



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION



November 23, 2021

Katherine Culliton-González
Office for Civil Rights and Civil Liberties
katherine.culliton-gonzalez@hq.dhs.gov
CRCLCompliance@hq.dhs.gov

Inspector General Joseph V. Cuffari
Office of the Inspector General

CC: Director David Neal
Executive Office of Immigration Review
David.Neal@usdoj.gov

Ombudsman David Gersten
Office of the Immigration Detention Ombudsman
david.gersten@hq.dhs.gov

Re: Severe Violations of Due Process and Inhumane Conditions at Tarrant County Detention Facility

Dear Ms. Culliton-González and Inspector General Cuffari,

We, the undersigned organizations, jointly file this complaint to request an investigation into severe violations of due process and inhumane conditions reported by individuals detained at Tarrant County Detention Facility (“Tarrant”) in Estancia, New Mexico and by attorneys and legal representatives attempting to provide them with legal services. The due process violations under the Department of Homeland Security’s purview include the denial of access to counsel, language access, information about the asylum process, and individualized custody determinations. These issues are exacerbated by violations of due process in the immigration courts, including improper immigration judge advisals and unusually rapid proceedings.

While most of these violations affect everyone detained at Tarrant, some, such as the denial of language access, the unusually rapid proceedings, and blanket denials of request for release disproportionately affect Haitian people. It is our understanding that there are approximately 80 Haitian men detained at Tarrant, and that they are asylum seekers who recently arrived in the United States and were apprehended in the vicinity of Del Rio, Texas. Some of them are likely victims or witnesses of Customs and Border Protection (CBP) misconduct that occurred there.¹

¹ Joel Rose, “The inquiry into border agents on horseback continues. Critics see a ‘broken’ system,” *NPR*, November 6, 2021, <https://www.npr.org/2021/11/06/1052786254/border-patrol-agents-horseback-investigation-haitian-immigrants>.

Violations of Access to Counsel

Since September 27, 2021, attorneys and legal representatives from the El Paso Immigration Collaborative (EPIC) have attempted to provide legal services to the Haitian men detained at Torrance. The detention facility has frequently denied EPIC's requests for legal calls or has failed to respond to them for days. Facility staff have told EPIC that a legal call cannot be scheduled for several days because the person who schedules them is "out sick" or "really busy". They have also told EPIC to "try again next week," even if the client has an upcoming hearing for which they must prepare.

On or around September 30, 2021, EPIC visited Torrance with prior approval to conduct a group legal meeting with 58 men from two units. After EPIC attorneys traveled to Torrance and waited two hours, facility staff informed them that they would not be able to conduct the meeting because the two units were in quarantine. EPIC's requests to conduct the meeting outdoors and/or in full personal protective equipment were denied. Eventually, the attorneys were allowed to briefly yell to one of the units of men through a door barricaded with a trash can in a non-confidential setting without access to interpretation.

On or around October 14, 2021, an attorney was able to conduct a group legal visit with approximately half of the group of Haitian men. Facility staff stated that attorneys could not meet with the other half of the men because they were in quarantine.

ICE initially did not respond to EPIC's further requests to meet with the remaining men and then later changed the requirements for the visit to be those of a Legal Orientation Program (LOP) provider. These requirements include the pre-approval of a syllabus and the limitation of attendance only to people who have expressed interest on a sign-up sheet, which ICE would not commit to providing in Haitian Creole. Even after complying with these requirements, EPIC was not allowed a second group meeting until November 12, 2021, more than four weeks after the first group meeting. ICE recently informed EPIC that it could meet telephonically with the detained individuals but often limited the calls to five people per day. This is insufficient given the number of individuals and urgency of their legal situations.

This denial of legal access to EPIC means a complete denial of access to counsel at Torrance, as there are no other non-profit legal service providers serving the facility. To the best of EPIC's knowledge, only a few of the men have an attorney representing them in their removal proceedings.

These events demonstrate Torrance's non-compliance with the in-person or telephonic legal representative access requirements of the Performance Based National Detention Standards 2011 ("PBNDS 2011"). The PBNDS 2011 require the facility to provide people consistent, unobstructed access to in-person legal visits seven days per week. Specifically, immigration detention facilities must "permit legal visitation seven days a week, including holidays, for a minimum of eight hours per day on regular business days . . . and a minimum of four hours per day on weekends and holidays."² Before any such visitation, legal representatives "shall not be asked to state the legal subject matter of the meeting."³ Such legal visitations

² See ICE PBNDS 2011 at Ch. 5.7(J)(2).

³ Id. at Ch. 5.7(J)(4).

include pre-representation visits, during which “the facility shall permit detainees to meet with prospective legal representatives or legal assistants.”⁴ When a legal rights group presentation is requested, “[a]ll facilities are required to cooperate fully with authorized persons seeking to make such presentations.”⁵ The PBNDS 2011 also states that “Legal rights group presentations shall be accommodated to the greatest extent possible absent significant logistical or security-related concerns.”⁶

The PBNDS 2011 also requires that Torrance provide detained individuals with written notice of “the procedure for obtaining an unmonitored call to a court, a legal representative or for the purposes of obtaining legal representation.”⁷ Notice shall be provided not only in Spanish but also “in the language of significant segments of the population with limited English proficiency”⁸—in this case, Haitian Creole.

The Fifth Amendment of the U.S. Constitution as well as a host of statutes, regulations, and long-standing practice also entitle these individuals to access counsel to understand and pursue their legal remedies and pursue the same.

Violations of Language Access

There is no consistent way for speakers of Haitian Creole to communicate with Torrance staff or ICE, the latter of which is not present onsite. The detained Haitians who have spoken with EPIC report not knowing what is happening in their immigration cases due to this lack of communication. When an individual calls the Executive Office for Immigration Review (EOIR) Automated Case Information System or the Detention Reporting and Information Line, they receive initial instructions to navigate the menu only in English and Spanish, without an option for Haitian Creole. The facility also shows detained individuals an informational video on the asylum process only in Spanish, with no interpretation.

Furthermore, as there is no LOP provider at Torrance and legal access is being denied to the only legal service provider available to people detained there, it is functionally impossible for asylum seekers who cannot read or write in English to fill out their I-589 Applications for Asylum and Withholding of Removal.

Lack of or Improper Adjudication of Release Requests

On or around November 3, 2021, EPIC submitted parole requests on behalf of 17 Haitian men detained at Torrance. Since then, EPIC has submitted 7 additional requests for a total of 24. All of the men have sponsors willing to receive them, no criminal history in the United States, and pending removal proceedings. As of November 17, 2021, 19 of the 24 requests have been denied. ICE has ignored the remaining 5 requests. ICE sent the first denial less than an hour after the request was submitted, in the form of a very short email stating that the request had been denied because there was “NO humanitarian” basis for parole (emphasis in original) and suggesting that the client seek bond. ICE followed this email denial

⁴Id. at Ch. 5.7(J)(4).

⁵Id. at Ch. 6.4(I).

⁶See id. at Ch. 6.4(C); Ch. 5.7(J)(12).

⁷See id. at Ch. 5.6(V)(B)(3).

⁸Id.

with a parole denial form that had “flight risk” and “danger to community” marked as justification for the decision, contradicting the justification the agency provided in the original email. This is a misapplication of the spirit of parole directives.

For some requests for release, there was no formal adjudication or individualized determination at all, just an email saying that ICE was declining to parole the respondent and that there was no humanitarian basis for parole. EPIC has also filed 13 requests for release pursuant to a court order in *Fraihat v. ICE*, all of which have been denied or ignored.⁹

Inhumane Detention Conditions

Torrance failed its annual inspection for compliance with the PBNDS 2011 in July 2021 with 22 deficiencies, 4 of which occurred in “priority components.”¹⁰ The inspection findings included that the facility is severely short-staffed. Litigation is pending regarding improper use of force after facility staff pepper-sprayed men in ICE custody for participating in a peaceful hunger strike.¹¹

People detained at Torrance, including the Haitian men, have reported dangerous conditions and medical neglect. Some have developed rashes with a tingling or stinging sensation after taking showers, which come from the same source as the drinking water. People have reported being served uncooked meat and a meal of “raw cornmeal mixed with water.” A man with a serious medical condition was left on the floor for half an hour after he collapsed and was not taken to a doctor. Another man reported that he is losing weight and that his “eyes are sinking back in [his] head faster every day.”

Improper Immigration Judge Advisals and Expedited Case Scheduling

Every Haitian with whom EPIC has spoken who has had a hearing before an immigration judge has stated that the judge told them they needed an attorney present in order to proceed with seeking asylum. The immigration judges are not advising these individuals that they can proceed pro se. This misinformation is leading to respondents with asylum claims being ordered removed at their first or second hearing. At least 4 Haitian immigrants have already been ordered removed at their initial master calendar hearing because, although they express fear of returning to Haiti, they had received no or very little access to legal services and did not understand the meaning of the term “asylum” when it was used by the judge. These men reported receiving the EOIR legal service provider list only in English and at the same hearing at which they were ordered removed. Some reported not even knowing that they had been ordered removed.

Based on the data collected by EPIC, we also believe that the Haitian asylum seekers detained at Torrance since September 2021 are being rushed through these proceedings significantly more quickly than the pace

⁹ *Fraihat v. ICE*, Case No. 5:19-cv-01546-JGB-SHK (C.D. Cal. Apr. 20, 2020), ECF No. 133

¹⁰ Leonardo Castañeda, “Understaffed, Unsanitary ICE Facility in Torrance County Fails Annual Inspection,” *ACLU New Mexico*, September 17, 2021, <https://www.aclu-nm.org/en/news/understaffed-unsanitary-ice-facility-torrance-county-fails-annual-inspection>.

¹¹ *Santa Fe Dreamers Project et al. v. CoreCivic et al.*

of proceedings prior to their arrival and to that of other nationalities. This is disparate treatment in violation of the Equal Protection Clause.

We understand that these court-related issues are a matter for the Department of Justice, not DHS. We are in communication with the Executive Office of Immigration Review, but it is important to note that these additional due process violations compound the effects of the violations by ICE listed above. Access to counsel is especially crucial given the urgent risk of removal. ICE must not remove individuals who are being rushed through removal proceedings without due process.

Conclusion

We urge your office to investigate the violations of due process and inhumane conditions described above and in the following affidavits from an attorney seeking legal access at Torrance and two people detained there. Torrance failed its only PBNDS compliance inspection in part due to an extreme staffing shortage, which Torrance has repeatedly referenced as an excuse for why requests for legal calls are denied or are not responded to for days. These staffing issues do not relieve ICE or Torrance of their obligations under the PBNDS 2011. If ICE is unable to staff the facility appropriately and provide individuals in its custody the services required by the written detention standards, ICE should release these people immediately.

Further, given the rapidly scheduled removal hearings of the Haitian men detained at Torrance, the facility is unable to provide them with the access to counsel and language appropriate information to ensure the protection of their rights in removal proceedings. Releasing them would permit these men to obtain pro bono counsel, reunite with family members already in the United States, and access appropriate social service and community support while they pursue applications for asylum. Keeping them detained at Torrance while EOIR speeds through their proceedings will only lead to more due process violations and wrongful removal orders.

This situation is especially egregious given that the Haitian men detained at Torrance entered the United States through Del Rio, Texas and many were present at the encampment there. We believe many were likely victims or witnesses of possible violations of federal law by law enforcement officers. Special attention must therefore be paid to ensure that they receive access to counsel in order to understand and exercise their rights under immigration law, provide statements to investigating bodies, and/or pursue potential civil claims. They must not be removed without the opportunity to do so.

Sincerely,

ACLU of New Mexico

American Immigration Council

American Immigration Lawyers Association

Innovation Law Lab

National Immigration Project of the National Lawyers Guild

Affidavit of Allegra Love

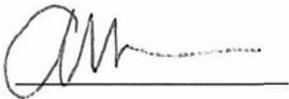
I swear under penalty of perjury of the laws of the United States of America that the following is true and correct.

1. I, Allegra Love, am an attorney barred in the state of New Mexico. I have been practicing immigration law for 10 years. I currently provide legal services to immigrants detained near El Paso, Texas, on behalf of the El Paso Immigration Collaborative (EPIC).
2. On or around September 27, 2021, I learned that a group of Haitian men were in U.S. Immigration and Customs Enforcement (ICE) custody at the Tarrant County Detention Facility ("Tarrant") in Estancia, New Mexico. That same day, I emailed Tarrant staff requesting to schedule a group legal presentation and individual legal intakes with these men. After originally requiring individual names and A numbers of meeting attendees, which I did not have, the facility scheduler eventually agreed to a group legal meeting with all "recently arrived Haitians" 3 days later.
3. Also that same day, I emailed ICE officer Patricia Bates at the Albuquerque Field Office, requesting the number of Haitian people detained at Tarrant, and whether they were in 235 expedited removal proceedings, 240 removal proceedings, or subject to Title 42. Officer Bates quickly responded to me, cc'ing SDDO Josh Chapman at Otero County Processing Center and asking me to submit G-28s for the people with whom I wanted to meet. I explained that I did not have G-28s yet but was looking for information in order to plan legal services. I did not receive a response.
4. On or around September 30, 2021, my colleague and I visited Tarrant to conduct the group legal meeting. After we waited for an hour, a member of the facility staff brought me to the library and informed me that I would be meeting with 58 men from 2 units. We waited another hour until Tarrant Chief Segura and Officer Edmundton arrived and informed us that we would not be able to conduct the meeting because we did not have G-28s. We explained that we were requesting a pre-representation meeting. Chief Segura and Officer Edmundton then stated that we could not meet with the 2 units because they were in quarantine. They denied our requests to conduct the meeting outside and/or in full personal protective equipment. Eventually, we were allowed to briefly yell to one of the units of men through a door barricaded with a trash can in a non-confidential setting without access to interpretation. We asked to speak to the other unit but facility staff told us it "was just too much."
5. Since that visit to Tarrant, I have repeatedly requested legal calls with the Haitian men detained at Tarrant. Facility staff have frequently denied the requests or have failed to respond to them for days. Staff have told me that a legal call cannot be scheduled for several days because the scheduler is "out sick" or "really busy". Staff have told me to "try again next week," even if the person with whom I have requested to meet had an upcoming hearing for which they needed to prepare.
6. On or around October 14, 2021, EPIC was able to conduct a group legal visit with approximately half of the group of Haitian men. Facility staff stated that EPIC could not meet with the other half of the men because they were in quarantine.
7. I informed ICE of my request for a group legal visit with the remaining men. ICE initially did not respond, and then changed the requirements for the visit to be those of a Legal Orientation

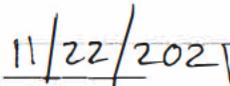
Program (LOP) provider. These requirements include pre-approval of a syllabus and attendance only of people who have expressed interest on a sign-up sheet, which ICE would not commit to providing in Haitian Creole. Even after complying with these requirements, EPIC was not allowed to conduct a second group legal meeting until November 12, 2021, over four weeks after the first group legal meeting.

8. ICE recently started to allow me to schedule legal phone calls with people detained at Torrance but on some days limited the calls to 5 people. This is insufficient given the number of individuals and urgency of their legal situations.
9. The men I have spoken to say that they cannot communicate with facility staff or ICE, the latter of which is not present onsite, due to a lack of Haitian Creole interpretation at the facility. These men have told me that they do not know what is happening in their immigration cases due to this lack of communication. They have also told me that the facility also shows detained individuals an informational video on the asylum process only in Spanish, with no interpretation.
10. I am extremely concerned about Torrance denying me legal access because EPIC is the only legal service provider available to people detained there. Therefore, this denial of access to EPIC means a complete denial of access to counsel at the facility. Out of 44 people EPIC has spoken to at Torrance, only 3 have attorneys representing them in their removal proceedings. There is no LOP at Torrance so it is functionally impossible for asylum seekers who cannot read or write in English to fill out their I-589 Application for Asylum and Withholding of Removal.
11. On or around November 3, 2021, I submitted parole requests on behalf of 17 Haitian men detained at Torrance. Since then, I have submitted an additional 6 parole requests for a total of 23. All of the men have sponsors willing to receive them, no criminal history in the United States, and pending removal proceedings. Less than an hour after I submitted the requests, I received the first denial via a very short email suggesting that the client seek bond. This email denial was followed later by a parole denial form that had “flight risk” and “danger to community” marked as justification for the decision, even though the email had stated that the reason for denial was that there was “NO humanitarian” basis for parole (emphasis in original).
12. ICE has denied 19 of the 23 requests, with the remaining 4 requests still pending. One of the denials is for a trans woman who is being held in an all-male unit. For some denials, ICE did not provide any justification besides an email saying that ICE was declining to parole the respondent or that “Although you did provide the sponsor documentation, in your clients case there is NO present urgent humanitarian reason or significant public benefit for release.” I have also filed 13 requests for release pursuant to a court order in *Fraihat v. ICE*, all of which have been denied or ignored.
13. People detained at Torrance, including the Haitian men, have told me about dangerous conditions and medical neglect at the facility. Some of them have said that they developed rashes with a tingling or stinging sensation after taking showers, which come from the same source as the drinking water. They have also told me that they are served uncooked meat and a meal of “raw cornmeal mixed with water.” One person told me that a man with a serious medical condition was left on the floor for half an hour after he collapsed and was not taken to a doctor. Another man reported that he is losing weight and that his “eyes are sinking back in [his] head faster every day. One man reported that a detention center guard kicked him.

14. I am very worried about the denial of access to counsel at Torrance because people detained there who appear in court without an attorney are receiving false advisals from the immigration judges. Every Haitian with whom EPIC has spoken who has had a hearing before an immigration judge has stated that the judge told them they needed an attorney present in order to proceed with seeking asylum. This misinformation is leading to respondents with asylum claims being ordered removed at their first or second hearing. At least 4 of the Haitian men have already been ordered removed at their initial master calendar hearing. These men have told EPIC that they did not understand the meaning of the term "asylum". They have said that they received the EOIR legal service provider list only in English and at the same hearing at which they were ordered removed. Some expressed that they did not even know that they had been ordered removed.
15. Based on the data collected by EPIC, I believe that the Haitian asylum seekers detained at Torrance since September 2021 are being rushed through these proceedings significantly more quickly than the pace of proceedings prior to their arrival and that of other nationalities.
16. The men I have spoken to entered the United States through Del Rio, Texas. I believe many were witnesses to possible violations of federal law by law enforcement officers. I am very concerned that they will be deported without the opportunity to share the information they have on these events.
17. I have worked in ICE detention since 2014. In my career I have never felt so disrespected by detention center staff and field office employees. I am scared for my clients and absolutely disgusted by my government. I believe there are extraordinary human rights violations afoot at this detention center and beg CRCL to take swift action.



Allegra Love



Date

Affidavit of [REDACTED]

I swear under penalty of perjury of the laws of the United States of America that the following is true and correct.

1. My name is [REDACTED]. I was born on [REDACTED]. I am currently detained at the Torrance County Detention Facility in Estancia, New Mexico. I fled my home country of Haiti on January 26, 2020, because I was afraid for my life. I traveled through South and Central America and arrived to the United States on September 17, 2021.
2. I attended my first immigration hearing on October 25, 2021. The judge told me that I had to have an attorney by November 25, 2021, or he would order me removed. At that time, I still had not spoken to an attorney at all. I wanted to talk to an attorney, but no one told me how to talk to one or that I had a right to do so. At that hearing, I was given a list of attorneys to call but I could not read the list because it was in English, and it was already too late for them to help me in court.
3. The judge asked me whether I wanted to apply for asylum. I did not know what asylum was. The only thing I had heard about asylum was from a man who was detained with me. He said that we needed proof to apply for asylum, so I was worried that I could not apply because I do not have proof of the danger I would be in if I returned to Haiti. This is why I told the judge that I did not want to apply for asylum. The judge then ordered me removed.
4. I speak Haitian Creole. I do not speak Spanish or English. There are no Haitian Creole interpreters at the detention center. If I need to speak to the detention center staff, I often have to ask someone who is detained with me to interpret or ask a relative to interpret over the phone.
5. The water in the showers at the detention center makes my whole body itch, from my head to my toes. I do not know what is wrong with the water. I am worried that there are similar problems with the water we have to drink. The food here is also so bad that we can barely eat it.
6. My family has put \$10 on my phone account five times, for a total of \$50 but I have tried to use this money and have not been able to make calls with it.

/detained/
[REDACTED]

11/15/21

Date

Affidavit of Anonymous

I swear under penalty of perjury of the laws of the United States of America that the following is true and correct.

1. I am currently detained at the Torrance County Detention Facility in Estancia, New Mexico. I fled my home country of Haiti because I was afraid for my life. I arrived in the United States on September 16, 2021.
2. I went to immigration court and received a list of immigration attorneys. I have been making phone calls to the attorneys on the list, but they do not answer or call back. The only attorney I have been able to talk to is Allegra Love.
3. The shower water gives us a rash on our bodies that itches. I can see that it is the same water that we drink; the detention center staff take it from the bathroom and put it in our room.
4. The staff speak English and sometimes Spanish. There are no Haitian Creole interpreters at the detention center. I don't speak any English at all, and I only speak a little Spanish so it is difficult to communicate. It is even more difficult for other people detained here who do not speak any Spanish.
5. The food is very bad at the detention center. It is not sufficiently cooked. Some people have diarrhea after eating it. I have diabetes so I need to eat food with less flour and sugar in it but that is not available.
6. No matter what medical problems we have, the medical staff give all of us, including me, the same pill. I do not know what the medication is. About a week ago, I felt sick and had to go to the hospital because of low blood sugar. Even after that, I still am not receiving treatment for diabetes. I am experiencing headaches because of my diabetes. I had to keep the phone call for taking this declaration short because I am not feeling well right now.

/detained/
Anonymous

11/15/21
Date