

Voices from Varick:  
Detainee Grievances at New York City's  
Only Federal Immigration Detention Facility



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## *Acknowledgments*

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## *About the New York Civil Liberties Union*

The New York Civil Liberties Union (NYCLU) is one of the nation's foremost defenders of civil liberties and civil rights. Founded in 1951 as the New York affiliate of the American Civil Liberties Union, we are a not-for-profit, nonpartisan organization with eight chapters and regional offices and nearly 50,000 members across the state.

Our mission is to defend and promote the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution, and the New York Constitution, including freedom of speech and religion, and the right to privacy, equality and due process of law for all New Yorkers.

For more information about the NYCLU, please visit [www.nyclu.org](http://www.nyclu.org).



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# I. EXECUTIVE SUMMARY

*“Do I have to die first before I see a doctor?”  
– A July 2, 2009 grievance from a Varick detainee  
explaining that medical staff has refused to examine him  
even though he has suffered through three to four days of  
chest pains, a burning sensation and vomiting*

The following white paper analyzes one year of grievances<sup>1</sup> filed by immigration detainees housed in the Varick Federal Detention Facility. It documents detainee stories of inadequate medical care and mistreatment by the facility’s staff. It adds to the growing chorus of voices that have concluded that the federal government has failed in its responsibilities to provide adequate care to detainees housed in immigration facilities.

In 2001, federal immigration authorities detained approximately 209,000 immigrants.<sup>2</sup> By 2009, that number had jumped to 383,524.<sup>3</sup> In 2010, the total is expected to surpass 400,000. The vast majority of detainees have no criminal records.<sup>4</sup> They are held in a disorganized hodgepodge of federal, state, county and private prisons.

While the immigration detainee population has exploded, so have the reports of mistreatment. One hundred and seven people have died in immigration detention since 2003.<sup>5</sup> A 2006 audit of five immigration detention centers by the Department of Homeland Security’s Inspector General found that four of the five facilities did not meet government standards on health care, including the provision of timely and responsive medical care.<sup>6</sup> Similar reports by human rights organizations have found that Immigration and Customs Enforcement (ICE) failed to protect detainees’ due process rights, to provide adequate medical care and sanitary facilities, and to utilize alternatives to detention.<sup>7</sup> These reports conclude that ICE’s failures to provide adequate care for detainees violates detainees’ civil liberties and human rights, including the United States’ obligations under the International Covenant on Civil and Political Rights.

Despite the growing chorus of criticisms, both the Bush and Obama administrations have failed to adequately address immigration detention conditions. In September 2008, ICE issued a set of 41 detention standards.<sup>8</sup> Yet it refused to issue legally enforceable regulations governing immigration detention facilities. While President Obama has recognized and promised to address inadequate conditions in immigration detention facilities, his administration has followed the same course pursued by the Bush administration by refusing to issue enforceable regulations governing the nation’s immigration detention system.<sup>9</sup>

This white paper provides a voice to detainees who are victims of the federal government’s failure to adequately manage the nation’s immigration detention system. It begins with an overview of the recent growth of immigration detention, and the simultaneous lack of enforceable regulations. It then provides the history of the Varick Federal Detention Facility, including its closure in 2001 after detailed accounts of problems in the facility, and reopening in 2008.

Next, the report analyzes grievances filed by detainees held at Varick during the one-year period of Aug. 8, 2008 to Aug. 26, 2009. It includes stories of struggles in the detainees’ own voices. Key findings include:

- ▶ There were 210 grievances filed by 176 different detainees, representing 186 unique complaints regarding the conditions of confinement at Varick.
- ▶ Of the 210 grievances, 21 percent appear to have resulted in no resolution.
- ▶ Thirteen grievances went before the Detainee Grievance Committee (DGC).

- ▶ In seven of the 13 grievances (54 percent) that went before the DGC, the aggrieved detainee rejected the proposed resolution of the complaint. In three cases, the aggrieved detainee concurred with the outcome. And in three others, there is no indication of whether resolution was accepted or rejected.
- ▶ In four of the seven DGC grievances (57 percent) where the detainee objected to the committee’s findings, the detainee who filed the grievance was transferred out of the facility. Once a detainee is transferred or deported, Varick ceases to investigate his grievances.
- ▶ Seventy-one of the grievances complained of inadequate medical care (34 percent). Grievances involving a complaint of abusive treatment by staff were the second most common, consisting of 52 total grievances (25 percent). The third most common type of grievance concerned diet and consisted of 27 grievances (13 percent).

*The report concludes with a set of recommendations for the Department of Homeland Security:*

## **A. Enact Enforceable Detention Regulations**

The problems documented in this report plague immigration detention facilities throughout the nation. They are a product of an immigration detention system that holds close to 400,000 people every year, yet is not governed by enforceable regulations. The New York Civil Liberties Union (NYCLU) recommends that President Obama direct the Department of Homeland Security to issue enforceable detention regulations. Should the president fail to do so, we call on Congress to pass the “Strong STANDARDS Act,” which would require that DHS adopt detention regulations that are legally binding and enforceable. Senators Robert Menendez (D-NJ) and Kirsten Gillibrand (D-NY) introduced the legislation. Senator Charles Schumer (D-NY) should support this bill and include it in any immigration reform package.

## **B. Expand Alternatives to Detention**

Alternatives to detention permit the Department of Homeland Security to enforce the nation’s immigration laws in a more humane and cost-effective manner. The federal government spends approximately \$1.7 billion a year on immigration detention.<sup>10</sup> Detaining individuals at the Varick Federal Detention Facility costs \$253 a day.<sup>11</sup> Alternatives to detention cost as little as \$14 a day.<sup>12</sup> The Department of Homeland Security should expand alternatives to detention for individuals who do not pose a risk to others. The Department should strive to use the least restrictive means necessary as alternatives to detention and promulgate regulations establishing the criteria for eligibility for alternatives to detention.

## **C. Release Eligible Detainees**

Unfortunately, due to inadequate access to counsel and hurdles created by current immigration law, too many individuals who should be eligible for release sit in detention while they wait for their immigration case to proceed. The NYCLU recommends that the Department of Homeland Security engage in a case-by-case review of detention decisions for each detainee held at Varick and determine whether the detainee should be released.

Moreover, Congress should amend the immigration laws and end the practice of mandatory detention and deportation, and restore due process and judicial review to our federal immigration system.

## **D. Ensure that Varick Detainees Remain Close to Family and Counsel**

Individuals currently detained in Varick must not be separated from their families and legal counsel because of

the Department of Homeland Security's decision to close Varick. The Department of Homeland Security's proposal to send the Varick detainees to the Hudson County Correctional Center in Kearney, New Jersey would present significant obstacles for detainees who are currently housed close to their lawyers and families in New York City. The NYCLU recommends that Homeland Security Secretary Janet Napolitano ensure that any changes to the placement of Varick detainees are done in a way that allows detainees access to legal counsel and their families.

## E. Reform Grievance Procedures

The grievance procedures instituted by Varick provide an opportunity for detainees to file complaints, and also an opportunity for outside organizations, such as the NYCLU, to review the complaints filed. However, the grievance procedure can and should be improved to allow for better record-keeping of filed complaints and tracking of recurring complaints that should trigger heightened scrutiny by immigration officials. The NYCLU recommends that the Department of Homeland Security mandate that immigration detention facilities provide better record-keeping of detainee grievances and record follow-up steps taken by facility and immigration staff. Moreover, federal officials should review grievances on a regular basis, whether through aggressive auditing or automated early warning systems.

*The NYCLU reserves its final recommendation to the City of New York:*

## F. Monitor Conditions of Confinement for Immigration Detainees in NYC

New York City Mayor Michael Bloomberg and City Council Speaker Christine Quinn support the rights of immigrants, including undocumented immigrants. Given their expressed support, Mayor Bloomberg and Speaker Quinn should ensure that no individual held in immigration detention in New York City is mistreated. Moreover, they must ensure that residents of New York City who are apprehended and detained by the federal government are not unnecessarily separated from their families and legal representatives.

## II. INTRODUCTION

The following section provides an introduction to the NYCLU's work to uncover information regarding conditions of confinement in the Varick Federal Detention Facility. It then reviews recent reports issued by the federal government and human rights organizations regarding conditions of confinement at immigration detention facilities. It concludes with a summary of President Barack Obama's promises to reform the immigration detention system, and the recent decision made by the Obama administration to refrain from issuing federal regulations governing the detention system.

### A. The New York Civil Liberties Union and the Varick Federal Detention Facility

In August 2009, the New York Civil Liberties Union received a letter from a detainee at the Varick Federal Detention Facility complaining of severe dental and digestive problems. According to the detainee, Varick officials knew about this condition yet repeatedly failed to provide him adequate treatment. Upon investigation, the NYCLU confirmed the detainee's allegation and began to advocate on his behalf. (For more on the detainee's story, see page 13).

Given this detainee's account of suffering and the history of inadequate conditions at Varick and other immigration detention facilities across the nation, the NYCLU filed a Freedom of Information Act request seeking information on grievances filed by other detainees in Varick. On Oct. 14, 2009, we received a response containing copies of more than 210 grievances filed by detainees from August 2008 to August 2009.

The NYCLU planned to produce an in-depth report on Varick, documenting detainees' experiences at the detention center and analyzing years of detainee grievances. Then in January 2010, the federal government announced plans to shutter Varick and transfer its detainees to a facility in New Jersey imminently. As a result, the NYCLU abandoned plans for the report and decided instead to present the information we already have – one year of grievances at the Varick Federal Detention Facility.

Though these grievances are only a partial slice of the Varick story, they provide a critical snapshot of the challenges its detainees face as well as the federal government's response to those challenges. The grievances do not always provide a complete picture – gaps in record keeping make it impossible to know the ultimate outcome of many detainees' cases. But it is a narrative missing from the current public discourse. New Yorkers have a right to hear these stories.

### B. Recent History of Conditions in and Growth of Immigration Detention

Since the mid-1990s, immigrant detention has increased exponentially. In 1994, the average daily population in immigration custody was 6,785.<sup>13</sup> By 2009, there were approximately 33,400 immigration detainees per night.<sup>14</sup>

The primary reason for the population growth was passage in 1996 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Anti-Terrorism and Effective Death Penalty Act (AEDPA).<sup>15</sup> These laws generated dramatic changes in immigration enforcement by expanding both the categories of crimes for which non-citizens could be deported and the categories of immigrants subject to mandatory detention. As a result, hundreds of thousands of men, women and children are now held in a hodgepodge of federal, state, local, and private prisons.<sup>16</sup>

As the immigration detention system grew, so did criticisms of conditions of confinement within the system. In 2000, following several public scandals involving inhumane and abusive conditions at immigration detention

centers, federal authorities adopted a set of 38 standards for facilities housing immigrant detainees. The standards covered issues such as recreation, food, telephone use and visitation rights,<sup>17</sup> but they are only guidelines – not mandatory rules. As such, the Detentions Operations Manual was largely unenforceable.<sup>18</sup>

As a result, detention centers across the nation often ignored federal guidelines. For example, a 2006 audit of five immigration detention centers by the inspector general for the Department

of Homeland Security (DHS) found that four of the five facilities did not meet government standards on health care, including the provision of timely and responsive medical care. The audit also found that all five facilities failed to comply with procedures for reporting detainee abuse.<sup>19</sup> Three of the five facilities failed to meet standards for environmental health and safety, such as unsafe bunk beds and excessively hot water.<sup>20</sup> DHS investigators also received complaints from detainees about undercooked poultry in meals, vermin and poor ventilation.<sup>21</sup>

A 2007 Human Rights Watch report further exposed poor treatment of detainees, particularly those with HIV/AIDS. The report condemned the failure of immigration detention centers to provide full medication regimens or conduct necessary laboratory tests consistently. It criticized the lack of continuity of care when detainees were transferred to other facilities and the harassment and discrimination those with HIV/AIDS suffered at the hands of staff and fellow detainees.<sup>22</sup>

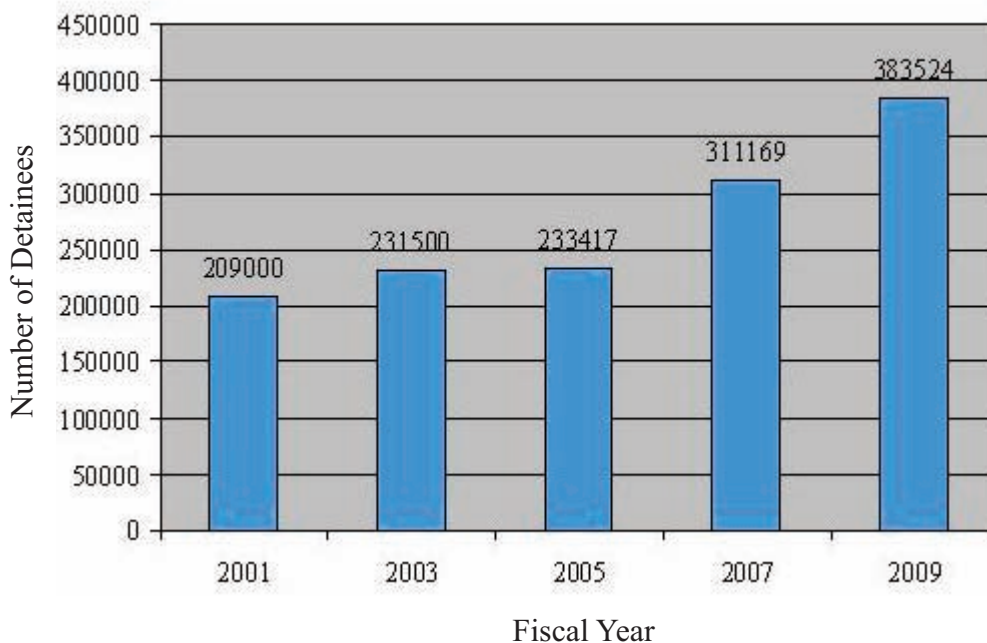
In a 2009 report, Amnesty International criticized the failure of Immigration and Customs Enforcement (ICE) to protect detainees' due process rights, to provide adequate medical care and to utilize alternatives to detention.<sup>23</sup>

A 2009 Human Rights Watch report criticized the Division of Immigration Health Services (DIHS), the agency responsible for providing medical treatment to immigrant detainees, for providing only the minimal care necessary to keep detainees "in deportable condition."<sup>24</sup> The same report shed light on the poor treatment and inconsistent care of female detainees. Women make up only 10 percent of the immigrant detainee population and their medical needs and routine exams are frequently neglected.<sup>25</sup>

A 2009 report by the Florida Immigrant Advocacy Center further criticized the poor medical care at detention facilities, highlighting insufficient staffing, difficulty accessing medical records and overcrowded and unsanitary facilities.<sup>26</sup>

Following years of mounting concern and criticism, ICE issued a new set of 41 detention standards in September 2008. It revised old standards and added new ones concerning media interviews, detainee searches, sexual assault prevention and staff training.<sup>27</sup> However, once again, the standards are not legally binding rules.

Immigrant Detention Population, FY 2001-2009



## C. Obama: Reform Without Legally Binding Regulations

President Obama has pledged to overhaul the immigration detention system. In August 2009, ICE announced plans to centralize the system and provide greater federal oversight of detention centers.<sup>28</sup> Two months later, Homeland Security Secretary Janet Napolitano announced a series of initiatives to improve the system, including plans to transfer non-criminal immigration detainees to less jail-like facilities more appropriate to their level of danger or flight risk; plans to centralize all contracts for detention services under ICE; and the intent to submit a plan to Congress for alternatives to detention nationwide.<sup>29</sup>

While these reforms are encouraging, the Obama administration has failed to establish enforceable standards for detention facilities. In July 2009, it rejected a petition by former detainees and their advocates to set legally enforceable standards. Federal authorities maintained that “rule-making would be laborious, time-consuming and less flexible” and said they preferred to continue the current reform efforts.<sup>30</sup>

# III. HISTORY OF VARICK FEDERAL DETENTION FACILITY

## A. Initial Opening of Varick Federal Detention Facility

The Varick Federal Detention Facility opened in 1984 as a short-stay processing facility for male and female detainees, replacing the Immigration and Naturalization Service’s (INS) processing facility at the Brooklyn Navy Yard. A successful NYCLU lawsuit challenging conditions at the Navy Yard facility prompted the change.<sup>31</sup> But Varick, located on the fourth floor of a 12-story federal office building in Greenwich Village, was quickly beset by many of the same problems that had plagued its predecessor.

As early as March 1985, detainees began engaging in hunger strikes to protest conditions.<sup>32</sup> More than 50 detainees staged a hunger strike in August 1986.<sup>33</sup> In December 1986, the Government Accountability Office (GAO) issued a scathing report on Varick, noting the facility’s lack of outdoor recreational space and the poor quality of its staff. The GAO also criticized the INS for detaining people at Varick for months even though the facility was intended to house people for less than a week.<sup>34</sup>

A three-week hunger strike in November 1987 prompted an attempt by the INS to improve the food and install more comfortable beds.<sup>35</sup> Those actions failed to ease tensions or significantly improve living conditions. In April 1988, the NYPD cordoned off the building’s block while about 75 detainees clashed with guards over living conditions, including the lack of outdoor space and limited access to telephones.<sup>36</sup>

## B. NYCLU Investigates Conditions

In the spring of 1990, Varick detainees contacted the American Civil Liberties Union (ACLU) complaining about conditions nearly identical to those the NYCLU had challenged at the Navy Yard. In response, the ACLU and NYCLU launched a thorough two-year investigation of Varick, obtaining information through Freedom of Information Act requests, interviews with more than 50 detainees and a tour of the facility accompanied by a veteran corrections expert.<sup>37</sup>

The ACLU and NYCLU documented their findings in a report released in August 1993. The investigation exposed a disturbing litany of problems, including inhumane living conditions, staff misconduct and detainees being denied access to basic legal services.

The report found that the living conditions at Varick fell far short of acceptable standards. Detainees had no access to fresh air, sunshine or outdoor recreation. Visiting hours were severely restricted. Detainees complained of inadequate food, poor sanitation and lengthy delays in receiving basic medical care. (For example, one detainee reported waiting 18 months for INS to fill his eyeglass prescription.)<sup>38</sup>

Individual detainees were subjected to arbitrary solitary confinement in cells described as “dirty,” “damp” and “roach-infested.” Detainees complained of being denied blankets, soap, clothing, toilet paper and water while in isolation cells.<sup>39</sup>

The report also documented numerous inadequacies with detainees’ access to legal services, including an outdated legal library, the inability of detainees to receive telephone calls and the lack of space for detainees and their attorneys to meet privately. It also raised serious questions about the competency and conduct of the facility’s staff. For example, it cited a September 1990 INS internal memo estimating that between 20 and 30 of Varick’s 70 guards were being investigated for personnel, criminal or civil rights violations.<sup>40</sup>

Echoing the 1986 GAO report, the ACLU/NYCLU report linked many of Varick’s problems to the fact that the average detainee spent about six months in a facility only intended for short term stays.

### C. Varick Closes

Substandard conditions persisted at Varick through the 1990s. Overcrowding intensified after Congress expanded the definition of a deportable crime, mandated detention for many immigrants, and substantially increased funding for the detention and deportation of immigrants. In November 1998, 80 detainees protested inside Varick after being forced to sleep on mattresses on the floor in a dormitory meant to house only 42 people.<sup>41</sup>

In January 1999, a Dominican man awaiting deportation at Varick died of untreated pneumonia and a viral infection two days after he complained of chest pains and a persistent cough. Nurses had treated the illness as a common cold and the man, an otherwise healthy 40 year old, was never examined by a doctor.<sup>42</sup>

The INS set new detention standards in 2000 requiring facilities to provide outdoor recreation space.<sup>43</sup> These standards, which do not carry the weight of regulations or statutory obligations, have proven difficult to enforce. Varick, still lacking outdoor space, remained open until it was evacuated during the 9/11 terrorist attacks.<sup>44</sup> It remained closed for several years.

### D. Varick Reopens, Problems Ensur

In February 2008, the federal government quietly reopened the facility as a temporary holding center for male detainees. The U.S. Department of Homeland Security contracts a private firm, Ahtna Technical Services Inc., to operate the facility.<sup>45</sup> The firm is a subsidiary of Ahtna Inc., an Alaska Native Corporation, which is exempt from a \$3 million cap on no-bid government service contracts that applies to other minority-owned small businesses.<sup>46</sup>

Today, Varick Federal Detention Facility houses only male immigrant detainees. The facility serves primarily as a processing center for non-citizens who first enter ICE detention. Most of this population is held for 30 days or less – some just a few hours – before being transferred or released from the facility.<sup>47</sup> The average length of stay for detainee transfers is one day.<sup>48</sup> Each year Varick cycles in and out an estimated 12,000 detainees, including immigrants without documentation, legal permanent residents and asylum-seekers.<sup>49</sup> Though the majority of Varick detainees live in the New York metropolitan area,<sup>50</sup> most detainees are transferred to facilities outside of this area, far from family and community ties.

While most of Varick's population is temporary, this report deals primarily with the smaller permanent population. In addition to its role as a processing center, Varick holds 250 long-term detainees.<sup>51</sup> It is this population – those who stay longer than one day – who are most likely to employ the written grievance process (submitting a grievance is cumbersome and a response to a grievance can take several days to many weeks – it is unlikely someone detained in the facility for a few days or less would file a grievance).

In October 2008, the New York City Bar Association received a petition signed by 100 long-term Varick Street detainees describing cruel conditions at the facility. They complained of, among other things, frigid temperatures, mildew and unsatisfying meals.<sup>52</sup> In response, the City Bar Justice Center organized a project to provide detainees pro bono legal assistance. In November 2009, the center issued a report demonstrating how their limited access to counsel and other legal services prevents detainees from pursuing valid legal claims such as parole, bond or asylum that would enable them to be released from detention or remain in the United States.<sup>53</sup>

For a November 2009 report, the City Bar Justice Center interviewed 158 Varick detainees and found that 85 percent had been living in the United States for more than five years and 28 percent had been in the United States for 20 years or more. Nearly half of those interviewed said they were detained at Varick for four to six months.

Advocates continued to raise concerns about general conditions at Varick, including food, living conditions and access to outdoor space. In January 2010, Varick detainees protesting conditions at the facility organized a hunger strike. When about 100 detainees refused to go to their scheduled meals, agents in riot gear broke up the protest.<sup>54</sup> Varick officials responded aggressively to the detainees' protest, despite non-violent recommendations in the ICE Detention Standards that outline how facility personnel should manage a hunger strike.<sup>55</sup>

## E. Decision to Close Varick

On Jan. 14, 2010, ICE announced Varick would close as an immigration detention center by the end of February and that Varick detainees would be moved to Hudson County Correctional Center, a county jail in Kearney, New Jersey. ICE representatives said the decision was part of the overhaul of the immigration system and noted that the new facility provides outdoor recreation space and visitation services not available at Varick.<sup>56</sup> Hudson is also more economical – it can house detainees for \$111 a day per detainee, half the cost of the \$253 a day spent at Varick.<sup>57</sup>

The New Jersey facility has its own share of problems, however. Though Hudson County received additional funding to expand its facility to include 512 beds and improve its center to house immigration detainees, county centers are generally not designed for long-term immigration housing. In 2007, the ACLU of New Jersey reviewed contracts that local correctional facilities had with ICE and revealed that, while each contains standards for medical care, food and other living necessities, there are no standards for access to legal services, legal materials, phone access, visitation or recreation.<sup>58</sup>

Along with insufficient standards to protect detainees' rights, a number of incidents of abuse have been reported at Hudson County. The ACLU of New Jersey interviewed one Hudson detainee who reported he was beaten by guards, an incident later investigated by the DHS Office of the Inspector General. The inspector general also investigated an incident in which two detainees alleged that a correctional officer took cell phone photographs of them while they were in the shower and a separate instance in which corrections officers failed to follow procedure for disciplining detainees. In 2006, the inspector general reported instances in which Hudson County did not follow medical standards as set forth in ICE's national detention standards, and did not respond to grievances within five days, the required time frame for addressing grievances.

Record keeping at Hudson is another problem noted multiple times in the report. The inspector general examined nine detainees' files and found documentation missing in all of them, including information regarding personal property, transfer forms, and forms documenting ICE's decision to release or continue holding detainees.<sup>59</sup>

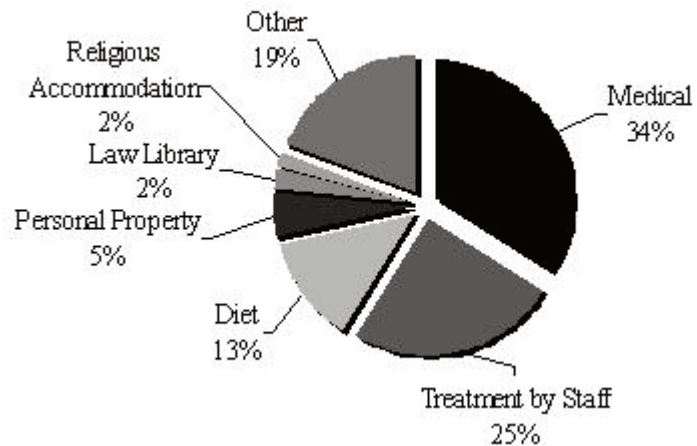
While Hudson County may have made improvements since the release of the DHS report, it is clear that Varick detainees will face new challenges at Hudson, in addition to being separated from their attorneys, families and support network.

## IV. ANALYSIS OF DETAINEE GRIEVANCES AT THE VARICK FEDERAL DETENTION FACILITY

### A. Grievance Records

If Varick detainees are unsatisfied with their care or conditions at the facility, they have the option of submitting a grievance. As set forth in the 2008 ICE detention standards, each detention facility must establish a formal written procedure for filing a grievance. Upon admittance into the facility, each detainee is provided with a handbook that outlines the grievance process.<sup>60</sup> The Varick Detainee Handbook states that written grievances must be submitted within five days of the issue or incident. Any detainee who requires assistance in preparing the written grievance may receive help, though a detainee cannot submit a grievance on behalf of another detainee.

Breakdown of Complaints by Category



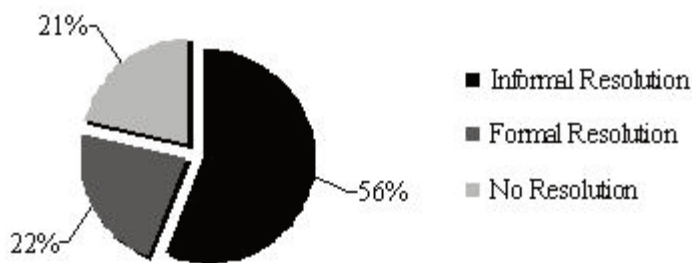
If a detainee makes an informal grievance orally to an officer or staff member, then it may be answered orally or without written documentation. If an informal resolution is unsuccessful, then the detainee may submit a written grievance to the shift supervisor. In the event that the shift supervisor cannot resolve the grievance, it is then forwarded to the appropriate department head for formal resolution.<sup>61</sup> If the grievance is still not resolved or the detainee does not accept the resolution, the Detainee Grievance Committee (DGC) reviews the grievance and must propose a resolution in five days. The last level of appeal if the grievance remains unresolved is the facility director, who has five days to reach a final decision. It should be noted, grievances related to medical care are sent directly to medical staff, who must respond to the grievance within five days of its receipt.<sup>62</sup>

On Aug. 14, 2009, the NYCLU filed a Freedom of Information Act (FOIA) request with Immigration and Customs Enforcement seeking all documents relevant to the grievance process at the Varick Federal Detention Facility. The records that were obtained in response primarily consist of a grievance form that is initially filled out by the detainee and then processed by Varick administrators. Grievance forms ask detainees to record their name, the date of the complaint and a description of the nature of the complaint, as well as list any particular action they would like taken in response. After a grievance has been submitted, administrators at Varick will attempt to achieve a resolution with the detainee, either informally or formally through a department head. In addition to the forms, we received internal memoranda from various administrators within both Varick and DHS explaining their findings and conclusions regarding a particular grievance.

The NYCLU analyzed 210 grievances filed by detainees held at Varick during the one-year period of Aug. 8, 2008 to Aug. 26, 2009. These 210 grievances were filed by 176 different detainees, and represented a total of 186 unique complaints regarding the conditions of confinement at Varick.

Detainees filed 71 grievances complaining of inadequate medical care, representing 34 percent of the total number of grievances filed, and the most common type of grievance. Grievances involving a complaint of abusive treatment from staff were the second most common, consisting of 52 total grievances (25 percent). The third most common type of grievance concerned diet and consisted of 27 grievances, representing 13 percent of grievances filed. Detainees filed 11 grievances (5 percent) regarding personal property, five grievances (2 percent) involving the law library, and four grievances (2 percent) regarding a religious accommodation. The remaining 40 grievances (19 percent) represented an assortment of issues including commissary, barbershop or visitation.

Resolution of Grievances that Went Before the DGC



Of the 210 grievances that were filed during the one-year period, 165 resulted in a resolution accepted by the complaining detainee. The informal process resulted in detainees agreeing to resolution for 118 grievances, and the formal process accounted for the resolution of 47 grievances. From information available in the grievance records, we categorized the remaining 44 grievances as having no resolution. The “no resolution” category includes 24 grievances where the records do not include a detainee signature indicating acceptance or rejection of a resolution. This may be the result of a failure to provide

detainees with the opportunity to accept or reject proposed resolutions, or it may be the result of inaccurate record keeping procedures (or both). It may also indicate the detainee’s rejection of the proposed resolution. The other 20 grievances that were considered a part of the “no resolution” category involved the transfer or deportation of the detainee.

The records indicate that once a detainee is transferred or deported, Varick ceases to process and investigate his grievances. This is particularly problematic when a grievance alleges staff misconduct or inadequate medical care. These allegations impact the facility as a whole and require continued investigation.

Finally, 13 grievances were referred to the DGC after the detainee did not accept resolution at the other stages. The detainee agreed with the resolution proposed by the committee in three of the 13 referrals. The records are incomplete and provide no indication of whether or not the detainee agreed in another three of the 13. The detainee disagreed with the resolution and sought further action on the grievance in the remaining seven cases. Notably, five out of the seven detainees who disagreed with a committee resolution were transferred out of Varick and no further process regarding their grievance seems to have occurred.

## B. Medical Grievances

The Department of Immigration Health Services (DIHS) is responsible for providing health care services at Varick. In order to obtain any treatment beyond basic medical care, medical personnel at the facility must submit a “Treatment Authorization Request” to DIHS offices in Washington D.C. The DIHS personnel who review these requests are nurses, known as Managed Care Coordinators (MCCs). On duty 40 hours a week, the MCCs review the paper work submitted by physicians at all detention facilities, including jails and prisons contracted with ICE, and determine whether or not DIHS will authorize the request. While on-site medical staff de-

termines if a specific treatment should be performed, it is off-site DIHS personnel that ultimately decide the course of treatment.<sup>63</sup> Requests are reviewed on a case-by-case basis, though DIHS authorizes few services beyond emergency care.<sup>64</sup>

The right of an immigrant detainee to adequate medical care is grounded in the due process clause of the Fourteenth Amendment. In contrast, the right of a convicted criminal to proper medical care while incarcerated is grounded in the Eighth Amendment proscription against cruel and unusual punishment. Courts hold that the right to proper medical care of an immigrant detainee in detention is at least as great as the right to medical care that is afforded to prison inmates.<sup>65</sup> Under this standard, a detainee seeking to establish a constitutional violation must show: (1) the existence of a serious medical need, and (2) that a prison official was deliberately indifferent to this medical need.<sup>66</sup> A “serious medical need” is often described as “a condition of urgency, one that may produce death, degeneration, or extreme pain.”<sup>67</sup> The concept of “deliberate indifference” has been characterized as “knowing of and disregarding a risk of harm.”<sup>68</sup>

Moreover, conditions of confinement within the immigration detention system implicate fundamental human rights protections embodied in treaties ratified by the United States. One of these treaties is the International Covenant on Civil and Political Rights (ICCPR), which protects the rights to life, liberty, fair trial, freedom of movement, thought, conscience, speech, and privacy, and prohibits slavery, torture, discrimination, and arbitrary arrest. In doing so, the ICCPR establishes that fundamental rights apply to all individuals, including those who have been deprived of their liberty, as in the case of an immigrant detainee.

Article 10 of the ICCPR states: “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”<sup>69</sup> The UN Human Rights Committee has issued commentary to help illuminate the provisions of the ICCPR. In these comments, the committee characterizes Article 10 as requiring governments to ensure that individuals who have been deprived of their liberty, are not subjected to “hardship or constraint other than that resulting from the deprivation of liberty,” and that “respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons.”<sup>70</sup> The commentary continues by adding the qualifying language of: “subject to the restrictions that are unavoidable in a closed environment.”<sup>71</sup>

Mistreatment of Varick detainees and the lack of access to routine health services are two conditions of confinement that would violate Article 10 of the International Covenant on Civil and Political Rights. Abuses in the delivery of medical care to detainees are not an unavoidable condition of detention; they are the result of government policy choices that can be changed. The United Nations defines an international standard of care for the treatment of a detainee as being the same medical care that is available to a non-detainee, subject to the practical limitations that arise from the circumstances of detention.<sup>72</sup>

In the following pages, we provide a snapshot of those medical grievances that we find most compelling in light of immigrant detainees’ right to medical care. These grievances chronicle the tragic position of immigrant detainees, people confined against their will and left with no recourse for their medical care other than what the government chooses to provide.

As these stories show, all too often serious medical injuries go untreated, raising significant constitutional and humanitarian concerns.

## SEVERE DENTAL AND DIGESTIVE PROBLEMS: DETAINEE X'S STORY

On June 24, 2009, in the first of a series of grievances filed over several weeks, a detainee in housing unit B1#155 complained that medical staff refused to extend his liquid diet. Detainee X had been on a liquid diet because of pain in his teeth and digestive problems, but medical staff placed him back on a normal diet. The detainee complained of stomach pain and diarrhea and explained that he had not eaten for two days, which made him weak and dizzy.

In his requested action, X wrote, "I need to go to the hospital to see a specialist. I need to see a dentist. I can't deal with pain anymore. The pain meds don't help me enough."

"I am in so much pain that I want to hit my head against the wall and cry."

– Detainee X

Varick personnel responded to the grievance on June 29, noting that the detainee only first mentioned his dental problems five months ago in Feb. 2009, not the eight months cited in the grievance. The resolution, which the detainee accepted, stated that X would remain on a soft food diet while waiting for a dental appointment, which he first requested in October 2008. Had this detainee not persisted in advocating for his own health care, this decision would appear to have finalized the matter.

On July 2, 2009 this same detainee submitted another, more detailed, grievance that described severe and constant pain in his teeth, gastro-intestinal problems that led to considerable weight loss and frustration with the facility's failure to address his well-documented complaints. X explained that medical staff knew of an abscess in his tooth since his admittance to the facility in October of the previous year; yet nine months later, they did not provide any treatment. A nurse made a note in his file about dental pain on Feb. 16, but only provided him with ibuprofen.

The continued neglect of X's tooth abscess worsened his condition and ultimately led to his inability to chew normal food. Along with his dental problems, the detainee complained of stomach pain, including diarrhea and decreased appetite. In a moment of desperation and agonizing pain, the detainee swallowed several capsules of ibuprofen on June 28, noting that earlier that day, he was again refused access to pain medication. X went to the hospital, where he was treated and diagnosed with a fever relating to an infection in his gums.

It was only after this incident that the detainee says medical staff was more responsive to his medical problems. Still, the detainee handwrote nearly five pages outlining his medical history in great detail and pleading for better medical care, and medical staff responded with a three-sentence reply, stating that the young man had been referred for a dental appointment and that he "is receiving necessary and appropriate treatment for his conditions."

The detainee did not agree with this resolution and the grievance was referred to the Detainee Grievance Committee. After this point, it is unclear what steps were taken to resolve the grievance. Another grievance filed by the same person shortly thereafter complained again of failure to provide him with pain medication.

The man wrote: "As I write this I am in so much pain that I want to hit my head against the wall and cry. This happens too often to me."

The response to this grievance was the same as was offered in response to the July 2 grievance.

As with many of the documents provided to the NYCLU regarding other grievances, the documents regarding detainee X do not reveal a final resolution. His complaints might well have been lost among the 209 other

grievances that we received had this particular detainee not written to the NYCLU seeking help in July 2009.

In his letter to the NYCLU, the young man outlined his ongoing medical and dental problems and the circumstances at Varick that severely aggravated his condition. In August, the NYCLU met with him and decided to assist him in his quest to obtain appropriate and necessary medical care.

From our examination of X's medical file and our ongoing communication with him, we have been able to piece together a story that illustrates the ineffective and inadequate provision of health care at Varick and the facility's failure to address a detainee's legitimate medical problems and severe pain.

During X's initial medical screening on Oct. 22, 2008, Varick personnel noted in writing that he had an abscess in one of his teeth and checked the box marking it as "a significant dental problem." Nonetheless, Varick personnel did not provide any treatment to address the problem. X complained about his escalating condition several times over the next few months, but no action was taken. Over the several months that X's dental issues went untreated, his oral infection spread to other teeth. He became overcome by pain and was eventually unable to chew normal food.

On May 20, 2009, X was placed on a liquid diet. In our grievance analysis, we are only introduced to X when his liquid diet was not extended, but the young man had already endured dental problems for eight months. As noted in the resolution of X's grievances, Varick medical staff submitted a referral for a dental appointment. But it was not until the NYCLU got involved with X that ICE finally scheduled a dental appointment for him—10 months after staff identified his "significant dental problem."

X saw a dentist on Aug. 19, 2009, two days after the NYCLU sent a letter to the facility demanding care for his dental and medical problems. This dentist, who we believe was working under contract with DHS, informed X that his oral infection had spread and recommended that he have seven teeth removed. X, who was only 23 years old at the time, was devastated. He felt such a loss would permanently diminish his quality of life.

As with his dental problems, X's stomach problems were not addressed until months after he first complained about them. The detainee was allowed to see a gastro-intestinal specialist on Sept. 17, 2009. Unfortunately though, the facility failed to properly prep him for the exam, so the results were limited. The specialist recommended medication and a specific diet, along with periodic follow up. Despite these recommendations, medical staff failed to comply promptly with the treatment plan and failed to arrange the necessary follow up visits to the GI specialist.

On October 22, 2008, Detainee X was given his initial medical screening by Varick doctors. He was diagnosed as having "a significant dental problem" and an abscess in his upper tooth. He was not taken to see a dentist.

In February 2009, X complained of pain in his teeth.

On May 20, 2009, X was put on a liquid diet because he could no longer eat regular food.

On June 24, 2009, X complained because he was taken off of his liquid diet but was still not taken to a dentist. He wrote, "I need to see a dentist. I can't deal with the pain anymore."

On June 28, 2009, X almost overdosed on ibuprofen because the pain was so severe.

On August 19, 2009 – after the NYCLU got involved – X was finally taken to see a dentist. The oral infection spread in the 10 months since X was sent to Varick and the dentist recommended that the 23-year-old detainee have seven of his teeth removed.

While dealing with ongoing stomach problems, the detainee continued to refuse the dental plan that would cost him seven teeth. This proposed course of treatment would also have required X to be transferred upstate to the Batavia Federal Detention Facility, a prospect that he adamantly rejected because it would separate him from his family and immigration attorney. X requested an independent consultation with his private dentist, a course of action that is recognized in the 2008 ICE National Detention Standards.<sup>73</sup> At the NYCLU's persistent urging, on Sept. 30, 2009 X was permitted to visit a private dentist at his own expense to explore whether a less drastic course of treatment was possible. This second dentist recommended a series of root canals that would address the dental problems and avoid the permanent loss of seven teeth.

Nearly five months later, X has still not received dental treatment. He was transferred briefly to another facility in order to allow ICE medical staff to assess the matter more thoroughly, yet, again, extraction was proposed as the only course of treatment. Despite the NYCLU's continued advocacy for alternatives to extraction, ICE and DIHS continue to delay treatment and insist on the less costly remedy to a problem that was exacerbated by their neglect.

Detainee X, now 24, has been in immigration detention for one year and four months and has endured severe pain through most of that time.

## PROSTATE CANCER

On Nov. 22, 2008, a detainee who was suffering from prostate cancer filed a grievance describing an aborted attempt to deport him two days after he had requested a doctor's appointment for cancer treatment.

The detainee, a 47-year-old Russian man, wrote of being forced to sit in a van at Kennedy International Airport for several hours with excruciating pain in his lower abdomen. He maintained that security guards refused his pleas to use a restroom and accused him of playing games.

He said the pain was so great that he nearly lost consciousness and didn't recall how he returned to Varick. He described having a catheter inserted at the facility to help him urinate. He said the doctor chastised him for not cooperating with the guards. The detainee said he had submitted a request for a doctor's appointment on Nov. 19, 2008 after enduring intense lower abdominal pain and extreme difficulty urinating.

According to his handwritten account, he was informed on Nov. 21 that he would be deported immediately. He said Varick officials didn't give him prior notice of this decision and didn't even allow him to call a family friend to arrange for warmer clothes. He had been detained since September and only had warm weather clothing.

He wrote that a doctor at Beth Israel Medical Center advised him in August to have immediate surgery. He said ICE arrested him before his cancer treatment could begin.

An undated doctor's note from St. Vincent's Hospital confirms the patient's cancer diagnosis and states that the patient requires either surgery or radiation therapy. The note states that it is unclear whether these treatments can be provided in Russia.

In a note dated Nov. 6, 2008, a physician at St. Vincent's states that the detainee does not qualify financially to receive radiation treatment at the hospital. The doctor recommends the detainee receive treatment at Beth Israel Medical Center, where he was originally diagnosed with cancer. The record doesn't indicate when the diagnosis occurred.

In a Nov. 26, 2008 memo, DIHS responded to the detainee's Nov. 22 complaint, acknowledging that St. Vincent's urology clinic had referred him to Beth Israel for cancer treatment. The memo states that staff had made

three unsuccessful attempts to contact Beth Israel. It says the detainee will be contacted once an appointment is scheduled.

Three weeks later, the detainee still had not visited a doctor. On Dec. 9, 2008, the detainee filed a grievance expressing alarm and frustration at his inability to receive treatment.

“How long or when will you be able to get may (sic) appointment, will it be after may (sic) death?” he wrote.

According to a handwritten note on the Dec. 9 grievance form, the detainee was deported on Dec. 22, 2008. It is unclear whether he ever received his medical care.

## *PROSTHETIC*

On Dec. 9, 2008, a detainee filed a grievance saying that his prosthetic leg no longer fit, causing pain and bleeding when he attempted to wear it.

The detainee, a Lebanese man, stated that he was eager to return to his native country. He said he has provided his entire family’s travel documents and birth certificates so that they may return home. He complained of being told numerous times that he was scheduled to be deported “within a week” only to remain in detention. He asked to have his artificial leg replaced as he waited to return to Lebanon.

According to ICE’s detention standards, medical prosthetics will be provided in a “timely manner” when a physician determines the detainee’s health would otherwise be adversely affected.

In a memo dated Dec. 15, 2008, DIHS informed the detainee that a private vendor had examined his prosthetic leg and determined that it should be replaced. The detainee was told that pending DIHS Management Care Department approval, he would be measured for a new prosthetic leg. He was asked to be patient while the request is reviewed.

One and a half months later, on Feb. 4, 2008, the detainee filed a second grievance, saying he had not received a replacement leg. His old prosthetic continued to cause him great pain whenever he attempted to wear it. He politely asked that it be replaced as soon as possible.

A Feb. 13, 2008 DIHS memo explains that a new referral for the prosthetic will be submitted to DIHS headquarters.

A DIHS memo dated March 9, 2008, three months after the initial grievance, indicates that headquarters never received a referral concerning the prosthetic. It explains that a referral will be submitted, though it “most likely will not be approved.”

It is unclear whether the man ever received a new prosthetic leg.

## *METAL PIECES STICKING OUT OF GUMS*

In a Nov. 14, 2008 grievance, a detainee complained of “metal pieces” sticking out from what appears to be a broken dental bridge. He said the metal pieces prevented him from chewing properly, causing him to choke on his food. He also said the metal cut his lips and tongue.

The detainee wrote that he had submitted “many, many” medical requests about this problem, which had not

been corrected during a previous dental appointment because staff had submitted improper paperwork.

DIHS responded in a memo dated Dec. 15, 2008 – more than a month after the grievance was filed – that they were awaiting confirmation of his dental appointment. The memo asks the detainee to “please be patient.”

It is unclear from the record whether a dental appointment was scheduled.

## **CHEST PAINS**

On July 2, 2009, a detainee filed a grievance because medical staff refused to examine him despite complaints of chest pains, a burning sensation and vomiting for three-to-four days.

The detainee explained that a nurse at the facility denied his request to see a doctor. She did not provide any medication. The detainee said the nurse told him she would put a note in his file concerning the situation, and that staff members ignored further requests for medical attention.

“What, do I have to die first before I see a doctor?” he wrote.

A July 13, 2009 DIHS memo concludes that the detainee was not suffering a medical emergency and likely has heartburn. This determination was made about two weeks after he first complained of chest pains and other symptoms. ICE detention standards require detainees’ health care needs be met in a “timely and efficient manner.” The memo concedes that the nurse should have addressed the detainee’s medical issue and states that her conduct is being investigated.

## **MAALOX FOR CHEST PAINS**

On July 13, 2009, a detainee filed a grievance after suffering severe chest pains, numbness in his left arm, and spitting up blood. The detainee, who appears to have had prior surgery to correct a blocked artery, had requested medical attention a week earlier and a nurse examined him. He did not believe the nurse took his condition seriously. She only provided him Maalox, an over-the-counter antacid.

“I would like you to know that when I’m at home and experiencing chest pain and I go to the hospital, I become a priority,” he wrote. “I don’t want to be a statistic.”

He requested a stress test.

ICE’s detention standards require that detainee’s medical needs be met in a “timely and efficient manner.” Under these standards, symptoms of cardiac arrest should be addressed immediately.

A July 16, 2009 DIHS memo explains that referral will be submitted to schedule the detainee for a cardiological evaluation. It is unclear whether the referral was approved or denied. The memo notes that the detainee was instructed to take nitroglycerine if chest pains occur and report to medical for an evaluation.

## **C. Treatment by Staff**

There were a total of 52 grievances regarding the treatment of detainees by Varick staff. The most alarming feature of these grievances is the consistency with which the allegations of abuse appear throughout the one-year period. In other grievance categories, such as diet, we noticed a spike in complaints at certain times of the year – for example, several complaints about a lack of kosher food at one time – followed by a period of time when no grievances of a similar nature were filed (suggesting, in this example, that the detainees once again had access

to kosher food). This would indicate the issue underlying these grievances was of an isolated nature, and that the issue was effectively addressed through the grievance process. In contrast, the treatment by staff category shows no such ebb and flow in the rate of grievances filed – there is a consistent, steady stream of complaints year round alleging the same types of abuse.

Few grievances allege physical abuse. Unfortunately, a substantial number of grievances alleged unprofessional behavior including verbal abuse, threats and the unfair denial of access to facility services. The verbal abuse often entailed derogatory comments directed at a detainee’s race, religion or immigration status.

The grievance records provide minimal detail regarding investigations or resolutions of staff treatment complaints. It appears, though, that administrators would typically ask a staff member about his or her conduct and review relevant surveillance footage. Consistently the results were inconclusive as the staff member in question would deny the alleged conduct and the videotape would not provide relevant evidence (verbal exchanges between detainees and staff are inaudible). As a result, administrators would either take no action or advise the staff member to act professionally.

### *VERBAL ABUSE and THREAT*

On Nov. 7, 2008, a detainee filed a grievance explaining that he was sitting in his bunk when a security officer verbally abused him and threatened to physically beat him.

“He told me he wanted me to fight him and that he would beat my ass,” the detainee wrote on the grievance form.

The detainee said surveillance camera footage would show the officer threatening the detainee with his hand.

A handwritten note dated Nov. 14, 2008 in the “formal resolution” section of the grievance form explains that an investigation showed that the officer did not threaten the detainee. It says that a review of the surveillance footage shows a conversation between the officer and detainee but offers no indication that the officer made any threats. Video footage alone seems insufficient to determine the nature of the verbal exchange.

The detainee rejected the formal resolution and was subsequently transferred out of Varick.

### *RELIGIOUS DISCRIMINATION*

On Sept. 17, 2009, a detainee filed a grievance alleging that a security officer cursed him and disrespected his religion after he complained about receiving the wrong meal.

The detainee said that the officer called Muslims a “bunch of women.” He said he was forced to sit in a processing room for four hours without food after he had fasted all day. This incident occurred during the Muslim holy month of Ramadan, when devout Muslims fast from sunrise to sunset.

The detainee accused the officer of routinely harassing him about his meals.

A handwritten note dated Sept. 17 on the “informal resolution” section of the grievance form says the officer will be interviewed regarding the detainee’s accusations. It says the detainee will receive a regular evening meal “from this time forward.” The form indicates that the detainee accepted this resolution.

## PHYSICAL ABUSE

On Jan. 26, 2009, a detainee filed a grievance alleging that a security officer punched him in his chest as he attempted to obtain his medication.

According to the detainee's handwritten account, he was busy shaving when detainees were told to go receive their medication. He went to see the nurse with his shirt untucked. He said the officer struck him in the chest with his fist, pushing him backward through the door. The detainee explained that the officer previously had verbally harassed him and tried to humiliate him.

According to a handwritten note dated Feb. 2, 2009 in the "formal resolution" section of the complaint form, an investigation revealed that the officer had no intention of injuring the detainee but only wanted to prevent him from visiting the nurse with his shirt untucked.

The note says the officer was instructed to use better judgment when interacting with detainees. The detainee accepted the formal resolution.

### D. Law Library Grievances

There were three grievances regarding the law library. Each of these grievances involved a claim of unfair denial of access to the law library. Varick administrators responded to these grievances by assuring that detainees were not denied access during the library's stated hours of operation and that services inside the library, such as copying and printing, were available.

The law library grievances are a useful example of how the grievance process can effectively ensure proper conditions of confinement at an immigration detention facility. This outcome is consistent with the ICE Office of Detention Removal detention standards and Supreme Court precedent regarding law library access. While the guidelines are not mandatory and not enforceable, the constitutional standard for law libraries is well defined. A detention facility must provide detainees access to an adequate law library.<sup>74</sup> It is a violation of the detainee's constitutional rights when efforts to pursue a particular legal claim are hindered by inadequate law library access.<sup>75</sup>

### E. Other Grievances

There were 13 grievances regarding diet. These grievances generally raised two issues: an inadequate supply of religious meals, and complaints of inadequate nutritional value and variety in meals. Other detainee complaints included problems with visitation, accessing the barber shop and getting access to personal property. Generally, when the grievance procedure was fully documented, the documents revealed that these issues were all effectively resolved by providing access to the facility service at issue. A few grievances posed questions about legal proceedings, and in those cases, Varick administrators properly advised the detainees.

However, as mentioned earlier, there is a staff treatment issue in the background of some of these grievances. In many cases, the primary issue in the grievance is addressed and the resolution finalized without any mention of inappropriate staff treatment. This is alarming because many of these grievances were resolved with a Varick administrator accommodating the detainee's request – an implicit acknowledgment of wrongdoing on the part of Varick staff.

## V. CONCLUSIONS AND RECOMMENDATIONS

As of the publication of this report, the Department of Homeland Security plans on closing the Varick Federal Detention Facility. The impetus for the closure remains unclear. DHS officials have cited the availability of less expensive detention space in New Jersey, and the lack of outdoor recreation space at Varick.<sup>76</sup>

Advocates have expressed concern that the reason for the closure stems from growing criticism by New York City's immigrants' rights community about conditions of confinement at Varick. Rather than addressing advocates' concerns, federal immigration officials may be packing up the facility and shipping detainees to prisons that do not necessarily have a better track record.

Regardless of the motivation behind the closure, and regardless of whether the Varick facility remains open or is closed, the NYCLU hopes that federal immigration officials will heed the voices of the Varick detainees and improve conditions of confinement for the men, women, and children held in immigration detention in the United States. The voices of the Varick detainees drive the recommendations below.

*The Department of Homeland Security should:*

### A. Enact Enforceable Detention Regulations

The problems documented in this report plague immigration detention facilities throughout the nation. They are a product of an immigration detention system that holds close to 400,000 people every year, yet is not governed by enforceable regulations.

The majority of detainees in the immigration detention system have no criminal record.<sup>77</sup> They include asylum seekers, families with children, and victims of human trafficking. Yet they are held in local, state, federal and private prisons that fail to comply with basic standards of care. More than 100 people have died in immigration detention since 2003.

Unfortunately, President Barack Obama has followed the same course pursued by the Bush administration and has refused to issue enforceable regulations governing the nation's immigration detention system.

The NYCLU recommends that President Obama reconsider his position and direct DHS to issue detention regulations. Should the president fail to do so, we call on Congress to pass the "Strong STANDARDS (Safe Treatment, Avoiding Needless Deaths, and Abuse Reduction in the Detention System) Act," which would require that DHS adopt detention regulations that are legally binding and enforceable. Senators Robert Menendez (D-NJ) and Kirsten Gillibrand (D-NY) introduced the legislation. Senator Charles Schumer (D-NY), chair of the Senate's Subcommittee on Immigration, Refugees and Border Security and a proponent of comprehensive immigration reform, should support this bill and include it in any immigration reform package.

### B. Expand Alternatives to Detention

Alternatives to detention allow DHS to enforce the nation's immigration laws in a more humane and cost-effective manner. Unnecessary detention comes at a cost not only to individuals and their families, but to taxpayers as well. The federal government spends approximately \$1.7 billion a year on immigration detention.<sup>78</sup> Detaining individuals at the Varick Federal Detention Facility costs \$253 a day.<sup>79</sup> Detaining individuals at the Hudson Correctional Facility costs \$111 a day.<sup>80</sup> Alternatives to detention cost as little as \$14 a day.<sup>81</sup>

Examples of alternatives to detention include supervised release, in-person reporting, home visits and community supervision, a program tested by the Vera Institute of Justice on behalf of the federal government that yielded an appearance rate of 91 percent at immigration court hearings.<sup>82</sup> Electronic tagging devices should be used only as a last resort, and only on individuals who are considered a security or flight risk.

DHS should expand alternatives to detention for individuals who do not pose a risk to others. The Department of Homeland Security should strive to use the least restrictive means necessary as alternatives to detention and promulgate regulations establishing the criteria for eligibility for alternatives to detention. A DHS report issued on Oct. 6, 2009 recommended the adoption of risk assessment tools so that detainees may be considered for alternative to detention.<sup>83</sup> Moreover, Secretary Napolitano has indicated her intent to submit a plan to Congress on implementing alternatives to detention nationwide. We support the immediate adoption of these proposals.

### C. Release Eligible Detainees

Unfortunately, due to inadequate access to counsel and hurdles under current immigration law, many individuals who should be eligible for release remain in detention while they wait for their immigration case to proceed. Detaining individuals in already overburdened detention facilities only exacerbates the problems in the detention system.

The NYCLU recommends that DHS engage in a case-by-case review of detention decisions for each detainee held at the Varick Federal Detention Facility, and determine whether that detainee is eligible for release. Examples of individuals who may be eligible for release from Varick include:

- ▶ Detainees who are eligible for bond but have yet to receive a bond determination hearing;
- ▶ Detainees who have already been provided with bond determination yet should be given bond redeterminations to reassess high bond amount, or be released on their own recognizance or under supervision;
- ▶ Detainees who have been mislabeled as ineligible for bond due to a misapplication of the mandatory detention statute; and
- ▶ People who are eligible for Temporary Protected Status (TPS), including newly eligible Haitians.

On Feb. 1, 2010 a broad coalition of 16 national and community groups, legal service providers and advocacy organizations sent a letter to DHS Secretary Napolitano urging her to release eligible detainees.<sup>84</sup> We hope that DHS will listen to this group's advice and reunite detainees with their families.

Moreover, Congress should amend the immigration laws and (1) end mandatory detention, which requires that DHS take into custody without bond non-citizens who have been convicted of certain removable offenses; (2) narrow the definition of an aggravated felony; (3) expand cancellation of removal and (4) restore judicial review so that the federal courts may review orders of removal made by the Department of Homeland Security. These commonsense amendments will ensure that the Department of Homeland Security detain only those individuals who truly present a danger to the United States.

### D. Ensure that Varick Detainees Remain Close to Family and Counsel

Detainees currently housed in the Varick Federal Detention Facility must not be separated from their families and legal counsel because of DHS's decision to close Varick. DHS's proposal to send the Varick detainees to the Hudson County Correctional Center in Kearney, New Jersey would present significant obstacles for detainees who are currently housed in New York City close to their lawyers and families. The Hudson County facility is

difficult to access for many families. Moreover, the transfer will erect barriers for pro bono representation, as lawyers based in New York City may be less willing to make the trip to New Jersey. Finally, as Senator Schumer noted in a letter to DHS Secretary Napolitano, the last audit of the Hudson County Correction Facility found that attorneys complained about difficulties accessing their clients at the Hudson facility.

The NYCLU recommends that Secretary Napolitano ensure that any changes to the placement of Varick detainees be done in a way that allows detainees access to legal counsel and their families.

## E. Reform Grievance Procedures

The grievance procedures instituted by Varick provide an opportunity for detainees to file complaints, and also an opportunity for outside organizations, such as the NYCLU, to review complaints. We commend Varick for instituting these procedures.

However, the grievance procedure can and should be improved to allow for better record-keeping and tracking of recurring complaints that should trigger heightened scrutiny by immigration officials. ICE's Detention Standards Compliance Unit must improve its monitoring system.

The NYCLU's analysis of 210 grievances reveals that current record keeping practices at Varick are inadequate. Too many of the grievance documents analyzed by the NYCLU did not contain the detainee's signature and response to the resolution; information on what happened during the grievance committee procedure; adequate information on the resolution of the grievance (i.e., one sentence that the investigation yielded no wrongdoing); and information on the final resolution (for example, the document will state that the grievance has been referred to someone else, yet does not provide detail on who in the final resolution).

Moreover, the grievances filed by Varick detainees reveal a pattern of alleged misconduct that should have triggered heightened scrutiny by federal immigration officials. In the context of medical care, detainees complained repeatedly about denial of proper medication or timely treatment for pain. With regards to staff treatment, detainees complained repeatedly about threats.

Human Rights Watch has found that the United States violates the ICCPR when grievance procedures do not adequately remedy human rights violations at federal detention facilities. The organization contends:

*Ineffective grievance procedures and the Department of Homeland Security's failure to convert the ICE detention standards into enforceable regulations impede detainees in enforcing their rights. The ICCPR, article 2.1, requires that state parties undertake to "ensure" the Covenant's rights to all persons within their territory. Without an effective remedy for the violation of the right to dignity, the enjoyment of the right cannot be guaranteed. The Human Rights Committee, which interprets the ICCPR and evaluates state compliance, has urged states to specify in their reports whether individuals in detention "have access to such information and have effective legal means enabling them to ensure that those rules are respected, to complain if the rules are ignored and to obtain adequate compensation in the event of a violation."*<sup>85</sup>

The NYCLU recommends that DHS require immigration detention facilities to keep full records of detainee grievances and of responsive steps taken by facility and immigration staff. Moreover, federal officials should review grievances on a regular basis, whether through aggressive auditing or automated early warning systems. Once themes appear in certain facilities—for example, complaining about not receiving adequate medical care or about an atmosphere of hostility—federal officials must investigate the situation and follow up accordingly.

*The City of New York should:*

## F. Monitor Conditions of Confinement for Immigration Detainees in New York City

New York City Mayor Michael Bloomberg announced during his third-term inauguration speech that he supports comprehensive immigration reform. In 2006, he stated: “Although they broke the law by illegally crossing our borders or overstaying their visas, and our businesses broke the law by employing them, our city’s economy would be a shell of itself had they not, and it would collapse if they were deported. The same holds true for the nation.”<sup>86</sup> City Council Speaker Christine Quinn also supports the rights of immigrants. In 2007, she stated, “New York City continues to rely on the hard work of immigrants who have been our city’s backbone for generations. Misguided immigration policies have a terrible impact on families, neighborhoods and communities. I join my colleagues in urging Congress to make real immigration reform a priority.”<sup>87</sup>

Given their expressed support for immigrants, including undocumented immigrants, Mayor Bloomberg and Speaker Quinn should ensure that no individual held in immigration detention in New York City is mistreated. Moreover, they must ensure that residents of New York City who are apprehended and detained by the federal government are not unnecessarily separated from their families and legal representatives.

The NYCLU calls on Mayor Bloomberg and Speaker Quinn to investigate conditions of confinement for immigration detainees in New York City. Moreover, Mayor Bloomberg and Speaker Quinn must ensure that the federal government’s plan to close the Varick Federal Detention Facility does not lead to the further mistreatment, and denial of justice, for immigrant detainees from New York City.

# ENDNOTES

<sup>1</sup> The NYCLU received copies of the grievances pursuant to a Freedom of Information Act request.

<sup>2</sup> U.S. DEP'T OF JUSTICE, 2001 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE 235 (2003), *available at* <http://www.dhs.gov/files/statistics/publications/archive.shtm> (last visited Feb. 19, 2010).

<sup>3</sup> TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE (TRAC), CHANGING COMPOSITION OF ICE DETAINEES: FY 2005 – FY 2010 (1<sup>ST</sup> QUARTER), *available at* <http://trac.syr.edu/immigration/reports/224/include/1.html> (last visited Feb. 19, 2010).

<sup>4</sup> A recent report by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University found that, in FY 2009, only 27 percent of immigration detainees had a criminal record. TRAC, DETENTION OF CRIMINAL ALIENS: WHAT HAS CONGRESS BOUGHT?, *available at* <http://trac.syr.edu/immigration/reports/224/> (last visited Feb. 19, 2010).

<sup>5</sup> The federal government's list of 107 deaths may be found at U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE), DETAINEES WHO DIED IN ICE CUSTODY OCTOBER 2003 – PRESENT, *available at* [www.ice.gov/doclib/foia/media-requests/detaineedeaths2003-2009.pdf](http://www.ice.gov/doclib/foia/media-requests/detaineedeaths2003-2009.pdf) (last visited Feb. 19, 2010).

<sup>6</sup> U.S. DEP'T OF HOMELAND SECURITY, OFFICE OF INSPECTOR GENERAL, TREATMENT OF IMMIGRATION DETAINEES HOUSED AT IMMIGRATION AND CUSTOMS ENFORCEMENT FACILITIES 1 (2006), *available at* [http://www.dhs.gov/xoig/assets/mgmtrpts/OIG\\_07-01\\_Dec06.pdf](http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_07-01_Dec06.pdf) (last visited Feb. 19, 2010). The following facilities were audited: Berks County Prison, Leesport, Penn.; Corrections Corporation of America Facility, San Diego, Calif.; Hudson County Correction Center, Kearny, N.J.; Krome Service Processing Center, Miami, Fla.; Passaic County Jail, Paterson, N.J. *See id.*

<sup>7</sup> *See, e.g.*, HUMAN RIGHTS WATCH, CHRONIC INDIFFERENCE: HIV/AIDS SERVICES FOR IMMIGRANTS DETAINED BY THE UNITED STATES (2007), *available at* <http://www.hrw.org/en/reports/2007/12/05/chronic-indifference> (last visited Feb. 19, 2010); AMNESTY INTERNATIONAL, JAILED WITHOUT JUSTICE: IMMIGRATION DETENTION IN THE USA (2009), *available at* <http://www.amnestyusa.org/uploads/Jailed-WithoutJustice.pdf> (last visited Feb. 19, 2010); HUMAN RIGHTS WATCH, DETAINED AND DISMISSED: WOMEN'S STRUGGLES TO OBTAIN HEALTH CARE IN UNITED STATES IMMIGRATION DETENTION (2009), *available at* [http://www.hrw.org/sites/default/files/reports/wrd0309web\\_1.pdf](http://www.hrw.org/sites/default/files/reports/wrd0309web_1.pdf) (last visited Feb 19, 2010); FLORIDA IMMIGRANT ADVOCACY CENTER, DYING FOR DECENT CARE: BAD MEDICINE IN IMMIGRATION CUSTODY (2009), *available at* <http://www.fiacfla.org/reports/DyingForDecentCare.pdf> (last visited Feb. 19, 2010).

<sup>8</sup> Press release, U.S. Immigration and Customs Enforcement, ICE announces new Performance-Based National Detention Standards for all ICE detention facilities (Sept. 12 2008), *available at* <http://www.ice.gov/pi/nr/0809/080912washington.htm> (last visited Feb. 19, 2010). The 2008 Detentions Operations Manual is available at <http://www.ice.gov/partners/dro/PBND/index.htm>.

<sup>9</sup> *See* Letter from Jane Holl Lute, Deputy Secretary, U.S. Dep't of Homeland Security, to Michael J. Wishnie, Clinical Professor of Law, Yale Law School, and Paromita Shah, Associate Director, National Immigration Project of the National Lawyers Guild (July 24, 2009), *available at* <http://www.nationalimmigrationproject.org/DHS%20denial%20-%207-09.pdf> (last visited Feb. 19, 2010) (denying petition for rulemaking in response to Judge Denny Chin's order compelling DHS to reply to petition that had sought DHS detention regulations).

<sup>10</sup> *See* U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, ICE FISCAL YEAR 2010 ENACTED BUDGET 2 (2009), *available at* <http://www.ice.gov/doclib/pi/news/factsheets/2010budgetfactsheet.doc> (last visited Feb. 19, 2010).

<sup>11</sup> Nina Bernstein, *Immigrants in Detention to be Sent Out of State*, N.Y. TIMES, Jan. 15, 2010, at A24, *available at* <http://www.nytimes.com/2010/01/15/nyregion/15ice.html?scp=1&sq=%22Immigrants%20in%20Detention%20to%20be%20Sent%20Out%20of%20State%22&st=cse> (last visited Feb. 19, 2010).

<sup>12</sup> *SEE* U.S. DEP'T OF HOMELAND SECURITY, FACT SHEET, ICE DETENTION REFORM: PRINCIPLES AND NEXT STEPS, SECRETARY NAPOLITANO ANNOUNCES NEW IMMIGRATION DETENTION REFORM INITIATIVES (2009), *available at* [http://www.dhs.gov/xlibrary/assets/press\\_ice\\_detention\\_reform\\_fact\\_sheet.pdf](http://www.dhs.gov/xlibrary/assets/press_ice_detention_reform_fact_sheet.pdf) (last visited, Feb. 29, 2010).

<sup>13</sup> CONGRESSIONAL RESEARCH SERVICE, IMMIGRATION RELATED DETENTION: CURRENT LEGISLATIVE ISSUES 12 (2004), *available at* <http://www.fas.org/irp/crs/RL32369.pdf> (last visited Feb. 19, 2010).

<sup>14</sup> ICE FACT SHEET ON FISCAL YEAR 2009 (May 7, 2009) available at <http://www.ice.gov/doclib/pi/news/factsheets/2010budgetfactsheet.doc>; GOVERNMENT ACCOUNTABILITY OFFICE REPORT, DHS: ORGANIZATIONAL STRUCTURE AND RESOURCES FOR PROVIDING HEALTH CARE TO IMMIGRATION DETAINEES, p. 14, available at <http://www.gao.gov/new.items/d09308r.pdf>.

<sup>15</sup> Pub. L. No. 104-208, 110 Stat. 3009 (1996), Pub. L. No. 104-132, 110 Stat. 1214 (1996)

<sup>16</sup> U.S. DEP'T OF HOMELAND SECURITY, OFFICE OF INSPECTOR GENERAL, IMMIGRATION AND CUSTOMS ENFORCEMENT: DETENTION BEDSPACE MANAGEMENT (2009), *available at* <http://www.aila.org/content/default.aspx?bc=1016%7C6715%7C16871%7C28831> (last visited Feb. 19, 2010).

<sup>17</sup> U.S. DEP'T OF HOMELAND SECURITY, DETENTION OPERATIONS MANUAL (2000), *available at* <http://www.ice.gov/pi/dro/opsmanual/index.htm> (last visited Feb. 19, 2010).

<sup>18</sup> *See* *Families for Freedom v. Napolitano*, 628 F.Supp.2d 535 (S.D.N.Y. 2009) (finding that the Department of Homeland Security must respond to plaintiffs' request that the department promulgate formal regulations on detention standards); *see also* *Orantes-Hernandez v. Gonzales*, 504 F.Supp.2d 825, 862 (C.D. Cal. 2007) (citing plaintiffs' argument, which notes that the detention standards are not judicially enforceable).

- <sup>19</sup> U.S. DEP'T OF HOMELAND SECURITY, OFFICE OF INSPECTOR GENERAL, *supra* note 6, at 28. The following facilities were audited: Berks County Prison, Leesport, Penn.; Corrections Corporation of America Facility, San Diego, Calif.; Hudson County Correction Center, Kearny, N.J.; Krome Service Processing Center, Miami, Fla.; Passaic County Jail, Paterson, N.J. *See id.*
- <sup>20</sup> *Id.* at 8.
- <sup>21</sup> *Id.* at 9-10.
- <sup>22</sup> HUMAN RIGHTS WATCH (2007), *supra* note 7, at 2.
- <sup>23</sup> AMNESTY INTERNATIONAL, *supra* note 7.
- <sup>24</sup> HUMAN RIGHTS WATCH (2009), *supra* note 7, at 4.
- <sup>25</sup> *Id.* at 2.
- <sup>26</sup> FLORIDA IMMIGRANT ADVOCACY CENTER, *supra* note 7, at 7.
- <sup>27</sup> Press release, *supra* note 8. The 2008 Detentions Operations Manual is available at <http://www.ice.gov/partners/dro/PBND/index.htm>.
- <sup>28</sup> Press release, U.S. Immigration and Customs Enforcement, ICE announces major reforms to immigration detention system (Aug. 6, 2009) available at <http://www.ice.gov/pi/nr/0908/090806washington.htm> (last visited Feb. 19, 2010). *See also*, Nina Bernstein, *U.S. to Reform Policy on Detention for Immigrants*, N.Y. TIMES, Aug. 6, 2009, at A1.
- <sup>29</sup> Press release, U.S. Dep't of Homeland Security, Secretary Napolitano and ICE Assistant Secretary Morton Announce New Immigration Detention Reform Initiatives (Oct. 6, 2009), available at [http://www.dhs.gov/ynews/releases/pr\\_1254839781410.shtm](http://www.dhs.gov/ynews/releases/pr_1254839781410.shtm). *See also* Nina Bernstein, *Ideas for Immigrant Detention Include Converting Hotels and Building Models*, N.Y. TIMES, Oct. 6 2009, at A14.
- <sup>30</sup> *See* letter from Jane Holl Lute, *supra* note 9. *See also* Nina Bernstein, *U.S. Rejects Call for Immigration Detention Rules*, N.Y. TIMES, July 29, 2009, at A17.
- <sup>31</sup> *Lam v. Smith*, Civ. No. 79-0795 (EHN)(E.D.N.Y.).
- <sup>32</sup> *Refugees Refuse Food in Protest of Detention*, N.Y. TIMES, March 10 1985.
- <sup>33</sup> Marvin Howe, *Detained Cubans Fast a 9<sup>th</sup> Day*, N.Y. TIMES, Sept. 17, 1896, at B10.
- <sup>34</sup> U.S. GENERAL ACCOUNTING OFFICE, CRIMINAL ALIENS: INS' DETENTION AND DEPORTATION ACTIVITIES IN THE NEW YORK CITY AREA 1-4 (1986), available at <http://archive.gao.gov/f0102/131959.pdf> (last visited Feb. 19, 2010).
- <sup>35</sup> Vivienne Walt, *Captives in Freedom's Land: Long INS detention a hardship for refugees*, NEWSDAY, Jan. 15, 1989.
- <sup>36</sup> *Id.*
- <sup>37</sup> AMERICAN CIVIL LIBERTIES UNION IMMIGRANTS' RIGHTS PROJECT, JUSTICE DETAINED: CONDITIONS AT THE VARICK STREET IMMIGRATION DETENTION CENTER 7 (1993), available at <http://www.jacquelinestevens.org/ACLUVarickStreetDetentionReport1-2.pdf> (last visited Feb. 19, 2010).
- <sup>38</sup> *Id.* at 45.
- <sup>39</sup> *Id.* at 39.
- <sup>40</sup> *Id.* at 13-14.
- <sup>41</sup> Mirta Ojito, *Change in Law Sets Off Big Wave of Deportations*, N.Y. TIMES, Dec. 15, 1998, at A1.
- <sup>42</sup> Mirta Ojito, *Immigrant's Death in Detention Prompts New Criticism*, N.Y. TIMES, Feb. 9, 1999, at B3.
- <sup>43</sup> U.S. DEP'T OF HOMELAND SECURITY, DETENTION OPERATIONS MANUAL, INS DETENTION STANDARD: RECREATION, III(A)(1)-(3) (2000), available at <http://www.ice.gov/doclib/pi/dro/opsmanual/recreat.pdf> (last visited Feb. 19, 2010)
- <sup>44</sup> Peter L. Markowitz, *Barriers to Representation for Detained Immigrants Facing Deportation: Varick Street Detention Facility, a Case Study*, 78 FORDHAM L. REV. 541, 552 (2009).
- <sup>45</sup> Nina Bernstein, *Immigrant Jail Tests U.S. View of Legal Access*, N.Y. TIMES, Nov. 2, 2009, at A1.
- <sup>46</sup> Scott Higham and Robert O'Harrow, Jr., "Probe of Security Contract Sought," *The Washington Post* 5 March 2005.
- <sup>47</sup> Markowitz, *supra* note 44.
- <sup>48</sup> TRAC, TRANSFERS OF ICE DETAINEES FROM THE VARICK STREET SERVICE PROCESSING CENTER (2008), available at <http://trac.syr.edu/immigration/detention/200803/VRK/tran/> (last visited Feb. 19, 2010).
- <sup>49</sup> Bernstein, *supra* note 11.
- <sup>50</sup> CITY BAR JUSTICE CENTER, NYC KNOW YOUR RIGHTS PROJECT: AN INNOVATIVE PRO BONO RESPONSE TO THE LACK OF COUNSEL FOR INDIGENT IMMIGRANT DETAINEES, 18, Appendix C (2009), available at [http://www.nycbar.org/citybarjusticecenter/pdf/NYC\\_KnowYourRightsNov09.pdf](http://www.nycbar.org/citybarjusticecenter/pdf/NYC_KnowYourRightsNov09.pdf) (last visited Feb. 19, 2010).
- <sup>51</sup> U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, NEW YORK CITY FIELD OFFICE: VARICK FEDERAL DETENTION FACILITY, available at <http://www.ice.gov/pi/dro/facilities/varick.htm> (last visited Feb. 19, 2010).
- <sup>52</sup> Bernstein., *supra* note 11.
- <sup>53</sup> CITY BAR JUSTICE CENTER, NYC KNOW YOUR RIGHTS PROJECT: AN INNOVATIVE PRO BONO RESPONSE TO THE LACK OF COUNSEL FOR INDIGENT IMMIGRANT DETAINEES (2009), available at [http://www.nycbar.org/citybarjusticecenter/pdf/NYC\\_KnowYourRightsNov09.pdf](http://www.nycbar.org/citybarjusticecenter/pdf/NYC_KnowYourRightsNov09.pdf) (last visited Feb. 19, 2010).
- <sup>54</sup> Nina Bernstein, *Jail Protest by Immigrant Detainees is Broken Up by Agents*, N.Y. TIMES, Jan. 20 2010, available at <http://www.nytimes.com/2010/01/21/nyregion/21jail.html> (last visited Feb. 19, 2010)
- <sup>55</sup> U.S. DEP'T OF HOMELAND SECURITY, OPERATIONS MANUAL ICE PERFORMANCE BASED NATIONAL DETENTION STANDARDS: HUNGER STRIKES (2008), available at [http://www.ice.gov/doclib/PBND/pdf/hunger\\_strikes.pdf](http://www.ice.gov/doclib/PBND/pdf/hunger_strikes.pdf) (last visited Feb. 19, 2010).

<sup>56</sup> Press release, U.S. immigration and Customs Enforcement, ICE to suspend the use of Varick Facility to house detainees (Jan. 14, 2010), available at <http://www.ice.gov/pi/nr/1001/100114newyork1.htm> (last visited Feb. 19, 2010).

<sup>57</sup> Bernstein, *supra* note 11.

<sup>58</sup> AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY, BEHIND BARS: THE FAILURE OF THE DEPARTMENT OF HOMELAND SECURITY TO ENSURE ADEQUATE TREATMENT OF IMMIGRATION DETAINEES IN NEW JERSEY (2007), available at <http://www.aclu-nj.org/downloads/051507DetentionReport.pdf> (last visited Feb. 19, 2010).

<sup>59</sup> DEP'T OF HOMELAND SECURITY, *supra* note 6.

<sup>60</sup> U.S. DEP'T OF HOMELAND SECURITY, OPERATIONS MANUAL ICE PERFORMANCE BASED NATIONAL DETENTION STANDARDS: GRIEVANCE SYSTEM (2008), available at [http://www.ice.gov/doclib/PBNDs/pdf/grievance\\_system.pdf](http://www.ice.gov/doclib/PBNDs/pdf/grievance_system.pdf) (last visited Feb. 19, 2010).

<sup>61</sup> Names of department heads were redacted from documents provided to the NYCLU.

<sup>62</sup> *Id.*

<sup>63</sup> CONGRESSIONAL RESEARCH SERVICE, HEALTH CARE FOR NONCITIZENS IN IMMIGRATION DETENTION 10-12 (2008), available at [https://www.policyarchive.org/bitstream/handle/10207/18888/RL34556\\_20080627.pdf?sequence=2](https://www.policyarchive.org/bitstream/handle/10207/18888/RL34556_20080627.pdf?sequence=2) (last visited Feb. 19, 2010).

<sup>64</sup> DEPARTMENT OF IMMIGRATION HEALTH SERVICES, MANAGED CARE, AVAILABLE AT <http://www.icehealth.org/ManagedCare/Providers.shtm>

<sup>65</sup> See, e.g., *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 243-4 (1983).

<sup>66</sup> See, e.g., *Chance v. Armstrong*, 143 F.3d 698, 701 (2d Cir. 1998).

<sup>67</sup> See *Hathaway v. Coughlin*, 99 F.3d 550, 553 (2d Cir. 1996).

<sup>68</sup> *Caiozzo v. Koreman*, 581 F.3d 63, 71 (2d Cir. 2009).

<sup>69</sup> INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on June 8, 1992, art. 10.

<sup>70</sup> UN HUMAN RIGHTS COMMITTEE (HRC), “Replaces general comment 9 concerning humane treatment of persons deprived of liberty,” General Comment No. 21, U.N. Doc. A/47/40 (1992), available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3327552b9511fb98c12563ed004cbe59?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3327552b9511fb98c12563ed004cbe59?Opendocument) (accessed February 15, 2010), para. 3.

<sup>71</sup> *Id.*

<sup>72</sup> This support can be found in non-binding resolutions promulgated and passed by the United Nations General Assembly. These resolutions are understood by the international law community to be a set of normative documents that advance the objectives of the human rights movement by setting standards and generating a common set of vocabulary for describing rights in a particular subject area. A resolution passed in 1990 and entitled “Basic Principles for the Treatment of Prisoners” provides:

Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants... Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

Another resolution, is entitled “UN Principles of Medical Ethics” and states:

Health personnel, particularly physicians, charged with the medical care of prisoners and detainees, have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.

<sup>73</sup> U.S. DEP'T OF HOMELAND SECURITY, OPERATIONS MANUAL ICE PERFORMANCE BASED NATIONAL DETENTION STANDARDS: MEDICAL CARE (2008).

<sup>74</sup> See *Bounds v. Smith*, 430 U.S. 817, 828 (1977)

<sup>75</sup> See *Lewis v. Casey*, 518 U.S. 343, 351 (1996)

<sup>76</sup> U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT NEWS RELEASE, “ICE to suspend the use of Varick Facility to house detainees” 14 Jan. 2010

<sup>77</sup> In FY 2009, only 27 percent of immigration detainees had a criminal record. TRAC, DETENTION OF CRIMINAL ALIENS: WHAT HAS CONGRESS BOUGHT?, available at <http://trac.syr.edu/immigration/reports/224/> (last visited Feb. 19, 2010).

<sup>78</sup> See U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, ICE FISCAL YEAR 2010 ENACTED BUDGET 2 (2009), available at <http://www.ice.gov/doclib/pi/news/factsheets/2010budgetfactsheet.doc> (last visited Feb. 19, 2010).

<sup>79</sup> Nina Bernstein, *Immigrants in Detention to be Sent Out of State*, N.Y. TIMES, Jan. 15, 2010, at A24, available at <http://www.ny-times.com/2010/01/15/nyregion/15ice.html?scp=1&sq=%22Immigrants%20in%20Detention%20to%20be%20Sent%20Out%20of%20State%22&st=cse> (last visited Feb. 19, 2010).

<sup>80</sup> Ibid

<sup>81</sup> SEE U.S DEP'T OF HOMELAND SECURITY, FACT SHEET, ICE DETENTION REFORM: PRINCIPLES AND NEXT STEPS, SECRETARY NAPOLITANO ANNOUNCES NEW IMMIGRATION DETENTION REFORM INITIATIVES (2009), available at [http://www.dhs.gov/xlibrary/assets/press\\_ice\\_detention\\_reform\\_fact\\_sheet.pdf](http://www.dhs.gov/xlibrary/assets/press_ice_detention_reform_fact_sheet.pdf) (last visited, Feb. 29, 2010).

<sup>82</sup> Report from the Vera Institute for Justice to the Immigration and Naturalization Service, available at <http://www.vera.org/download?file=615/finalreport.pdf>

<sup>83</sup> Dr. Dora Schriro, "Immigration Detention Overview and Recommendations," UNITED STATES DEPARTMENT OF HOMELAND SECURITY IMMIGRATION AND CUSTOMS ENFORCEMENT, October 6, 2009.

<sup>84</sup> For a copy of the letter and a list of signatories, log onto <http://www.nyclu.org/news/nyclu-coalition-of-organizations-urge-timely-release-of-immigrant-detainees-varick-detention-ce>.

<sup>85</sup> Human Rights Watch, "Detained and Dismissed: Women's Struggles to Obtain Health Care in United States Immigration Detention" March 2009, available at <http://www.hrw.org/en/reports/2009/03/16/detained-and-dismissed>.

<sup>86</sup> New York Sun, "Bloomberg's America," July 6, 2006, available at <http://www.nysun.com/editorials/bloombergs-america/35541/>

<sup>87</sup> Press Release, "COUNCIL TO VOTE ON LEGISLATION TO PROTECT FIREFIGHTERS FROM HAZARDOUS BUILDING CONDITIONS; Also introduces resolution calling upon Congress to reform federal immigration policy," May 9, 2007, available at [http://council.nyc.gov/html/pr/pdf\\_files/newswire/045\\_050907\\_prestated.pdf](http://council.nyc.gov/html/pr/pdf_files/newswire/045_050907_prestated.pdf).