



Give Me Your Tired, Your Poor...

A Report on Due Process Issues
in the Handling of Immigration Detainees in Massachusetts

Detention Working Group
of the
Massachusetts Chapter of the National Lawyers Guild

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Credits & Acknowledgements

This report is based on information gathered by the Detention Working Group subcommittee of the National Lawyers Guild. Group contributors to this report are Hayne Barnwell, Sarah Coleman, Benjamin Falkner, Caline Jarudi, Owen Li, Urszula Masny-Latos, Alex Minnaar, Dawn Montague, Sara Pic, John Pollock, Camila Sosman, Sara Stanley, Carl Takei, Stephanie Woldenberg and Denise Zwahlen.

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About the Detention Working Group

The Detention Working Group (DWG) is a project of the Massachusetts Chapter of the National Lawyers Guild (NLG, or “the Guild”). Founded in 1937, the Guild brings together legal professionals, law students and community activists who believe the law should be an instrument for the people rather than a tool of repression and who use the law to promote social, political and economic justice.

The DWG originated in the wake of September 11, 2001. In reaction to 9/11, the federal government required male non-citizens from a list of 25 countries (almost all of which were Arab or Muslim) to report for a series of Special Registration interviews, beginning in December 2002. Many of those who reported for interviews ended up being detained and/or deported. Alarmed by this and other punitive policies targeting immigrants, the Guild joined with a number of other New England organizations in a regional network of volunteers (called the New England Immigrant Response to Detention Network [NEIRDN]), seeking to protect the rights of immigrant detainees – particularly the Arab and Muslim immigrants who were required to report for Special Registration.

This network successfully provided information and access to legal resources to those going through Special Registration. However, it soon became clear that the post-9/11 environment had contributed to harsher immigrant detention and deportation policies across a broad range of ethnic, racial and religious groups, not just Muslims and Arabs. After the Special Registration program ended in April 2003, the DWG developed as an NLG spin-off from NEIRDN. Composed of lawyers, law students and community activists, the DWG spent two years gathering information about the impact of detentions on Massachusetts immigrant families and communities. The DWG set up a regular court observation schedule and developed procedures for collecting information and interviewing detainee families. The DWG’s goal is to raise public awareness about the harms caused by our nation’s immigrant detention and deportation policies, particularly with regards to due process issues in the detainee hearings. This report represents the results of our investigation into detention practices and policies.

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What This Report Contains

Trends in court

We monitored the trends in court by sending law students and activists to immigration courts to observe detention and deportation-related hearings. During their observations, the observers took notes in a standardized format, which they then entered into a central database which we used to identify trends.

The topics we analyzed for this report were:

- Countries of origin
- Length of detention and time spent in the United States prior to detention
- Legal representation
- Problems with translation services and court technology
- Problems communicating with family members, attorneys and/or medical professionals while in detention
- Mental health issues
- Reasons for deportation
- Bond issues

Trends out of court

Detention and detention policies have far-reaching impacts on the families of detainees and on immigrant communities, as well as significant implications for national and local policies and the Constitution. Our information on out-of-court trends comes primarily from discussions we had with former detainees or with their families. We also gathered information from discussions with organizations that serve Massachusetts immigrant communities.

Overview of Findings

The images in the Boston immigration courtrooms were striking: men in orange jumpsuits with shackled hands and feet waving sorrowful goodbyes to their children over televideo connections; people bursting into tears because their family members are being deported and no one understands why; men and women begging to be deported because of the miserable conditions within the detention facilities.

The Detention Working Group's observations of the court process itself were equally alarming: Despite the best efforts of judges, the system churned through deportations at a rapid speed and at a great cost to detainees' rights. Unlike in criminal cases, there is no right to free, court-appointed counsel even though detainees are imprisoned in the same manner as those facing criminal charges. Because of this, almost half of all detainees whom we observed had no legal representation at their hearings, forcing them to navigate a complex, unfamiliar and unforgiving system by themselves. Detainees with mental health problems were not always represented by counsel, and there are neither safeguards for the mentally ill in removal proceedings nor resources allocated to the court to deal with such situations. Added to all of that was a combination of technological and linguistic barriers that created alarmingly frequent difficulties. For instance, most detainee hearings were not live but were conducted via televideo connections that suffered from time delays and poor audio quality. This often made it difficult for detainees to understand the proceedings – particularly when the detainee needed an interpreter. When televideo was combined with a telephonic interpreter, these technical problems only added to the stress of an already difficult situation; we observed detainees upset, nervous and in tears as they tried to understand their interpreters via speakerphone piggybacked on an already difficult-to-hear televideo connection.

We also observed that the system seemed to be operating in a needlessly harsh and somewhat arbitrary manner. On average, most detainees had been living and working peaceably in the United States for over a decade before their hearings. In one particularly poignant case, a respondent who had arrived in the United States in 1969 at the age of 10 had no family remaining in her native Portugal but nevertheless was ordered deported.

Some countries appeared to be singled out for aggressive deportation tactics, particularly those countries that were subject to the Special Registration process. And bond levels appeared to be handed out arbitrarily; some detainees with little or no criminal history faced higher bonds than those with serious criminal records.

Although immigration proceedings are open to the public, people generally are not interested in attending and/or following these hearings. Compounded with limited media coverage of immigration proceedings, there is little awareness of the problems with the system. By reporting on our months of observations and interviews, we aim to provide a general sense of trends in detainee courts as well as a general sense of the emotional and psychological impact on the detainees and their families.

It is important to note that we had some difficulty finding family members and former detainees who would speak openly even in the most general of terms. This fear and unwillingness to go public is indicative of a greater anxiety that affects immigrant communities, especially those that are singled out by the government or by society at large.

It is the DWG's hope that this report will raise awareness of these problems and begin to generate discussion as to what can be done at the legislative level to address some of these serious issues.

About the Data Analyzed in This Report

The data analysis in this report was generated primarily from information that court observers were able to glean from watching the immigration hearings known as “master calendar hearings” (a master calendar hearing generally is a detainee’s first appearance in court during which the charges against the detainee are presented). Some information came from interviews with detainees and their family members as well as from discussions with representatives of organizations that serve immigrant communities. Since the summer of 2003, we’ve observed 716 hearings representing 502 different detainees (some detainees had multiple hearings). We also interviewed five former detainees and 15 members of detainees’ families.

At the start of each hearing, the judge states a few particulars about the case: the detainee’s alien number, his/her name (although it is not spelled out), the names of the attorneys on both sides and the judge’s name. The judge does not routinely state many other details such as a detainee’s country of origin or immigration status, his/her criminal record (if any), the detainee’s length of detention or any mental health issues. Because observers were able to ascertain these details only if they arose during the course of the hearing, our data in these areas cannot be comprehensive for all of the cases we observed.

Furthermore, detainee cases often are continued over the course of many weeks, making it difficult for the DWG to track cases to final status. The DWG relies heavily on law students for court observation, and class schedules and other obligations make consistent court coverage difficult from week to week.

Finally, the DWG only observed master calendar proceedings, so any detainee’s case that was taken off the master calendar and set for an individual calendar was no longer observed.

About the DWG's Detainee Database

Each detainee is represented by a **case record** in our database. The case record contains information that does not change from hearing to hearing, such as the name, alien number, place of detention, country of origin, gender, age, date of arrival in the United States, date of detention and place where the detainee was apprehended. The **hearing record** contains all information gleaned from a session such as grounds for deportation, criminal record, troubles with lawyers or interpreters, family presence and mental illness issues.

One difficulty with the database is our inability to always accurately identify each detainee. Other immigration courts in the Northeast (Hartford, New York) post the master calendar of hearings every day, and this calendar includes each detainee's country of origin, alien number and full name. But the Boston immigration court posts only its individual calendar (which shows the schedule of hearings concerning detainees with legal claims for remaining in the United States, such as political asylum or change in immigration status). The Boston immigration court has refused without explanation to post its master calendar despite multiple requests by the DWG. This has made the work of the DWG much more difficult. Although the judge reads the alien numbers before each hearing, the number has eight digits, and it is often impossible to hear all the digits, especially when the number is read quickly and in a low voice (as it most often is). Furthermore, the spelling of the detainees' names is virtually impossible to guess. Without a reliable name or alien number to identify each detainee in the database, there is a risk of creating multiple case records for the same detainee. An exhaustive search was done to remove duplicates, but a few duplicates may remain nonetheless.

To our knowledge, no similar observation project exists, so the DWG developed the observation, data collection and data processing methods from scratch. When we began observing cases in 2003, we did not yet have a developed sense of what information was relevant, nor did the forms filled out by observers necessarily ask the right questions. At the outset, the form did not ask about mental health issues, presence of family and current immigration status. The DWG also had not yet developed the necessary standards for data entry, such as how to enter the grounds for deportation information in a way that would make it possible to discover all cases of a certain type (such as all those who were being deported due to criminal charges). For these reasons, data collected within the last six months has been more complete than the data collected during the early part of the project. The database itself, having been developed from the ground up, experienced some growing pains related to malformed data, and much work was done to check the records and correlate the data to the written forms.

Immigration Detention Policies

Who are we talking about?

U.S. immigration law classifies all people within the United States in two broad categories: **nationals** and **aliens**. In general, this means you are either a **citizen** or a **non-citizen**. Non-citizens generally come to the country as **immigrants** or on **temporary visas** (this includes tourists). This report focuses on both kinds of non-citizens who find themselves in removal proceedings in immigration court.

What is a removal proceeding?

Immigration removal proceedings take place in immigration court in front of an immigration judge, who is part of the Department of Justice. A non-citizen can enter removal proceedings in two ways:

- If a non-citizen is found inadmissible to the United States upon arrival, s/he will be placed in removal proceedings.
- If a non-citizen already in the United States violates the conditions of his/her status, s/he can be ordered removed. The vast majority of detainee hearings we observed fell into this category.

Immigration removal proceedings start with a “notice to appear,” which lists the charges the government is alleging against the non-citizen. These charges can include **immigration offenses** and/or **criminal offenses**.

Legal permanent residents who have established new lives in the United States can be subject to removal for minor and serious crimes alike. **Immigration offenses** include but are not limited to illegal entry; transporting, smuggling or harboring non-citizens who are in the United States unlawfully; committing fraud; committing marriage fraud; overstaying a temporary visa; or working without authorization.

When a U.S. citizen is convicted of a crime, s/he serves a criminal sentence. Non-citizens are subject to the same criminal proceedings but in addition may face immigration consequences and be put through removal proceedings.

Who ends up in detention?

Mothers, fathers, children and refugees fleeing persecution can all end up in immigration detention. Any non-citizen who is found inadmissible at a border or a port of entry can be subject to removal proceedings. Similarly, any non-citizens – **lawful permanent residents** (green card holders), **temporary visa holders, people who overstay their visas** or **undocumented immigrants** – can be ordered detained if found in violation of immigration law.

Where are they detained?

Immigration and Customs Enforcement (ICE) places immigrant detainees in security processing centers,

Detention Centers Where Boston Immigration Court Can Order Detainees Held

Boston, Massachusetts
Greenfield, Massachusetts
Dedham, Massachusetts
North Dartmouth, Massachusetts
Plymouth, Massachusetts
Brentwood, New Hampshire
Goffstown, New Hampshire
Dover, New Hampshire
Central Falls, Rhode Island
Newton, Connecticut
Hartford, Connecticut
Somers, Connecticut
Niantic, Connecticut

Immigration Detention Policies

Department of Homeland Security (DHS) detention facilities, state and local government jails, and Bureau of Prisons institutions. Since jail policies often are written to treat all detainees in the same way, non-criminal immigration detainees can end up sharing quarters with convicted criminals and are treated in the same manner as those in jail for violent crimes. Because of the tendency to split up members of the opposite sex in jailhouses, immigrant families can be separated and often have little to no means of communication with one another throughout the removal process.

What happens to detainees in immigration proceedings?

Non-citizens in immigration proceedings do not have the right to a free court-appointed lawyer. Obtaining counsel for removal hearings is not easy, especially for non-citizens with few financial resources. While free and low-cost legal service providers are available, the supply does not come close to meeting the demand. Forty-two percent (42%) of non-citizens in immigration court represent themselves (*pro se*) and argue their cases against a lawyer from the Department of Homeland Security.

All non-citizens who are put in removal proceedings because they were found inadmissible at the border are automatically placed in detention. Non-citizens who already are in the United States are not always put in detention. Once in detention, certain detainees are eligible for bond. Before granting bond, the immigration judge considers whether the non-citizen is a risk to the community or a flight risk.

What is the Immigration and Nationality Act (INA)?

Initially created in 1952, the INA is a compilation of all the statutes and regulations that pertain to all non-citizens. The act has been amended numerous times since its original enactment; it remains the principal body of immigration law.

What other laws are applicable to detainees?

Currently two federal statutes (passed in 1996) govern the majority of detention and deportation cases. These statutes, the Anti-terrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), were enacted during an era of increased anti-immigrant sentiment. These two acts formed a procedure of “expedited removal.” Any immigration inspector at the border or port of entry who determines a non-citizen inadmissible due to fraud or on documentary grounds will place the non-citizen in mandatory detention and begin the process of expedited removal. Since the passage of the IIRIRA and AEDPA, mandatory detention of non-citizens has increased from approximately 6,800 detainees under the control of the Immigration and Naturalization Service (INS) in 1994 to approximately 22,800 under the control of the Department of Homeland Security in 2004.¹

How does the USA Patriot Act affect detainees?

After September 11, 2001, a section of the Immigration and Nationality Act was amended by the USA Patriot Act to include a provision that gives the government authority to detain without a formal charge any non-citizen who has been deemed a terrorist suspect. Additionally, under Section 412, the act created new procedures for indefinite detention of immigrants. The act also expanded the definition of terrorism, giving the government further discretion to detain non-citizens who satisfy the broadly defined term and allowing for secret proceedings. Civil liberties groups argue that these provisions violate the Constitution.

Immigration Detention Policies

What about case law?

Individuals and civil liberties groups have challenged these restrictive policies as unconstitutional, though few have been successful when the cases reached the U.S. Supreme Court. In 2003, the Supreme Court upheld the 1996 acts as constitutional in *Demore v. Kim*. The court addressed the plaintiff's concerns about allowing legal immigrants to be detained while awaiting deportation proceedings, specifically in cases in which the government would be "substantially unlikely to prevail." The court held that, pursuant to the INA, a legal permanent resident could be held without an individual bond hearing.

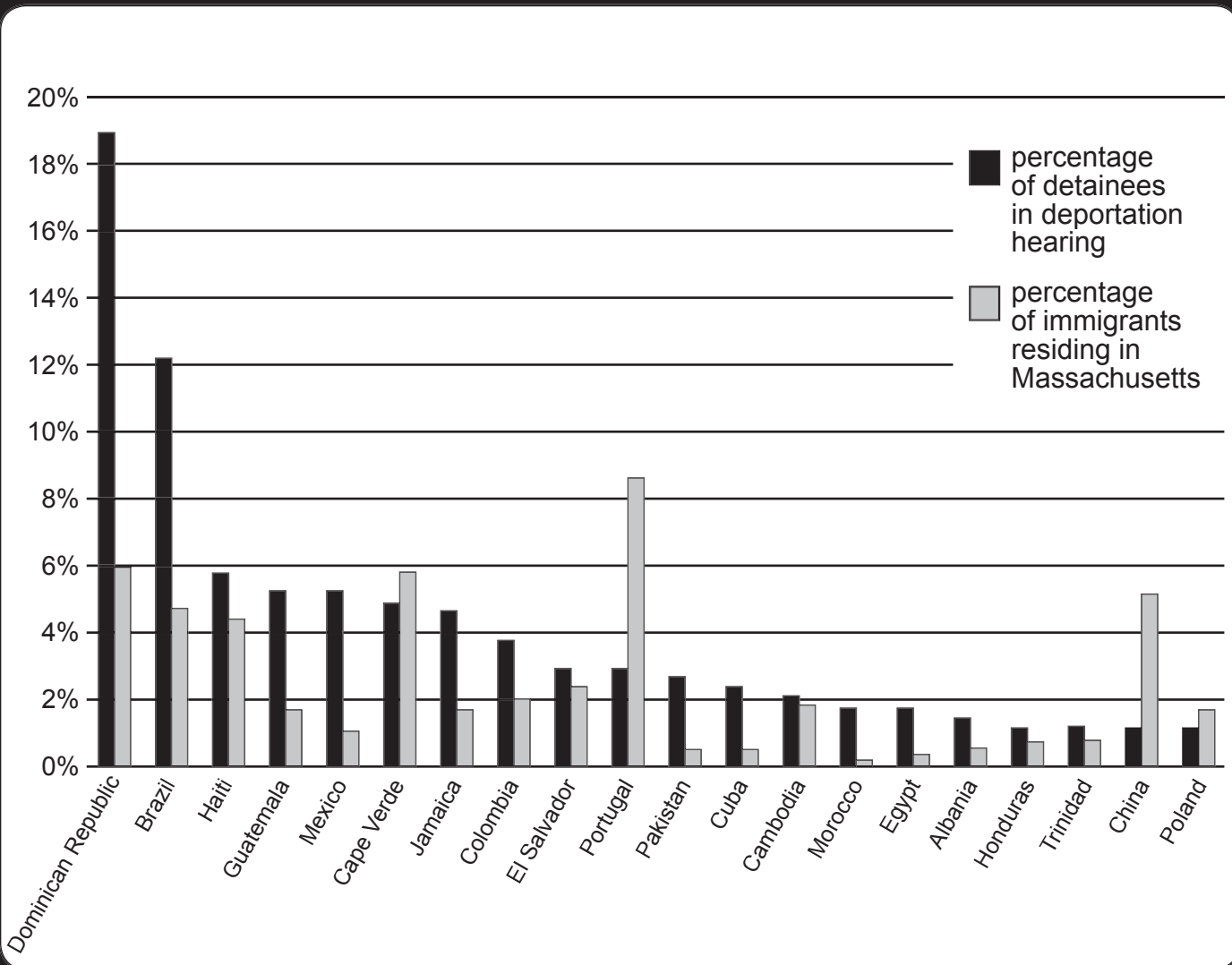
However, in regards to indefinite detention, two significant cases have come before the Supreme Court that extended the rights of detainees. *Zadvydas v. Davis* (2001) held that, during removal proceedings, the INA does not authorize indefinite detention for non-citizens who cannot be repatriated to their home countries. This was based on the non-citizen's due process rights under the 5th Amendment. More recently, in *Clark v. Martinez* (2005), a Cuban national challenged his indefinite detention as an inadmissible non-citizen who had attempted to enter the United States. The court found that the holding of *Zadvydas* also applied to inadmissible non-citizens.

Countries of Origin

Through court observations, the DWG captured country of origin information for 68% of cases observed (341 cases). The 20 most-represented countries account for 83% of these case records. The countries most often represented were the Dominican Republic (19%) and Brazil (12%). Although the number of people detained from each country roughly reflects the percentage of immigrants in Massachusetts and New England from that country, some countries are over- or under-represented. For instance, although only 6% of the foreign-born population in Massachusetts comes from the Dominican Republic, Dominicans account for 19% of the cases. The next most over-represented countries are Brazil, Guatemala and Mexico. Portugal, in contrast, represents 9% of the Massachusetts foreign born but only 3% of cases.

The treatment of detainees from countries of political instability or repression raises multiple concerns. One

Rate of Detainees Facing Deportation Versus Rate of Immigrants Residing in Massachusetts



Countries of Origin

Cuban-born man was ordered deported for a past conviction of obtaining money under a false pretense, a conviction for which he had received a one-year suspended sentence (Cubans ordered removed could not return to Cuba because the country does not accept deportees). A Somali faced removal hearings in June 2004 (when the country was devastated by widespread violence and tidal waves), and at least one Haitian was deported after the bloody ouster of Haiti's ex-president Aristide. That removal order was given seven months after the apparent coup, at a time when violence was still rife in Haiti.

Among detained immigrants who had no criminal record, men from Special Registration countries were disproportionately represented in the court. They were most often from Morocco or Pakistan. One immigrant we interviewed reported many instances of discriminatory treatment toward Muslims, who were verbally abused at the time of arrest and during detention ("terrorists," "fucking cheap Arabs" and "criminals" were among the epithets used). Muslims were refused the Koran while Bibles were available in many languages, and it took days to obtain a kosher diet.

Young Central Americans, mostly from Guatemala and who had tattoos, also were treated differently. They were systematically accused of belonging to MS13, a gang that has been associated with violent crime in the Greater Boston area. With this label pinned onto them, they were less likely to be granted bond because they were seen as being a threat to the community.

Conclusion

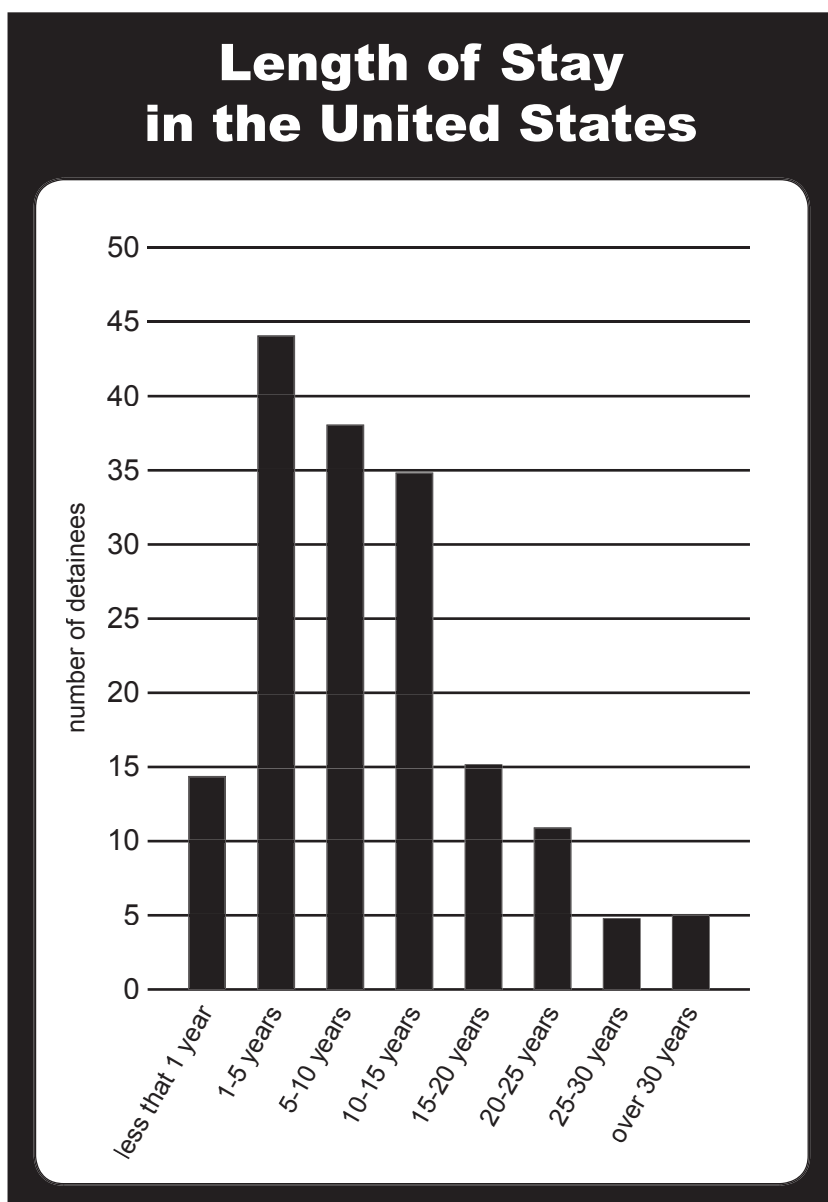
The majority of immigrant detainees came from five countries: Dominican Republic, Brazil, Haiti, Guatemala and Mexico. All five of these countries also were over-represented in the immigration court; the percentage of detained people from these countries did not reflect the percentage of immigrants from the respective countries in Massachusetts. Country of origin also played an important role in the treatment detainees received in detention centers. Arabs and Muslims encounter much harsher treatment from both non-Arab/non-Muslim detainees and from prison guards.

Length of Detention & Time in U.S.

Detention Length

When available, observers recorded each respondent's initial date of detention. Unfortunately, a detainee's original detention date is infrequently mentioned in the course of a hearing, so less than 10% of the total cases provided the actual date when the detainee was first detained. However, a few cases stand out and are compelling. One respondent was in detention almost 3.5 years for multiple criminal charges before he received his first hearing. At that hearing, the immigration judge deported him to El Salvador. He was not represented by an attorney.

Another respondent was in detention almost 2.5 years before he was released on bond even though he had a pending asylum application; he was from the Kurdish minority in Syria. He was originally detained for simple assault, working illegally and overstaying his visa.



Time in the United States

When available, observers recorded each respondent's initial date of entry into the United States. We then calculated how long a respondent has been present in the United States by counting the number of days from his/her initial date of entry to the last hearing date recorded in our database. Many detainees had been in the United States for many years, often working and living their lives without incident before they were placed in detention.

We were only able to record the initial date of entry into the United States for approximately one-third of the total cases (166 out of 502). The length of time respondents spent in the United States ranged from 24 days to 35.5 years; the average was just over 10 years.

As in much of the data we recorded, sad and compelling cases were evident, particularly given the minor crimes involved. One respondent arrived in the United States at the age of 10 in 1969. She lived in the United States for 35 years and had children who are U.S. citizens. Unfortunately she had problems with gambling, was convicted of larceny over \$250 and received a two-year sentence.

Length of Detention & Time in U.S.

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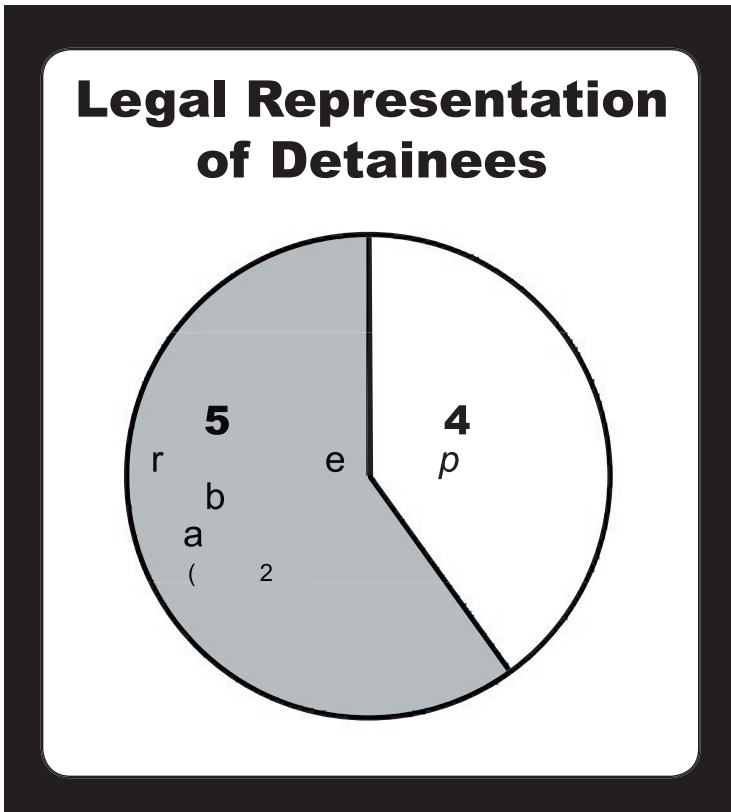
She was ordered deported to her native Portugal, even though she had no family remaining there. Another respondent arrived in the United States as a refugee in 1980 from Cuba. She was convicted of obtaining money under false pretenses. She was ordered deported to Cuba, the country from which she fled as a refugee 25 years earlier. Because Cuba does not accept U.S. deportees, it is unclear how long she will continue to remain in detention.

Conclusion

Though compiling data on length of detention and length of time in the United States was difficult for court observers, it is apparent from the data that observers were able to gather that detainees experience significant problems in both areas. Detainees are sometimes held in detention for significant lengths of time before final resolution of their cases. Also, many detainees have lived in the United States for a decade or more, some even living here as long as a generation. They have grown up, worked, had families and ultimately contributed to the United States as much as other people, yet their non-citizen status has kept many of the law's protections out of their grasp.

Legal Representation

According to the Immigration and Nationality Act of 1996 (in particular, 8 U.S.C.A. § 1362), immigrants in deportation proceedings have the right to legal representation by attorneys who are authorized to practice in such proceedings. However, this right comes with a critical caveat: Detainees must hire their own attorneys at their own expense. While the court refers detainees who cannot afford an attorney to legal services organizations that offer assistance at free or reduced rates, these organizations do not have the resources to be able to guarantee representation.



What are the effects of not being able to afford an attorney? Immigration is a complicated area of law. The relief available to people in deportation proceedings is limited and can be difficult to understand. Language can form a significant barrier for those who try to navigate the world of immigration paperwork on their own. As a result, detainees in these proceedings may be seriously disadvantaged while facing such grim consequences as permanent separation from family members and forcible return to politically unstable home countries.

To assess issues in detainees' access to and possession of legal representation, this report used the most recent hearing record for each detainee in order to determine his/her represented status. If a detainee had been able to retain an attorney despite having appeared *pro se* (representing him/herself) in the past, the report considered that detainee to be represented. Conversely, if the detainee had been represented in the past but now was forced to appear *pro se*, the report considered him/her to be *pro se*.

Out of a total of 502 cases observed, nearly half of all detainee cases (42%, or 211 cases) had no legal representation. Some detainees reported that they lacked the money to pay for counsel; others simply repeated that they "just wanted to be deported" as quickly as possible. Whether this was because of the economic, psychological or physical hardships of being in a detention facility was not always clear. Two detainees emphasized that their families in Mexico were dependent on them to provide economic support, so they preferred to be sent home quickly rather than postpone the hearing until they had retained lawyers.

Financial hardship unsurprisingly was reported as a barrier to those seeking representation but was documented in only seven cases, owing again to the difficulty of collecting this information. The cases in which this issue was observed included a detainee who could only afford a lawyer for the bond hearing and a detainee who was no longer able to afford an attorney's services. In one case the detainee was unable to retain a lawyer because his wife was unable to withdraw the funds needed on the day of the hearing. A few detainees indicated that they could not afford the retainer fees that some lawyers required up front (up to \$4,000 in one case). An Iraqi male detained for over three years also had been unable to retain a lawyer, forcing his case to come to a standstill. Even with organizational intervention in a *pro bono* capacity, the drafting of a *habeas corpus* to move his case forward proved challenging due to the scarcity of resources and manpower. As a result, he remains in detention indefinitely. Additionally, family members of some detainees told us about problems they encountered with

Legal Representation

immigration lawyers who requested large amounts of money for cases in which there was no legal remedy. One interviewee, whose Moroccan husband has been detained since February 2005, said that her family paid almost \$20,000 to a lawyer even though the lawyer knew detention and deportation were unavoidable for her husband.

Detainees who sat before the judge *pro se* often were unclear about the legal process and unaware of the relief available to them under current immigration laws. A startling example of this was a case in which the judge told a detainee that he was possibly eligible for a specific type of relief. Unfortunately, the detainee did not have an attorney or even any family to help him fill out the necessary paperwork. As a result, the judge had to ask a prison guard to help the detainee with the application.

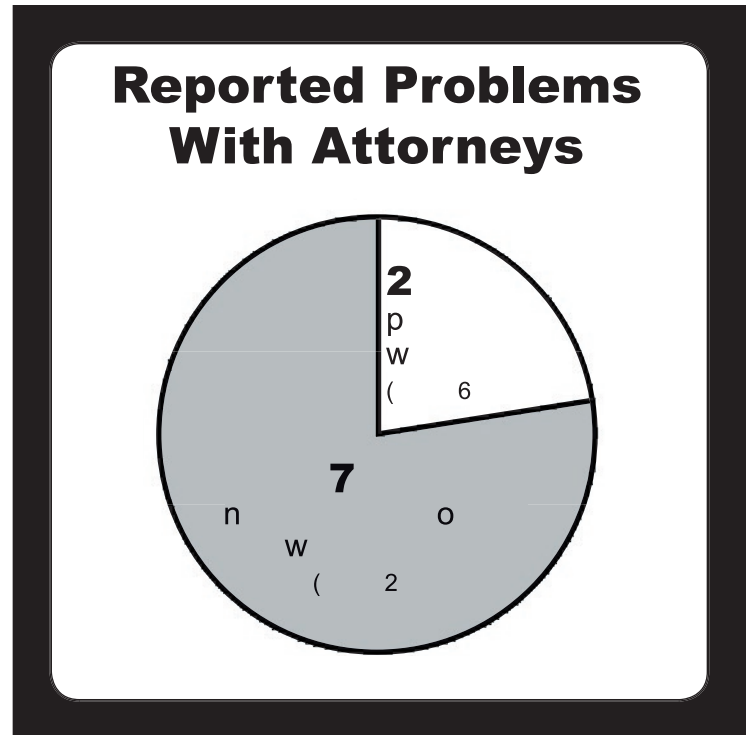
Of the 291 cases in which detainees were able to retain legal representation, 23% of them either reported or were observed having trouble with their lawyers (68 cases). Nearly half of the problems recorded involved “no-shows” of the lawyers (29 cases). Four detainees reported that their lawyers consistently had not appeared in court on two or three occasions. One detainee’s family paid his lawyer \$2,000 up front, after which they never saw the lawyer again. Another attorney apparently “refused” to show up and failed to forward some of his client’s documents to the newly retained lawyer. This issue was also brought up in the interviews we conducted: The mother of a young Moroccan paid a lawyer \$2,000 up front and never saw a penny of it – her son was deported before the lawyer even reviewed the case.

Court observers also noticed that some lawyers seemed incompetent (13 cases). Generally, these lawyers were late, disorganized, inexperienced or had communication breakdowns with their clients. On one occasion, a judge was observed giving a lawyer advice on how to plead the case.

Our records show nine cases in which a detainee wanted a lawyer but was unable to secure one. This low number is more likely reflective of the difficulty of obtaining information about lawyers. Nonetheless, one of the documented cases involved a detainee whose case was continued for two months because he was unable to find a lawyer. He was detained for that period of time. A Vietnamese detainee we interviewed was detained in Oakdale, Louisiana, while his family and friends lived in the Boston area. That made the task of retaining a lawyer more challenging.

Conclusion

Lack of legal representation is one of the most significant problems with the immigration system and is particularly egregious when combined with situations such as mental illness. Individuals charged in criminal cases are provided with free representation because they face a deprivation of liberty, yet immigration detainees faced with the same deprivation are not provided with similar representation.



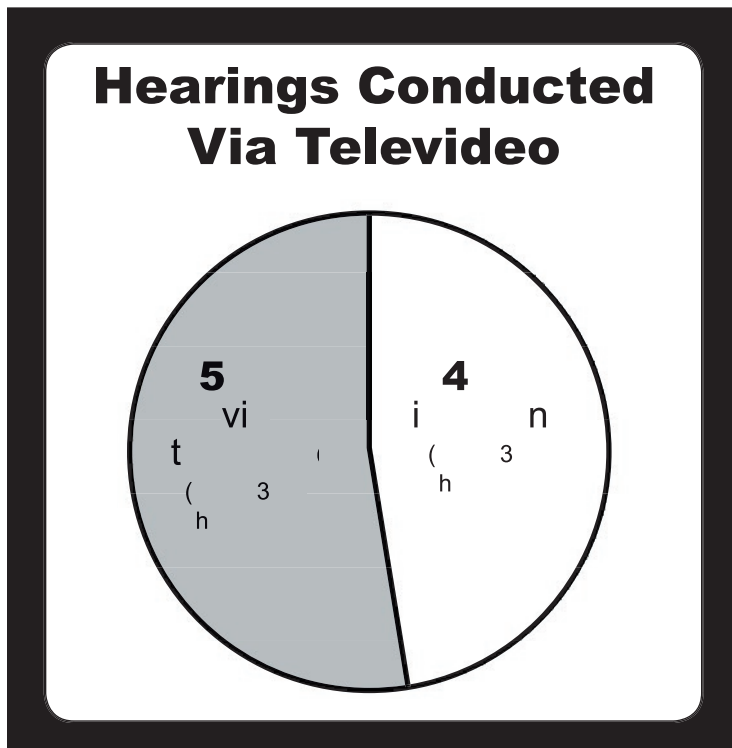
Translation Services & Court Technology

Language interpretation is a major component of a non-English speaking detainee's court case, and the detained immigrant has an absolute right to adequate translation.² But this absolute right is only part of the right to present evidence and cross-examine witnesses – there is no *per se* right to simultaneous interpretation of the entire proceedings.³ This means many immigrant detainees do not know all of what is being said in court because they do not get the entire proceeding translated for them during that court date. The complexities of immigration law can make an immigration court case difficult for a native English speaker to follow; without proper translation, the non-English speaking detainee is lost, left out or easily confused in a court proceeding, with serious and possibly life-changing consequences.

Because of budget cuts, detainees do not always have the opportunity to be present in court and instead can be “present” via two-way televideo sessions (or by telephone in rare cases). In the televideo sessions, the detainee sits in front of a video camera in a specified room in the detention facility; this image appears on a television screen in the courtroom. Both the court and the detainee have microphones and speakers. But the technology does not always work well. Sometimes the judge cannot hear the detainee or vice versa. At other times, a detainee might have to stand 10 feet away from his/her microphone so that his/her voice does not scream into the courtroom.

When language interpretation is needed, the interpreter is not always present in the courtroom. Sometimes the court makes use of a telephonic interpretation service, at which point the interpretation comes through speakerphone. We have observed detainees who often appeared uncomfortable asking interpreters to repeat something. In some sessions it appeared as if the detainee simply could not hear the interpreter due to technology issues.

Frequency of Use of Televideo and Interpreters



The majority of hearings (52%, 375 out of 716 hearings) were conducted via a televideo connection. In these cases the detainee was in a detention facility while his/her attorney, the prosecutor, the judge and any witnesses were in a courtroom miles away (on a few rare occasions the detainee's lawyer was present at the detention facility). There were frequent technical difficulties with the televideo equipment: Often there was a visual time delay (the picture “froze”), and/or the voice of the detainee was difficult to hear. This is of particular concern in hearings that are translated.

Out of the 502 cases in our database, 193 cases involved interpreters who appeared either live (163 cases) or telephonically (30 cases) for at least one of the detainee's hearings. This accounts for 40% of total cases for which data was collected (see chart on page 18).

The majority of cases in which interpretation was needed (59%, or 113 cases) were conducted via televideo. Moreover, 65% of all detainees who

Translation Services & Court Technology

required interpretation represented themselves *pro se* (126 cases).

The most-interpreted language, both in person and via speakerphone, was Spanish, which accounted for 43% of all interpreted cases. The next most widely interpreted language was Portuguese, which accounted for 15% of all interpreted cases. Languages only available using a telephonic interpreter include Albanian, Somali and Vietnamese.

Problematic Trends and Sample Cases

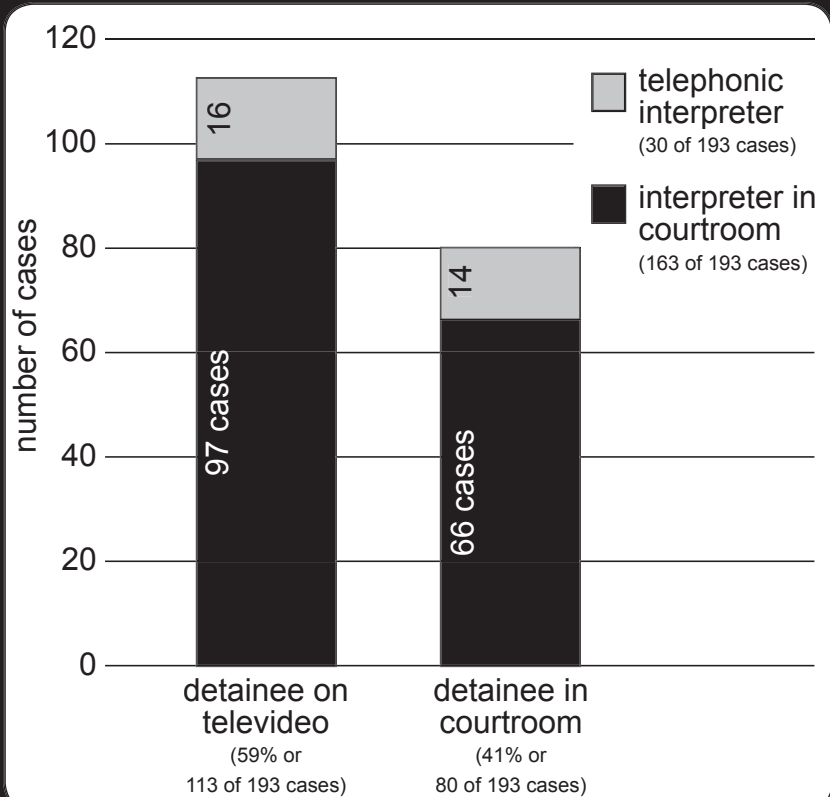
Telephonic Interpreters & Televideo Detainees

There was a high potential for difficulty when there was a telephonic interpreter and a detainee appearing via televideo. A newly arrived alien from China filing for asylum was in tears when she appeared via televideo and struggled to listen to her telephonic interpreter. An Albanian woman who had been detained at Logan Airport and who was applying for asylum and protection under the Convention Against Torture was visibly nervous, distraught and in tears when she appeared via televideo and tried to listen to her telephonic interpreter. Both women had a difficult time understanding the proceedings and listening to their telephonic interpreters over televideo. Additionally, most detainees who appeared via televideo with telephonic interpreters also appeared *pro se* and did not have an attorney to help facilitate the situation. In the 16 cases recorded, only five detainees had attorneys.

Telephonic Interpreters & Live Detainees

Problems arose simply with the telephonic interpreter service used by the court. When a Haitian detainee appeared *pro se*, the court called the telephonic interpreter service to request a Haitian-Creole speaking interpreter. The service put the judge on hold, and then he was suddenly disconnected. The court called back repeatedly but could not get through. The judge was forced to reschedule this detainee's case for later that day. At another hearing, the court was supposed to arrange for a French-speaking telephonic interpreter. The judge had problems getting the telephonic system to work, so this detainee's hearing also was postponed for later that day.

Interpreted Cases Combined With Use of Court Technologies



Translation Services & Court Technology

In interpreted cases, there are four possible scenarios:

- **The detainee and interpreter are both present in the courtroom.**
- **The detainee is present in the courtroom and interpreter's voice is present via speakerphone in the courtroom.**
- **The interpreter is present in the courtroom but the detainee appears on television screen via televideo from the detention facility.**
- **The interpreter's voice is present via speakerphone in the courtroom and the detainee appears via televideo from the detention facility.**

Live Interpreters & Televideo Detainees

Cases sometimes had to be continued because an interpreter who spoke the detainee's language was not available. One judge had to continue the first hearing of an Arabic-speaking detainee from Egypt because there was no Arabic interpreter available in the court. The detainee had to wait another week in a detention facility due to the lack of an interpreter.

Live Interpreters & Live Detainees

Troubling issues most often arose with live interpreters and live detainees when an interpreter who was supposed to be present failed to show. Non-court-appointed interpreters sometimes filled in to assist the detainees. In at least three cases, a detainee's attorney assisted with the interpretation. In other cases, our own court observers fluent in a detainee's language were asked by a judge to help out with translation. Sometimes a friend or family member of the detainee offered to help out. In at least one case in which a friend interpreted, the friend did not understand or did not know the appropriate legal terminology to interpret accurately. One detainee was a native Portuguese speaker and the court had only a Spanish interpreter present, so the judge had to continue the hearing for one week to schedule the correct interpreter.

Conclusion

An interpreter is a necessary component of an immigration court case for a non-English speaking detainee. Even if an interpreter is present either in person or telephonically, many complications can arise, especially if the detainee appears via televideo. Most interpreters only translated questions asked to the detainee and did not translate what was said to the detainee's attorney, if there was

one, or what was discussed between the judge and the Department of Homeland Security attorney. Although problematic, the courts have held that the lack of simultaneous interpretation of the *entire* proceeding does not violate due process.

But the large number of non-live (televideo), translated hearings does raise questions of due process. If a detainee does not have the opportunity to speak in person to an attorney, is unable to confront witnesses in the same room and is trying to understand an interpreter through a distorted televideo connection, it is questionable that the detainee has been given a fair hearing.

Lack of access to an interpreter in the detention centers also was a pervasive issue; translation most often was provided by other detainees. One interviewee told us about a particularly dramatic situation in which an immigrant from Guatemala was evaluated by a psychiatrist who did not speak Spanish. The detainee was banging his head against his cell walls and was exhibiting other self-destructive behaviors. His cellmate was Syrian and only spoke Arabic. The former detainee whom we interviewed, a Moroccan who spoke six languages, was asked to act as an interpreter both for the distraught detainee and the cellmate who had observed his behavior.

Communication Problems

One issue tracked by observers was whether detainees were having difficulty communicating with their families, attorneys or medical professionals. Difficulties associated with court proceedings that involved televideo connections and/or interpreters are not included in this section.

In a small number of the hearings we observed, detainees reported troubles communicating with their families (nine out of 716, or just over 1%). Though it is not a statistically large number, there are notable cases. The trouble often was telephone related. A young Egyptian man was unable to contact his mother for 10 days while he was detained. In two separate cases, detainees were unable to contact lawyers because the lawyers would not accept collect calls. Collect calls are the most common method used by detainees to contact others while in detention.

Others had difficulty receiving mail at detention facilities. This delayed their proceedings because the mail contained paperwork important to their court cases. A man from Trinidad & Tobago who was married to a U.S. citizen had trouble providing documents that a previous marriage had been annulled. He could not receive the paperwork documenting the annulment from Trinidad & Tobago while he was detained. The judge expressed disbelief that anyone would be unable to receive such important mail, but observations show that this has occurred more than once. A detained Iraqi man stopped receiving mail from family members in Jordan with no explanation. His mail often included money for supplies he needed to buy from the detention center. Without this money, basic necessities were unobtainable.

Some families reported difficulties with the visitation policies at detention centers. The mother of a Moroccan youth we interviewed experienced difficulty visiting her son. On two occasions she was given in writing the day and time she could visit, only to be turned away when she came to visit. On another occasion she was not allowed in the detention center because she declined to take off her head scarf (even though she offered to submit to a full search by a female correction officer). The wife of another Moroccan detainee pointed out the limited times of evening visitation (8 p.m. to 9 p.m.) at a facility with poor access by public transportation (Central Falls, Rhode Island).

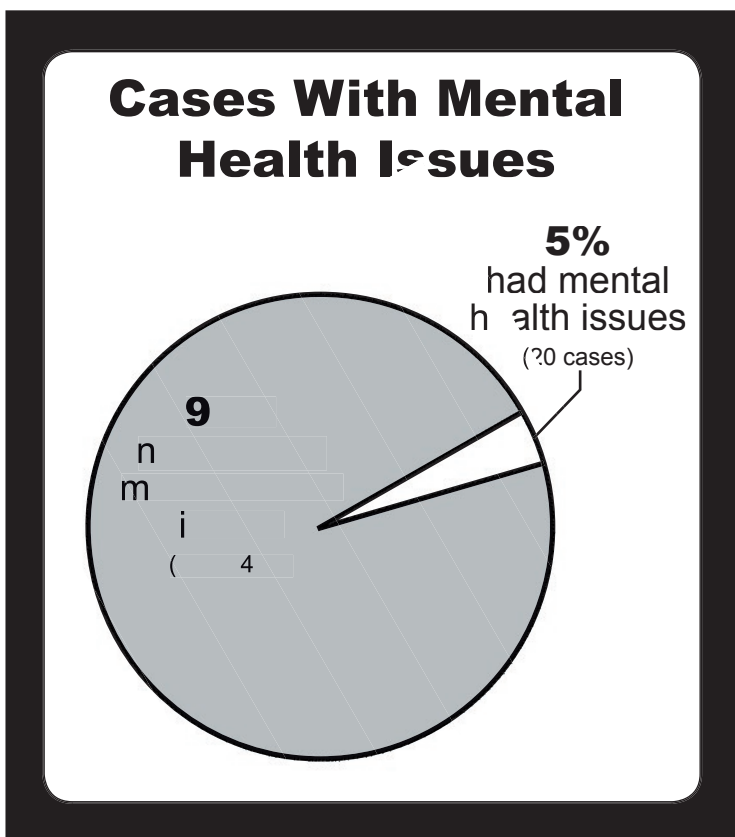
Another issue that was brought up was the prohibitive cost of international calls. Detainees were allowed to use only the calling cards sold by the prison canteen, which had an inflated price. Other facilities allowed only collect calls, which limited access to lawyers and family members.

Conclusion

The communication problems detainees had were rarely discussed in court, so observers were unable to record the true reach of the issue. Though our reported number of cases was small, the problems – difficulty making telephone calls, high cost of international calls, trouble receiving mail, short visiting hours and distant location of detention facilities – were more widespread. A major concern that arose from these findings was that communication problems contributed to people being forced to stay longer in detention centers because of a lack of access to basic resources such as mail, telephones, family members and attorneys.

Mental Health Issues

Detainees with mental health issues represent some of the most vexing cases observed by the DWG. Judges are not supposed to remove detainees who cannot comprehend the nature of the proceedings, yet the judges lack the resources to appoint attorneys for these individuals to ensure their due process rights. Unfortunately, the statutory protections for the mentally disabled are thin at best. For example, 8 U.S.C. § 1229a(b)(3) states only that “If it is impracticable by reason of an alien’s mental incompetency for the alien to be present at the proceeding, the attorney general shall prescribe safeguards to protect the rights and privileges of the alien.” There do not appear to be regulations that further explain how these safeguards are to be implemented. Court observers witnessed proceedings in which a detainee with serious mental health issues would appear before the court without representation, and the attorney for Homeland Security would argue that the hearing could proceed because the judge could somehow “ensure that there were safeguards.” Judges often expressed bewilderment as to what safeguards they could provide and steadfastly refused to deport an alien who had no understanding of the nature or content of the proceeding.



At the time of this report, cases in which mental health issues arose in at least one of a detainee’s hearings comprised slightly less than 5% of the total observed cases (about 20 cases). Of the mental health cases, roughly 35% of those detainees represented themselves at their hearings (see chart on page 22); 20% involved debates over the competency of the detainee, and in 10% of the cases, the detainee had been found mentally incompetent by a prior court. Some cases involved detainees who previously had been staying at Bridgewater State Mental Hospital. One individual in particular had only one charge on his criminal record, that of threatening the president of the United States. Several cases involved detainees with schizophrenia or paranoia, and in one case a detainee complained of not having regular access to his mental health medications for over six months.

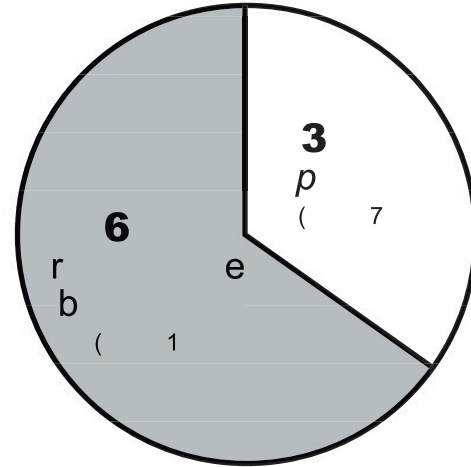
In one particularly alarming case, a man from Cape Verde was brought before the court; he suffered from psychiatric problems and also from full-blown AIDS. The government sought to transfer the detainee to the Columbia Care facility in South

Carolina, but a doctor from Physicians for Human Rights appeared before the court and asked to conduct a competency hearing in Boston. The government argued that the detainee had to be transferred because the Shattuck Shelter lacked enough beds to house the detainee. The court ordered the detainee to be physically present the next week so that he could be scheduled for examination. The next week, the doctor appeared in court to schedule the exam, but the government informed the judge that the detainee had been transferred to South Carolina during the past week. The doctor informed the court that she had spoken with Shattuck and that there was no shortage of beds for the detainee, and the judge angrily inquired why the detainee had been transferred despite a court order. The attorney for Homeland Security stated it was not his decision, at which point there was a lengthy off-the-record conversation out of court between the judge and the attorney. Upon returning, the judge informed the doctor that the detainee would be examined in South Carolina, but the doctor expressed concern that an examination there would be inadequate.

Mental Health Issues

In another mental health case, a detainee had been transferred from a prison (where he had been waiting for a criminal trial) to a psychiatric unit when it was discovered that he was mentally ill, and a Texas criminal court subsequently found him incompetent to stand trial. He thus had no criminal record and appeared *pro se* in immigration court. The Homeland Security attorney pointed out that, unlike a criminal trial setting, there are no specific standards for competency in immigration court, and so the immigration judge was free to ignore the prior incompetency finding. The Homeland Security attorney also argued that the court could appoint a guardian or attorney for the detainee. The judge expressed skepticism at this, as the detainee had no visible family and the court lacked resources to hire an attorney for the detainee. The judge then attempted to question the detainee, who was non-responsive to all questions. At this point, the judge questioned why Homeland Security had placed this man in proceedings when he clearly was unable to comprehend the nature of the proceedings. The case was continued for a week, at which point the government sought to transfer the detainee out of the court's jurisdiction and into the Columbia Care facility in South Carolina.

Cases with Mental Health Issues and Legal Representation



Another area of concern is the fate of detainees who have been victims of torture and other violent or traumatic events in their countries of origin and who are seeking asylum in the United States. Many of them suffer from post-traumatic stress disorder (PTSD) and are at risk for suicide and other self-destructive behavior. Mental health services available at the detention facilities are not equipped to deal with their situations. In one case, an Iraqi man, who has been detained since 2002, claimed to not receive adequate care or attention for his PTSD, anxiety and depression.

Conclusion

The treatment of mentally impaired detainees is one of the most troubling aspects of the immigration system. While we have observed that judges in Boston do their best to ensure that such people receive a fair hearing, the judges are not provided with any dedicated resources (such as the power to appoint an attorney) or particular legal guidance (such as specific guidelines for ensuring adequate protection of the detainees' rights) that would help the situation.

Reasons for Deportation

The reasons for deportation are many and varied. This report focuses on how the reasons for deportation have affected the following five categories of detainees: lawful permanent residents (green card holders), refugees and asylees, visa holders with valid immigration status, visa overstays and detainees with non-violent crime issues.

This report defines drug possession, distribution and trafficking as non-violent crimes, as well as more obvious non-violent crimes such as shoplifting. Violent crimes include assault and battery, rape, armed burglary, attempted murder and murder.

Problematic Trends and Sample Cases

Lawful Permanent Residents (LPR)

Out of 502 total detainee cases, 17.5% were lawful permanent residents (88 cases). All had been convicted for either a non-violent crime or violent crime. Most of the LPRs observed by the DWG were longtime residents of the United States and often had a spouse and children who were U.S. citizens. At least one of these detainees was released on his or her personal recognizance.

According to immigration law, an alien or LPR is deportable if at any time after admission into the United States s/he is convicted of two crimes involving moral turpitude. The crimes cannot arise out of a single scheme of criminal misconduct.⁴ In determining a crime of moral turpitude, it is neither “the seriousness of the offense nor the severity of the sentence imposed,”⁵ but the crime must be one that is *per se* morally reprehensible and intrinsically wrong.⁶ Crimes of moral turpitude can include relatively minor non-violent crimes such as fraud, larceny, theft, illegal use of credit cards and trespassing, among others. An alien or LPR also is deportable if within five years of admission s/he is convicted of one crime involving moral turpitude for which a sentence of one year or longer may be imposed.⁷

The DWG witnessed cases in which detainees were removed by combining their minor, non-violent crimes of moral turpitude. One LPR from Ghana with a shoplifting conviction and a driving without a license conviction was ordered deported. There also were some cases in which detainees with minor non-violent convictions were deported even though they suffered from serious health conditions that made it dangerous for them to return to their home countries. One detainee was deported to Cape Verde due to crimes of larceny and shoplifting, despite having paranoia, hearing voices and being afraid to return to Cape Verde because of his health. Another detained LPR with serious medical problems had been in the United States since 1968 and was ordered deported to Cuba based on one drug conviction. Because Cuba does not accept deportees, the judge recognized that he probably would wind up back in detention and in legal limbo. Yet another LPR detainee with a single drug conviction had renal failure that led to dialysis. He had been in the United States since 1976 and wanted to apply for Convention Against Torture relief because he feared returning to Haiti with his medical conditions.

Refugees and Asylees

There were only six known refugees and asylees out of 502 cases, which accounted for just over 1% of the cases. These are important cases because the detainee by definition has a fear of returning to his/her home country because of persecution; many refugees have long severed ties to their home country. All refugee detainees in our database had relatively minor non-violent crime convictions. One refugee from Laos came to the United States in 1988. He was now in his early 20s, had two shoplifting convictions and faced deportation

Reasons for Deportation

to a country he barely knew. The judge continued his case to give him more time to find and consult with an attorney. Another refugee had a larceny conviction and faced deportation to Cambodia, which he had left as a young child. A refugee from Cuba who had been in the United States since 1980 had a conviction for obtaining money under false pretense and was ordered removed.

Visa Holders With Valid Immigration Status

There were only five known cases in which detainees were holders of valid visas. This accounted for less than 1% of the cases. In one case, a detainee had a petty shoplifting conviction but was the managing chef of a restaurant, married to a U.S. citizen and had two children who were U.S. citizens. His case was continued because the Department of Homeland Security claimed not to receive a change-of-status filing that had been sent by his wife. A woman from Haiti who robbed a bank due to her drug addiction was convicted of armed robbery and ordered deported. However, she had been in the United States since 1988 and had no ties in Haiti. She applied for deportation relief under the Convention Against Torture.

Visa Overstays

There were 35 known cases in which detainees had only a visa overstay on their records; these detainees had absolutely no criminal convictions. Of these 35 cases, four planned to file or had filed asylum applications and eight had accepted voluntary departure orders.

A few visa overstay cases involved post-9/11 Special Registration and the Joint-Terrorist Task Forces. In two cases, the immigrants failed to appear for Special Registration. One was a Moroccan man who had entered the United States on a student visa in 2000 but did not stay in valid student status because he did not attend college from June 2003 to April 2004. Another case involved an Egyptian man whose visa overstay was discovered through a routine traffic stop. In a different case, a Joint-Terrorist Task Force picked up a Pakistani man who had overstayed his visa. The Department of Homeland Security attorney admitted he had no information that the detainee had terrorist connections.

Also relevant to visa overstays are the raids conducted by Immigration and Customs Enforcement (ICE) and other public and private enforcement units. Out of the 35 known cases with only a visa overstay, two immigrants were detained after raids on their homes; two others were detained as part of a driver's license sting. One immigrant apprehended at his home was a Moroccan man who overstayed his student visa. The FBI was looking for somebody else in his apartment but checked the immigration papers of all people present in the apartment. He had entered the country as a student in 2002 but had married a U.S. citizen and had an adjustment of status petition pending. A 25-year-old Brazilian woman also was detained with her parents after a raid of their home. They had entered the United States in 1996 and, at the time of the immigration court hearing, she was an honor student studying nursing at a local community college. The immigration judge granted \$1,500 in bond for her.

Regarding the driver's license sting, ICE focused on people who had recently received Maine licenses and had converted them to Massachusetts licenses, likely because Maine licenses were easier to obtain without valid immigration documents. The two immigrants who had been detained as part of this driver's license sting were both Brazilians without criminal records, and the judge ordered them deported. The observers of these two cases did not note that either had tried to use the driver's licenses to obtain immigration benefits. Yet they were not even offered the relief of voluntary departure.

All Detainees With Non-Violent Crime Issues

It was difficult to calculate exactly how many of the 502 cases on record involved non-violent crime convictions

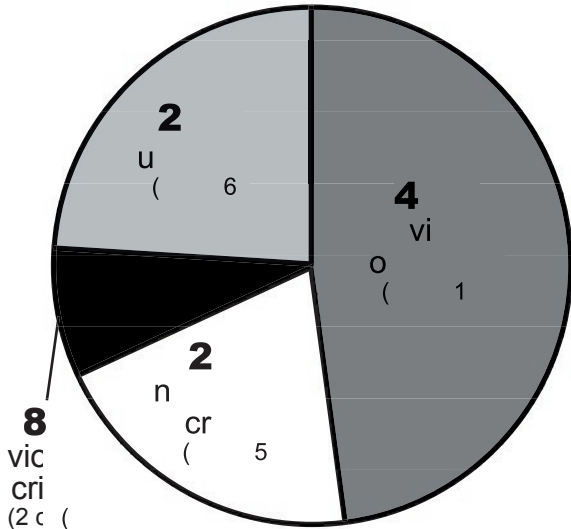
Reasons for Deportation

because some of the records simply stated "criminal conviction" as the grounds for deportation. However, a conservative estimate is that the majority of cases involved some sort of non-violent crime conviction because violent crime convictions are usually treated by court in a serious manner, which would be easy to note by a court observer.

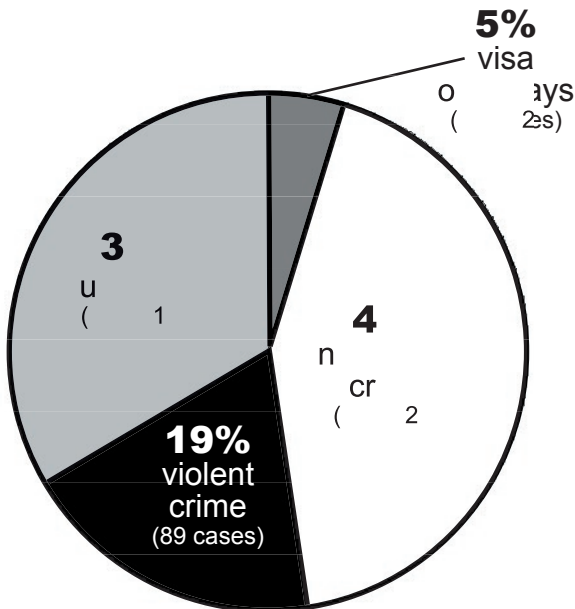
Most of the non-violent crime convictions related to drug possession, drug distribution and drug trafficking. A young Cuban LPR spent six months in detention and received deportation orders for pleading guilty to marijuana possession charges in 2000. Other non-violent crime convictions covered a spectrum ranging from petty larceny, destruction of property, shoplifting, receiving stolen property, resisting arrest, bank fraud, obtaining money under a false pretense and use without authority. An American woman whose Colombian husband (a permanent resident since 1990) has been in detention since November 2004 told us that the ICE used a 1994 larceny conviction against her husband as a basis for the detention and deportation proceedings (as a 15-year-old he had been found guilty of stealing his neighbor's bike).

Reasons For Deportation

Special Registration Countries



Non-Special Registration Countries



Detainees From Special Registration Countries

The Detention Group witnessed 25 cases in which the detainee hailed from a country subject to Special Registration. In 13 of those cases the detainee had no criminal record whatsoever. These detainees were held for reasons such as visa overstays and alleged marriage fraud. Of the three cases in which there were criminal grounds, the crimes were fairly minor (such as larceny).

Conclusion

Because so many cases were continued and the case records did not often note the final disposition of the detainee's immigration case, it was difficult to conclude trends in the data regarding what ended up being the actual reasons for deportation versus what were alleged deportation grounds. Clearly there were criminal convictions alleged as deportation grounds for the majority of detainees in our database. But the non-violent convictions presented challenging circumstances for lawful permanent residents and refugees and asylees,

Reasons for Deportation

Special Registration Countries

Afghanistan
Algeria
Bahrain
Bangladesh
Egypt
Eritrea
Indonesia
Iran
Iraq
Jordan
Kuwait
Lebanon
Libya
Morocco
North Korea
Oman
Pakistan
Qatar
Saudi Arabia
Somalia
Sudan
Syria
Tunisia
United Arab Emirates
Yemen

who often faced leaving their longtime home and families, who had serious medical issues and/or who faced returning to countries where they were once persecuted. For the detainees who had only overstayed their visas, some faced criminal-like nighttime raids on their homes or workplaces by public or private enforcement groups – even though they had been convicted of no crime.

In deciding whether bond will be set for a detainee, the court must determine if the detainee is eligible. If the detainee has committed an aggravated felony or, in some cases, two or more smaller crimes of moral turpitude, then the detainee is considered a mandatory detainee and is ineligible for bond. If the person is not a mandatory detainee, the decision to grant and determine the amount of bond is based on the judge's evaluation of whether the detainee is a significant flight risk or a danger to the community.

There were bond proceedings in 128 observed cases; in 96 of those cases a decision was made. Bond was denied in 40 cases and granted in 56 cases (including four detainees who were released on their own recognizance). Crimes resulting in denial of bond typically involved trafficking of drugs, sex crimes, larceny over high amounts and intimidation of witnesses.

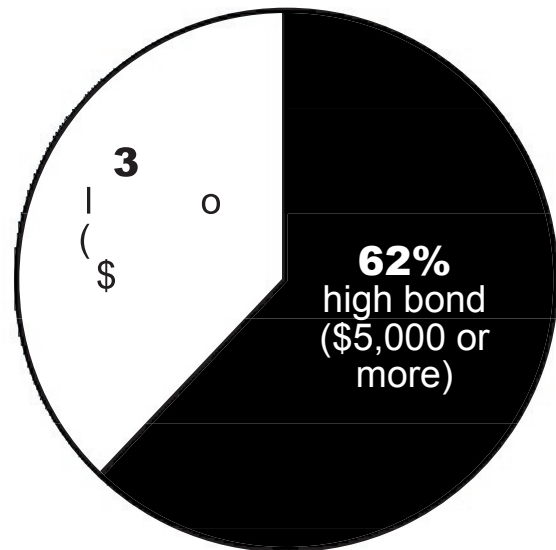
The DWG found that bonds appeared to be set in a fairly arbitrary manner, with some detainees facing high bonds despite no criminal records and others obtaining release on personal recognizance or low bonds despite more serious crime convictions.

High Bond Cases (\$5,000 or more)

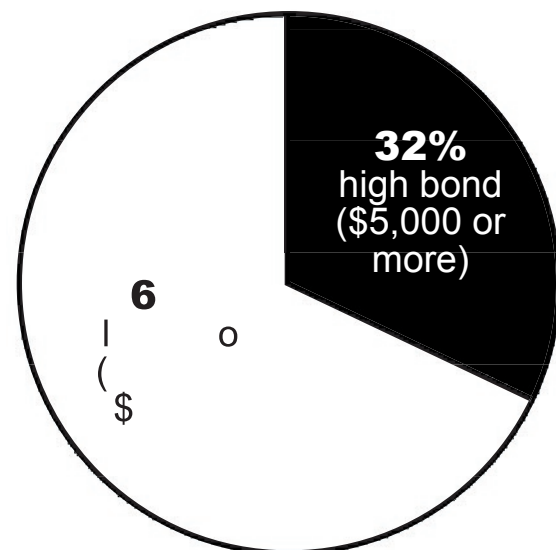
We have observed 20 cases in which bonds were set at \$5,000 or more; one detainee had a bond set at \$20,000. These cases are noteworthy because most of them did not appear to involve serious and/or recent crimes. A \$10,000 bond was given to a detainee who had a 1989 driving under the influence (DUI) conviction and a 1992 theft conviction. This detainee was married, had two U.S. citizen children and had recently bought a home in the Lawrence/ Methuen area, so he did not appear to be a flight risk. Similarly, in January 2005, \$10,000 bond was set for a detainee with a 1989 conviction of possession of cocaine and heroine and possession of an illegal firearm. His only other criminal issue mentioned was attachment of incorrect license plates to a motor vehicle in 1996. The length of time

Bonds Granted

Detainees Without Legal Representation



Detainees With Legal Representation



since his convictions suggests that he was not a danger to the community. Furthermore, his attorney submitted letters from his family and from community members that suggested he was not a flight risk. There were two cases in which bond was set at \$5,000, one involving an altercation with a Massachusetts State Police officer.

High bond was set more often for detainees who represented themselves *pro se*. Sixty-two percent (62%) of detainees who represented themselves *pro se* (five cases) received high bond compared to 32% of detainees who were represented by an attorney.

Low Bond Cases (less than \$5,000)

Contrasting these cases, four detainees were released on personal recognizance. One detainee was released on personal recognizance despite a conviction of possession with intent to distribute a Class B substance, suggesting the detainee might be a danger to the community; it is unknown how old the conviction was. Another

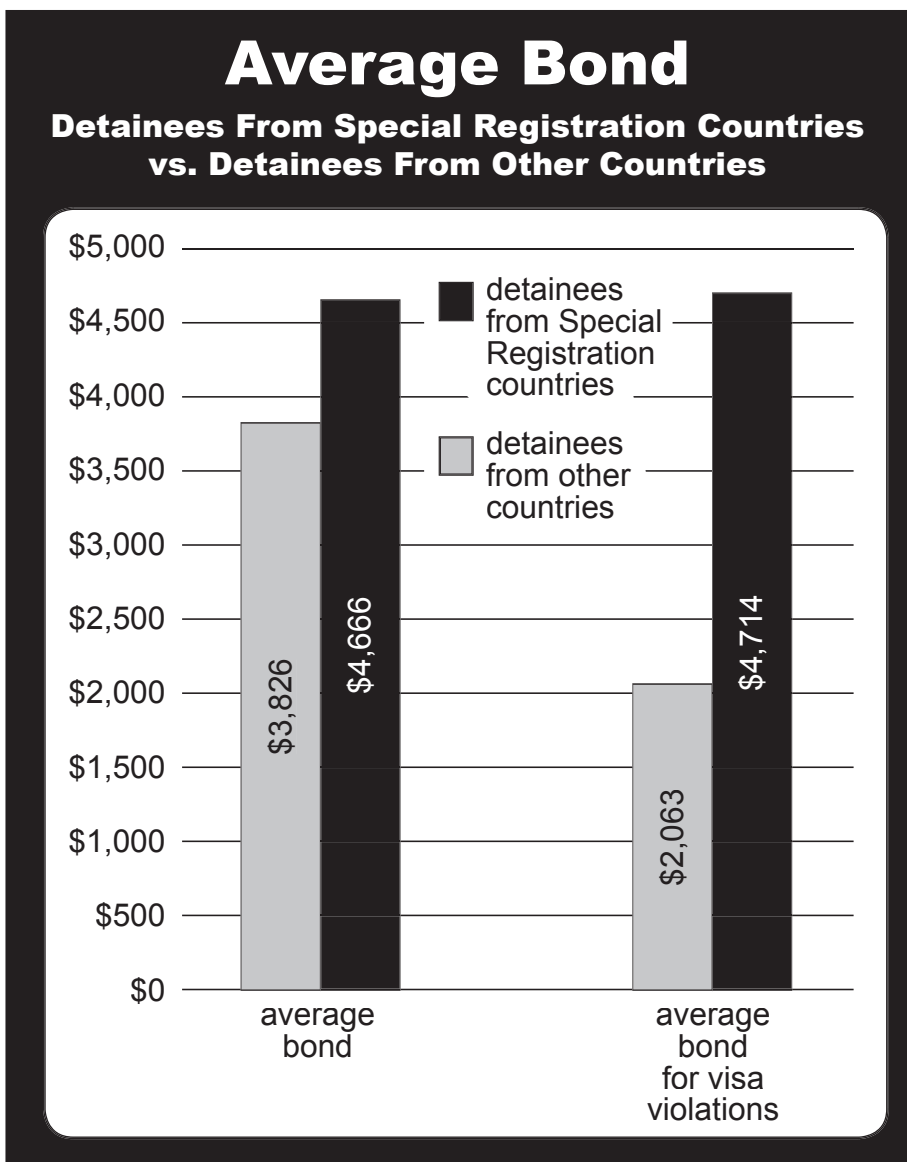
detainee was released on personal recognizance despite charges for resisting arrest as well as a recent (1998) conviction for violating a domestic violence restraining order.

In most cases in which bond was granted, it was set between \$1,500 and \$5,000. These cases typically involved visa overstays and illegal entry. Minor crimes, such as driving with suspended or expired licenses, were sometimes involved in these lower bond cases. The average bond for all 56 cases was \$3,826. However, for detainees from Special Registration countries, it was \$4,666.

Bond and Relationship to Grounds for Deportation

Simple Immigration Violations

Of the cases in which bond fell between \$1,500 and \$5,000, there were 16 cases in which the only grounds were visa overstays or undocumented status. In at least two cases the government



The decision to grant and determine bond is based on the judge's evaluation of

- **whether the detainee is a significant flight risk**
- or*
- **whether the detainee is a danger to the community.**

opposed bond completely and in another case argued for a higher bond of \$10,000. We also observed that detainees from Special Registration countries received higher bonds for visa violations than detainees from other countries. The average bond for visa violations for detainees from Special Registration countries was \$4,714 compared to \$2,063 for detainees from other countries.

Immigration Violations and Driver's License Crimes

There were five cases in which bond fell between \$1,500 and \$5,000 and in which the grounds for deportation involved a visa overstay combined with an expired, suspended or fake driver's license. The government appealed bond in one case.

Other Non-Violent Crimes

One case involved marriage fraud. That detainee was Pakistani and also had been suspected of terrorism; the government's lawyer even admitted that those suspicions were unfounded. He received a \$10,000 bond. One case involved credit card fraud and larceny. The detainee was denied bond because the government successfully

argued that his crimes were of moral turpitude. One case involved prostitution; that Chinese woman received no bond. Four cases involved drug possession (but not intent to distribute). In three of these cases the detainee received no bond. The fourth detainee received \$20,000 bond.

High Bonds for Violent Crimes

Detainees with violent crime convictions such as assault and battery or domestic abuse usually received bonds between \$4,000 and \$5,000.

Low Bonds for Violent Crimes

In contrast, a detainee charged with assault, two domestic assaults, intent to enter a building and drug possession received a \$1,500 bond. Another detainee received the same bond for theft, assault and battery and drug convictions.

Government Appeal of Granting of Bond

A detainee *in absentia* was convicted of operating a motor vehicle without a license. Bond was set at \$5,000, but the government attorney asked that the detainee remain in custody while the government's appeal was pending. At that point the judge accused the government attorney of abuse of power, most likely because the judge was convinced that the detainee was not a flight risk and did not pose any danger to the community.

Conclusion

Out of the cases in which bond was denied, most involved serious criminal offenses. But many detainees with

Bond Issues

non-violent crimes and little evidence of being a danger or a flight risk faced stiff bonds and vigorous opposition to bond by Homeland Security. Additionally, the impression of observers was that Homeland Security generally opposed bond more vigorously in 2005 than it did in early 2004, arguing against bond even when the detainee's only offense was a visa overstay.

Summary of Findings & Conclusions

Between July of 2003 and June of 2005, the Detention Working Group conducted a data-gathering study on the Boston Immigration Court, its handling of detained cases and the impact immigrant detentions have on families and communities. During the period of the study, the DWG observed 716 detained hearings for 502 cases, interviewed five former detainees and 15 family members of detainees, and conducted discussions about detentions with representatives of organizations in Boston that serve Arab, Muslim, Central American, Asian, Cape Verdian and Brazilian communities.

Based on the data collected, the DWG concludes

- Almost half of immigrant detainees (40%) **DO NOT** have legal representation and are forced to represent themselves against a Homeland Security lawyer.
- Thirty percent (30%) of detainees with mental health issues have **NO** legal representation and represented themselves at the hearings.
- There are no real safeguards for mentally ill detainees to ensure proper treatment and adequate access to the legal system.
- The majority (52%) of detainees' court hearings are conducted via televideo system, which makes it difficult for detainees to properly follow and fully understand court proceedings.
- Lack of court interpreters contributes to unnecessarily prolonged detentions.
- Most detainees were living in the United States for a long time before being placed in deportation proceedings; detainees' average length of stay in the United States prior to detention was 10 years.
- Bonds are set in an arbitrary manner. Even detainees with refugee status or valid visas faced high bonds and deportation. The amount of bond did not correlate with the severity of prior charges and/or convictions.
- Detainees from 25 countries subjected to the Special Registration program were treated harsher by the immigration authorities than individuals from other countries.
- Almost half (48%) of detainees subjected to the Special Registration program were detained and put into deportation proceedings for overstaying their visas, compared to 5% of individuals from other countries.
- Only 12% of detainees subjected to the Special Registration program were charged with drug-related and violent crimes, compared to 47% of detainees from other countries.
- Detainees subjected to the Special Registration program received higher bonds than detainees from other countries; for simple immigration violations, detainees from Special Registration countries faced bonds that were more than double what other detainees received for the same violations.

This report's title is a line from the poem "The New Colossus" by 19th century American poet Emma Lazarus. The full poem appears on a plaque at the base of the Statue of Liberty: Give me your tired, your poor, / Your huddled masses yearning to breathe free, / The wretched refuse of your teeming shore. / Send these, the homeless, tempest-tossed, to me: / I lift my lamp beside the golden door.

¹ Congressional Research Service, "Immigration Related Detention: Current Legislative Issues" April 28, 2004.

² *Augustin v. Sava*, 735 F.2d 32 (2d Cir. 1984).

³ 8 C.F.R. §240.5; *Matter of Exilus*, 18 I&N Dec. 276 (BIA 1982); *El Rescate Legal Services, Inc. v. EOIR*, 959 F.2d 742 (9th Cir. 1992) (on rehearing): Neither the INA nor the Constitution mandates simultaneous translation and plaintiff's facial challenge was rejected.

⁴ INA §237(a)(2)(A)(ii), 8 U.S.C. §1227 (a)(2)(A)(ii).

⁵ *Matter of Serna*, 20 I&N Dec. 579 (BIA 1992).

⁶ *Ibid.*

⁷ INA §237(a)(2)(A)(i), 8 U.S.C. §1227(a)(2)(A)(i).