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The federal government is incarcerating thousands of immigrants in the GEO detention facility in Aurora Colorado without cause for months or years while they wait to have a hearing in their immigration cases.

This practice violates basic fairness and is a gross abuse of governmental power. This systematic incarceration of these immigrants without reasonable cause is also exacerbated by the abject failure by the federal and state governments to provide these indigent detained immigrants the essential assistance of legal counsel they need to secure a fair trial in their immigration cases thus denying them due process under the Fourteenth Amendment of the U.S. Constitution.

I learned about this shameful system of injustice when I responded to a request by Casa de Paz for volunteers to visit immigrants detained in the 1253 bed GEO detention facility for immigrants in Aurora, Colorado. This facility is part of the nation wide system of private prisons incarcerating immigrants, the vast majority of whom have no history of criminal conduct. A large percentage of these immigrants are persons fleeing dangerous conditions in their home countries and are seeking asylum in the United States consistent with US and international law.

In addition to the asylum seekers, undocumented immigrants who have been in this country for years as productive members of our communities but are now being swept up by ICE as part of the Trump

administration's war on immigrants are also incarcerated in the GEO Aurora detention facility. Like the Asylum seekers, these undocumented immigrants for the most part have no criminal histories but are still incarcerated in GEO Aurora detention facility while they await hearings in their immigration cases. Given the nation-wide backlog of 600,000 immigrants waiting for their immigration hearings, these immigrants are incarcerated many months or even years before they have a hearing in their immigration cases.

GEO is one of the two largest prison corporations in the country. It operates 141 prisons throughout the world and, as of 2018, maintains a daily population of 43,000 immigrants in its prison system in the United States. In 2015, GEO yielded \$2 billion dollars from the US government for operating these private prisons for immigrants. GEO totally controls the treatment and placement of immigrants placed in its custody by ICE. Given that GEO is paid a daily rate for incarceration of these immigrants of over \$100 per day, it has no incentive to recommend that any immigrants in their custody return to community living while they await a hearing on their immigration cases. The incarceration of these immigrants prevents them from working to support themselves and their family members, and as a result the vast majority of these immigrants also do not have the money to hire legal counsel to represent them in their immigration cases.

Because I visited immigrants confined in the Aurora GEO prison for 3 months this year, I had an opportunity to view portions of this facility and was able to talk to some of the detained immigrants. But the detained immigrants are careful about what they say while in detention because they fear reprisal if they are found criticizing the facility.

The Aurora facility is a high security prison. The immigrants detained there are not allowed to leave the building. The only fresh air they get is from an open window high up near the ceiling of the ward. Some immigrants are moved from one GEO facility to another depending upon where open beds in the

GEO system need to be filled to ensure the highest profit. Families are not given prior notice of such moves.

Prior to the filing of a class action last year against GEO, detainees in the GEO Aurora facility were required to do all the maintenance work throughout the facility for which they were paid \$1 a day.

Detainees who refused to participate in this work detail were placed in solitary confinement.

There are no law books and other reference material on the wards, which would help immigrants to learn about the complicated web of legal standards that will govern their particular cases. The immigrants can access a web site for information about current conditions in their particular country that might be relevant to their case, but they often have difficulty getting the staff to make copies of the relevant documents from the website for their use as evidence in their cases. Otherwise, the immigrants have no access to the Internet, newspapers or magazines to learn what is going on in this country or in the world.

Visiting with friends and relatives at the GEO detention facility is a no contact experience in a room with 10 cubicles in which the detained immigrants sit behind Plexiglas and speak through a telephone. If multiple people are part of the visit, only one at a time can use the phone to talk to the immigrant. There is no privacy for detained immigrants and their family members. Some visitors tend to try to speak loudly enough without the phone to speak to the immigrant they are visiting. In the small visiting area, this makes it difficult for other immigrants and their visitors to communicate with each other. I observed many families with small children at the detention center general visiting room. Mothers hold up the small children in front of the Plexiglas, but none of the detained immigrants are allowed to hug or kiss their children or other family members.

The detention of these immigrants not only harm the immigrants detained but their families as well. Detaining immigrants for months and in come cases

for years erodes the financial stability of these families. Without a lawyer, as most of them are, none of these immigrants are allowed to be discharged on bail or on parole. Without a job, these immigrants cannot work and thus have no money to pay for a lawyer. And without a lawyer, the vast majority of these immigrants are deported back to countries from which they fled to preserve their lives.

The disparity of experiences of two of the immigrants I visited highlighted for me the unfairness of the system. The two men were roommates and were each from Africa, one from Nigeria and the other from Cameroon. Both immigrants had asserted asylum claims at the US border, consistent with both U.S. statutes and international law. Neither of these young men had any criminal history. Nevertheless, they were arrested and had been placed in detention for months despite the fact they each had passed the test regarding credible fear of persecution or torture if they were deported to their home countries. The critical difference about these two men is that one had a lawyer to represent him in his immigration case and the other did not.

The Nigerian man had good luck. He is one of the few detainees at the Aurora facility who secured a pro bono lawyer. He described her as a young woman at a large law firm who was assigned to the care by a partner at the firm. She worked hard, filed a petition for parole for him and represented him in some preliminary hearings, which allowed him to be released from custody while he awaits the hearing on the merits of his asylum claim. As the Nigerian man had relatives in New York, the lawyer successfully argued that his case should be transferred to New York so that he will have the support of his family in getting a job while he awaits his immigration hearing. The more important reason for the transfer from this immigrant's position is that the immigration courts in Brooklyn have a higher success rate for Asylum claims than does the Aurora court at the detention facility. The firm representing him has offices in New York and will represent him at the merits hearing of his case when it is scheduled. In the

meantime, the Nigerian man is free living in the community and has secured a job to support himself while he is waiting for his merits hearing in New York.

The second immigrant was a young man from Cameroon. Unlike the Nigerian man, he had no lawyer despite his many attempts to secure a pro bono lawyer. As he had been detained for nearly seven months when I first met him, he had no money to hire one. When I asked this young man from Cameroon the reasons for his fleeing Cameroon, he described to me the following events. For 36 years, the President of Cameroon, who is a Francophone (French-Speaker), had discriminated against the Anglophone population (English speakers) of which he is a member in allocating government resources and enacting laws that determined the legal rights of the Anglophone population. In 2016, this President decided that it was time to make Cameroon a totally French-speaking county so he decreed that all schools, the courts, all state agencies and businesses could only operate in French. This young Anglophone man had just entered his first year of college and was doing well studying electric power with English speaking teachers. However, after the President's decree, the University provided only French speaking teachers in all courses throughout the University despite the fact that it was located in an Anglophone region. Because this young man and his colleagues in the class were all Anglophones, they could not learn from such French-speaking teachers. In an attempt to resolve this issue, these students wrote a polite letter to the University administrator asking for English speaking instructors necessary for them to learn. The University administrator's response informed the Anglophone students to stop their protest or be sanctioned by the University. The students stopped going to classes, as they could not learn from the French-speaking teachers.

About the same time, the lawyers in the country held a public protest against the President's decree making the courts only French-speaking. The young man and some of his fellow students attended the protest. As the University

administrator had given the students' letter to the police, the young Cameroonian man was picked up by the police at the protest and haled off to jail. For the next three days, he was beaten at every change in shift. The young man's grandfather intervened and convinced the police to let him go by promising that he would stop any further protest. His grandmother and grandfather insisted that the young man stay at home and away from any further protest. He followed their orders. Months later, there was a public protest by large segments of the Anglophone community. Thousands of people attended. Although the young man did not attend the protest, a fellow student did and was killed by the police. The police also then came to the young man's house and haled him to jail again where he remained for 30 days. During these 30 days in jail, he was continuously beaten around his head, shoulders, back and feet. His front tooth was knocked out.

To get this young man out of jail, his grandfather consulted with a lawyer who told him he would have to raise money to pay the police to get his grandson out of jail. The grandfather sold a plot of land around his house and an uncle contributed additional money necessary to get the young man out of jail.

When the police released the young man from jail based on the Grandfather's payment, the police warned the young man and his grandfather that he would be put back in prison for life and or killed if he engaged in any further protest. As the family was so concerned about the young man's safety, an uncle secured an airline ticket to Ecuador, one of the only near by countries that did not require a visa. From Ecuador, the young man, with money given to him from his aunt, made his way over the next few months to the California border where he filed his claim for asylum at the border. He was immediately arrested, placed in custody and transported to a GEO private prison in Arizona. After a few weeks, he was transferred to the GEO Aurora detention facility where he had been incarcerated for seven months before I met him.

Prior to my meeting him, this young Cameroonian

had tried for months to get a lawyer to represent him in his immigration case but lacked any money to pay for such representation and had no luck in securing a pro bono lawyer. The lawyers he was able reach said they had too many pro bono cases so they would not be able to represent him.

On the second week of my visits with this Cameroonian man, he told me he would have to represent himself at a merits hearing on his case then scheduled three weeks from that day. Based upon the young man's description of the reasons for his flight from Cameroon and the results of my online search of the conditions of Cameroon to see if there would be documentary evidence to support this young man's claim for asylum, I called all of the pro bono programs in Denver as well as other immigration lawyers who as part of their private practice do some pro bono or lower rate representation for immigrants at the Aurora detention facility. Despite many calls over the next ten days, I found no lawyer willing to represent him on a pro bono or low rate basis. As the merits hearing in his case was set for ten days later and I knew that the prospects for him prevailing in his case without a lawyer were quite low, so I made a decision to hire a lawyer to represent this young man as I believed, based upon the information I had collected, that he appeared to have a meritorious case and should have a chance to prove his case with the assistance of a competent immigration lawyer. But given the complexity of the law and procedures of immigration cases, I thought it more likely than not that he would be deported back to Cameroon where the police had already threatened to either kill him or imprison him for the remainder of his life.

On the date set for the merits hearing, I appeared at the court with this young man. I first explained to the judge that I have practiced law for over thirty years but, as I am not an immigration lawyer and was not competent to represent him myself in his immigration case. I then also told the judge that I had listened to the young man's description of the events that led to him to flee his country and reviewed the documentary evidence about the conditions in Cameroon for

Anglophone people. Based upon that review, I had hired a lawyer to represent him in order to allow him the opportunity to prove his case. I also informed the court that the lawyer I had hired indicated she would need 60 days to prepare the case. At first, the judge stated that he does not generally grant such an extension of the hearing date, but then agreed to grant the request if I would guarantee that a lawyer for this young man will appear in 60 days ready try the case. I agreed to that condition and sixty days later, I attended the trial. The judge after hearing the evidence commended the attorney for her excellent presentation of the case and granted the young man's asylum claim. The judge then signed the order approving his asylum claim, with no objection from the Department of Justice lawyer defending the case, this young man was released from detention that afternoon and is now living with his aunt and cousin in Maryland.

Although my action helped this young man prevail in his claim for asylum, it did nothing to address the ongoing problem of the thousands of immigrants without lawyers currently detained at the GEO detention facility or those who will be detained in the future.

During the time between the day I hired the lawyer for the young man from Cameroon and the day of his trial, I spent time reviewing the government's own data about the differences in results in immigration cases between immigrants detained the whole time in the GEO prison in Aurora, immigrants detained for a time and then released pending their immigration hearing and immigrants allowed to remain free prior to the merits hearing in their case. I wanted to know how big the problem is.

According to the US government's own data, during the period March 2002 and March 2018, ICE in Colorado rounded up 73,317 immigrants. Fifty percent of these immigrants (36,738) were detained from the time they were taken into custody until the completion of their immigration cases. Eighty-nine percent of these detained immigrant (32,775) lacked



legal counsel to represent them in their immigration cases. As a result, 30,122 of these immigrants received deportation orders and another 4760 of these detained immigrants agreed to voluntary deportation when it became clear that they had no chance of winning their cases. Only 4.3 percent of these detained immigrants (1594) received positive orders granting them relief from deportation.

During these same years, ICE took another 13,891 immigrants into custody, detained them for a time and then released them during the remaining pendency of their immigration cases. Seventy-one percent of these immigrants were able to secure legal representation for their cases. As of March 2018, 22 percent of these immigrants had achieved positive results in their cases while 4802 still had ongoing cases but remained free of detention.

Nearly 64 percent of the remaining 22,686 immigrants taken into custody by ICE during the same period but were never detained during the course of their immigration cases were able to secure legal representation. Nearly thirty-six percent (8989) of these never detained immigrants received orders allowing them to remain in the US, and an additional 6310 of these immigrants still had ongoing cases but remained free of detention as of March 2018.

This disparity of treatment among these three groups of immigrants taken into custody by ICE raises clear issues regarding the unfairness of the immigration system, particularly for immigrants detained for months or years while their immigration cases wind through the system and thus are deprived of the opportunity to work to support their families and raise the money necessary to secure legal representation essential for their immigration cases. Given the clear intent of the Trump administration to detain more and more immigrants while their immigration cases are pending, the lack of an adequate system of legal representation for indigent detained immigrants facing deportation at the GEO detention center in Aurora, Colorado will deprive more and more of these immigrants of their right to due process guaranteed to

all persons, including immigrants, under the Fourteenth Amendment of the U.S. Constitution and will ensure that the vast majority of these immigrants without lawyers will be summarily deported.

Fifty-three years ago, the United States Supreme Court held that the right to counsel for a criminal defendant is fundamental, and that “any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.” *Gideon v. Wainwright*, 372 U.S. 335 and 344. In addition, The Supreme Court has also long recognized that while deportation is not technically a criminal proceeding, “it visits great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom.” As Justice Brandeis opined ninety years ago, deportation “may result in the loss of both property or life, or of all that makes life worth living,” *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1921). Given the high stakes in deportation proceedings, the right to counsel is just as fundamental in immigration cases as it is in criminal proceedings, but the Supreme Court has yet to rule that indigent immigrants have the same right to a lawyer as it has accorded defendants in criminal proceedings.

Currently, federal law states that immigrants have a right to a lawyer in immigration cases but “not at the expense of the government.” Given the Trump administration’s war on immigrants, there will no change in this position until a change of government is achieved. Within the last few years, a growing number of states and cities have begun to finance legal assistance programs for the defense of immigrants facing deportation proceedings. Such programs, given the large numbers and growing population of immigrants being picked up by ICE, detained and subjected to deportation proceedings, will require large sums of money to secure the number of trained lawyers necessary to represent this immigrants detained at the Aurora GEO detention center.

As the federal government has refused to accord

indigent immigrants the same right to council as is accorded indigent criminal defendants to ensure a fair trial, it is up to cities and states as well ordinary citizens to help develop and fund a system of legal representation for immigrants sufficient to ensure that they have a fair chance to successfully defeat deportation actions and establish their affirmative claims in immigration cases.

In Colorado, the Denver City council has recently initiated the Denver Immigrant Legal Services Fund to aid immigrants in removal Proceedings and DACA/Dream Act Assistance. For the first two years, the council appropriated funding totaling \$200,000, which has been augmented by \$150,000 contributed by the Vera Institute of Justice and the Rose Community Foundation. This fund, which is yet to be implemented, is a start, but far from enough to even provide legal counsel for all indigent Denver residents facing deportation proceedings. Further, as the Denver Immigrant Legal Services fund is reserved solely for Denver residents, it leaves hundreds of other immigrants currently detained at the Aurora detention facility and others who will be incarcerated there without any legal assistance.

While the initiation of this fund is a start, we have a long way to go to ensure that all indigent immigrants, particularly those detained in the GEO detention facility in Aurora, have the access to legal counsel necessary for a fair hearing during their immigration proceedings. One of the first steps is to notify and educate the broader community about the unjust system afflicting immigrants currently detained at the GEO detention facility in Aurora with the goal of developing sufficient community support and funding for establishing a universal system of legal representation for these immigrants.

It will be a hard but not impossible task to ensure that indigent immigrants detained at the GEO detention facility have the necessary legal assistance they need to secure a fair hearing of their claims. Other states, cities, local foundations and local citizens are making the investments necessary to ensure such

representation in immigration cases. See for example Ex. A, the listing I made a month ago about the legal representation for immigrant funds being established in other states and cities in other parts of the country.

Thanks for reading this tome.

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