore compiles more interviews with detainees than the 2011 report and is more up-to-date.

The student attorneys normally conducted interviews at the detention center in groups of two interviewers, and the interviews ranged from thirty minutes to two hours. The interview questions were based on a three-page questionnaire that integrated previously noted violations at HDC. The authors also conducted follow-up interviews with interview questions based off of the detainee's first interview. All interviewees gave oral consent to participate in this report. Prior to giving consent, each interviewee was informed that the initial purpose of the interview was to ascertain the conditions of immigrant detention, and not to prepare a case for legal representation in removal proceedings. This advice was given so that detainees would not expect representation

²³ The student attorneys were working under the supervision of Prof. Fatma Marouf, Associate Professor of Law and Co-director of the Immigration Clinic at UNLV's Boyd School of Law.

²⁴ *2011 ODO Report*, *supra* note 13, at 4.

in removal proceedings as an outcome of the interview.²⁵ The Immigration Clinic screened the summaries of the interviews to identify detainees whose cases raised important legal issues and undertook representation in immigration court of at least one detainee. In other cases, the Immigration Clinic gave written or oral legal advice related to the detainee's removal proceeding. At the time of publication of this report, the Clinic continues to consider various legal remedies that might be pursued to address concerns raised by individual detainees.

Each detainee was informed that his or her identity would remain confidential. The names of detainees have been replaced by numbers that coincide with the listed interviews in a confidential appendix on file with the Immigration Clinic. Any information that may reveal the identity of the detainee has been omitted from this report.

B. Key Findings

The authors have made the following key findings based on twenty-nine total interviews with detainees at HDC:

- **Access to Legal Resources**

- Law Library

- Eighteen detainees used the law library – six women and twelve men. Of those eighteen, ten believed the library resources were inadequate.
- Three detainees reported only having access to the law library between the hours of 10pm and 5am. All three are women, meaning half of the women who used the law library shared this complaint.
- Two detainees complained that they could not get help necessary to utilize law library resources, either because they lacked English-language or technical skills.

- Representation:

²⁵ Since the immigration clinic is very small, it can only represent a small number of individuals in removal proceedings. However, it provides legal advice to a larger number of individuals facing removal.

- Only nine individuals had obtained legal representation for pending removal proceedings.
 - Pro Bono Services:
 - Sixteen detainees discussed pro bono representation. Of that number, eleven received information from HDC or ICE about pro bono services.
 - Of that number, seven reported having trouble getting in contact with pro bono providers.
 - Student Attorneys:
 - After a draft of this report was sent to ICE and HDC, the policy on visitation was changed to require student attorneys to submit a signed G-28 attorney representation form for each detainee, as well a letter from their supervisor listing the names of the detainees to be visited.
- **Telephone Access**
 - Seven detainees reported a problem with phone access either because they were denied access to the phone or because they did not know they could request a private line for legal calls.
- **Mail**
 - Legal Mail: Five detainees discussed serious problems with their mail, namely that legal mail was opened and searched while the detainee was not present.
 - General: Mail entering HDC appears to suffer a three to five day delay in most cases.
- **Coerced Signings of Legal Documents:**
 - All twenty-nine detainees were asked about coerced signings. Nine individuals reported that while in ICE offices, they felt either rushed when reviewing paperwork, or that ICE officers were trying to pressure them to sign documents.
 - One detainee witnessed an ICE officer physically forcing another detainee to sign a document that the detainee did not want to sign.
 - One detainee reported an HDC officer tried to coerce him to sign a document; that detainee also faced retaliation for his refusal to sign.

- **Verbal/Physical Abuse**
 - Mistreatment by ICE Officers
 - All twenty-nine detainees were asked about verbal and physical abuse. Eleven detainees reported mistreatment by ICE officers, specifically that ICE uses racial slurs or demeaning threats during transport to and from detention.
 - Four detainees reported ICE officers unnecessarily used physical force upon detainees, such as pushing or shoving.
 - Three detainees explained that ICE officers placed handcuffs excessively tight, so as to cause cuts or bruising on one detainee's wrists.
 - Mistreatment by HDC Officers
 - Three detainees reported incidents of threats from HDC officers.
 - Three detainees experienced retaliation after filing a grievance.
 - Six detainees discussed problems with a condescending or rude tone from the guard, including being called offensive names.
- **Medical Care**
 - All twenty-nine detainees were asked about their access to medical care. Ten detainees reported waiting three weeks or more --sometimes as long as four months--to see a physician.
 - Various inmates have complained about the unavailability of certain over-the-counter medications (like allergy medication) or the cost of certain over-the-counter medications (like Tylenol) in the commissary.

The above key findings reveal that conditions of immigration detention at HDC require improvement.

C. Background: 2011 ODO Audit of HDC

“In 2009, ICE created the Office of Detention Oversight (ODO) to conduct targeted inspections of detention facilities, where complaints or deficiencies have been reported.”²⁶ From October 25, 2011 to October 27, 2011, the ODO conducted just such an investigation at HDC, reviewing HDC’s processes “to determine the compliance with current policies and detention standards.”²⁷ In addition to an overall review of HDC’s policies, procedures, and facilities, the ODO interviewed sixteen male detainees and five female detainees.²⁸ The ODO found that HDC was well managed and in compliance with the areas and standards inspected.²⁹ This overall finding was made notwithstanding the fact that the ODO identified thirty-one specific deficiencies, the majority of which the ODO characterized as “administrative.”³⁰

Specifically, the ODO found deficiencies in:

Access to Legal Material (3 deficiencies), Admission and Release (1), Detainee Handbook (1), Environmental Health and Safety (8), Food Service (1), Key and Lock Control (3), Medical Care (4), Special Management Unit – Administrative Segregation (2), Special Management Unit – Disciplinary Segregation (3), Staff-Detainee Communication (1), Suicide Prevention and Intervention (1), Telephone Access (2), and Use of Force (1).³¹

The following portions of the ODO’s report are relevant as areas that have remained inadequate despite the ODO’s audit and recommendations: Access to Legal Material, Medical Care, and Telephone Access. Specifically, the 2011 ODO audit report found the following:

²⁶ *Performance-Based National Detention Standards (PBNDS) 2011: Hearing before the Subcomm. on Immigration Policy and Enforcement of the H. Comm. on the Judiciary* 112th Cong. (2012) (written testimony of Kevin Landy, Assistant Director of the U.S. Immigration and Customs Enforcement Office of Detention Policy and Planning) (released Mar. 27, 2012), available at <http://www.dhs.gov/news/2012/03/27/written-testimony-us-immigration-and-customs-enforcement-house-judiciary>.

²⁷ *2011 ODO Report*, *supra* note 13, at 1.

²⁸ *Id.* at 4-5.

²⁹ *Id.* at 2.

³⁰ *Id.*

³¹ *Id.* at 1.

- **Access to Legal Material**

- HDC failed to provide “a law library in a designated room with sufficient space to facilitate detainees’ legal research and writing. The law library [must] be large enough to provide reasonable access to all detainees who request its use.”
- HDC did not provide certified mail service to detainees.
- HDC did not provide notice to detainees regarding how and when to request access to the law library.³²

- **Telephone Access**

- HDC failed to provide adequate telephone access in that telephone use rules were not provided to detainees.
- Not all monitored phones were clearly marked as monitored, and there was no notice to detainees on how to obtain an unmonitored phone call for legal calls.³³

- **Medical Care**

- Physicians did not review health assessments performed by nurses, as required.
- Detainees did not sign consent forms before receiving medical exams and treatment.
- Not all staff was CPR certified.
- HDC did not provide written notification when a detainee needed medical clearance before release or transfer, or when a detainee required medical transport during removal or transfer.³⁴

Deficiencies in these areas persist, and this report reveals further violations of ICE’s national standards.

There is little empirical evidence with which to compare the results of our interviews because most accounts of abuses and deprivations in ICE custody rely on anecdotal accounts.

³² *Id.* at 8.

³³ *Id.* at 28-29.

³⁴ *Id.* at 19-20.

Even the ODO's Compliance Inspections shed little empirical light on the state of detained immigrants because their reports are exactly what they purport to be: *compliance* reviews. Since the ODO's reports follow a compliance model, the oversight is centered on ensuring the detention centers have the proper policies in place to police themselves. In other words, the ODO reports do not enumerate instances of abuse; they are designed to ensure only that the detention centers have a procedure in place in case abuse occurs.³⁵

It is, however, possible to assess how well HDC addresses broad areas of concern: due process, detainee abuse, and medical care. In terms of due process, detainees at HDC likely benefit greatly from being housed in a population center where they can access counsel and family assistance.³⁶ Yet the interviews indicate that the law library is largely inadequate and that serious problems exist concerning attorney-client privilege. The student attorneys with the Clinic were also prevented from entering the detention center after sharing a draft of this report. In terms of abuse, the detainees did not report any sexual abuse, but did report some physical abuse. They also regularly reported that ICE officers, though not HDC officers, were disrespectful both in word and act. Medical care was certainly problematic in that most detainees experienced a substantial wait in securing medical services. Considering the partial successes and failures in the areas of due process, detainee abuse, and medical care, it would be unfair to characterize HDC as having failed to protect detainees. Still, it seems equally unfair to say HDC has succeeded.

³⁵ See, U.S. Immigration and Customs Enforcement, *FOIA Library, Office of Detention Oversight – Detention Facility Compliance Inspections*, <http://www.ice.gov/foia/library/> (last visited Apr. 20, 2013).

³⁶ See Steering Committee of the New York Immigrant Representation Study Report, *Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings New York Immigrant Representation Study Report: Part I*, 33 CARDOZO L. REV. 357, 363-65 (2011) (finding that detainees are substantially more likely to succeed when they are not detained in a far-off detention center.).

Part I of this report analyzes detainees' access to legal resources, particularly access to pro bono services and the ability to communicate with a paid attorney at HDC. Access to legal resources also encompasses access to a law library and the receipt of legal mail. Part II discusses situations in which detainees have been coerced to sign legal documents by ICE officials or by HDC guards. Part III describes instances of mistreatment, including physical or verbal abuse. Part IV analyzes the standard for healthcare and discusses how HDC's current medical care standards fall short. Part V concludes with key recommendations.

II. ACCESS TO LEGAL RESOURCES

A. Access to Pro Bono Services

The Immigration Advocates Network lists three organizations that offer immigration services in Southern Nevada: Hermandad Mexicana, Nevada Legal Services – a Legal Services Corporation (LSC) funded organization – and Legal Aid Center of Southern Nevada. Hermandad Mexicana, Nevada Legal Services, and Legal Aid Center of Southern Nevada are able to assist detained individuals in removal proceedings, but only if they qualify for a U-Visa, T-Visa, or VAWA relief.³⁷ In other words, to be eligible for representation, a detainee must have been a victim of trafficking, a violent crime, or domestic violence. Likewise, the Salvation Army of Southern Nevada provides an attorney for victims of sex trafficking through its Seeds of Hope program.³⁸ Catholic Charities of Las Vegas and the UNLV Immigration Clinic are two organizations that provide free assistance to immigrants in removal proceedings in Southern Nevada. Catholic Charities works closely with the Executive Office of Immigration Review

³⁷ *National Immigration Legal Services Directory*, IMMIGRATION ADVOCATES NETWORK, <http://www.immigrationadvocates.org/nonprofit/legaldirectory/search?state=NV> (last visited Apr. 21, 2013),

³⁸ *SEEDS of Hope*, THE SALVATION ARMY, <http://www.salvationarmysouthernnevada.org/#!seeds-of-hope-human-trafficking/ck2l> (last visited Apr. 20, 2013).

(EOIR) and United States Citizenship and Immigration Services (USCIS) to assist immigrants in navigating the immigration process.³⁹ The organization provides both administrative and legal assistance related to employment authorizations, asylum claims, legal permanent residency, and temporary protected status.⁴⁰ The UNLV Immigration Clinic provides representation to individuals in deportation proceedings and many other types of immigration cases, as well as in non-immigration matters that affect the rights of immigrants.⁴¹

Detained immigrants do not have access to the Internet or phone book to research the organizations that may be able to assist them. As such, detainees rely completely on the information they are given by EOIR and the facility where they are housed, here HDC. The Department of Justice, through the Office of Legal Access Programs (OLAP), offers four legal assistance programs to provide representation to individuals in immigration proceedings.⁴² However, none of these programs are available to immigrants in removal proceedings.⁴³ 8 C.F.R. § 1003.61 requires that Immigration Judges provide a List of Free Legal Providers to individuals in removal proceedings.⁴⁴ The list for Nevada contains only two resources: Catholic Charities in Las Vegas and Nevada Hispanic Services in Reno.⁴⁵ By contrast, the List of Free Legal Providers for Arizona immigration courts contains nineteen individual attorneys and legal organizations,⁴⁶ the California courts list ten,⁴⁷ Utah four,⁴⁸ and Colorado five.⁴⁹

³⁹ *Catholic Charities Immigration Services*, CATHOLIC CHARITIES OF SOUTHERN NEVADA, <http://www.catholiccharities.com/immigrationservices.html> (last visited Apr. 20, 2103).

⁴⁰ *Id.*

⁴¹ For example, the immigration clinic has developed a pilot project with the Clark County Public Defender's Office to provide advice to criminal defendants about the immigration consequences of various convictions. The Immigration Clinic also explores possible civil rights litigation on behalf of immigrants.

⁴² *Office of Legal Access Programs*, EXECUTIVE OFFICE OF IMMIGRATION REVIEW, <http://www.justice.gov/eoir/probono/probono.htm> (last visited Apr. 21, 2013).

⁴³ *Id.*

⁴⁴ *See Id.*

⁴⁵ EXECUTIVE OFFICE OF IMMIGRATION REVIEW, NEVADA FREE LEGAL PROVIDERS LIST, (2013), *available at* <http://www.justice.gov/eoir/probono/freelgchtNV.pdf>.

⁴⁶ EXECUTIVE OFFICE OF IMMIGRATION REVIEW, ARIZONA FREE LEGAL PROVIDERS LIST, (2013), *available at* <http://www.justice.gov/eoir/probono/freelgchtAZ.pdf>.

The demand from detainees for pro bono services is high but the supply of providers is lacking. Obtaining pro bono representation in deportation proceedings has proven difficult for HDC-ICE detainees. Although Detainee 19 explained the ICE provides pro bono legal information to detainees,⁵⁰ only thirteen out of twenty-nine interviewed detainees stated that they either received information on pro bono services at HDC or they had knowledge about pro bono services. Of those that received information on pro bono services, six specifically named Catholic Charities.⁵¹

However, seven detainees that sought direct assistance from Catholic Charities or from a pro bono attorney never received assistance, despite repeated phone calls or letters.⁵² Detainee 17 stated that ICE detainees are given the phone number to Catholic Charities, but “Catholic Charities is unable to help detained migrants.”⁵³ Detainee 13 clearly stated the problem with pro bono providers: “No one answers and by the time [detainees] get a hold of someone, their court dates have passed.”⁵⁴ Others who have tried to contact Catholic Charities from HDC for pro bono assistance have experienced the same problem: the dial tone is busy or no one answers their call.⁵⁵

Immigration attorneys have attempted to meet the need of detainees through informal programs. Rolando Rex Velasquez, an immigration attorney practicing in Las Vegas, started an informal pro bono project several years ago offering services to detainees in removal

⁴⁷ EXECUTIVE OFFICE OF IMMIGRATION REVIEW, CALIFORNIA FREE LEGAL PROVIDERS LIST, (2013), *available at* <http://www.justice.gov/eoir/probono/freelglchtCA.pdf>.

⁴⁸ EXECUTIVE OFFICE OF IMMIGRATION REVIEW, UTAH FREE LEGAL PROVIDERS LIST, (2013), *available at* <http://www.justice.gov/eoir/probono/freelglchtUT.pdf>.

⁴⁹ EXECUTIVE OFFICE OF IMMIGRATION REVIEW, COLORADO FREE LEGAL PROVIDERS LIST, (2013), *available at* <http://www.justice.gov/eoir/probono/freelglchtCO.pdf>.

⁵⁰ *See* Confidential Appendix p. 72 (Confidential Appendix on file with author) [hereinafter Appendix].

⁵¹ *See* Appendix p. 19, 34, 37, 43, 54, 65.

⁵² *See* Appendix pp. 3, 8, 19, 34, 37, 43, 65.

⁵³ *See* Appendix p. 43.

⁵⁴ *See* Appendix p. 34.

⁵⁵ *See* Appendix p. 37.

proceedings. Mr. Velasquez would meet detained immigrants as they arrived at the Las Vegas Immigration Court and would determine their eligibility for certain forms of relief from removal. Mr. Velasquez would then accompany a detainee during the court hearing and explain to the Immigration Judge what, if any, forms of relief the detainee could potentially pursue. This process helped the court quickly determine which detainees intended to seek relief, and which could knowingly and intelligently sign a deportation order. If the detainee appeared eligible for relief, Mr. Velasquez would find an attorney through the local American Immigration Lawyers Association (“AILA”) chapter to represent the individual. However, approximately two years ago, the Immigration Court decided to require Mr. Velasquez to submit an EOIR-28 form (Notice of Entry of Appearance as Attorney or Representative) for each individual that he screened and accompanied during the hearing. Even though the program was largely successful, Mr. Velasquez was not able to continue this project because of the liability involved with submitting an EOIR-28 form.⁵⁶ Therefore, there is a great need to expand pro bono projects serving detained immigrants in Nevada.

B. Access to a Paid Attorney

1. ICE Standards for Telephone Access

Due to the overwhelming demand for pro bono assistance and the lack of providers, detainees either represent themselves or pay an attorney. Several of the interviewed detainees agreed that most detainees remain unrepresented and therefore agree to sign deportation documents.⁵⁷ Nonetheless, about seventeen out of twenty-nine detainees had an attorney. This section describes incidents where HDC officers have prevented represented detainees from

⁵⁶ Telephone Interview with Mr. Rolando Rex Velasquez, Esq, in Las Vegas, NV (Apr. 18, 2013).

⁵⁷ See Appendix p. 10.

communicating with their attorneys or have delayed communication with attorneys.

According to ICE’s Performance-Based National Detention Standards (NDS), “[d]etainees shall be able to have confidential contact with attorneys and their authorized representatives in person, on the phone, and through correspondence.”⁵⁸ For each monitored telephone call, the facility must “at each monitored telephone, place a notice that states . . . the procedure for obtaining an unmonitored call to a court, legal representative,” or to obtain representation.⁵⁹ Importantly, a facility cannot block calls from detainees to their legal representatives, “nor limit the duration of such calls by rule or automatic cut-off.”⁶⁰

HDC automatically records all telephone calls that are made from the housing units, or pod areas.⁶¹ The 2011 audit report of HDC explains that HDC allows unmonitored telephone calls to attorneys and legal representatives when detainees submit a request form or when they verbally notify a housing unit officer.⁶² When the request is approved, the detainee is then provided access to a telephone outside the housing unit where the call will not be monitored or recorded.⁶³ Detainee 9 reported that there are about five to six telephones inside the pod area that are accessible to detainees, but all of the phone calls are monitored.⁶⁴ There is only one telephone outside the pod area where calls are not monitored.⁶⁵

According to an email from HDC Corrections Superintendent Pamela K. Lauer to the UNLV Immigration Clinic, the requests for telephone access are documented.⁶⁶ All officers are

⁵⁸ U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2011 401 (2011), available at <http://www.ice.gov/detention-standards/2011/> [hereinafter *NDS*].

⁵⁹ *Id.* at 361.

⁶⁰ *Id.* at 364.

⁶¹ 2011 ODO Report, *supra* note 13.

⁶² *Id.* at 5.

⁶³ *Id.* at 28.

⁶⁴ See Appendix p. 24.

⁶⁵ *Id.*

⁶⁶ Email from Pamela Lauer, HDC Superintendent, to student attorney with the UNLV Immigration Clinic (Apr. 4, 2013) (on file with authors).

to document phone call requests, and to include whether a message had been left if the receiving person was unavailable.⁶⁷ HDC does, “at times, have to remind Officers that the calls for ICE inmates to their legal representative can be made from the free phone instead of collect.”⁶⁸

The 2011 ODO report explains that detainees receive the ICE National Detainee Handbook at the ICE Las Vegas Sub-Office and the HDC handbook upon arrival to the HDC facility.⁶⁹ Detainees sign a form acknowledging receipt of the handbooks. The HDC handbook is printed in both English and Spanish. In addition to including relevant information about HDC’s programs and services, the handbook includes information on correspondence and mail, access to legal materials, and telephone access.⁷⁰ The handbook expressly states that a detainee is allowed to use an unmonitored phone to speak to an attorney.⁷¹

2. Problems with Telephone Access at HDC

Despite written and known HDC policy regarding access to a private phone line, detainees reported delays or restrictions in speaking with their legal representatives on an unmonitored line. Detainee 2 stated that on three or four occasions, he was denied permission to call his Public Defender and added that HDC officers sometimes deny access simply because “they are in a bad mood.”⁷² Detainee 9, who is represented in removal proceedings, has specifically requested access to the unmonitored phone line to speak to his attorney, but his request has only occasionally been honored.⁷³ When student attorneys followed-up with Detainee 9 in November 2013, eight months after the initial interview, Detainee 9 reported that access to

⁶⁷ *Id.*

⁶⁸ Email from Pamela Lauer, HDC Superintendent, to student attorney with the UNLV Immigration Clinic (Apr. 4, 2013) (on file with authors).

⁶⁹ *2011 ODO Report, supra* note 13, at 11.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *See* Appendix p. 5.

⁷³ *See* Appendix p. 24.

unmonitored phone lines remains a problem.⁷⁴ Detainee 3 has also been denied the use of a private, unmonitored phone line. He stated that the telephone lines are monitored when he talks with his attorney, and has been told by HDC that he can only request a private line “for emergencies.”⁷⁵ The same detainee stated that when a detainee wants to speak with his attorney, it costs \$10, which is too expensive.⁷⁶

The cost of using the telephone and/or the hassle of obtaining calling cards is a common complaint among both pro se and represented detainees.⁷⁷ Specifically, one pro se detainee stated she had the funds to hire an attorney; however, she was waiting to receive her calling card to be able to call an attorney.⁷⁸ Approximately two weeks would pass before she was able to purchase and receive a calling card.⁷⁹ Yet, according to HDC policy, if the call is to reach a legal representative, it *should* be free of charge. Consequently, this detainee waited unnecessarily for two weeks to call and retain a private attorney.

Another detainee stated that he had “no idea” he could request a private telephone line or private video conferencing.⁸⁰ He stated that he had been using a calling card to call his attorney or had dialed 1-800 collect on a monitored telephone in the pod area.⁸¹ This indicates that HDC has not posted visible instructions for using the unmonitored telephone, a violation that persists from the 2011 ODO report.

Detainee 22 stated that he initially experienced delay when he first sought to contact his attorney at HDC.⁸² On two occasions, Detainee 13, also represented, witnessed two detainees

⁷⁴ See Appendix p. 70.

⁷⁵ See Appendix p. 8.

⁷⁶ *Id.*

⁷⁷ See Appendix pp. 8, 52, 63.

⁷⁸ See Appendix p. 63.

⁷⁹ *Id.*

⁸⁰ See Appendix p. 48.

⁸¹ *Id.*

⁸² See Appendix p. 54.

requesting the use of the unmonitored telephones to speak with their attorneys.⁸³ The same officer refused them access. Detainee13 is concerned with privacy and stated that she prefers the use of face-to-face interviews in the contact rooms.⁸⁴ Yet only one detainee stated that her attorney uses the contact room to communicate with her instead of calling.⁸⁵

The practice of preventing or delaying detainees from reaching their attorneys with an unmonitored phone line undermines attorney-client privilege. Confidentiality is the foundation of this relationship and should be safeguarded. Detainees must be allowed to speak with their attorneys without having their conversations monitored or recorded, as specified in the HDC handbook, and free of charge, as stated by the HDC Corrections Superintendent.

C. Access to the “Law Library”

1. ICE Standards for a Law Library

The NDS articulate several requirements detention centers must conform to in providing a law library. Specifically, the NDS require that each facility provide a “properly equipped law library.”⁸⁶ The law library is required to have enough computers and printers available to support the detainee populations, as well as writing supplies and other supplies required for the preparation of legal documents, including photocopiers.⁸⁷ The NDS require the law libraries to provide certain legal materials enumerated and all legal materials maintained by the detention center must be up-to-date.⁸⁸ These legal materials can be made available in hard copy format, or in the alternative, through LexisNexis CD-ROM, although paper versions are encouraged.⁸⁹ The NDS also require detention facilities to keep legal materials and equipment in good condition,

⁸³ See Appendix p. 33.

⁸⁴ *Id.*

⁸⁵ See Appendix p. 17.

⁸⁶ NDS, *supra* note 57, at 402, Part 6.3, Law Libraries and Legal Material, § V(A).

⁸⁷ *Id.* at 403, § V(D).

⁸⁸ *Id.* at § V(E)(1).

⁸⁹ *Id.* at 404, § V(E)(1)(a).

and replenish supplies as needed.⁹⁰ If a detainee needs a legal resource not provided by the library, the facility must allow the detainee to request the material.⁹¹ Facilities are also required to provide assistance to detainees in accessing legal materials and utilizing equipment, and must allow detainees to assist one another unless it poses a security risk.⁹²

The NDS also sets forth standards for hours of access to the law library to facilitate “meaningful access” to the law library.⁹³ Facilities must devise a schedule that permits the use of the law library “on a regular basis,” enables maximum possible use, and causes the library to be used between meals and other official facility functions.⁹⁴

2. Problems with the Law Library at HDC

The HDC “law library” consists of a computer room with CD-ROM Lexis-Nexis access to the criminal database. The software includes the Nevada Revised Statutes (N.R.S.) and a searchable criminal case collection.⁹⁵ One detainee believed that the United States Code (U.S.C.) is not available to detainees.⁹⁶ Detainees may print materials from the database,⁹⁷ but there is no photocopy machine to make copies from books, and the computer printer has been reported to be out of ink at times, sometimes for up to a full week.⁹⁸

Twenty-five of the twenty-nine detainees interviewed were aware of the law library at HDC. Only one detainee claimed that HDC does not actually have an accessible law library but

⁹⁰ *Id.* at § V(E)(2).

⁹¹ *Id.* at 406, § V(G).

⁹² *Id.* at § V(I).

⁹³ *Id.* at 401, Part 6.3, Law Libraries and Legal Material, § II.

⁹⁴ *Id.* at 403-03, § V(C).

⁹⁵ *See* Appendix p. 13.

⁹⁶ *Id.*

⁹⁷ One detainee expressed concern that the printing procedure, by which the detainee gives the correctional officer a memory drive containing the documents to print and the correctional officer prints the documents in a separate and private room, poses a risk to the privacy of the detainee’s legal case. *See* Appendix p. 70.

⁹⁸ *See* Appendix p. 51.

merely a cart with a few books.⁹⁹ This detainee believed he only had access to legal information from the Immigration and Nationality Act through the use of “kite” forms with a one-week turn-around to receive photocopies from sections of the Act.¹⁰⁰ Three detainees noted they had not actually tried to use the library because they had an attorney. Four detainees did not have any specific reason why they have not used the library.

Twelve of the twenty-five detainees who were aware of the library reported that no Spanish materials are available at the library.¹⁰¹ Thirteen detainees also reported they felt the library was “inadequate” generally, with one male detainee noting he could not find any information specific to his case and charge of removability.¹⁰² Seven of these twenty-five detainees noted that the computer is very difficult to use and requires peer tutoring or extensive trial-and-error to be able to navigate the Lexus-Nexis software program.¹⁰³ Only two detainees, both female, reported they were allowed to visit the library with another detainee to help them, and one of these two detainees reported that a guard assisted her in using the library computer.¹⁰⁴

There seems to be a persistent belief that there “is not much there” in the HDC library. Three of the twenty-five detainees noted this belief as a reason why they did not have interest in visiting the library.¹⁰⁵ Also, one female detainee noted that sometimes HDC guards will discourage the female detainees from using the library resource by telling the females they do not have much of a legal case anyway.¹⁰⁶

⁹⁹ See Appendix p. 49.

¹⁰⁰ See Appendix p. 49. A “kite” is an information request card which is submitted by a detainee to receive photocopies of specific legal information specified on the request card.

¹⁰¹ However, in one follow-up interview, a detainee who accesses the library regularly said that there are very few Spanish resources and absolutely no Russian resources, despite there being a Russian population in HDC. See Appendix pp. 70, 71.

¹⁰² See Appendix p. 14.

¹⁰³ See Appendix pp. 15, 22, 26, 38, 40, 56, 58.

¹⁰⁴ See Appendix pp. 16, 67.

¹⁰⁵ See Appendix pp. 16, 23, 67.

¹⁰⁶ See Appendix p. 32.

The lack of library resources and research assistance demonstrates that most pro se individuals cannot adequately prepare their case simply due to their status of being detained at HDC. Moreover, interviewees consistently described the law library as a room with one computer where guards would often allow only one person to work at a time.¹⁰⁷ This fails to “provide reasonable access to all detainees who request [the law library’s] use.”¹⁰⁸ It also shows that HDC has not furnished “a sufficient number of tables and chairs to accommodate detainees’ legal research and writing needs;”¹⁰⁹ and allowing only one detainee at a time prevents detainees from receiving “assistance where needed”¹¹⁰ since fellow detainees cannot assist. Furthermore, the ODO already cited HDC for its failure to provide a sufficient law library for detainees to perform legal research and drafting.¹¹¹ Thus, failing to maintain an adequate law library is a persisting problem at HDC.¹¹²

3. Odd Access Hours to the Law Library at HDC

Three female detainees stated that the hours they are allowed to use the library are between 12 midnight and 7 a.m., but usually late in the night around 3 a.m.¹¹³ Similarly, two male detainees stated that the law library is open between 10:00 p.m. and 4:30 a.m., with day hours depending on the correctional officer on duty.¹¹⁴ Naturally, the men and women are tired at this time and likely not as alert for the vigor of serious legal research. The women said that the guards claimed this was the best time to go to the library because fewer people would be in the

¹⁰⁷ See Appendix pp. 5, 30, 37, 66.

¹⁰⁸ *NDS*, *supra* note 58, at 402.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *2011 ODO Report*, *supra* note 13, at 8.

¹¹² Follow-up interviews conducted eight months after the initial study revealed that although library resources remain minimal, access to the law library had improved. According to two detainees, HDC allows detainees to visit the law library in pairs. See Appendix p. 70.

¹¹³ See Appendix pp. 32, 36, 55.

¹¹⁴ See Appendix pp. 70, 72.

hallways compared to the busy situation during the day. However, this violates ICE’s standard that law library availability be scheduled in such a way that it does not interfere with detainees scheduled activities, which includes sleep.¹¹⁵ This practice also contravenes the 2011 audit of HDC, which found that computers for legal research “are available for all detainees to use at any time upon request, except during meal service and sleeping hours.”¹¹⁶

D. Access to Legal Mail

1. ICE Standards for Mail

The NDS regarding mail provide that “all facilities shall implement procedures for inspecting for contraband, in the presence of the detainee, all special correspondence or legal mail.”¹¹⁷ Further, “[i]ncoming correspondence shall be distributed to detainees within 24 hours (one business day) of receipt by the facility.”¹¹⁸ Beyond just legal mail, NDS provides that “detainees shall be able to correspond with their families, the community, legal representatives, government offices and consular officials,”¹¹⁹ and specifically requires indigent detainees to “receive a specified postage allowance to maintain community ties and necessary postage for privileged correspondence.”¹²⁰

2. Problems with Legal Mail at HDC

A common complaint among detainees is that their mail is often delayed.¹²¹ Five of the twenty-nine detainees interviewed reported that all U.S. mail is delayed at least three days versus standard postal delivery times. While some delay is inevitable for routine safety inspections,

¹¹⁵ *Id.* at 402-03.

¹¹⁶ *2011 ODO Report*, *supra* note 13, at 8.

¹¹⁷ NDS, *supra* note 58, at 331.

¹¹⁸ *Id.* at 330.

¹¹⁹ *Id.* at 327.

¹²⁰ *Id.*

¹²¹ Detainees reiterated this complaint during follow-up interviews in November. *See* Appendix pp. 70, 73.

“legal mail” from sources such as the Las Vegas Immigration Court and other known legitimate and reputable sources is reported commonly delayed for at least a three-day period, and sometimes an additional week.¹²² One detainee, a pro se litigant, reported that he had to resend a brief because it was “lost,” and he had yet to receive an important status letter sent by the immigration court three months earlier.¹²³ Similarly, another detainee had yet to receive an important immigration form sent by the immigration court two weeks prior.¹²⁴ Also, three detainees reported that a few guards often just state mail is “lost a lot.”¹²⁵ Magazines and books, ordered and sent direct from publishers or Amazon.com, are also reported to be given out well past their magazine issue date or book order date.¹²⁶

Every detainee interviewed who had any legal mail correspondence knew the official HDC policy was to require officers inspecting correspondence marked “legal mail” to open that mail in front of the detainee. However, five detainees reported that an HDC officer on multiple occasions opened their legal mail *before* they received it. Three of these detainees noted that much of their legal mail was shuffled up, missing pages, or had other defects like rips or excessive folding.¹²⁷ One detainee received her legal mail opened and ruffled, and later experienced rude comments from guards about her legal issues contained in the mail.¹²⁸

Finally, HDC’s provision of only domestic stamps for mail has prohibited communication to obtain counsel and correspond with family. The 2011 ODO report confirmed that HDC complies with NDS standards by providing domestic “postage-paid envelopes to

¹²² See Appendix p. 55.

¹²³ See Appendix p. 18.

¹²⁴ See Appendix p. 70.

¹²⁵ See Appendix p. 36.

¹²⁶ See Appendix p. 9.

¹²⁷ See Appendix pp. 9, 36, 42.

¹²⁸ See Appendix p. 32.

indigent detainees to mail legal documents.”¹²⁹ However, while HDC provides a standard first class pre-stamped envelope to indigents (\$0.46), it does not provide the current \$1.10 postage for a letter to Mexico (and several other Central American countries).¹³⁰ A detainee who needed to correspond with family in Central America about details regarding funding for her legal representation and other regular family communication was told that a letter to Mexico or Central America costs \$10.¹³¹ The true cost for a standard letter to Central America is around \$1.50.¹³² The NDS expressly states that not only must indigent detainees be provided with free envelopes and stamps for domestic legal matters, but that “[r]equests to send international mail may also be honored.”¹³³ As this detainee was indigent, she could never afford \$10 for her needed legal or personal communications. This problem has impeded her efficient communication with family to fund her legal representation.

E. Student Attorney Access to Detainees

When the Immigration Clinic informed ICE and HDC about the existence of this report, they attempted to block student attorneys’ access to the detention center by imposing additional procedural hurdles that directly contravene ICE’s own standards of operation. Late Sunday evening, November 3, 2013, the Immigration Clinic sent a draft version of this report to both ICE and HDC. When the student attorneys arrived at HDC on Tuesday, November 5, 2013, the guards informed them that a new directive had been issued that Monday regarding student attorneys’ access to the detention center. Under the new policy, student attorneys need a letter from their supervising attorney listing the names of the detainees that they want to interview. In addition, the student attorneys must present G-28 forms (attorney representation forms) signed

¹²⁹ 2011 ODO Report, *supra* note 13, at 10.

¹³⁰ See Appendix p. 25.

¹³¹ See Appendix p. 25.

¹³² For standard postage rates, www.usps.gov (postage calculator) (last visited April 26, 2013).

¹³³ NDS, *supra* note 58, at 408.

by each detainee that they wished to meet. This requirement directly conflicts with ICE's NDS, which specifically states that attorney representation forms are not required for *pre-representation* meetings or meetings *not related to immigration*, such as meetings about the conditions of detention.¹³⁴ Indeed, requiring a G-28 form for a pre-representation interview would make no sense, since the form cannot be signed by the detainee before a meeting takes place.

On November 17, 2013, two student attorneys with the Immigration Clinic working on an unrelated project attempted to meet with detainees at HDC and were denied access because they did not have G-28 forms. They provided copies of ICE's published policies to no avail. On November 15, 2013, another student attorney who is currently representing a detainee in his removal proceedings provided a signed EOIR-28 form (the attorney representation form for immigration court), as well as a letter from his supervisor, but was still denied a private meeting room (i.e. a "contact visit"). He therefore had to speak to his client from an area adjoining the main waiting room, which does not provide adequate privacy to protect confidential communications. As this report goes to publication, the Clinic has a meeting scheduled with ICE on November 19, 2013 to discuss the issue of access by student attorneys.

¹³⁴ The relevant language states: "'To meet with a detainee, a legal service provider's representative need not complete a Form G-28 (stating that he/she is legal representatives of the detainee) at the "pre-representation" stage." NDS, note 58, at 375-76. Part 5.7 Visitation § V(J)(7). In addition, "Attorneys representing detainees on legal matters unrelated to immigration are not required to complete a Form G-28." *Id.*

III. COERCED SIGNING OF LEGAL DOCUMENTS

A. Coerced Signings of Legal Documents at the ICE Office

Black's Law Dictionary defines *coercion* as "compulsion by physical force or threat of physical force" and is intended to restrict another's freedom of action.¹³⁵ In this context, coercion includes the practice of using intimidation, threats, undue influence, or physically forcing a detainee to act in an involuntary manner. 8 C.F.R. § 287.8(c)(2)(vii) speaks directly to the issue of coerced signings of documents, prohibiting "[t]he use of threats, coercion, or physical abuse by the designated immigration officer to induce a suspect to waive his or her rights or to make a statement is prohibited."¹³⁶

ICE officers in Nevada use different forms of coercions, including intimidating or encouraging detainees to sign legal documents that (a) they do not understand, usually because of language barriers, or (b) they do understand, but are quickly rushed into signing. Two detainees reported actual physical coercion.¹³⁷ Such a practice undermines the detainees' free will and the right to know what they are signing. Coerced signing of documents can have significant consequences for detainees' removal cases, including whether or how soon they will have an Immigration Court hearing or be deported.

Detainee 9 stated that ICE officers pressured him to sign a document which he had no opportunity to read through, and consequently, he unknowingly waived his right to a hearing

¹³⁵ BLACK'S LAW DICTIONARY 294 (9th ed. 2009). *See also* NEV. REV. STAT. § 207.190 (2013) ("It is unlawful for a person, with the intent to compel another to do or abstain from doing an act which the other person has a right to do or abstain from doing, to: (a) Use violence or inflict injury upon the other person or any of the other person's family, or upon the other person's property, or threaten such violence or injury; (b) Deprive the person of any tool, implement or clothing, or hinder the person in the use thereof; or (c) Attempt to intimidate the person by threats or force.").

¹³⁶ 8 C.F.R. § 287.8(c)(2)(vii)

¹³⁷ *See* Appendix pp. 50, 54.

with a judge within ten days of detention.¹³⁸ According to the same detainee, it is a common practice for ICE officers to pressure detainees to sign documents which the detainees do not understand. Detainee 9 reported two specific and distinct occasions when ICE officers pressured him to sign a document that he did not want to sign by saying things like “you’re just stalling”; “you’re just making the process longer”; and “you’re just wasting your time.”¹³⁹ Similarly, Detainee 2 has met individuals who were coerced into signing documents they did not understand after ICE threatened more time in detention.¹⁴⁰

One detainee met a non-English speaking Mexican male detainee who tried to inform an ICE officer that he wanted voluntary departure.¹⁴¹ The officer instead *physically* coerced him to place his fingerprint (thumb) on a line to indicate that he wanted to see an Immigration Judge.¹⁴² As a result, the man spent a month in detention instead of returning to Mexico promptly.¹⁴³ If the detainee’s intent had been honored or if the ICE agents would have made an attempt to understand the detainee, it could have saved ICE significant resources related to keeping the man detained for the whole month because HDC charges ICE about \$102.00 per immigration detainee per day.¹⁴⁴ Detainees 1, 6, and 20 also had a similar experience—they had all met detainees who were forced by ICE to sign forms to see an immigration judge when they really just wanted to depart voluntarily.¹⁴⁵

Another detainee stated that he experienced both verbal and physical coercion at the ICE office. The ICE officers told him to sign paperwork, but the detainee stated that his attorney told

¹³⁸ See Appendix p. 23.

¹³⁹ *Id.*

¹⁴⁰ See Appendix p. 5.

¹⁴¹ See Appendix p. 52.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Modification of Detention Services Intergovernmental Agreement, U.S. Department of Justice, United States Marshals Service – Henderson Detention Center (Jan. 27, 2012) (“Increase the per diem rate from \$96.96 to \$102.00”); see also Lapan, *supra* note 16.

¹⁴⁵ See Appendix pp. 3, 15, 50.

him not to sign anything.¹⁴⁶ The ICE officer responded with, “Sign it, you mother fucker!”¹⁴⁷

The ICE officer told him he would be sent to Mexico, pulled on his shoulder, and threw him into the cell.¹⁴⁸ In another incident, a detainee observed two ICE officers “hold a guy up by his overalls and force him to sign.”¹⁴⁹

Detainee 22 stated that ICE officers use scare tactics to get detainees to sign documents.¹⁵⁰ For example, ICE officers tell detainees that if they do not sign a document, they will go to jail for six months.¹⁵¹ Additionally, ICE has tricked detainees into signing legal documents.¹⁵² In one case when a detainee refused to sign a document, the ICE officer simply instructed him to put his fingerprint on the document.¹⁵³ Not knowing that a fingerprint qualifies as a signature, the detainee placed his fingerprint on the document.¹⁵⁴

Quickly rushing detainees is an ICE practice reported by an overwhelming number of the interviewed detainees.¹⁵⁵ Detainee 19 explained that he read every form he signed, but he added that ICE officers “rush you, ask you a bunch of questions so fast that you get disoriented.”¹⁵⁶ He had heard similar complaints from other detainees as well. Many of the detainees stated that non-English speakers are rushed into signing documents more than English speakers.¹⁵⁷ Detainee 3 stated that he did not understand the documents at the ICE office because the documents were

¹⁴⁶ See Appendix p. 66.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ See Appendix p. 73.

¹⁵⁰ See Appendix p. 66.

¹⁵¹ *Id.*

¹⁵² See Appendix p. 66 (noting ICE officers would cover the paper so the detainee could not see what he was signing).

¹⁵³ See Appendix p. 54.

¹⁵⁴ *Id.*

¹⁵⁵ See Appendix pp. 5, 8, 19, 23, 28, 38, 45, 48.

¹⁵⁶ See Appendix p. 48.

¹⁵⁷ See Appendix pp. 3, 10, 54, 60.

in English and he was not provided with a translation.¹⁵⁸ The ICE agent urged him to sign, saying, “You have to sign this; we are running out of time. You will be deported.” In fact, some detainees shared that non-English speakers are yelled at more frequently or placed in solitary confinement simply because they do not know English and thus fail to follow directions.¹⁵⁹ Overall, it appears that detainees with language barriers are at a greater disadvantage in detention, but particularly when it comes to the forced signing of legal documents.

B. Coerced Signings of Legal Documents at HDC

While most incidents related to coercion appear to occur at the ICE office, one detainee reported coercion by intimidation and threats at HDC. The detainee made several requests with a “kite” form to call his attorney through a private telephone line.¹⁶⁰ After one request was denied, an HDC officer demanded the detainee sign a document denying his calls to an attorney.¹⁶¹ The officer threatened solitary confinement if the detainee did not sign the form.¹⁶² The form that the HDC guard wanted him to sign was the bottom of a kite, which states: “Signing acknowledges that employee has answered request only. Any further requests need to be filed on an inmate request form. If you wish to grieve this request, you must submit a grievance form within 72 hours of receipt of this request.”¹⁶³

The detainee refused to sign and the guard sent him to his cell. Once again, the guard went to the detainee’s cell and tried to force him to sign by yelling at him.¹⁶⁴ When the detainee refused to sign, the guard wrote, “Inmate refused to sign” and locked him in his cell for

¹⁵⁸ See Appendix p. 8.

¹⁵⁹ See Appendix p. 15.

¹⁶⁰ See Appendix p. 24.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

approximately two hours as a form of retaliation.¹⁶⁵ The guard also threatened the detainee that if he refused to sign again, he would be locked up for a period of five days.¹⁶⁶

IV. PHYSICAL AND VERBAL ABUSE OF DETAINEES

A. Conduct of ICE Officers Toward Detainees

1. ICE Standards for Treatment of Detainees

The NDS address the manner and mode of transportation to protect detainees from harm.¹⁶⁷ All vehicles must be properly equipped, including equipment necessary for the transportation of detainees with disabilities and special needs.¹⁶⁸ ICE officers also must make reasonable accommodations for detainees with physical disabilities or special needs¹⁶⁹ and must transport detainees “in a humane manner.”¹⁷⁰ Specifically, ICE officers must “speak and act with the utmost professionalism” and “conduct themselves in a manner that reflects positively on ICE/ERO.”¹⁷¹ According to the Department of Homeland Security, “ICE takes employee misconduct extremely seriously, and [ICE is] heavily invested in addressing these issues to ensure that ICE upholds the public trust and conducts its mission with integrity and professionalism.”¹⁷²

The NDS call for the use of force in limited circumstances. ICE personnel are only to use

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ NDS, *supra* note 58, at 42, Part 1.3, Transportation (by land), § I.

¹⁶⁸ *Id.* at § II (2).

¹⁶⁹ *Id.* at § II (5).

¹⁷⁰ *Id.* at § I.

¹⁷¹ *Id.* at 51, § V(0).

¹⁷² *Department of Homeland Security: An Examination of Ethical Standards: Hearing before the Subcomm. on Oversight, Investigations, and Management of the H. Comm. on Homeland Security 112th Cong. (2012)* (statement of Timothy M. Moynihan, Assistant Director of the U.S. Immigration and Customs Enforcement Office of Professional Responsibility) (May 17, 2012), *available at* <http://www.ice.gov/doclib/news/library/speeches/120517moynihan.pdf>; U.S. Immigration and Customs Enforcement; NDS, *supra* note 58, at 391 (setting out requirement for grievance procedures relating to “violations of officer misconduct”).

force to gain control of a detainee, in self-defense, or defense of a third person.¹⁷³ Before exerting force over a detainee, ICE staff must attempt to gain the detainees “willing cooperation.”¹⁷⁴ The use of force must be executed pursuant to “approved techniques and devices” and only to the degree necessary and reasonable, depending on the “totality of the circumstances.”¹⁷⁵ Physical force is never authorized to punish a detainee.¹⁷⁶

Like the use of physical force, the use of instruments of restraint is authorized only in a limited number of circumstances. Instruments of restraint, such as handcuffs, may only be used to prevent escape during transfer, for medical purposes, or to prevent self-injury, injury to others, and property damage.¹⁷⁷ The use of restraints must also be limited in duration; they are only authorized for the “least amount of time necessary to achieve the desired behavioral objectives.”¹⁷⁸ Instruments of restraint are not to be used in such a manner that would cause “pain or extreme discomfort,” including applying restraints unnecessarily tight.¹⁷⁹ This section assesses the conduct of ICE officials in light of these national standards.

2. Conditions of ICE Transportation

Ten detainees painted a vivid picture of ICE transportation of detainees from HDC to the Las Vegas Immigration Court.¹⁸⁰ Even though the Las Vegas Immigration Court is located only about ten miles from the facility, detainees are awakened between 2:00 and 3:00 in the morning for their 8:00 a.m. hearing.¹⁸¹ By 4:30 a.m., detainees are gathered outside the facility where they

¹⁷³ NDS, *supra* note 58, at 210, Part 2.15, Use of Force and Restraints, § V(A)(1).

¹⁷⁴ *Id.* at § V(B)(3).

¹⁷⁵ *Id.* at § V(A)(2).

¹⁷⁶ *Id.* at § V(B)(2).

¹⁷⁷ *Id.* at § V(B)(1).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at § V(B)(10)(b).

¹⁸⁰ See Appendix pp. 15 (Detainee 6), 17 (Detainee 7), 19 (Detainee 8), 28 (Detainee 11), 29 (Detainee 12), 34-35 (Detainee 13), 48 (Detainee 19), 59 (Detainee 25), 66 (Detainee 28), 68 (Detainee 29).

¹⁸¹ See Appendix pp. 15, 28, 33, 66.

are placed in handcuffs and shackles.¹⁸² From there, ICE officials load detainees into ICE vans or buses, and the detainees are driven to the immigration court.

Upon arrival, ICE transports the detainees, with shackles around their waists, feet, and wrists, to holding cells within the immigration court. Several detainees described these cells as small and very cold.¹⁸³ While one detainee reported no problems with overcrowding,¹⁸⁴ two others reported thirty to forty detainees being packed into the cells.¹⁸⁵ Detainees choose to wear multiple jumpsuits and socks to withstand the frigid temperatures.¹⁸⁶ Detainees wait in the cells “all day,”¹⁸⁷ leaving as late as 6:00 p.m., even though hearings finish around noon.¹⁸⁸ Detainees are served “frozen” or “day-old” sandwiches and juice while in these cells.¹⁸⁹ The cells contain one to two toilets, which are not private; detainees must relieve themselves, while shackled, before a room full of people.¹⁹⁰

Eighteen of the interviewees did not report problems arising during transportation. One detainee reported being treated “very well” by ICE.¹⁹¹ However, eight of the twenty-nine interviewees reported unsafe or inhumane conditions of transport. One detainee reported that ICE packed him, along with at least fifteen detainees, into a three-row ICE van.¹⁹² The same individual explained that ICE sometimes forces detainees to sit on milk crates while in transport.¹⁹³ One detainee described the driving of the transport van as “reckless” and erratic,¹⁹⁴ making overcrowding and lack of safety restraints particularly troublesome. Three detainees

¹⁸² See Appendix p. 66.

¹⁸³ See Appendix pp. 17 (Detainee 7), 28 (Detainee 11), 34 (Detainee 13), 68 (Detainee 29).

¹⁸⁴ See Appendix p. 66.

¹⁸⁵ Appendix pp. 29 (Detainee 12 noted forty people in one room), 68 (Detainee 29 noted sometimes thirty people).

¹⁸⁶ See Appendix pp. 28 & 34.

¹⁸⁷ See Appendix p. 59 (Detainee 25).

¹⁸⁸ See Appendix 34-35, 59.

¹⁸⁹ See Appendix pp. 29, 35.

¹⁹⁰ *Id.*

¹⁹¹ See Appendix p. 55.

¹⁹² See Appendix p. 18.

¹⁹³ *Id.*

¹⁹⁴ See Appendix p. 21.

reported incidents of an ICE officer watching indifferently or responding with excessive force when individuals struggled, due to their age or height, to get into the ICE vehicle while shackled.¹⁹⁵ Two of these detainees reported that the vehicles contain crates to use as stepping stools to get into the van, but one must insist that the officers provide it.¹⁹⁶ The failure of ICE to ensure that detainees are transported safely and to make reasonable accommodations for disabled individuals and those with special needs, including the elderly, is not just a violation of established ICE directives but also an affront to human dignity.

3. Disrespectful Speech and Conduct

Eleven detainees described ICE conduct during transportation as offensive, racist, disrespectful and demeaning.¹⁹⁷ They explained that ICE officers “talk down” to detainees in transport¹⁹⁸ and “treat you like you’re ignorant.”¹⁹⁹ While the disrespectful conduct is sometimes limited to “tone of speech,”²⁰⁰ this often escalates to offensive remarks. Interviewees reported being told by ICE officials “you guys are going back to fucking Mexico,”²⁰¹ “you shouldn’t be here,”²⁰² and “Mexicans only come here to sell drugs and steal.”²⁰³ They also reported name-calling and racial taunts. One inmate reported that an ICE officer called her “stupid,” and the

¹⁹⁵ See Appendix pp. 25 (Detainee 10 – female detainee was expected to crawl, with hands and feet bound, into the ICE van), 32 (Detainee 13 – elderly man who could not step onto the stool was shoved into the van by an ICE officer), & 59 (Detainee 25 – ICE officer did not respond to 63 year old man who struggled to get into the ICE van).

¹⁹⁶ See Appendix p. 25, 59.

¹⁹⁷ Appendix pp. 4 (Detainee 2 – offended by ICE officer’s use of the term “alien” to refer to the detainees), 7 (Detainee 3 – reporting no name calling during transport, but that ICE officers “talk down” to detainees), 14 (Detainee 6 – ICE officers often say “mean things”), 19 (Detainee 8 – ICE officers use racist and offensive words), 21 (Detainee 9 – ICE officer called detainee “parasite”), 32 (Detainee 13 – reporting that ICE officers told her during transport “you’ll be back” and “we’ll get you next week”), 49 (Detainee 20 – ICE officer stereotyping Mexicans as drug dealers), 53 (Detainee 22 – stating that verbal abuse is common in ICE transportation), 57 (Detainee 24 – “[ICE] treats you like you’re ignorant”), 59 (Detainee 25 – describing ICE officers using an “overly aggressive in the tone of speech”), 64 (Detainee 27 – stated that ICE called her “stupid” and others “fucking Mexicans” and “beaners”).

¹⁹⁸ See Appendix p. 7.

¹⁹⁹ See Appendix p. 57.

²⁰⁰ See Appendix p. 59.

²⁰¹ See Appendix p. 14.

²⁰² See Appendix p. 65.

²⁰³ See Appendix p. 49.

group of detainees she traveled with “fucking Mexicans” and “beaners.”²⁰⁴ Another detainee reported that an ICE officer walked among the detainees saying the Spanish command “párase, párase,” meaning “stand up,” but when the officer approached the interviewee, the ICE officer instead called him a “parasite.”²⁰⁵ This disrespectful demeanor and abusive language demonstrates unprofessional conduct in violation of the NDS and common decency.

4. Physical Mistreatment

Four of the detainees interviewed reported unreasonable or unnecessary use of force by ICE officers, especially during transportation.²⁰⁶ The severity of force used ranged from minor pushing and shoving to punching. Three detainees reported that ICE officers unnecessarily push and shove detainees, treating them “like animals” while being transported.²⁰⁷ Generally, unnecessary and excessive use of force is used without first gaining the detainees’ willing cooperation. One detainee reported that an ICE officer shoved an elderly man into the ICE transportation van because he was unable to step onto the stool to get into the vehicle.²⁰⁸ Another detainee reported that an ICE official pushed a detainee into his seat just because the detainee was talking while being transferred into the transport van.²⁰⁹ While in immigration court, the same person witnessed an ICE official punch another detainee in the neck because the detainee continued talking after the ICE officer told him to stop.²¹⁰ Another detainee reported being “manhandled” by ICE officers for making racial slurs when the detainee merely referred to one

²⁰⁴ See Appendix p. 65 (Detainee 27).

²⁰⁵ See Appendix p. 21 (Detainee 9).

²⁰⁶ See Appendix pp. 14 (Detainee 6 – ICE officer pushed detainee into seat because he was talking), 18 (Detainee 8 – ICE officers push and shove detainees), 21 (Detainee 9 – ICE officers engage in “unnecessary pushing”), 32 (Detainee 13 – reporting that an elderly man was shoved into the van when he couldn’t get himself in).

²⁰⁷ See Appendix pp. 14 (Detainee 6), 18 (Detainee 8), 21 (Detainee 9).

²⁰⁸ See Appendix p. 32. This conduct is also contrary to NDS § II, which calls for reasonable accommodations for detainees with disabilities or special needs.

²⁰⁹ See Appendix p. 14.

²¹⁰ *Id.*

of the officers as “the black guy.”²¹¹ Not only was the use of force unnecessary in each of these instances, but the force exerted was excessive in relation to achieving the conduct desired of the detainee.

None of the twenty-nine interviewees have experienced or know someone who has experienced sexual abuse at the hands of an ICE officer. However, one female detainee reported that rape of women by male passengers is common in ICE vehicles transporting groups to Mexico pursuant to deportation orders.²¹²

Interviews revealed that detainees are placed in handcuffs and shackles when transported to the immigration court.²¹³ Aside from making detainees “feel like criminals,”²¹⁴ these restraints have caused detainees to experience pain and injury. Four detainees reported that ICE officers close handcuffs or shackles too tightly, sometimes causing physical injury.²¹⁵ One detainee had handcuffs placed so tightly that he displayed cuts around his wrists.²¹⁶ The use of condescending verbal conduct, pushing and shoving, and the placement of excessively tight handcuffs reflect that ICE officials unnecessarily humiliate and demean immigration detainees.

Follow-up interviews confirmed that most physical abuse occurs under ICE supervision, either at the ICE office or during transport between ICE and HDC. As one detainee, who has been back to ICE numerous times in the past fifteen months stated, reported, “they can rough you up down there.”²¹⁷

²¹¹ See Appendix p. 69.

²¹² See Appendix p. 35 (Detainee 13).

²¹³ See Appendix p. 66.

²¹⁴ See Appendix p. 28 (Detainee 11).

²¹⁵ See Appendix pp. 11 (Detainee 4), 14 (Detainee 6), 25 (Detainee 10), 59 (Detainee 25).

²¹⁶ See Appendix p. 59 (Detainee 25).

²¹⁷ See Appendix p. 72.

B. Conduct of HDC Officers Toward Detainees

Beyond mistreatment by ICE, in recent years there has been a great deal of concern regarding mistreatment of immigrants in detention centers, especially in regards to sexual and physical abuse.²¹⁸ Information regarding mistreatment at the Henderson Detention Center is not easily accessible. Apart from the interviews conducted by the Immigration Clinic, the most reliable information available is from the 2011 ODO report of HDC, finding that from February 2011 to October 2011, detainees filed 141 formal grievances, 25 of which were about staff members.²¹⁹ ACLU Freedom of Information Requests have not yet uncovered reports of sexual abuse at HDC.²²⁰ Ten of the twenty-nine detainees interviewed described sixteen incidents where HDC officials mistreated a detainee. No detainees reported sexual abuse of any kind at HDC; the remaining incidents can be classified as Physical Mistreatment, Threats, Retaliation for Complaints or Grievances, Unequal Treatment, and Disrespectful Conduct or Speech.

1. Physical Mistreatment

Four of the twenty-nine detainees interviewed reported that they either experienced, witnessed, or heard of physical mistreatment by HDC officers. Of the sixteen reported incidents of mistreatment, four included some form of physical mistreatment. Specifically, Detainee 3 reported that he witnessed an HDC guard grabbing the arm of another detainee while threatening to strike that detainee.²²¹ Detainee 12 reported that he was the victim of a similar incident. After asking an officer to add Spanish subtitles to the TV, the officer grabbed him by the neck and

²¹⁸ See, e.g., *Frontline: Lost in Detention* (Public Broadcasting Service Oct. 18, 2011); American Civil Liberties Union, *Sexual Abuse in Immigration Detention Facilities*, <http://www.aclu.org/maps/sexual-abuse-immigration-detention-facilities> (last visited Apr. 21, 2013).

²¹⁹ *2011 ODO Report*, supra note 13, at 2-3.

²²⁰ American Civil Liberties Union, *Sexual Abuse in Immigration Detention Facilities*, <http://www.aclu.org/maps/sexual-abuse-immigration-detention-facilities> (last visited Apr. 21, 2013) (noting only 1 report from the North Las Vegas Detention Center in 2010).

²²¹ See Appendix p. 7 (this incident is also reported as a threat).

said, “You should be happy that others are around or I would have punched you.”²²² Detainee 5 reported that officers sometimes place handcuffs too tightly.²²³ Lastly, Detainee 14—the only female detainee reporting physical mistreatment—has heard of an officer who throws toilet paper rolls at detainees when they request toilet paper and also shoves detainees.²²⁴

2. Threats

Three detainees have each reported one incident of threats by HDC officers. As discussed in Coerced Signings of Legal Documents, Detainee 9 reported that an officer threatened to put him in solitary confinement for five days when he refused to sign a document indicating that he had received a response to his request to use an unmonitored phone.²²⁵ Also, as discussed in the section on physical mistreatment, an HDC officer threatened to strike both Detainees 3 and 12.²²⁶

3. Retaliation for Complaints or Grievances

Three detainees each reported one incident of retaliation after they or someone else made a complaint or filed a grievance. As discussed above, Detainee 9 was threatened with solitary confinement when he refused to sign a document stating he had received a response for a request he made.²²⁷ Because he refused to sign the document, he was actually locked in his cell for two hours when he was supposed to be free to walk around his pod.²²⁸ Detainee 14 reported that she has heard about one instance of retaliation for a complaint.²²⁹ Apparently a detainee who did not speak English well asked for help from another detainee to fill out a grievance about one of the female guards.²³⁰ That female guard was friends with the sergeant who received the grievance.

²²² See Appendix p. 29 (this incident is also reported as a threat).

²²³ See Appendix p. 12.

²²⁴ See Appendix p. 36 (this incident is also reported as disrespectful conduct or speech).

²²⁵ See Appendix p. 24 (portions of this incident also appear in the retaliation for complaints or grievances section).

²²⁶ See Appendix p. 7, 29 (these incidents also appear as physical mistreatment).

²²⁷ See Appendix p. 24 (portions of this incident also appear in the threats section).

²²⁸ *Id.*

²²⁹ See Appendix p. 37.

²³⁰ *Id.*

The sergeant asked around to find out who had helped prepare the grievance in English and told that detainee to stay out of the situation.²³¹ Lastly, Detainee 12 reported that after making complaints about ICE and HDC, he was moved to a less desirable cell.²³²

4. Unequal Treatment

According to detainees interviewed, HDC mixes the civil immigration detainees with its general population.²³³ Detainee 19 reported that the intermixing creates friction between the two groups.²³⁴ Based on this mixed-population dynamic, three detainees were able to discern a degree of unequal treatment between ICE detainees and the general population. Specifically, Detainee 3 noted that guards will sometimes lockdown Hispanic detainees and not non-Hispanic detainees.²³⁵ Detainee 8 reported that he was moved to a less desirable cell because he was talking to another detainee in his cell.²³⁶ However, United States citizen detainees who stole two trays of food faced no consequences.²³⁷ When he complained of this unequal treatment, he was told that these decisions were made at the officer's discretion.²³⁸

Lastly, the ICE Detention Standard on Detainee Classification System requires facilities to classify detainees into three categories upon their arrival to the detention center.²³⁹ Detainees that are not high-risk should not be placed with high-risk detainees, and should be informed in

²³¹ *Id.*

²³² *See* Appendix p. 29.

²³³ *See, e.g.,* Appendix pp. 24, 34, 73; *see also* 2011 ODO Report, *supra* note 13, at 1 (“HDC has a total capacity of 540 beds (455 for males, 85 for females). Of the 540 beds, 300 are dedicated to ICE detainees.”).

²³⁴ *See* Appendix p. 73 (“[intermixing] keeps people tense...an extra slice of bread means war.”).

²³⁵ *See* Appendix p. 8 (this may suggest a racial motive as opposed to an immigrant-detainee status motive, but it is important that Detainee 3 compares Hispanic detainees to *American* detainees, the only detainees who would not be held by ICE).

²³⁶ *See* Appendix p. 20.

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ DEP’T OF HOMELAND SEC., OFFICE OF INSPECTOR GEN., OIG-07-01, TREATMENT OF IMMIGRATION DETAINEES HOUSED AT IMMIGRATION AND CUSTOMS ENFORCEMENT FACILITIES 17 (2006), http://www.oig.dhs.gov/assets/Mgmt/OIG_07-01_Dec06.pdf.

the detention handbook that he or she can appeal a classification.²⁴⁰ Yet Detainee 9 complained that ICE detainees are systematically housed with members of the general population who have much more substantial criminal records.²⁴¹ Both Detainee 9 and a friend of his, who is also detained by ICE, had the experience of sharing a cell with a member of HDC's general population who had a much more severe criminal background.²⁴²

5. Disrespectful Speech and Conduct

Six detainees reported seven incidents of disrespectful conduct or speech. Three of the seven reports were generalized statements that HDC officers were rude or condescending.²⁴³ Detainee 10 reported that HDC officials often call her Mexican, even though she is not Mexican, which she finds offensive.²⁴⁴ Detainee 12 reported that an HDC officer called him stupid.²⁴⁵ Detainee 9 reports that verbal insults are more commonly used in conversations among officers than in direct communication with detainees.²⁴⁶ For example, Detainee 9 reported overhearing an HDC officer refer to the detainees as "illegals" in a conversation with an ICE officer.²⁴⁷ Lastly, as discussed in the above section on physical mistreatment, Detainee 14 heard that one HDC officer throws toilet paper rolls at detainees when they ask for toilet paper, in addition to shoving them unnecessarily.²⁴⁸

To HDC's credit, during the interviews no detainees reported any sexual abuse, and the physical mistreatment here, while unacceptable, does not rise to the level of egregiousness

²⁴⁰ *Id.*

²⁴¹ *See* Appendix p. 24.

²⁴² *See* Appendix p. 24.

²⁴³ *See* Appendix p. 15 (Detainee 6 reports that HDC officers talk down to detainees), 36 (Detainee 14 reports that HDC officers talk down to detainees), and 47 (Detainee 19, reporting that "Some COs are not friendly guys.").

²⁴⁴ *See* Appendix p. 25.

²⁴⁵ *See* Appendix p. 29.

²⁴⁶ *See* Appendix p. 69.

²⁴⁷ *See Id.*

²⁴⁸ *See* Appendix p. 36.

reported at other detention centers.²⁴⁹ Nevertheless, the behavior discussed above violates ICE's policies regarding integrity and professionalism and should be addressed by ICE and HDC.²⁵⁰

V. ACCESS TO MEDICAL CARE

A. The Right to Healthcare in Detention

Access to proper healthcare is recognized as a universal human right.²⁵¹ Under the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT), the United States is required to provide adequate medical care to detainees because failure to do so amounts to degrading treatment.²⁵² Access to adequate medical care is especially important for detained individuals because they are in a vulnerable situation.²⁵³ Detained individuals cannot utilize their own doctors or medicine if the detention center denies them access to medical care, even if those detained are willing and able to pay for it.²⁵⁴ Unfortunately, reports show that the United States is frequently violating its obligation to provide adequate medical care in its immigration detention centers.²⁵⁵

The Division of Immigration Health Services (DIHS) policy restricts medical care for immigration detainees to emergency care and treatment of conditions that would cause

²⁴⁹ See, e.g., *Frontline: Lost in Detention* (Public Broadcasting Service Oct. 18, 2011) (describing instances of sexual abuse and extreme physical abuse by guards).

²⁵⁰ "ICE takes employee misconduct extremely seriously, and we are heavily invested in addressing these issues to ensure that ICE upholds the public trust and conducts its mission with integrity and professionalism." *Department of Homeland Security: An Examination of Ethical Standards: Hearing before the Subcomm. on Oversight, Investigations, and Management of the H. Comm. on Homeland Security* 112th Cong. (2012) (statement of Timothy M. Moynihan, Assistant Director of the U.S. Immigration and Customs Enforcement Office of Professional Responsibility) (May 17, 2012), available at <http://www.ice.gov/doclib/news/library/speeches/120517moynihan.pdf>.

²⁵¹ Allyson Zivec, *Don't Give Us Your Sick: Inadequate Medical Care in Immigration Detention Centers and How It Violates International Human Rights Law*, 5 PHX. L. REV. 229, 230-31 (2011).

²⁵² *Id.*

²⁵³ *Id.* at 231.

²⁵⁴ *Id.*

²⁵⁵ *Id.*

deterioration of the detainee's health or uncontrolled suffering affecting his or her deportation status.²⁵⁶ As a result of this policy, the medical staff of private detention centers throughout the United States are providing sub-standard and, in some cases, reckless medical care, and often push off paying for any medical care until it is either too late for immigrant detainees to seek care or it results in lifelong physical deformities.²⁵⁷

HDC provides its medical services through Corizon, and its facility holds no accreditations.²⁵⁸ This section of the report compares ICE's standards for healthcare to the healthcare that detainees receive at HDC.

B. ICE Standards for Healthcare

ICE standards require a minimum of two medical examinations for each detainee: an initial health screening immediately upon arrival, including a determination of appropriate treatment for the detainee, and a follow-up screening and physical examination within fourteen days of arrival.²⁵⁹ Additionally, facilities are required to provide language translation services to all detainees.²⁶⁰ Finally, facilities are required to give all detainees access to "sick call" and other services.²⁶¹ All "request slips," the forms used by detainees to request medical care, are required to be processed in a timely manner.²⁶² While these standards appear to provide a framework for adequate medical care, detention centers rarely followed them.²⁶³

²⁵⁶ Kate Bowles, *Is the Doctor in? The Contemptible Condition of Immigrant Detainee Healthcare in the U.S. and the Need for A Constitutional Remedy*, 31 J. Nat'l Ass'n Admin. L. Judiciary 169, 170 (2011).

²⁵⁷ *Id.*

²⁵⁸ 2011 ODO Report, *supra* note 13, at 19.

²⁵⁹ Brianna M. Mooty, *Solving the Medical Crisis for Immigration Detainees: Is the Proposed Detainee Basic Medical Care Act of 2008 the Answer?*, 28 Law & Ineq. 223, 237 (2010).

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.* at 237-238.

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the Homeland Security Act of 2002 by amendment to the Inspector General Act of 1978.²⁶⁴ In 2006, it conducted a series of audit, inspection, and special reports to promote economy, efficiency, and effectiveness within the department.²⁶⁵ In the OIG's Audit Report, it presents the results of an audit of compliance with selected standards at five facilities used by ICE to house immigration detainees:

- Berks County Prison (BCP), Leesport, Pennsylvania
- Corrections Corporation of America (CCA) Facility, San Diego, California
- Hudson County Correction Center (HCCC), Kearny, New Jersey
- Krome Service Processing Center (SPC), Miami, Florida
- Passaic County Jail (PCJ), Paterson, New Jersey.²⁶⁶

Previously, ICE had established Detention Standards for Medical Care, Hunger Strikes, and Suicide Prevention and Intervention. The Audit Report assessed the detention facilities for adherence to health care standards in the following four areas:

- Initial medical screening and physical examination.
- Sick call requests and medical treatment.
- Hunger strike initial evaluation and monitoring.
- Suicide watch monitoring.²⁶⁷

1. Initial Medical Screenings and Physical Examinations

The ICE Detention Standard for Medical Care requires all new arrivals to receive initial medical and mental health screening, including tuberculosis screening, immediately upon arrival by a health care provider or an officer trained to perform this function.²⁶⁸ The health care

²⁶⁴ DEP'T OF HOMELAND SEC., OFFICE OF INSPECTOR GEN., OIG-07-01, TREATMENT OF IMMIGRATION DETAINEES HOUSED AT IMMIGRATION AND CUSTOMS ENFORCEMENT FACILITIES PREFACE (2006), *available at* <http://trac.syr.edu/immigration/library/P1598.pdf>.

²⁶⁵ *Id.*

²⁶⁶ *Id.* at 1.

²⁶⁷ *Id.* at 3.

²⁶⁸ *Id.*

provider must also conduct a health appraisal and physical examination on each detainee within 14 days of arrival.²⁶⁹

2. Response to Sick Call Requests

The ICE Detention Standard for Medical Care requires each facility to have a mechanism that allows detainees the opportunity to request health care services provided by a physician or other qualified medical officer in a clinical setting.²⁷⁰ Each facility will have regular scheduled times, known as sick call, when medical personnel will be available to see detainees who have requested medical services. Sick call will be regularly scheduled according to the following minimum standards:

- Facilities with fewer than 50 detainees - minimum of 1 day per week
- Facilities with 50 to 200 detainees - minimum of 3 days per week
- Facilities with over 200 detainees - minimum of 5 days per week.²⁷¹

The ICE standards regarding medical response to sick calls do not clearly define what should be considered a timely response to non-emergency sick call requests.²⁷² In the absence of such standards, local detention facility health services have established differing policies regarding response to non-emergency health care treatment.²⁷³

3. Hunger Strikes

The ICE Detention Standard on Hunger Strikes requires all facilities to follow accepted standards of care in the medical and administrative management of hunger-striking detainees.²⁷⁴

Among the standards are two key provisions:

²⁶⁹ *Id.*

²⁷⁰ *Id.* at 4.

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Id.* at 5.

- Staff will consider any detainee refusing food for 72 hours to be on a hunger strike, and will refer him or her to the medical department for evaluation and possible treatment.
- Medical staff will take and record weight and vital signs at least once every 24 hours during the hunger strike. Other procedures will be repeated as medically indicated.²⁷⁵

4. Detainees on Suicide Watch

The ICE Detention Standard on Suicide Prevention and Intervention requires observation of imminently suicidal detainees by medical or detention staff to occur no less than every fifteen minutes.²⁷⁶

C. Problems with Healthcare at HDC

Since January 2011, HDC has accommodated ICE detainees who are at the detention center for periods in excess of 72 hours via a Detention Services Intergovernmental Agreement with the United States Marshals Service (USMS).²⁷⁷ Corizon, a private contractor, provides medical care at HDC. The facility holds no accreditations.²⁷⁸ By holding no accreditations, HDC fails to comply with ICE's requirement that medical facilities within the detention center shall achieve and maintain current accreditation with the standards of the National Commission on Correctional Health Care (NCCHC), and shall maintain compliance with those standards.²⁷⁹

Detainees are not charged fees for health services.²⁸⁰ The clinic includes a medical housing unit with capacity for five males and five females.²⁸¹ All patient rooms have negative air pressure to accommodate detainees with symptoms suggestive of tuberculosis, and there is a

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ 2011 ODO Report, *supra* note 13, at 1.

²⁷⁸ *Id.*

²⁷⁹ NDS, *supra* note 58, at 277, 4.3 Medical Care.

²⁸⁰ 2011 ODO Report, *supra* note 13, at 19.

²⁸¹ *Id.*

separate examination room with a door to ensure privacy.²⁸² Full-time medical staff consists of the Health Services Administrator (HSA), Registered Nurses (RNs), Licensed Practical Nurses (LPNs), and Medical Assistants (MAs).²⁸³ Part-time staff includes a Clinical Medical Officer, a Nurse Practitioner (NP), and a psychiatrist.²⁸⁴ Staff is supplemented when needed by on-call RNs, LPNs, and two dentists.²⁸⁵

RNs perform intake medical screenings, tuberculosis testing, and physical examinations (PEs) at HDC upon arrival.²⁸⁶ HSA provided proficiency statements signed by the Medical Director attesting the RNs were trained and approved to perform the hands-on portion of the PEs.²⁸⁷ These examinations must be performed within a fourteen day timeframe of the detainee's arrival.²⁸⁸ The ODO cites this as a best practice because it affords immediate identification of chronic medical needs and expedites delivery of care.²⁸⁹ However, the 2011 ODO report confirmed that at HDC physicians did not review PEs conducted by RNs as the NCCHC requires.²⁹⁰

ICE detainees at HDC can access health care by submitting sick call requests to nurses during the distribution of medication.²⁹¹ Request forms are available in English and Spanish.²⁹² A review of sick call logs and medical records demonstrated that requests are triaged to determine priority for treatment and confirmed that detainees are seen in a timely manner.²⁹³ According to the HSA, the facility's procedures for screening detainees being transferred or

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.* at 3.

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.* at 19.

²⁹² *Id.*

²⁹³ *Id.*

released include alerting officers to any special medical or psychiatric needs by way of an Inmate Movement Card.²⁹⁴ In addition, the HSA communicates special needs to officers via electronic mail messages and verbally to an ICE agent; however, the Officer-in-Charge (OIC) does not receive written notification when a detainee's condition requires medical clearance prior to release or transfer, or medical escort during deportation or transfer.²⁹⁵

ODO reviewed the Suicide Prevention and Intervention standard at HDC to determine if the health and well-being of detainees are protected by training staff in effective methods of suicide prevention.²⁹⁶ Records indicated that training covered all elements that ICE requires, however, two staff members employed at the detention center since 1994 had not received any training as of 2011.²⁹⁷

The most predominant complaint among interviewed detainees at HDC was the length of time they had to wait to see a doctor. Of the twenty-nine detainees interviewed, ten complained that they had failed to see a doctor in an appropriate amount of time. Some of their requests lagged from three weeks up to four months.²⁹⁸ For example, Detainee 8 explained that he put in a request or "kite" to see a doctor on October 19, 2012 and had yet to be granted a doctor's visit by the day of the interview, which was conducted in March 2013, almost five months later.²⁹⁹

Another detainee stated that "people have to be very sick or almost to the point of passing out to get prompt attention."³⁰⁰ Health care for toothaches is particularly a problem, with some

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ *Id.* at 27.

²⁹⁷ *Id.*

²⁹⁸ See Appendix p. 19, 37, 48.

²⁹⁹ See Appendix p. 19.

³⁰⁰ See Appendix p. 30.

detainees complaining of waiting up to a month to see a dentist.³⁰¹ This certainly fails to meet ICE's standard of timely follow up.³⁰²

Another prominent complaint was that the detainees were not able to obtain simple over-the-counter medication unless they saw a doctor, which often was delayed, or bought medication themselves from the commissary.³⁰³ For example, Detainee 3 needed to buy medication for allergies or a cold, but was only granted access to the commissary every ten days.³⁰⁴ Detainee 10 confirmed that rare access to the commissary, and/or the status of being indigent, means some detainees endure most illnesses without medication.³⁰⁵

A few detainees felt that the medication provided to them was not an adequate treatment for their medical complaint. Detainee 20 showed the report's authors a protruding bump on his finger with a long red line stretching along his whole arm, seemingly from an insect bite.³⁰⁶ After receiving medical care, the medical staff provided him only with Tylenol. Likewise, Detainee 9 complained to a nurse of a throat ache.³⁰⁷ The nurse provided the detainee with a common allergy medication, but told him to consider removing his tonsils when he left the detention center. The allergy medication did not relieve his throat pain.

Further, there was not a consensus among the interviewed detainees as to whether the medical staff was bilingual or not. Three detainees were under the impression that there were no

³⁰¹ See Appendix pp. 25, 49 (waited 8 days for dental treatment), 53 (noted a detainee spent one month waiting for toothache treatment and was not given medication in the meantime).

³⁰² According to ICE's standards, detainees shall be able to request health services on a daily basis and shall receive timely follow-up. NDS, *supra* note 58, at 78.

³⁰³ The facility administrator and HSA shall jointly approve any nonprescription medications that are available to detainees outside of health services (e.g., sold in commissary, distributed by housing officers, etc.), and shall jointly review the list, on an annual basis at a minimum. *Id.* at 288.

³⁰⁴ See Appendix p.7.

³⁰⁵ See Appendix p.25.

³⁰⁶ See Appendix p.49.

³⁰⁷ See Appendix p.22.

bilingual doctors or nurses.³⁰⁸ However, two detainees indicated interaction with at least one or two Spanish-speaking nurses.³⁰⁹ ICE's national detention standards require facilities to provide appropriate interpretation and language services for detainees related to medical and mental health care.³¹⁰ Where appropriate staff interpretation is not available, facilities are to make use of professional interpretation services.³¹¹

Notably, for the detainees diagnosed with more serious medical conditions, such as heart disease, bipolar disorder, or depression, the HDC medical staff has provided medication in a timely manner (daily or weekly).³¹² Detainee 12 requires up to twelve different medications, and generally has access to a doctor, although he has not been able to see a bilingual doctor and English is not his first language.³¹³ Detainee 12 also noted that, while he normally receives his medications regularly, the medications are stopped on days when detainees are taken to Immigration Court.³¹⁴ Aside from Detainee 12, at least two detainees with diagnosed medical conditions found the medical care at HDC to be sufficient.³¹⁵

Lastly, most of the detainees did not know if HDC had their most current medical records. Eight out of twenty-nine detainees reported they were unsure if HDC had their current medical records, while only four others testified that they were certain that HDC had their correct information.³¹⁶ The rest did not answer this particular question. As mentioned above, one of the standards of HDC is to conduct physical examinations and tuberculosis testing within fourteen days of the detainee's arrival. This standard will at least help HDC determine if the detainee has

³⁰⁸ See Appendix pp. 10, 30, 54.

³⁰⁹ See Appendix pp. 26, 33, 38.

³¹⁰ NDS, *supra* note 58, at 286.

³¹¹ *Id.*

³¹² See Appendix pp. 9, 12, 14, 55-56.

³¹³ See Appendix p.30.

³¹⁴ *Id.*

³¹⁵ See Appendix pp.12 ("all is fine" with medical care), 33 (female detainee believes HDC does a good job in securing medical appointments for her chronic condition).

³¹⁶ See Appendix pp. 25, 38, 65, 68.

any current illness while HDC obtains all of the detainee's records. In addition, ICE requires detention centers to keep medical records separate from other detainee detention records and stored in a securely locked area within the medical unit.³¹⁷ Due to the fact that HDC accommodates other types of inmates within the facility, having all inmates' up-to-date medical information is not only important for the detainees' safety but also to comply with ICE's procedural rule of record keeping. Based on the interviews, the authors were unable to determine if this rule was being followed.

Two follow-up interviews conducted in November 2013 suggest that detainees who seek medical treatment continue to experience delays in seeing a doctor.³¹⁸ Specifically, one detainee reported waiting one month before being able to see a doctor.³¹⁹ As Detainee 19 explained, because detainees regularly get sick, HDC staff tends to respond slowly to requests for medical attention and treatment.³²⁰

VI. KEY RECOMMENDATIONS

Based on the findings of this report, the authors recommend that ICE and HDC take the following actions:

- **Improve Telephone Access:** The attorney-client privilege must be protected even in detention. Instructions should therefore be posted at all telephones stating that an unmonitored phone is available by detainee request for *free* to speak with an attorney. HDC officers should also be trained to grant access to the phone without requiring a detainee to purchase a calling card.

³¹⁷ NDS, *supra* note 58, at 250.

³¹⁸ See Appendix pp. 70, 72.

³¹⁹ See Appendix p. 72.

³²⁰ See *Id.*

- **Create a Law Library with Adequate Resources:** The current law library is not a sufficient resource for detainees. The law library should be expanded to provide more computers and accommodate more than one user at a time. The library should contain equipment necessary for preparing a legal case, including a working photocopier and a printer with ink. Library access hours should be granted during the day between meals and other activities, but not during the detainees' sleep hours.
- **Follow Legal Mail Procedures:** Legal mail standards must be followed to ensure the detainees have full and efficient legal communication. Legal mail should be opened *in front of the detainee*, and only to check for contraband, not to inquire as to the detainee's legal case. Mail should be delivered to detainees within 24 hours after its receipt to HDC.
- **Stop Coercion and Physical or Verbal Mistreatment:** There should be independent oversight of ICE officers and detention facilities, either by the government or a private organization. Independent oversight would ensure that standards of conduct are in place and that ICE officers and detention facilities will be held accountable for violating those standards. ICE could also provide better monitoring of its own officers, for example by use of video cameras or other monitoring equipment. In addition, ICE should provide more training to its officers and discipline those who mistreat detainees. If there are no consequences for wrongful actions, behavior such as coercion and physical or verbal mistreatment will continue to occur. "Know Your Rights" presentations may also be effective in informing immigrants not to sign documents at the ICE office that the individual does not want to sign or does not understand.

- **Improve Access to Medical Care and Obtain Accreditation:** Access to medical care is a detainee's right even in detention. Failing to address minor ailments may lead to significant illnesses or deterioration of a detainee's health. Therefore, HDC should ensure requests for medical care are timely met within the same week. In order to comply with ICE's national standards, HDC should provide sick call at a minimum of five days per week. In addition, HDC should obtain accreditations and comply with the standards of the National Commission on Correctional Health Care (NCCHC).
- **Follow Established NDS Guidelines on Attorney Access to Detainees:** The NDS recognizes the critical importance of access to legal counsel. Local ICE field offices and detention facilities should not be allowed to alter NDS standards. Therefore, HDC should immediately rescind its recent policy of requiring student attorneys to provide G-28 forms and letters from their supervisors in order to meet with detainees.

We urge ICE and HDC to take immediate action to address the issues set forth above. In addition, we recommend further investigation and reports regarding additional information not addressed here, such as mental health care for detainees. We also recommend gathering more information on the treatment of women detainees in particular, as well as the impact of detention on their children and families.