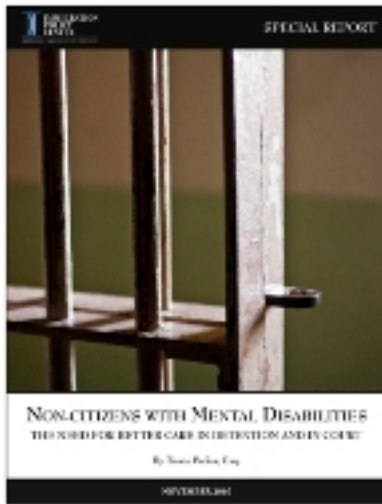


Non-Citizens with Mental Disabilities



[1]In 2009, Immigration and Customs Enforcement (ICE) detained approximately 380,000 people. Roughly 15 percent of the non-citizen population in detention, or around 57,000 people, have a mental disability. Unfortunately, these mental disabilities often go unrecognized by law enforcement and immigration officials, resulting in less access to justice for the individual and greater confusion and complexity for the attorneys and judges handling the cases. The consequences of immigration enforcement for unauthorized immigrants, long-term permanent residents, asylum-seekers, and other non-citizens with mental disabilities can be severe. Even U.S. citizens have been unlawfully detained and deported because their mental disabilities made it impossible to effectively defend themselves in court.

Teasing out the complicated issues of fair treatment for people with mental disabilities caught up in our broken immigration system is not easy, particularly because it must be disentangled from the many challenges facing all immigrants who find themselves in immigration custody or in proceedings before the immigration court. As a report by Human Rights Watch and the American Civil Liberties Union aptly put it:

Not every non-citizen with a mental disability is entitled to remain in the United States; but everyone is entitled to a fair hearing and a chance to defend his or her rights. If the US government is going to detain and deport individuals with mental disabilities, it must do so in a way that respects their human rights, honors US human rights commitments, and ensures fair and accurate court decisions.

Faced with mounting criticism of its practices, ICE conducted its own intensive internal review of its procedures for processing and detaining non-citizens with mental disabilities in 2009, which revealed vast deficiencies in the system. In July 2010, ICE convened a workshop on the issue to bring together stakeholders and government officials to explore the development of a pilot project to provide greater access to counsel. In September 2010, ICE held a forum between stakeholders in the immigration and mental health communities to further explore the problems and solutions concerning non-citizens with mental disabilities.

While these new initiatives are promising and reflect the Obama administration's broad commitment to detention reform, the particular issues relating to the treatment of mental disabilities require immediate attention. This special report reviews and summarizes the key findings and recommendations of both non-governmental organizations and the Department of Homeland Security (DHS) with respect to arrest and detention of non-citizens with mental disabilities. It also highlights recommendations regarding access to counsel and the immigration courts made by the Legal Action Center of the American Immigration Council at the request of the Board of Immigration Appeals.

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