



Immigration Detention and COVID-19 in Minnesota:

Illuminating Human Rights
Concerns in Minnesota Jails

The Advocates for Human Rights
James H. Binger Center for New Americans
Minnesota Immigrant Health Alliance

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Introduction

Immigration detention during the COVID-19 pandemic has illuminated how Minnesota’s lack of standards, oversight, and accountability has led to serious violations of health, dignity, and due process rights for people held in Minnesota jails.

Only a handful of jails in Minnesota have contracts with Immigration and Customs Enforcement (ICE) to detain people while they await federal immigration proceedings. But the confluence of prolonged, indefinite detention of people while cases proceed through federal immigration agencies; lack of legal representation in complex, high stakes cases; medical and mental health needs disproportionately found in refugee and immigrant communities; and dozens of languages has exposed serious problems.

Without doubt, COVID-19 has presented serious challenges to Minnesota jails. The sudden onset of the pandemic, lack of test kits and treatment options, staffing shortages caused by community outbreaks and exposures, and a constantly evolving understanding of the disease combined to make developing an effective response difficult. Some jails have risen to this challenge, taking steps to alleviate some of the problems faced by those they detain.

In Minnesota, state law provides little guidance or standards for jails beyond minimal licensure requirements, and approaches to budgets, oversight, and transparency vary widely. While the Minnesota Human Rights Act covers detained persons, its scope is limited. People who experience harm while detained face nearly insurmountable barriers to seeking redress in the courts. **Lack of clearly defined standards, oversight, and accountability mechanisms, coupled with a system driven largely by cost and revenue concerns, have led to serious failures relating to health care and safety, solitary confinement, and due process.**

When the state decides to deprive someone of their liberty, the state assumes the responsibility of guaranteeing the basic human rights of that person.¹ Every person has these basic human rights free of discrimination of any kind. Because detained persons depend upon their custodian to ensure these rights are upheld, and because detained persons are particularly vulnerable to human rights violations, special international standards relating to their treatment have been established. Whenever a Minnesota jurisdiction takes a person into detention, it has the responsibility to ensure that person’s health, safety, access to due process, and dignity are respected, protected, and fulfilled.

The bottom line: No matter who’s paying the bill, Minnesota must ensure that everyone detained in Minnesota jails has access to health, safety, due process, and dignity. Minnesota has the opportunity to lead by creating oversight and accountability to prevent and redress human rights violations in its jails.

¹ United Nations, Working Group on Arbitrary Detention, Report submitted to the Human Rights Council, A/HRC/10/21, Ch. III: Thematic considerations, ¶ 46 (adopted Feb. 16, 2009).

Spotlight on ICE Detention

The human toll on people detained by Immigration and Customs Enforcement (ICE) in Minnesota jails is real. People suffer from medical and mental health issues without adequate comfort or care. They languish without access to attorneys, family, or even the outdoors. All too often, people give up and leave the country – even when they have the right to stay and fight their cases – because they cannot bear indefinite detention.

Jails with federal immigration detention contracts faced additional complications. Federal Immigration and Customs Enforcement (ICE) transfers² people throughout a nationwide web of detention centers. Before the pandemic, ICE was holding an average daily population of 50,165,³ rotating more than 500,000 people through more than 200 jails, prisons, and private and federally operated detention centers in 2019.⁴ This behemoth has a decades-long track record rife with medical neglect and violations of due process rights.⁵

People in ICE detention include those who, because of immigration status, have been excluded from both the private health insurance market and publicly funded coverage. ICE also detains people who fled to the United States after suffering persecution, torture – including torture while detained in their home countries – and other trauma. Detained adults spend an average of 55 days in ICE detention,⁶ but detention can stretch indefinitely while cases work their way through a chronically backlogged federal immigration court system. And federal immigration enforcement, which disproportionately targets Black, Latinx, and Asian communities, amplifies the effects of underlying health disparities experienced by such communities.

The complex demands of incarcerating people facing civil immigration proceedings explains the relatively high per diem rate paid by ICE to local jails, compared to the rates paid by municipal, county, state, and federal authorities to hold people with pending criminal charges or sentences following convictions. ICE's Performance-Based National Detention Standards attempt to reflect these needs by requiring access to the outdoors, accommodation of legal orientation programs, and specialized immigration legal research facilities, among other things.⁷

² For example, despite ICE's policy to minimize transfers between jails during the pandemic, a large group of people were transferred to Freeborn County Jail after a jail in Nebraska "abruptly" closed due to a COVID-19 outbreak.

³ https://www.ice.gov/coronavirus?mc_cid=8cf6031a1a&mc_eid=f85729f808#detStat

⁴ Detention Watch Network, Immigration Detention 101, available at <https://www.detentionwatchnetwork.org/issues/detention-101> (last accessed Feb. 12, 2021).

⁵ See, e.g. The Advocates for Human Rights, Oakdale Detention Center: The First Year of Operation (1987) and Hidden from View: Human Rights Conditions in the Krome Detention Center (1991); Amnesty International, Jailed Without Justice: Immigration Detention in the USA (2007); Human Rights First, Jails and Jumpsuits: Transforming the US Detention System (2011); Human Rights Watch, Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention (2018).

⁶ American Immigration Council, Immigration Detention in the United States by Agency, Jan. 2020, available at https://www.americanimmigrationcouncil.org/sites/default/files/research/immigration_detention_in_the_united_states_by_agency.pdf.

⁷ <https://www.ice.gov/factsheets/facilities-pbnds>

But ICE readily waives compliance with these standards when it contracts with Minnesota jails.⁸ The jails, in turn, see ICE detention contracts as windfall revenue sources, in some cases expanding jail capacity to accommodate greater numbers of ICE detainees and generate additional revenue⁹. Counties have made little investment in even the most basic functions – such as interpreter access – needed to ensure people’s health, safety, dignity, and due process rights.

The contracts between ICE and local jails tend to obfuscate responsibility for people in detention, with both sides pointing to contract terms rather than to state medical, nursing, pharmacy, or psychology practice standards or even to ICE’s own detention standards. And, because people detained by ICE face civil immigration proceedings, they have no right to government-appointed counsel and never appear in front of independent courts who have the authority to address misconduct, order redress of harm, or, in many cases, even review custody status.

Although Minnesota jails have no direct say in which individuals ICE chooses to detain, jails that contract with ICE have a responsibility to ensure that they have appropriate facilities, staffing, programming, and expertise to ensure the health, safety, and access to justice of the people it confines. In other words, Minnesota must ensure that any contracting upholds our values as a state dedicated to protecting human rights.

No Systems Oversight = Passing the Buck

Compounding the harms in Minnesota jails, oversight is inaccessible, unclear, and unresponsive. The maze of actors involved in immigration detention impedes state efforts to uphold best practices, allowing people to pass the buck, bad actors to exploit gaps, and good actors to lack guidance and power. The COVID-19 pandemic has only exacerbated the problem. Immigration detention involves federal actors—the police, prosecutor, and judge all from the executive branch—as well as the Minnesota State Department of Corrections, the county jails that contract with ICE, and independent monitoring bodies such as the Minnesota Ombudsperson and the DHS Office of Civil Rights and Civil Liberties. Within this network, detained people and advocates find no oversight or redress as each entity either lacks power to address the issue or passes the buck to one of the other actors.

The legal community has sought redress and relief on behalf of people detained by ICE in Minnesota—all with very little success. Actions included requests to ICE, the immigration courts, and U.S. District Court to set bond or release on parole or writs of habeas corpus. Such efforts were met with mixed success and do not address the underlying, systemic issues of ICE detention. ICE has the authority to release people to fight their cases outside of detention, including the use of custody alternatives such as check-ins and electronic monitoring. Immigration courts may grant bond in some (although not all) cases, depending on the removal charges ICE chooses to file. All too often, ICE fails to exercise its authority and instead defaults to a “detain” decision, in many cases even when the detention puts a person at risk of serious illness if exposed to COVID-19. In response to ICE’s indifference, in

⁸ See ICE Office of Inspector General, ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards, Jan. 29, 2019, available at <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf> (last accessed Feb. 19, 2021).

⁹ In September 2020, Steele and Freeborn counties renewed an agreement for Steele to take non-ICE detainees from Freeborn in order for Freeborn to increase capacity for more lucrative ICE detainees. See https://www.southernminn.com/owatonna_peoples_press/news/article_d7560861-78ba-598c-8744-b82e10573ccc.html (copies of the agreement on-file with The Advocates).

April 2020, a federal court ordered ICE to review the detention of medically vulnerable people.¹⁰ ICE only recently began to even facially comply with that order, but to date, rather than perform a robust review of individual cases, ICE has been conducting rote reviews that most often result in a decision to prolong detention. ICE's insistence on mass incarceration, particularly given the high risks the pandemic presents, raises serious concerns.

Advocates also filed complaints to human rights and oversight bodies at the local, state, federal and even international levels. At the state level, the Department of Corrections reported that they lacked authority to set standards or take corrective action in the jails. The new Ombudsperson for Corrections reported the office lacked capacity. As panic around COVID-19 began to escalate at the Kandiyohi County Jail in late 2020, fueled by detained people's eroding trust in the information jail officials were providing about the outbreak, advocates sought assistance from the Minnesota Department of Health, only to learn that MDH does not enter the jails. Federal oversight bodies also reported lacking authority to order compliance and resources to investigate. Such complaints also take time to snake through bureaucratic channels—leaving people facing harms and urgent health issues in the hope that some action may result.

Minnesota must address the oversight gap in immigration detention and ensure accountability for the safety and rights of the people in its custody—whether federal ICE inmates or otherwise.

About this Report

This report distills information obtained through interviews with people detained by or released from ICE detention in Minnesota; interviews with Minnesota attorneys who represent people detained by ICE; reports from the Immigration Court Observation Project; insights from medical professionals; and information in the public domain. All reports are on file with the authors. The report identifies some of the key systemic failures that have allowed health and due process problems to occur. This report does not address prevalence but seeks instead to highlight reported incidents that indicate problems for people held in Minnesota jails. These trends echo experiences reported around the country.¹¹

Founded in 1983 by Minnesotans who recognized the state's unique spirit of social justice, **The Advocates for Human Rights** works in our home community and in partnerships worldwide to end violence against women, abolish the death penalty, protect the rights of migrants, and build the human rights movement.

¹⁰ *Fraihat v. ICE*, EDCV-19-1546 JGB (SHKx), Apr. 20, 2020.

¹¹ See, e.g. Vera Institute for Justice, Tracking COVID-19 in Immigration Detention: A Dashboard of ICE Data, <https://www.vera.org/tracking-covid-19-in-immigration-detention>; Detention Watch Network, Hotbeds of Infection: How ICE Detention Contributed to the Spread of COVID-19 in the United States (https://www.detentionwatchnetwork.org/sites/default/files/reports/DWN_Hotbeds%20of%20Infection_2020_FOR%20W_EB.pdf); <https://phr.org/our-work/resources/praying-for-hand-soap-and-masks/>; <https://www.vera.org/tracking-covid-19-in-immigration-detention>; https://www.americanbar.org/groups/public_interest/immigration/immigration-updates/impact-of-covid-19-on-the-immigration-system/; <https://www.brennancenter.org/our-work/research-reports/immigration-detention-and-covid-19>; www.jhsph.edu/covid-19/articles/covid-19-in-jails-prisons-and-immigration-detention-centers.html; <https://www.npr.org/2020/09/16/913398383/whistleblower-alleges-medical-neglect-questionable-hysterectomies-of-ice-detaine>

The University of Minnesota Law School's **James H. Binger Center for New Americans** expands urgently needed legal services for noncitizens, pursues litigation to improve our nation's immigration laws, and supports noncitizens in the region through education and community outreach.

Together, The Advocates for Human Rights' and the Binger Center for New Americans' Immigration Court Observation Project monitors detained immigration court hearings at the Fort Snelling Immigration Court. Nearly 700 volunteer court observers have documented hearings since the project launched in 2017.

Minnesota Immigrant Health Alliance is a collective of health care providers in Minnesota advocating for the health of immigrants and refugees.

What's Happening?

Health Care Failures

The COVID-19 pandemic has posed additional, serious challenges to ensuring the health and safety of people held in Minnesota jails. These challenges exacerbated already poor care and treatment, and were aggravated by weak oversight, contracts between jails and ICE, and jail relationships with private health vendors.

Many of the health issues identified existed before, and without change will continue to exist beyond the pandemic. These include, but are not limited to:

- Inadequate mental health care and protocols;
- Costs for care and unclear standards regarding responsibility for payment by ICE, the detained person or the state;
- Failure to follow—and lack of accountability for—state and ICE standards and protocols; and
- Lack of skilled health care providers and use of private health vendors that do not meet care standards.

During the pandemic, we noted serious deficiencies in health care, including but not limited to:

- Inadequate health and safety measures in place to respond to the pandemic;
- Inadequate COVID-19 testing, treatment, and monitoring, including refusal to offer tests and a failure to monitor oxygen levels;
- Over-reliance on lockdowns and solitary confinement; and
- Inadequate care and treatment for non-COVID-19-related mental health and medical conditions.

Jails failed to provide timely, accurate information to detained people about risks, symptoms, and safety measures. There was an overreliance on temperature taking and lockdowns, rather than decreasing crowding by releasing people from detention, provision of hand sanitizer, use of personal protective equipment (PPE), COVID-19 testing, or medical treatment. Meanwhile, people in detention struggled with underlying and often serious health conditions.

Inadequate COVID-19 Related Health and Safety Protocols in Jail

Per the Centers for Disease Control, the use of face masks, physical distancing, and proper hand hygiene, coupled with expedient diagnosis and treatment for both symptomatic and asymptomatic cases, are important measures

to control the spread of COVID-19.¹² Court observers, attorneys, people in detention, and people released from ICE detention in Minnesota reported that health and safety measures in the jails are inconsistent, substandard, and unresponsive to changing needs and new evidence during the pandemic.

The U.S. Immigration Court at Fort Snelling halted in-person hearings due to the pandemic starting in April 2020, and people began appearing at their removal hearings via videoconference from within the jails. Attorneys and court observers reported that the jails were not consistently sanitizing shared spaces or equipment including the headsets, telephones, tables, and chairs used during these immigration court hearings. Attorneys noted that practices seemed to vary from jail to jail and sometimes pod to pod.

Court observers documented that corrections officers did not begin to wear masks until mid to late April. Once masks began being worn, observers documented inconsistent mask wearing by corrections officers and detained persons, sometimes seeing guards wearing masks around their necks. Court observers also noted that guards did not practice safe distancing and were observed in video hearings, without gloves, touching detainees who were unmasked.

Court observers did not see detained people wearing masks during their video immigration court hearings until June 25. Observers continued to document problems with correct masking by detained people, who often wore masks over their mouth but not noses, indicating inadequate understanding and enforcement of safety practices.

Court observers also documented detained people as they voiced fears about COVID-19. For example, in early May 2020, a detained person told the immigration judge, “There’s a crisis in detention. I’m afraid of catching [COVID-19].” Another detainee reported that the jail was not taking precautions to protect people with medical conditions. Attorneys appearing before the immigration court argued that their clients faced health risks because safe distancing could not be practiced in detention. Immigration judges noted these concerns on record, but few people were ordered released due to COVID-19. A federal judge dismissed a case filed by a group of 62 people detained at Sherburne County Jail asking for release due to their fear of contacting COVID-19.¹³

View from Inside | One woman provided details on her experience in the Kandiyohi County Jail between the pandemic’s onset in March and her release in mid-June 2020. A.S. reports that staff never informed “inmates” about the pandemic or safety measures. Instead, the jail left people in detention to learn about the pandemic by watching TV, speaking to family outside the jail, or from each other. When asked, jail staff told people that cases had not been diagnosed in the county, but A.S.’s roommate had a family member working at a hospital who was caring for COVID-19 positive patients at the time. The jail never posted signs about safety measures or COVID-19 symptoms. A.S. told us that, at some point, information was provided on the internal TV announcements. A.S. reported that, from the pandemic’s outbreak in mid-March to mid-June when she was released, she was not aware of anyone being tested for COVID-19 by the jail. People in detention were not informed of any COVID-19 infections in staff or inmates, although one nurse admitted that someone was booked directly into isolation.

¹² See, e.g. Things to Know about the COVID-19 Pandemic, Centers for Disease Control, available at <https://www.cdc.gov/coronavirus/2019-ncov/your-health/need-to-know.html> (last accessed Feb. 9, 2021).

¹³ *Siddiqui, et al. v. Tritten, et al.*, Case No.20-CV-793 (NEB/ECW), U.S. Dist. Ct. (D. Minn.), May 14, 2020; <https://www.startribune.com/federal-magistrate-urges-against-release-of-sherburne-62-ice-detainees-who-argued-for-home-monitoring-amid-pandemic/570047882/>.

Although A.S.'s cellmate continued to leave the jail daily on work release, jail staff refused to provide A.S. with a mask when she requested one. Eventually, when COVID-19 infections began spiking, the jail stopped allowing the person to leave on work release. A.S. reported that at least two new people were placed in her pod in April. One of those new arrivals told her she had been in a three-day quarantine. Jail staff, of course, continued to leave and return to the jail daily.

According to A.S., guards did not begin wearing masks until sometime in April. The jail did not provide masks or hand sanitizer to detained people, never advised people to physically distance or refrain from physical contact with others, and did not change meal service protocols, until at least three months into the pandemic. A.S. reports being given an additional small piece of soap every Sunday. Sometime in April, after repeated requests, the pod was provided sanitizing spray bottles to wipe common surfaces.

Soon after Minnesota Governor Tim Walz issued the first Stay at Home order in March 2020, A.S. reported a fever, severe sore throat, and loss of smell to jail health staff. A nurse minimized the threat of COVID-19, telling A.S. that many more people die of the regular flu and dispensing cold medication. She was not tested and was told that since no one has been sick, she was not infected. A.S. reported that two Tylenol cost her \$1.00.

Soon before A.S. was released in June, jail staff moved everyone in her pod to another unit to create a "quarantine" pod. A.S. reported, however, that detained people from throughout the facility had to walk through the "quarantine" pod to access the canteen.

ICE released A.S. on June 15. A.S. was shackled at her hands and feet for the two-hour drive from the Kandiyohi County Jail to ICE's Fort Snelling office. When she asked for a mask to wear during transport, she was first told there were none. Fortunately, a second staff member did find a mask.

Lack of COVID-19 Testing

Minnesota jails holding people in ICE detention were slow to roll out testing and once testing began, it appeared to be inconsistent. Lack of information about plans, protocols, or testing criteria heightened anxiety amongst people in detention. People with serious underlying health conditions reported that they were not tested for COVID-19 and that requests for tests were refused. People in detention reported that jails often relied on temperature taking, rather than testing, even after tests became available, despite risks of asymptomatic spread and understanding that fever is not always present in those who have other symptoms, including people with more severe respiratory infections. People reported having to share cells with people who had tested positive for COVID-19 or who were experiencing symptoms.

As the pandemic unfolded, The Advocates for Human Rights received calls from detained people worried about how jails were responding. One person reported, "No one's been tested. New people just have to wear a mask for fourteen days. It's hard to protect yourself when people come in from outside all the time." Another detained person reported a positive case in the Kandiyohi County Jail in mid-April, saying that person was removed from the pod but no one else was tested despite the exposure. A person calling from Freeborn County Jail reported he "doesn't know if anyone's been tested. They do temperature checks for people when they first arrive. There is one guy in particular who seems pretty sick with Coronavirus," and that he thinks "there has been exposure to COVID-19 at Freeborn."

The Advocates for Human Rights received reports from people in detention that Sherburne County Jail was refusing to administer tests. The Advocates for Human Rights received six calls in July from people who reported

serious underlying health conditions, including leukemia, hypertension, and diabetes. One caller reported being on a suicide watch. Two others identified themselves as “medically vulnerable.” One reported that temperature taking was the only clinical assessment that was being conducted in response to the request for testing. Even for people complaining of symptoms, testing was rare before the end of August.

On November 20, 2020, Kandiyohi County Jail reported its first COVID-19 case. The number escalated rapidly. By December 29, the total number of infections at Kandiyohi, as reported on ICE’s website, had reached 40, with 20 of these individuals still detained. COVID-19 has remained active in the jail into 2021. A person detained by ICE who was negative for COVID-19 reportedly was placed in a cell with a COVID-positive individual in mid-January.

Detained people and attorneys reported that jails sometimes refused to test symptomatic people. A person held at Sherburne County Jail reported suffering for a month from chest pain, cough, and difficulty breathing. When he asked medical staff for a COVID-19 test he was told, “no tenemos nada” (“we don’t have any”). In mid-July, another person reported that he had diabetes, hypertension, and other chronic conditions and despite having a cough, fever, and shortness of breath, he had not been seen by medical staff or been tested. He reported others in his pod were symptomatic but only one had been tested. In late August, a person detained at Freeborn County Jail who suffers from depression and twice attempted suicide, reported coughing, shortness of breath, and chest pain. He was seen by a doctor or nurse; his symptoms were reviewed but he did not get a COVID-19 test.

One attorney reported that even when tested, detained people are not always given the results. When they did receive their test results, they were not provided accurate information about COVID-19. For example, one person reported that the jail nurse told her, after she and her pod tested positive for COVID-19, that it was “like the measles.”

Underlying Deficiencies in Medical and Mental Health Care

Many of the people being detained by ICE have serious health conditions and the jails are not meeting their health care needs. We have documented serious inadequacies in care even before the pandemic. Many of these conditions pose an increased risk for severe illness from the virus that causes COVID-19.¹⁴

Since mid-March, we are aware of ICE detainees with the following medical and mental health conditions: chronic pain following serious injury, high blood pressure, heart disease, cardiac arrhythmias, traumatic brain injury, blood clot, stroke history, seizure disorder, depression, anxiety, bipolar disorder, schizophrenia, PTSD, suicidal ideation, and suicide attempts while incarcerated, ADHD, hepatitis C, cancer, leukemia, chemical dependency, asthma, gastroesophageal reflux disease, pancreatitis, tuberculosis, pneumonia, migraines, rheumatoid arthritis (an autoimmune condition), HIV positivity, and survivorship of sexual violence, and assault. Many report persistent problems from previous injuries, and many of these individuals suffer from multiple health problems which significantly increase their risk during the pandemic.

Immigration court observers documented numerous detained people who described untreated health problems during their immigration hearings. One detained person reported that he suffered chest pain for over a month and the only assessment he received in detention was a blood pressure check by a nurse. Another individual

¹⁴ See Centers for Disease Control, COVID-19: People With Certain Medical Conditions, available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last accessed Feb. 19, 2021).

reported having a persistent cough for more than four weeks, requesting a medical visit, but getting denied. A detainee with a known seizure disorder reported being tasered. Another person reported that he was still awaiting treatment of a fractured nose he suffered just prior to arrest. Another reported untreated diabetes. During a hearing, one detainee stated, “they opened up my stomach for an operation” and told the immigration judge he wanted to have resolution to that operation. One man told the immigration judge that he was worried about his health and feared he will “die in my cell.”

An attorney reported a long-term Minnesota resident currently detained by ICE who “has a blood clot in his lung and can't be in jail any longer” due to the risk of contracting COVID-19. The man, who had been planning to file for asylum and has a U.S. citizen fiancée, told the immigration judge, "My health is not doing well. I'm not doing well. I was denied a bond. I just can't stay in jail anymore." This person chose deportation to avoid further medical neglect and continued risk of contracting COVID-19 in detention.

Observers documented multiple cases of people reporting that they were not receiving necessary medications or were receiving them inconsistently. People also reported not getting meals that met their medical needs. A diabetic person reported getting high carb meals. A detained man with a seizure disorder requiring several medications reports that he gets some medications sporadically, but not all of them, and not regularly. A man with diabetes and pneumonia reported he was not receiving his medication in detention. One man reported suffering from pancreatitis, a dangerous and painful condition, yet he did not get adequate treatment for his pain or the medically appropriate diet. A man reported that treatment for syphilis was being delayed, having been told that he had to await COVID-19 testing because of a possible case in his detention center.

Mental health care is largely lacking in detention despite serious mental health problems being pervasive. Observers noted numerous cases of serious mental illness among people appearing for their immigration court hearings, including people who were psychotic, suicidal, schizophrenic, and triggered by PTSD. Anxiety and depression were common.

In some cases, attorneys were able to arrange for an outside psychological or neuropsychological evaluation of their clients to provide the immigration court with evidence relating to claims for asylum, other deportation defenses, or release from ICE custody. But jails do not appear to provide ongoing treatment or to use trained and licensed mental health providers for assessment, monitoring, and treatment. To our knowledge, there are no psychiatrists or mental health nurse practitioners contracted to provide care in the county jails with ICE contracts. One attorney reported that his client could not get an antipsychotic medication he required. Another attorney reported that the government attorney objected to a continuance and release on detention for a man with schizophrenia and other serious mental illness, arguing that because the detained man was getting the same treatment available to other detained people – counselling by a marriage and family therapist – he was receiving sufficiently “adequate” treatment to be able to participate in his defense.

Failure of Oversight and Accountability

Since 2015, 56 people have died in Minnesota jails.¹⁵ This pattern reflects both Minnesota’s failure to oversee provision of medical and mental health care to people in jail and counties’ use of for-profit vendors who win contracts based on low costs. One of these providers has been the subject of news investigations in recent months,

¹⁵ <https://www.kare11.com/article/news/investigations/kare-11-investigates-minnesota-fails-national-jail-death-standards/89-82cc1c52-423e-4b4e-8b09-7af583a5f076>

as allegations of serious problems came to light.¹⁶ Another provider has been sued 164 times between 2008 and December 2020 in 17 states for poor care and preventable deaths, including one case in Minnesota.¹⁷

ICE's Office of Detention Oversight conducts periodic inspections to determine compliance with ICE detention standards, but just like with state licensure mechanisms, failure to comply with ICE standards carries no consequences. Indeed, according to a report by the Office of Inspector General, Department of Homeland Security, "ICE does not fully use contracting tools to hold detention facility contractors accountable for failing to meet performance standards."¹⁸

Sherburne¹⁹, Freeborn²⁰, Carver²¹ and Kandiyohi County Jails²² all were inspected between July 2020 and September 2020. Because of COVID-19, these inspections were conducted remotely and included review of records and interviews with jail staff, ICE staff, and detained persons.

ICE inspectors found twenty-one deficiencies at Freeborn County Jail, among them: nine deficiencies in medical care, two in self-harm and suicide prevention, and three in food service.²³ Kandiyohi had twenty-four deficiencies, including three in environmental health and safety, three in use of force, eight in medical care and one in suicide prevention.²⁴ Sherburne was found to have seventeen deficiencies, among them were two in use of force and restraints, one in sexual abuse and assault prevention, one in medical care, two in self-harm and suicide prevention, and two in disability identification and accommodations.²⁵

Among the serious medical deficiencies in Minnesota jails noted by the Office of Detention Oversight in its inspections were:

- Nurses working with expired licenses.
- Doctor being only available by phone when contracted for 8 hours weekly on site.
- Not performing required examination of new arrivals.
- Not screening for TB or not reading TB test results.

¹⁶ <https://www.kare11.com/article/news/investigations/kare-11-investigates-unethical-record-of-minnesotas-largest-jail-health-care-provider/89-aed51ef6-ca37-4ace-b6d0-3e079389c9c9>

¹⁷ https://dockets.justia.com/search?parties=Advanced+Correctional+Healthcare&court=all_district&cases=between&sort-by-last-update=false&after=2008-1-1&before=2020-12-31

¹⁸ <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>

¹⁹ <https://www.ice.gov/doclib/foia/odo-compliance-inspections/SherburneCoElkRiverMNJuly2020.pdf>

²⁰ <https://www.ice.gov/doclib/foia/odo-compliance-inspections/FreebornADC-AlbertLeaMN-Sept2020.pdf>

²¹ https://www.ice.gov/doclib/foia/odo-compliance-inspections/carverCoJail_ChaskaMN_Jul20-23_2020.pdf

²² <https://www.ice.gov/doclib/foia/odo-compliance-inspections/KandiyohiCounty-WillmarMN-August2020.pdf>

²³ <https://www.ice.gov/doclib/foia/odo-compliance-inspections/FreebornADC-AlbertLeaMN-Sept2020.pdf>

²⁴ <https://www.ice.gov/doclib/foia/odo-compliance-inspections/KandiyohiCounty-WillmarMN-August2020.pdf>

²⁵ <https://www.ice.gov/doclib/foia/odo-compliance-inspections/SherburneCoElkRiverMNJuly2020.pdf>

- Inappropriately charging for medications.
- Not getting consent for procedures.
- Not assessing gynecologic conditions.
- Having detention officers conduct medical, dental, and mental health screenings without documented training.
- Failing to use interpreters during medical or health screenings for people with limited (or no) English.
- Providing psychotropic medication without consent.
- Discontinuing medication for opioid withdrawal without indication.
- Not performing welfare checks on detainees on suicide watch.

Despite these findings, The Advocates for Human Rights is not aware of any changes, penalties, or remedies. Indeed, the ICE report simply states that it *recommends* that the facility resolve any deficiencies outlined in the report in accordance with contractual obligations.

Failure to Follow Federal Court Order in *Fraihat v. ICE*

As COVID-19 erupted in ICE detention centers around the United States, concerns about detained people’s health and safety escalated. In April 2020, a federal court ordered ICE to screen for co-morbidities, determine whether they could adequately protect the individual from contracting COVID-19, and, if not, release such high-risk individuals from detention.²⁶ The court also ordered that a national hotline be established by ICE.²⁷ A detained person reported to The Advocates for Human Rights that the jail had blocked calls to the hotline. Despite the requirements that ICE has under the *Fraihat* injunction, the jails are ultimately responsible for the health and safety of all their detainees.

Attorneys report that ICE failed to do any screening until late 2020. Once ICE’s *Fraihat* screening began, it has been largely rote, often with boilerplate denials that downplay risks. *Fraihat v ICE* requires that ICE perform an individualized custody review of all medically vulnerable individuals within 14 days of detention. Nonetheless, attorneys saw no indication that reviews were being performed systematically and the *Fraihat* court found ICE directly contravened its order by refusing to implement these reviews. Attorneys who filed applications for release of people with COVID-19 concerns, including medical co-morbidities, reported few releases from custody. When ICE did begin to conduct independent reviews, their denials seemed “boilerplate”, mentioning only a BMI over twenty-five (an indication of being overweight), but not other medical conditions.

ICE’s failure to follow the federal court’s order meant that people continue to be held in Minnesota jails despite elevated health risks. People detained by ICE also reported that they were held with people being held on criminal

²⁶ *Fraihat v. ICE*, EDCV-19-1546 JGB (SHKx), Apr. 20, 2020. **This nationwide class action lawsuit initially was filed before the outbreak of COVID-19**, on August 19th, 2019, against the U.S. Immigration and Customs Enforcement (ICE), U.S. Department of Homeland Security (DHS), and others acting in their official capacities. According to the Civil Rights Education and Enforcement Center (CREEC), the “lawsuit challenges the federal government’s failure to ensure detained immigrants receive appropriate medical and mental health care, its punitive use of segregation in violation of the Fifth Amendment of the U.S. Constitution, and its failure to ensure that detained immigrants with disabilities are provided accommodations and do not face discrimination as required by Section 504 of the Rehabilitation Act of 1973.”

²⁷ See Instructions for Completing the Pro Se Request for Release Pursuant to *Fraihat* (Individuals), available at https://www.splcenter.org/sites/default/files/ijp_fraihat_v_ice_pro_se_resources_for_individuals_sep_2020-final.pdf.

charges who were moving in and out of the jail pursuant to work release programs. ICE's failure to appropriately use alternatives to detention and comply with the *Fraihat* order, resulted in a symptomatic person being apprehended by ICE, transported to Fort Snelling, processed at the Whipple building, and transported to the Freeborn County jail where he tested positive. This incident prompted a two-day closure of the immigration court at Fort Snelling for deep cleaning and put many Freeborn detainees at risk before this person was subsequently released.

Solitary Confinement Violations

Jails have used lockdowns and segregation (solitary confinement) to control COVID-19 spread. Isolation has substituted for medical assessment, such as universal COVID-19 testing, of other measures to stem the spread of the disease, such as providing masks, hand sanitizer, and enabling physical distance. The pandemic has illuminated underlying problems with standards governing segregation practices, which have come under scrutiny in recent years as their impact on physical and mental health and on due process has been documented.²⁸

Detained people report being put into "quarantine" for 14 days as an alternative to testing when symptomatic or after testing positive for COVID-19. At the same time, people report that jails have failed to separate symptomatic and asymptomatic people. We have not been able to ascertain if "quarantine" has signified a shared cell or a segregation cell. Some people reported that they were hesitant to even report symptoms because they feared being subject to isolation.

Lockdown

Lockdown, or confinement to cells and away from common areas, undermined well-being and due process. Each of the county jails that contract with ICE utilize a "pod" system. Cells connect to a common living space where vending machines, televisions, showers, video visiting stations, and telephones are located. During the pandemic, people reported that lockdowns increased substantially. Detained people reported an increased sense of isolation, anxiety, and boredom. Some detainees expressed that lockdowns also impacted sleep patterns, either sleeping much longer, not at all, or at odd hours. People also report that the lack of access to phones made it difficult to contact family members and attorneys.

The use of isolation has also had due process consequences. Detained people appearing in immigration court reported being unable to search for an attorney as quarantine prevented phone access. Attorneys reported being unable to speak with their clients while in "lockdown." Attorneys also reported sometimes being unable to speak confidentially with clients, who had to make calls from their cells.

²⁸ Williams BA, Li A, Ahalt C, Coxson P, Kahn JG, Bibbins-Domingo K., *The Cardiovascular Health Burdens of Solitary Confinement*, J Gen Intern Med. (Oct. 2019) at <https://pubmed.ncbi.nlm.nih.gov/31228050/>; Jules Lobel & Huda Akil, *Law & Neuroscience: The Case of Solitary Confinement*, the American Academy of Arts & Sciences (2018) at https://www.mitpressjournals.org/doi/pdf/10.1162/daed_a_00520; *History of Solitary Confinement Is Associated with Post-Traumatic Stress Disorder Symptoms among Individuals Recently Released from Prison*, Brian O. Hagan, Emily A. Wang, Jenerius A. Aminawung, Carmen E. Albizu-Garci, Nickolas Zaller, Sylviah Nyamu, Shira Shavit, Joseph Deluca, Aaron D. Fox, Transitions Clinic Network (9 March 2019) The New York Academy of Medicine at <https://pubmed.ncbi.nlm.nih.gov/28281161/>; *Older Prisoners and the Physical Health Effects of Solitary Confinement*, Brie A. Williams, MD, MS, Am J. Public Health (Dec. 2016) at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5105008/>; What to do with the Survivors? *Coping with the Long-Term Effects of Isolated Confinement*, Tina Kupers (2008) at <https://doi.org/10.1177/0093854808318591>.

A court observer documented one person who failed to appear for his video immigration court appearance because of lockdown. In mid-November, a detained person reported to the immigration judge that he was in lockdown 23 hours a day. Another person told the judge that he had no access to a phone or a shower during lockdown. People reported being unable to obtain documents they needed for their cases or to get help from other detained people²⁹ completing forms or getting documents translated for their relief applications because of lockdown. Nonetheless, removal proceedings continue despite the serious obstacles quarantine creates, resulting in the deportation of people in Minnesota who may have an ability to win their case but for the lockdown.

Segregation

Segregation, or solitary confinement, increased in jails during the pandemic. Jails routinely use “administrative” segregation to deal with people with mental illness, developmental disability, gender identity, in medical isolation, or on infirmity status.³⁰ Jails also use “disciplinary” segregation to respond to a range of infractions.³¹

The increased use of segregation has had an impact on people detained by ICE. The psychological effects of isolation include anxiety, depression, cognitive disturbances, and psychosis.¹⁹ Solitary confinement exacerbates symptoms, or can trigger recurrences, for people with serious mental illness, including bipolar disorder, schizophrenia, and major depressive disorder.

One person reported he was held in segregation for 7 days without getting a daily 1-hour release. Another person reported being in “the hole” for 23 days in August. This person had mental health issues concerning enough to the immigration judge that she stated her office would help find him an attorney.

ICE detains people in Minnesota from populations³² with documented prevalence of past torture and trauma experience.³³ Refugees are defined by the need to flee violence, trauma, and persecution.³⁴ While neither refugee status, torture history, or trauma exposure equate to mental illness, research shows these populations have elevated risks of depression, anxiety, major depressive disorder, post-traumatic stress disorder, somatoform pain

²⁹ All documents submitted to the Immigration Court, including required forms and evidence, must be in English or accompanied by a translation. Immigration judges routinely tell detained people to get help from other people in the detention center. Neither the Immigration Court, ICE, or the jails provide any language access assistance. Between fifty to ninety percent of detained people appearing at the Fort Snelling Immigration Court do not have an attorney and must prepare all documents themselves. See TRAC Immigration, State and County Details on Deportation Proceedings in Immigration Court, available at <https://trac.syr.edu/phptools/immigration/nta/> (last accessed Feb. 12, 2021).

³⁰ Minn. Rules 2911.0200, Subp.2 (2020).

³¹ Minnesota Administrative Rules Chapter 2911.2850.

³² See, e.g. <https://www.mncompass.org/topics/demographics/immigration> (last accessed Feb. 12, 2021)

³³ See, e.g. <https://www.health.state.mn.us/communities/rih/guide/mh1ppt.pdf> (last accessed Feb. 12, 2021)

³⁴ 8 U.S.C. §1101(a)(42) (defining the term “refugee” as “any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion”).

disorder, and dissociative disorder.³⁵ Some of these conditions correlate to elevated risks of other medical conditions, including hypertension, coronary vascular disease metabolic syndrome, diabetes mellitus, and chronic pain.³⁶ Those who suffer from mental illness, including PTSD, and higher rates of psychosis are especially vulnerable to the ill-effects of segregation and isolation.

The use of solitary confinement in correctional institutions has drawn increased scrutiny and several states, including Minnesota, have begun to take steps to monitor and limit its use.³⁷ Minnesota enacted legislation in 2018 to increase data collection and reporting and set standards for the use of solitary confinement in Department of Corrections facilities, including ensuring mental health care and treatment for those placed in segregation.³⁸ Despite the large number of vulnerable people who have a mental illness who end up in county jails,³⁹ the practice remains largely free of independent monitoring or regulation. ICE detention standards also address use of solitary confinement,⁴⁰ but these standards fail to recognize or manage the medical and health impacts of segregation.

Many studies have demonstrated that solitary confinement “can be as clinically distressing as physical torture.”⁴¹ The UN Standard Minimum Rules for the Treatment of Prisoners, known as the Nelson Mandela Rules, state that solitary confinement should be used only as a last resort, is prohibited in excess of 15 days, and should never be used for people with a mental or physical disability.⁴²

³⁵ See Kroll, Jerome & Yusuf, Ahmed & Fujiwara, Koji. (2010). Psychoses, PTSD, and depression in Somali refugees in Minnesota. *Social psychiatry and psychiatric epidemiology*. 46. 481-93. 10.1007/s00127-010-0216-0; Jaranson, J. M., Butcher, J., Halcon, L., Johnson, D. R., Robertson, C., Savik, K., & Westermeyer, J. (2004). Somali and Oromo refugees: Correlates of torture and trauma history. *American Journal of Public Health*, 94, 591–598; Shannon, P. J., Cook, T., Vinson, G. A., Wieling, E., & Letts, J. (2014). Torture, War Trauma and Mental Health Symptoms of Newly Arrived Karen Refugees. *Journal of Loss and Trauma*, (just-accepted). DOI:10.1080/15325024.2014.965971; Willard, C. L., Rabin, M., & Lawless, M. (2013). The prevalence of torture and associated symptoms in United States Iraqi refugees. *Journal of Immigrant and Minority Health*. Advance Online Publication. Retrieved October 29, 2014. doi:10.1007/s10903-013-9817-5; Van Ommeren, M., de Jong, J. T., Sharma, B., Komproe, I., Thapa, S. B., & Cardena, E. (2001).

³⁶ See <https://www.health.state.mn.us/communities/rih/guide/mh1ppt.pdf>, FN 14, for summary of associated research.

³⁷ <https://www.aclu.org/news/prisoners-rights/2019-was-a-watershed-year-in-the-movement-to-stop-solitary-confinement/>

³⁸ Minn. Stat. 243.521 (2020).

³⁹ https://www.prisonpolicy.org/research/mental_health/

⁴⁰ See, e.g. ICE Performance-Based National Detention Standards 2011, 2.12 Special Management Units, <https://www.ice.gov/doclib/detention-standards/2011/2-12.pdf>

⁴¹ Jeffrey L. Metzner and Jamie Fellner, Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics, *Journal of the American Academy of Psychiatry and the Law Online* March 2010, 38 (1) 104-108, available at <http://jaapl.org/content/38/1/104>

⁴² UN Standard Minimum Rules for the Treatment of Prisoners, General Assembly resolution 70/175, annex, adopted on 17 December 2015, available at https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-book.pdf.

Due Process Failures

People detained in Minnesota jails with ICE detention contracts must present their immigration cases despite limited access to attorneys, legal resources, and evidence. Yet, even before the pandemic, we documented due process violations due to challenges with phone access, visitor access, and more. Because each facility sets its own policies, some facilities made important efforts to allow Legal Orientation Programs to provide “know your rights” presentations and screening, enable attorneys to easily contact clients, help detained people access resources for their cases, and more. Others did not.

During the pandemic, these failures multiplied, and the complex maze of actors left compliance and accountability wanting. Some Minnesota jails with ICE detention contracts made accommodations, changed policies, and dedicated staff resources to facilitating access to attorneys for people held in ICE custody. Despite these efforts, people detained by ICE experienced problems in accessing counsel and in preparing and presenting defenses to deportation. Systemic failures, including failure to provide access to counsel or language access support, leave people to face complex, high-stakes legal proceedings on their own.

Access to Counsel

Detained people faced barriers to finding and communicating with attorneys, posing serious due process concerns in a system plagued by low representation rates. People detained by ICE have no access to a “public defender” system for civil deportation (removal) hearings. Between January 2016 and January 2021, representation rates ranged from 10.0% to 47.5% of detained people appearing at the Fort Snelling Immigration Court – meaning 52.5% to 90% of people must appear before the judge, prepare lengthy applications, gather evidence, and present complex legal arguments in deportation hearings all by themselves.⁴³

The COVID-19 pandemic quickly led jails to restrict access to visitors, including contact visits with attorneys. The Advocates for Human Rights’ attorneys struggled to contact potential clients for case screening and to work with clients to prepare applications and testimony. Court observers documented that difficulty communicating with attorneys resulted in case delays and continued detention.

Lack of in-person attorney-client visits compounded language barriers. Since the pandemic began, The Advocates for Human Rights alone has served people from 46 countries speaking 27 different languages. Even when interpreters are available, nonverbal communication can be key to comprehension.

Attorneys report that relying on telephone contact interfered with the ability to establish trust and rapport and to ensure understanding of complex legal information. Communication difficulty was exacerbated by language barriers. Some jails allowed detained people to video conference with their attorneys, but access was uneven across different jails. Inconsistent and changing procedures at the jails posed additional challenges, and people’s access to their attorneys varied depending on where they were detained.

Ongoing legal orientation programs (“LOP”s), where representatives from nonprofit organizations provide comprehensive explanations about immigration court procedures along with other basic legal information to

⁴³ TRAC Immigration, State and County Details on Deportation Proceedings in Immigration Court, available at <https://trac.syr.edu/phptools/immigration/nta/> (last accessed Feb. 12, 2021).

detained individuals,⁴⁴ and screen for cases or provide referrals for services, were suspended. This suspension disrupted nascent efforts by legal service providers to identify people in ICE custody in need of legal assistance. While some jails have made efforts to create remote LOP access, implementation has been difficult.

At the same time, the U.S. Immigration Court at Fort Snelling moved from in-person hearings to video hearings, meaning that people could no longer meet with their attorneys immediately before or after hearings. The move to video appearances also meant that people appearing in front of the Immigration Judge no longer received paper copies of charging documents, evidence, or even the list of free legal services during their hearings.⁴⁵

The Advocates for Human Rights received reports that jails provided the Executive Office for Immigration Review (EOIR)⁴⁶ list of free legal services inconsistently. Some people told The Advocates for Human Rights that, because the telephone numbers are posted near the communal telephones in their jail, they did not have the numbers available when they were in lockdown. Legal service providers often were left to wait until someone was scheduled for an immigration court hearing before they were identified as someone in need of counsel and could then attempt to contact them through the different jail procedures.

Restrictions within jails on access to common areas where telephones are located made finding an attorney challenging, sometimes leading to delays in cases and continued detention. One person reported to the immigration judge that they were unable to contact an attorney because they were in quarantine. Despite these challenges, the immigration courts continued to deny continuances, risking deportation for those who could not obtain an attorney in time.

Some jails took steps to increase access to telephones, tablets, and video conference meetings with attorneys, but access was limited, unpredictable, and uneven across jails. Attorneys faced challenges scheduling confidential meetings with clients. For example, Freeborn County Jail has two private phones, and allows video calls, but the room is available only when not in use for immigration court and district court hearings. Because such hearings are conducted during normal business hours, many detainees reported that they were unable to contact pro bono organizations or their attorneys who are only available during the same hours often reserved for immigration court. During COVID-19, Sherburne County Jail provides free video calls, but limits phone access to a public space, making discussing private, sensitive, or dangerous information on the phone impossible. Kandiyohi County provides tablets for people to use, and while it has private phone rooms that can be used to speak to attorneys, use of these confidential spaces is limited.

Telephone communication between attorneys and clients is fraught with frustration and can result in court delays that extend the time spent in detention. Some locations will fetch a detained person when an attorney calls,

⁴⁴ Because the federal government does not maintain any public defender system, federal detention standards permit legal orientation programs to help people detained pending their removal hearings to understand the legal process and their options under federal immigration law. <https://www.justice.gov/eoir/legal-orientation-program>

⁴⁵ As required by regulation, EOIR maintains the List of Pro Bono Legal Service Providers and roster of Recognized Organizations and Accredited Representatives. See 8 C.F.R. § 1003.61 and § 1292.2.

⁴⁶ The U.S. Immigration Court at Fort Snelling is part of the U.S. Department of Justice, Executive Office for Immigration Review.

allowing attorneys to convey essential information to their clients, prepare for hearings, and get answers needed to complete the complicated written forms required by the immigration system, Other jails, however, will take a message from an attorney and then have the client call back at an unscheduled time. Detained callers, however, cannot leave voice messages for their attorneys, resulting in phone tag and frustration, especially when facing tight deadlines. While the phone issue is exacerbated by COVID-19, it has long plagued immigration representation.

COVID-19 has also challenged the ability to prepare required written applications, affidavits, and evidence prior to immigration court hearings. Failure to file complete and accurate applications can result in deportation, in some cases to persecution or torture. When COVID-19 closed in-person attorney visitation, all jails began allowing attorneys to email legal documents to their clients and clients to return signed paperwork to their attorneys by email. Jails are inconsistent, however, in how they permit detained persons to send other documents to their attorneys, with some facilitating email of documents and others requiring people to return paperwork by mail. In or around summer 2020, attorneys reported instances in which jail personnel told them that ICE had to clear communications sent by email to/from clients, raising concerns that attorney-client privileged communications would be shared with opposing counsel by jail staff.

Inability to Present a Defense

While COVID-19 compounded difficult issues for those with counsel, COVID-19 seriously undermined the already tenuous ability of detained people to have a fair day in immigration court without an attorney.⁴⁷ People appearing pro se struggle to obtain, complete, and file required forms and evidence with the immigration court. Jails fail to provide detained people with access to reliable immigration court filing procedures, interpretation and translation assistance, copiers, and immigration legal resources. This failure directly undermines people's access to full and fair hearings and, ultimately, can mean permanent separation from families and communities or even return to a country where they face persecution or torture.

Detention has a cascading impact on people's ability to present a defense to deportation. Federal immigration laws allow ICE to detain anyone facing removal charges while the case is pending. Immigration judges can review ICE's custody determinations and, depending on the civil removal charges ICE has chosen to file, immigration judges may have authority to order release upon posting of a bond. Many charges result in "mandatory" detention with no judicial authority to order release while the case is pending. Meanwhile, all defenses to deportation require the detained person to file lengthy, complex forms, fully completed in English, with the immigration court. Many defenses also require the detained person to file significant documentary evidence of family relationships, length of time in the United States, medical conditions, employment history, and other information. Cases are delayed when required paperwork is not received by the immigration court on time, resulting in prolonged detention. In many cases, delays effectively coerce people to give up, abandon their defenses, and ask to be deported. Those who persevere rarely are able to prepare applications, gather evidence, and obtain certified translations.

⁴⁷ Access to counsel is a major determinant of case outcome. In one study, chances of a positive outcome went from 4 percent when immigrants facing removal were unrepresented to a projected 48 percent with an attorney. Stave et al., *Assessing the Impact of Legal Representation*, 2017.

Because immigration court hearings now take place by video conference during COVID-19, detained people can no longer file required forms and evidence in person at their hearings. None of the jails have established a process for timely delivery of paperwork to the Fort Snelling Immigration Court, so forms must be sent by regular mail. Court observers documented several instances where required forms had not reached the immigration judge by the time of the hearing despite the person having given the paperwork to the guard to mail pursuant to policy. One person reported that he gave the application to the guard at the jail, but the court did not receive it. Another person, who was refiling his application in English after the court rejected his first attempt because the application was in Spanish, also told the judge that he had given the paperwork to a guard to mail. The guard subsequently reported that the unmailed application had been located and would be sent to the court. Such delays not only impacted people's cases but resulted in prolonged detention as they waited for the guards to mail the paperwork.

All immigration paperwork must be completed in English and any non-English evidence must be accompanied by a certified translation, but jails fail to make language access or support available. Immigration judges, meanwhile, regularly direct unrepresented people to ask other detainees for help. Court observers documented one case where the person was visibly alarmed when the court told him it had not received his application. He told the judge that he had paid another detainee to translate the application into English but had not received a copy after providing it to the guard to be mailed to the court because there was no copier that he could use. The judge told him to re-file or risk being deported if the asylum application was not received within three weeks.

COVID-19 restrictions also resulted in deprivation of meaningful access to immigration legal resources, which resulted in the loss of cases and deportation. The high rate of unrepresented people facing removal proceedings makes lack of these resources a serious problem, as many people must prepare and file their cases on their own. Detained people require access to legal resources to research and prepare appeals briefs, motions, and deportation defense applications. Attorneys reported learning of several cases dismissed by the Board of Immigration Appeals and the U.S. Court of Appeals for the Eighth Circuit, despite an explanation of limited legal resource access.

Human Rights Violations at Virtual Hearings

The pandemic has forced jails to respond as courts began holding hearings via video conference. Jails undoubtedly have faced significant challenges in coordinating with courts and redeploying space and staff to fulfill this new responsibility. Those with ICE detention contracts had to coordinate with federal agencies, including the Fort Snelling Immigration Court and ICE, to ensure people appeared at scheduled hearings. Court observers monitoring immigration court hearings documented problems that impeded detained peoples' access to full and fair immigration court hearings during remote court appearances.

Observers raised concerns that many people appearing at video hearings were handcuffed throughout their hearings. Observers noted that shackling practices varied by jail, and sometimes within jails. Handcuffs during hearings impeded people's ability to take notes, refer to legal paperwork, or even to raise their hands when being sworn in by the judge.

Problems with video conference technology undermined the fairness of proceedings and led to delays and prolonged detention. Observers documented persistent problems, including freezing of screens during hearings. The screens frequently froze with the image of one person stuck on screen while the judge proceeded with subsequent hearings. Jail staff did not regularly monitor hearings to ensure technology was working properly.

Over time observers noted that immigration judges “got used to it” and stopped bothering to ask the jails to reboot the systems.

Observers noted numerous cases when the wrong person—or, even, the wrong facility—appeared on the screen or remained connected while other cases proceeded. For example, one observer noted that a person in Kandiyohi was on screen prior to the start of court and sat through two Sherburne hearings unrelated to him. No one acknowledged him or told him to relax while waiting so he sat completely still, staring ahead for an hour. In another case, a person in Freeborn was on-screen for 20 minutes while the judge conducted the hearing of another detainee at a different location. As an observer noted, “what stress this must add to people in removal proceedings, hearing extraneous conversations, wondering what is being said, and whether that conversation is relevant to their case.”

Attorneys representing detained people raised concerns that video conference technology undermined peoples’ right to a fair hearing. Immigration judges must assess credibility to determine eligibility for release on bond, asylum, protection under the Convention Against Torture, and other deportation defenses. Frozen screens interfered with judges’ ability to assess eye contact, demeanor, and other indicia of credibility.

As one observer noted, “people are supposed to have a right to ‘face their accuser’... but the setup of video doesn’t even allow them to look at each other and that is the best of circumstances. What about without video or with a frozen image? Sometimes they couldn’t even tell if the person was there or not. How does that uphold human dignity?”

Prolonged Detention Without Access to Family, Community, Programming, or Outdoors Undermines Due Process

The COVID-19 pandemic has restricted already limited access to facilities and services needed to sustain dignity and well-being while subject to prolonged detention. Fears of contracting COVID-19 exacerbated these deficits. Deprivation of the ability to see family members, connect with community, engage in rehabilitative and vocational programming, or even to see the sunshine undermined due process, as people gave up legal avenues to stay in the United States rather than face indefinite detention. While the COVID-19 pandemic exacerbated such issues, The Advocates for Human Rights has documented these problems as endemic to the ICE detention structure well before the pandemic.

Detained people rely on phone access to maintain morale and contact with family as well as to prepare evidence in their cases, yet telephone access varies by jail. For example, in May 2020, as part of its emerging COVID-19 response, ICE provided 500 free phone minutes to each person in detention.⁴⁸ Carver and Freeborn County Jails refused to provide the free phone minutes, citing security concerns. Inadequate phone access in some cases

⁴⁸ See AILA, ICE Issues Guidance on COVID-19, which reports as of May 27, 2020, “ICE updated its guidance on its response to the COVID-19 pandemic, adding updated information on how detainees can communicate with family members and others. ICE noted that it began ‘providing 520 minutes of free domestic or international phone or video calls per month to detainees on April 22 at all facilities served by Talton Communications (serving approximately 57% of the ICE population), and has been negotiating with all other facilities to provide 500 minutes or more,’” available at <https://www.aila.org/infonet/ice-issues-guidance-on-covid-19> (last accessed Feb. 14, 2021).

impeded detained people’s ability to gather documents or arrange testimony for their immigration cases. In one case, a call with a law enforcement agency investigating human trafficking was cut short due to lockdown.

Isolation remains a problem for people in ICE detention. None of the Minnesota jails with ICE contracts allowed in-person contact visits (relying on closed-circuit video) with family or friends prior to the pandemic, so the expanding availability of remote video visits offered by some of the jails has been welcome. It appears that each of the jails allowing remote visits, which cost money and require internet access, also permit visitors to use on-site terminals to visit at no cost.⁴⁹ But because people detained by ICE are not necessarily from the county in which they are held, family members cannot necessarily afford travel or time off work to utilize this resource. Access to programming varies across jails, with limited availability to community-based visitation, educational, chemical dependency, and other programs.

COVID-19 has exacerbated lack of access to fresh air. Even prior to COVID-19, none of the jails provides access to outdoor, open-air recreation yards and fresh air is available only in rooms specially equipped with small vents near the ceiling that let outdoor air into the room. Access to these recreation rooms has been limited due to facilities’ reliance on lockdowns, quarantine, and solitary confinement throughout the pandemic.

Conclusion

Detention in Minnesota requires urgent attention to protect human rights and basic human dignity. Immigration detention in Minnesota jails is no exception. The COVID-19 pandemic has exacerbated many issues and illuminated areas for reform. The complex maze of actors and standards involved in immigration detention—federal agencies, Minnesota state legislation and policy, and county jails with individual practices—must not be an excuse for lack of accountability. Clear standards must be enforced through contracting, policies, legislation and—crucially—accountability.

Minnesota jails must ensure health and welfare for all people in custody. During the pandemic, this obligation includes robust testing and access to care. Solitary confinement and lockdowns must not be substitutes for social distancing, masking, and sanitization. Outside of the pandemic, Minnesota jails must provide quality care to people in custody, including eliminating cost-prohibitive practices, refusing to pass the buck to ICE, ensuring sufficient and trained mental and physical health professionals, and holding facilities accountable when they fall short.

Minnesota jails must also ensure due process and human rights protections for all those in custody. Access to counsel requires reasonable phone, visitation, and mail policies. Practices across all Minnesota facilities must be uniform in this regard. During the pandemic, accommodations must be made to ensure privacy and access to phones while working with ICE to ensure people can present their defenses through adequate legal resources,

⁴⁹ See <https://www.co.carver.mn.us/departments/county-sheriff/jail-services/inmate-visitation>, <http://www.co.freeborn.mn.us/DocumentCenter/View/5055/COVID-19-Detainee-Visitation>, <https://www.kcmn.us/departments/sheriff/departments/jail/index.php>, and <https://www.co.sherburne.mn.us/419/Visitation> (all sites last accessed Feb. 24, 2021).

language support and reliable transmissions to the courts. Video court must not be an excuse to dehumanize people. And, Minnesota jails must ensure access to fresh air, exercise, facilities, and access to communications with attorneys and the outside world to maintain health and well-being in the face of ICE efforts to prolong detention.

The Advocates for Human Rights

The mission of The Advocates for Human Rights is to implement international human rights standards to promote civil society and reinforce the rule of law. By involving volunteers in research, education, and advocacy, The Advocates builds broad constituencies in the United States and select global communities.

The Advocates for Human Rights works to change systems and conditions that cause human rights abuses, improve laws and lives throughout the world, represent individual victims of human rights violations, and fight injustice, The Advocates develops partnerships and mobilizes volunteers to address some of the most pressing issues of our time because we believe that everyone has the power and responsibility to advance human rights.

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