

Migrant detainees exist in a kind of limbo. Although subject to both criminal and civil penalties of the United States, and the objects of fierce international tensions, migrant detainees in the U.S. find themselves outside "the letter and the spirit of international law." Often confused as to precisely what offenses they are charged with, migrants picked up in the Northwest may find themselves "whisked 2,000 miles away from their home, family, community, etc. to be detained in South Texas." Amazingly, migrant detainees don't have a right to counsel, since the U.S. Supreme Court has ruled that the deportation process is "non-punitive."

Migrant Detention in South Texas by Greg Moses

In a recent landmark report, United Nations Special Reporter on the Human Rights of Migrants Jorge Bustamante said that the "overuse of immigration detention in the United States violates the spirit of international laws and conventions and, in many cases, also violates the actual letter of those instruments." South Texas immigration attorney Jodi Goodwin agrees.

"I do not see that the letter nor the spirit of international law is given any importance in US Immigration law," confirms Goodwin. "In fact, international law does not really come into play in the legal arena at all." Considering Goodwin's long experience with migrant clients, we asked her to respond to other issues raised by the Bustamante report:

GM: Bustamante said immigration enforcement is being gradually shifted toward state and local agencies. At last count, Immigration and Customs Enforcement (ICE) reports that 41 state and local agencies have signed up as "287(g) partners" to assist with immigration enforcement, helping to identify as many as 45,000 individuals for "possible deportation." The Associated Press reports that the number of cooperating agencies could soon reach as many as 100. What effects of this activity can be seen at the detention centers in South Texas?

Goodwin: The increase in the use of local law enforcement for immigration law is seen at the detention centers all the time. Many times people are detained by ICE only after a traffic stop for a minor violation, like a headlight being out or something, and then the local law enforcement officers inquire into the immigration status of individuals. I have seen really sympathetic cases where local law enforcement initiated the arrest and then the people are whisked 2,000 miles away from their home, family, community, etc. to be detained in South Texas.

GM: When it comes to immigration law, what is the difference between a criminal violation and a civil violation?

Goodwin: The criminal violations of the immigration law are prosecuted by the United States Attorney in Federal Courts. These criminal violations can be subject to jail and or prison sentences. Civil violations of the immigration laws are processed by the ICE Office of Chief Counsel. These violations can result in deportation if the person does not have any relief from removal.

GM: According to the Bustamante report, in 2006 the USA began to intensify the use of mandatory detentions and deportations that were put into law in 1996. What effects have you seen of this recent crackdown?

Goodwin: The biggest effect of the enforcement crackdown that I have seen is the enormous growth in the population of detained individuals in the South Texas area. The San Antonio Field Office of ICE is home to more detention bedspace than any other Field Office in the US. Beyond that, there is a marked lack of lawyers and pro bono assistance for all of these individuals that are detained for the most part in very rural, remote, areas of South Texas.

GM: Bustamante says that he "heard accounts from victims that ICE officials entered their homes without a warrant, denied them access to lawyers or a phone to call family members, and coerced them to sign "voluntary departure" agreements." How does this compare with accounts that you have heard from your clients?

Goodwin: Bustamante's account of ICE actions comports completely with many stories that I have heard from my clients. In fact, I have heard even more egregious stories than the example Mr. Bustamante sets forth.

GM: One of your clients? Would you be able to share a story like that?

Goodwin: Sure, I have heard the ugly details of many such arrests. Let me take one as an example: I had a client who was arrested by ICE at her home at around 5:00 am. Agents

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knocked on the door loudly yelling, "Police, Federal Officers." Her husband answered the door half asleep and as soon as he opened the door the agents forced their way into the home and knocked her husband down. Of course, the agents start yelling at him and start going through the house to look for people.

My client was in her bed as was her child. She was forced up and handcuffed while in her night clothes. The child awoke and saw all of this happen and as expected of a child started to cry. Instead of showing any compassion at all the agents start yelling at the child to shut up, then yelling at the parents to make their child shut up. They had to beg the agents to let her put on clothes before they took her away.

After being arrested and before physically making it in transport to the detention center, my client was "asked" to sign a voluntary removal no less than 4 times. Fortunately for her, she was insistent with the agents that she would not sign their papers and they would just have to put her in jail because she wanted to see an immigration judge.

My client was not a criminal. She had no criminal history at all. She was married to a United States citizen and had applied for her "papers" through him. What was her immigration violation that would warrant a pre-dawn home invasion? She overstayed her visitor visa.

GM: Rapporteur Bustamante recommends that, "Immigration detainees in the custody of the Department of Homeland Security and placed in removal proceedings, should have the right to appointed counsel." It seems astonishing to me that detained persons would not have a right to counsel, but maybe you can help us to understand how the lack of right to an attorney is affecting people in detention today?

Goodwin: The lack of the right to appointed counsel is one that has plagued me for decades. The Supreme Court has characterized the deportation process as non-punitive. Therefore, given that it is a civil proceeding in nature, the Constitutional guarantees to counsel do not apply. The lack of access to legal counsel is a huge constraint on South Texas detainees. Many are confused and do not know what they are being charged with. Many do not understand the process and procedures of the court system. Many do not know or have access to information that could prove they have a defense or are eligible for some form of relief from being removed.

GM: Bustamante also seems to be concerned that Government pressure for deportation is conflicting with basic human rights to private life and family. He says that laws in the USA put too much weight on the Government's side. He recommends that USA laws should be changed to "ensure that all non-citizens have access to a hearing before an impartial adjudicator, who will weigh the non-citizen's interest in remaining in the United States (including their rights to found a family and to a private life) against the Government's interest in deporting him or her." What are the kinds of human issues that don't get heard under the current system?

Goodwin: Most human issues are not heard at all in immigration proceedings. It is extremely difficult for a person to qualify for any type of relief from being removed. And then, even if one does qualify, the courts have to be convinced in their discretion to grant you some type of relief. This is the hardest aspect to make my clients understand: even though I care about the human issues involved in their cases, the courts and the Immigration Service do not. Our laws are structured in a way that any interest in human issues is left out of the equation.

GM: In a related recommendation, Butamante says that ICE should, "ensure that the facilities where non-citizens in removal proceedings are held are located within easy reach of the detainees" counsel or near urban areas where the detainee will have access to legal service providers and pro bono counsel." In your experience, is it ever a hardship to represent clients simply because of the location of the detention centers?

Goodwin: It is ALWAYS a hardship to represent detainees in remote areas. I live in South Texas and practice here, but most of my clients are from thousands of miles away. That means their family and support network are thousands of miles away. Aside from the logistical difficulty of getting documents and preparing cases, the worst part is the extreme depressive state my clients develop. For many I am the only person that ever visits them, and they would benefit greatly from the support and care of their families being close by. The other hardship is that there are a very limited number of lawyers who practice immigration law in this area. There is only one pro bono agency. The pool of available competent lawyers is extremely thin.

GM: Bustamante is calling for some fairly serious reforms in the structure of immigration judges. He says immigration judges should no longer work under the Department of Justice; rather, they should be appointed to a truly independent judicial system. What kind of difference would this make to the practice of immigration law?

Goodwin: It would change in the sense that the Immigration Judges would not be beholden

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politically to the Attorney General. They would be able to make decisions based in law and justice as opposed to politics and fear. They would be able to pass judgment on the government as well as the aliens. As it stands the process, even through the administrative appeals process, is highly weighted toward the government.

GM: Finally, Bustamante says that migrant detention practices should provide more alternatives, especially for children, but also for women who are suffering from prior traumas. How appropriate are the conditions of current detention for traumatized migrant women?

Goodwin: Conditions for women are of particular concern because of the specialized medical care needs. I have seen that these medical needs are not met routinely. I have also seen that women, who have been traumatized by events prior to their detention, are further traumatized by the further detention. The lack of mental health care also plays into the conditions for women.

GM: Thank you Jodi Goodwin for helping us to understand the Bustamante report in the context of South Texas.

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