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# Broward Transitional Center: A 'Model' for Civil Detention

MARCH 2013

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**Americans for  
Immigrant Justice**

Formerly Florida Immigrant Advocacy Center (FIAC)



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# Broward Transitional Center: A 'Model' for Civil Detention

By Susana Barciela and Cheryl Little

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*With the indispensable contributions of AI Justice Attorneys:*

Franco Torres  
Jessica Shulruff  
Romy Lerner  
Losmin Jimenez  
Lana Chiariello  
&  
Sharon Ginter  
Lori Dubbin



**Americans for Immigrant Justice**  
3000 Biscayne Boulevard, Suite 400  
Miami, Florida 33137  
Tel (305) 573-1106  
Fax (305) 576-6273  
[www.aijustice.org](http://www.aijustice.org)

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**For further information contact**  
Cheryl Little, Executive Director  
Susana Barciela, Policy Director  
or Sharon Ginter, Administrative Assistant to the Executive Director

## Our Work at Americans for Immigrant Justice

AI Justice is an award winning, nationally recognized pro bono law firm that protects the basic right of America's immigrants. Many of our clients have fallen victim to human rights violations such as slavery, denial of a legitimate asylum claim, abuses while detained, and lack of due process in a barely functional immigration court system that does not ensure legal representation for those who face deportation. Our lawyers have closed over 80,000 cases of vulnerable immigrants from Central and South America, Africa, Europe and Asia.

AI Justice is the rare organization that works both nationwide and on the frontline of human rights in Florida. Grounded in real-world, real-people experience, AI Justice's free direct work with immigrant clients informs its broader policy work. Its multicultural and multilingual staff works to build alliances between immigrant and non-immigrant groups, including government, civil, social and faith-based communities. AI Justice is a non-partisan organization, with high-profile members of both parties on its Board and Advisory Board. AI Justice's advocacy and services has skyrocketed, making our mission more relevant than ever.

### From FIAC to AI Justice

In 2011, seeing hardening attitudes toward immigrants nationwide, AI Justice decided to step up its advocacy for sensible immigration policies and reform. This renewed determination prompted a national agenda and a name change to Americans for Immigrant Justice (AI Justice) from Florida Immigrant Advocacy Center (FIAC). While continuing to defend human rights by representing vulnerable immigrants, AI Justice provides "boots on the ground" experience that informs smart and workable national immigration policy.

Our Washington, D.C., Office Director extends AI Justice's policy influence. Four former AI Justice staffers now work on The Hill. They are Deputy Assistant for Policy, Department of Homeland Security (DHS); Immigration Counsel to Senator Harry Reid; Staff Director, U.S. Senate Judiciary Subcommittee on Immigration, Refugees and Border Security; and Democratic Chief Counsel to the House Judiciary Subcommittee on Immigration Policy and Enforcement. At least 10 former staff have become asylum officers with the U.S. Citizenship and Immigration Services (USCIS) or work at DHS.

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"Such successes have turned [AI Justice] into a powerhouse in national advocacy for persecuted migrants too poor to hire a lawyer."

— The Miami Herald, January 2, 2006

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AI Justice testifies before Congress, challenges government abuses in federal court, and informs the public on critical immigration policy.

In 2012 alone, we submitted four statements for congressional hearings. One statement addressed racial profiling; others focused on detention abuses, including sexual assault and medical care.<sup>1</sup> During a May House Judiciary Committee hearing on the Violence Against Women Act, Rep. Zoe Lofgren read the stories of two survivors of domestic violence who had been clients of AI Justice's LUCHA director. LUCHA's director also testified before the ABA Commission on Hispanic Legal Rights & Responsibilities last year on human trafficking, focusing on client stories.<sup>2</sup>

"I'm a big fan of what they do and I'm a big fan, incidentally, of the great work they are doing in Washington D.C."

— Al Cardenas , chairman, American Conservative Union

In April 2012, our Executive Director wrote an op-ed column, *Rubio proposal offers way toward Dream Act*, which urged the administration to provide Dreamers provisional status.<sup>3</sup> Asked by Dreamers to meet with Administration staff, she wrote a legal brief on provisional status and urged the White House staff to offer deferred action.<sup>4</sup> Further, in January 2013, AI Justice co-hosted The Haitian Diaspora, a one day seminar in Washington, D.C., with panels on separation of Haitian families, Haitian deportations, refugee policies and a discussion with U.S. government officials.

AI Justice's Detention Program director co-chairs the national Detention Watch Network and contributed to the network's *Expose and Close* reports on 10 of the worst immigrant prisons in the United States.<sup>5</sup> Our Executive Director served on the Immigration Detention Standards Committee of the National Prison Rape Elimination Commission and submitted oral and written testimony to that commission.<sup>6</sup> She also testified numerous times before Congress regarding immigration issues, including on Detainee Medical Care at the U.S. House Subcommittee on Immigration in 2007.<sup>7</sup> AI Justice clients also have testified before the House and Senate on issues of human trafficking, asylum, detention and unaccompanied minors facing deportation.

Among our reports are:

- *After the Earthquake – Haitian Children Seeking Safety in the United States.*<sup>8</sup>
- *Unleash the DREAM: End the Colossal Waste of Young Immigrant Talent.*<sup>9</sup>
- *Dying for Decent Care: Bad Medicine in Immigration Custody.*<sup>10</sup>
- *Securing our Borders: Post 9/11 Scapegoating of Immigrants.*<sup>11</sup>
- *Haitian Refugees: A People in Search of Hope.*<sup>12</sup>
- *INS Detainees in Florida: A Double Standard of Treatment.*<sup>13</sup>
- *Cries for Help: Medical Care at Krome Service Processing Center and in Florida's County Jails.*<sup>14</sup>
- *Florida County Jails: INS's Secret Detention World.*<sup>15</sup>

"Little was the visionary who pushed the Administration to grant deferred action to childhood arrivals when no one else thought it possible."

— Manny Diaz, Homeland Security Advisory Council member and former Mayor of Miami





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## Introduction: ‘A Model’ for Civil Detention

When Immigration and Customs Enforcement (ICE) announced plans to reform our nation’s troubled immigrant detention facility in 2009, ICE promoted the Broward Transitional Center (BTC) as a model for “civil” detention.<sup>16</sup> ICE Chief John Morton noted that BTC only housed nonviolent detainees, among them asylum seekers. An ICE detention reform list of accomplishments further noted that BTC “offers a less restrictive, yet secure environment.”<sup>17</sup>

AI Justice’s response, as then noted in the New York Times,<sup>18</sup> remains unchanged. BTC may offer a better environment than a local jail, but the vast majority of its detainees have committed no crimes or only minor infractions. They are precisely the population that ICE should release: people who pose no threat to their communities and should not be locked up in detention, even if it is a less punitive detention.

Ensuring that ICE does not detain people needlessly is particularly urgent now, as immigration reform is percolating in Congress. Even as we were finalizing this report, ICE was releasing thousands of immigrant detainees across the nation because of looming federal budget cuts triggered by sequestration.<sup>19</sup>

### Needlessly Detained

ICE said it released “non-criminals and other low-risk offenders who do not have serious criminal histories.”<sup>20</sup> Among those were about a dozen detainees who AI Justice had been helping at BTC. One of them is a victim of domestic violence who had been detained for more than nine months. At the average cost of \$164 a day per detainee, her unnecessary detention cost taxpayers upward of \$44,000.<sup>21</sup>



BTC’s cafeteria, where AI Justice offers detainees “Know Your Rights” presentations

SUN-SENTINEL



"At the average cost of \$164 a day per detainee, her unnecessary detention cost taxpayers upward of \$44,000."

If ICE can release such detainees in mass now, why detain them at all? And why should taxpayers foot the bill for all these detentions? It makes no sense to spend that much money when community programs successfully monitor these detainees for \$14 per day per person or less.

Meanwhile, ICE detainees who remain detained continue to suffer from sexual assault, substandard medical care, improper isolation, excessive use of force, abysmal conditions, and the lack of due process, legal counsel and meaningful oversight.

### Requests for Release

In Florida, Marc Moore, ICE's Field Director for Enforcement and Detention Operations, addresses local issues. In all fairness, he has responded to many AI Justice requests for improved BTC conditions and for the release of detainees. When we met with him in late November 2012 to discuss complaints related to this report, Mr. Moore temporarily assigned Assistant Field Office Director (AFOD), Paul Candemeres to replace the former BTC AFOD. AI Justice immediately saw measurable improvements.

Mr. Candemeres quickly released a number of AI Justice clients, including two victims of domestic violence who were suffering from depression and Post Traumatic Stress Disorder (PTSD) as a result. At other times, high-ranking ICE and Department of Homeland Security (DHS) officials also have intervened to secure the release of BTC detainees with compelling cases and medical conditions.

However, we remain concerned about serious problems, among them: the failure to exercise prosecutorial discretion, medical mistreatment, detainee-on-detainee sexual abuse and harassment, and the lack of due process.

AI Justice well knows BTC. For years our attorneys routinely have conducted Know Your Rights presentations and represented detainees there. Since 2011, GEO staff has been cooperative in providing our attorneys access, space and assistance in providing these presentations on a regular basis.

In 2009, BTC increased its capacity from 530 detention beds to 700 beds. Currently, 595 beds are designated for men and 105 for women under a federal government contract with the GEO Group, a private prison corporation.<sup>22</sup> That contract costs taxpayers more

than \$20 million a year.<sup>23</sup> Meanwhile, detention conditions at BTC continue to dehumanize individuals who should not have been detained in the first place.

"The best way to help immigration detainees is not to roll out the welcome mat at detention facilities. It is to process illegal immigrants for removal more expeditiously."

—Then U.S. Rep. Elton Gallegly, before House Subcommittee hearing, "Holiday on ICE," March 28, 2012

### Fundamental Problem

An incident in November 2010 sums up a fundamental problem. An AI Justice attorney was standing next to two GEO officers at the BTC front desk when one officer turned to her and had the following exchange:

**Officer:** "I don't know how you do what you do. It's not like they are people."

**Attorney:** "They absolutely are people."

**Officer:** "Yeah, but not under the Constitution."

**Attorney:** "They absolutely have rights under the U.S. Constitution, even if they don't have all the rights of U.S. citizens."

"ICE Detention Reforms have transformed into a detention system aimed at providing resort like living conditions to criminal aliesns."

— Statement by 7,000 ICE union members who unanimously ratified a "Vote of No Confidence." June 25, 2010.

Such a comment by a detention officer raises central concerns. If officers in a “model” civil detention facility view detainees as subhuman and treat them as such, how much worse are detainees treated in local jails, state prisons and other for-profit prisons contracted by ICE? It’s not surprising, then, that evidence suggests detainee abuse is widespread.

One detainee well described such dehumanizing treatment. In the aftermath of an attempted suicide by a woman at BTC in May 2011, the detainee was worried about another woman detainee who seemed suicidal:

“There are a lot of women here who are scared and depressed, and many who have been hospitalized with mental-health problems. One woman was crying all the time and refusing to eat because she had been separated from her husband. We were very worried about her, so a couple of women and I wrote a letter to the immigration officials, telling them what was happening and requesting that she and her husband be placed in the same facility. One of the ICE officers came to talk to us; he told us that we were not allowed to send joint letters to them and that we had broken the rules by sending a group letter. I felt really bad – I had been trying to help this woman and instead I just got in trouble.

“I hate being in detention because I hate the way the guards treat me and the other women here. They make me feel like I am not a person, and they treat us like we are animals. The deportation officers pressure people to sign deportation orders, and I have seen them laughing in the hallway after convincing people not to fight their cases. It makes me really upset because the women being deported are terrified and they are returning to really difficult and dangerous conditions in their home countries. The guards should not laugh at them.”<sup>24</sup>

Despite extensive remodeling during its last expansion, BTC continues to have obvious problems. For example:

- BTC has been touted as a model. But as AI Justice’s Executive Director said to Al Jazeera, it certainly is not an alternative to detention, which is what ICE officials said to expect when BTC opened. We believed that BTC would be releasing detainees who pose no security risk – and still believe BTC should do so.<sup>25</sup>
- Three detainees attempted suicide at BTC in 2011, according to a 2012 federal inspection. The review also noted that 10 detainees referred to outside psychiatrists were not seen within two weeks as required by ICE standards.<sup>26</sup>
- Male detainees reported being sexually abused by other detainees in 2012, but BTC officials took no apparent action to investigate the abuse claim, protect the victim from further abuse, or offer counseling.

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“Some of the reports coming out of [BTC] are horrifying.”

—Letter from lawmakers to ICE Director John Morton, September 2011

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- Many BTC detainees fall outside of ICE’s enforcement priorities, yet there have been significant delays in responses to release requests or denials of meritorious cases. Some deportation officers have failed to respond to repeated inquiries by attorneys about cases.
- ICE has failed to provide credible and reasonable fear interviews to detainees who have expressed a fear of return and has deported detainees without doing so. Some detainees who passed credible fear interviews have been told that they have to proceed with their immigration cases while detained, which hampers their ability to obtain documents and other proof needed to make their case.

"I hate being in detention because I hate the way the guards treat me and the other women here. They make me feel like I am not a person, and they treat us like we are animals."

— BTC detainee, May 2011.

- BTC has no resident mental health professional.<sup>27</sup> Many detainees are given anti-depressants and other medications that have a sedating effect – instead of mental health therapy or a release order.
- Women who are taken to receive mental health counseling outside BTC are shackled during transport. Many of these women are embarrassed when they walk into the waiting room with uniformed guards. This detracts from their therapy.
- Detainees reported that GEO staff frequently yells at them. Detainees also say that staff single out certain detainees for punishment and scrutiny while providing special treatment to others, often based on racial and ethnic considerations. In January, for example, women detainees talked about an African American guard who was throwing things and yelling at them.
- In September 2012, one detainee told AI Justice attorneys that: "The security guards at BTC treat us like we are nobody, like we are not human beings. We are not criminals. We are just immigrants."
- Access to recreation at BTC continues to depend on detainee gender: Men have regular access to fresh air while women may only go outside for a few hours a day.
- Detainees pay exorbitant rates to telephone family and friends. Detainees report that they must pay from \$1.50 to \$3 a minute for phone calls.
- Detainees are paid \$1 a day to work in the cafeteria and other areas at BTC. In doing so, GEO Group takes advantage of a captive population.
- Though the "paid" work is said to be voluntary, AI Justice clients have not understood that message. One AI Justice client said BTC staff told detainee women that if they didn't work, there would be no food and they would not eat.<sup>28</sup> Another client was desperate for the pay to call her children. Other detainees need the money for immigration court filing fees, calls to loved ones or snacks.

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"This hearing is entitled, 'Holiday on ICE,' because ICE has decided to upgrade accommodations for detained illegal and criminal immigrants."

— Statement by Judiciary Committee Chairman, U.S. Rep. Lamar Smith. March 28, 2012.

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- One Sunday in May 2011, BTC detainees were served rotten chicken. Numerous detainees complained of food poisoning and were sick for several days. Mr. Moore said the Broward County Health Department said it could not pinpoint the cause of detainee's sudden gastrointestinal problems.<sup>29</sup>
- The same month, AI Justice heard credible rumors that a BTC officer in charge of recreation had female detainees sew tablecloths for her private business and did not compensate the women.<sup>30</sup>
- BTC's longtime GEO Group administrator resigned abruptly in March 2011 without explanation.
- For the 12 month period ending October 2012, an average of 33 male detainees voluntarily attended AI Justice's weekly Know Your Rights presentations at BTC. At one point, 70 to 80 male detainees were coming to the sessions. These numbers reflect the great need for legal help and attorney representation.<sup>31</sup>

- Since 2012, AI Justice has seen hundreds of detainees at BTC who have experienced brutal treatment in CBP “hieleras” in Texas. These holding cells have no beds, no chairs, and a single sink and toilet sitting in plain view. Detainees, many of them asylum seekers and victims of domestic violence, huddle on the floor for warmth and are fed sparsely. Many ultimately agree to sign documents they could neither read nor understand, only to find they have agreed to accept expedited removal from the United States. AI Justice has filed Federal Tort Claims actions seeking damages on behalf of four immigrants who were subjected to such inhumane and unlawful treatment by CBP.<sup>32</sup>
- In summer 2012, two undocumented activists from Dream Activist and the National Immigrant Youth Alliance deliberately got themselves detained at BTC. Among the abuses they exposed was that of a woman who had complained of excessive menstrual bleeding. A month later, BTC sent her out for surgery. Returned to BTC the same day, she suffered severe hemorrhaging.<sup>33</sup> BTC has been in the limelight since then, following a detainee hunger strike and activists demanding an end to the detention and deportation of immigrants with minor or no criminal histories.

And BTC is an ICE “model” for civil detention?

This report includes numerous issues that raise serious complaints. In fact, many examples of abuses at BTC were not included because the cases were too sensitive to reference.

In late 2012, the Broward/Palm Beach New Times and the South Florida Sun Sentinel both published in-depth news stories on abuses at BTC. ICE’s Miami Field Office Director, Marc Moore, denied the activists claims of mistreatment at BTC. He described BTC conditions as excellent, telling the Sun Sentinel that the “staff here treats people with respect.”

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“It’s well past time that these serious issues [at BTC] be addressed.”

— U.S. Rep. Ted Deutch, in the Sun Sentinel,  
January 5, 2013

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Nonetheless, 26 U.S. House members signed a letter to ICE Director Morton in September 2012 complaining of lengthy detention periods and medical mistreatment at BTC. Organized by Rep. Ted Deutch, whose district encompasses BTC, the letter urged a “thorough case-by-case review” of each BTC detainee. Three months later, the Congressman followed with another letter noting the “excessive delay” in responding and hoping that the reviews had been “completed or nearly completed.” Finally, on Jan. 9, 2013, Rep. Deutch received a response that he believed to be inadequate.<sup>35</sup> To our knowledge, case reviews have yet to be undertaken by ICE at BTC.

U.S. Rep. Zoe Lofgren also wrote a letter of concern in September 2012, this one to DHS Secretary Janet Napolitano. The letter recalled a 2009 ICE claim that the agency was “more actively housing non-criminal, non-violent populations” at appropriate facilities, including BTC. Rep. Lofgren questioned whether alternatives to detention would be more cost-effective with these populations and “limited resources should continue to be expended on persons who appear such low priorities.” She also asked for “a prompt review of BTC” to ensure the facility is in line with DHS policies.<sup>36</sup>

Indeed, why should U.S. taxpayers spend an average of \$164 a day for detainees who are not a priority, especially at BTC where detainees, by definition, pose no threat to their communities or national security? The National Immigration Forum estimates that ICE detention will cost taxpayers \$5.4 million per day – or nearly \$2 billion for the 2013 fiscal year.<sup>37</sup>

Alternatives to detention are effective and far cheaper. Existing program costs run from 30 cents to \$14 per day. If ICE was truly focused on detaining and deporting dangerous criminals, it would save more than a billion dollars annually.<sup>38</sup> The savings would certainly help relieve the “fiscal cliff” crisis.

Meanwhile, until ICE reforms detention centers such as BTC, detainees will continue to suffer abusive and dehumanizing treatment, as the examples in this report attest.

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“To its credit, this Administration . . . admitted that the system was broken. A fundamental change was necessary to prevent the suffering and death and to make immigration detention suitable for its civil population.”

— Rep. Zoe Lofgren column, Immigration detention is no ‘holiday.’  
The Hill’s Congress Blog. March 30, 2012.

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# A Brief History of BTC

The facility now known as BTC began in 2002. The then Immigration and Naturalization Service (INS)<sup>39</sup> contracted 72 beds of a work-release facility from a firm now called the GEO Group.<sup>40</sup> The facility sits across the street from a massive landfill. A private prison company, GEO has been widely criticized for its questionable practices and prisoner abuses over the years.<sup>41</sup> Most recently, its \$6 million donation to name a university football stadium has drawn fire from outraged students, activists, former BTC detainees and their supporters.<sup>42</sup>

BTC's first immigrant detainees were 50 Haitian women who had been detained at a Miami-Dade maximum-security county jail where they endured abysmal conditions after their boat ran aground in the Florida Keys.<sup>43</sup> AI Justice — then known as the Florida Immigrant Advocacy Center (FIAC) — denounced the women's treatment and demanded improved treatment. BTC was supposed to be the solution, but still hasn't achieved the promise.

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"What we are seeing today with the acquisition of the Wackenhut facility is the result of many months of work listening to the concerns of our communities and doing what we could to provide the best possible detention environment for our detainees."

— INS Miami Acting District Director John M. Bulger,  
August 12, 2002

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Early on, BTC called its facility an "alternative to detention" even though immigrants were locked up 24-hours a day. For years detainees were allowed to wear their own clothes — today men wear orange jumpsuits, women dress in grey. Women also had broader access to outdoor recreation than they have today. Yet by 2004, AI Justice and the Women's Refugee Commission<sup>44</sup> complained that, "Conditions at BTC have failed to improve, and in some cases, have even deteriorated."<sup>45</sup>

For example, women were "often denied timely and effective healthcare" and few received mental-health counseling. Detainees were asked to sign documents they did not understand. BTC staff imposed their religious beliefs on detainees and, in one case, delayed a rape victim's release after she requested an abortion.<sup>46</sup>

The condescending treatment encountered at times by female asylum seekers was reflected in staff culture and training. In 2004, for example, we reviewed a BTC Detention Manual that included "social tips." It told detainees not to spit or blow their nose on the floor, walls or in the sink. It also added that: "Americans are very conscious of personal hygiene and, therefore, detainees should shower, brush their teeth and change their undergarments every day." Underlying these "tips" was the assumption that foreign-born women engaged in socially unacceptable behavior.<sup>47</sup>

The manual was finally revised after AI Justice and the Women's Refugee Commission filed a complaint with the U.S. Department of Justice Civil Rights and Civil Liberties in June 2004.<sup>48</sup> In September 2005, GEO Group responded saying that BTC had "removed these alleged insensitive suggestions from all detainee handbooks."<sup>49</sup>

Similar complaints persist at BTC today.

## Bigger, Not Better

Over the years the facility grew. In 2009, BTC expanded to 700 beds from 530 beds. ICE continues to contract BTC beds from the GEO Group, and the demand for pro bono legal assistance has dramatically increased. AI Justice has not been

granted targeted funding for work at BTC and has scarce funding for detention work. Yet we expanded our services since no other non-profit group has a presence there. We have provided free Know Your Rights presentations at BTC for years, now about six times a month. We also represent detainees with individual cases and refer other cases to American Immigration Lawyers Association (AILA) attorneys who already have agreed to provide pro bono representation. All of our services are free.

Two AI Justice attorneys routinely see detainees at BTC. Both of them provide detainees with legal information packets tailored to their immigration situation so they can better advocate for themselves if necessary. The AI Justice attorneys offer free legal consultations to unrepresented detainees, including assessing whether detainees may be eligible for an immigration benefit, for AI Justice assistance, or for referral to pro bono or private legal services. One of our attorneys is an Equal Justice Works Fellow who has recruited a squadron of law school interns and volunteers, which has enabled him to increase the number of detainees getting legal help.

Our attorneys also appreciate the professionalism of the GEO staff that coordinates Know Your Rights presentations and access to detainees in need of legal assistance. These GEO officers have been very accommodating and genuinely nice with AI Justice staff.

Over the years, AI Justice has written numerous letters of complaint and has had meetings with ICE and GEO officials regarding conditions at BTC. We have raised concerns — including inadequate medical and mental health care offered detainees, female detainee access to recreation, the lack of adequate translators, scarce confidential attorney-client visitation space, limited access to the law library, failure to provide adequate space for the immigration court, and questionable staff attitudes — with some success. AI Justice has also called for investigations by the Office of Civil Rights and Civil Liberties into abuses at BTC.

AI Justice continues to document and denounce inhumane treatment of BTC detainees and to advocate for improvement. In many cases we ask BTC staff no more than to follow existing ICE policy and practices. Even so, some complaints have persisted for years.

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AI Justice attorneys appreciate the professionalism of the GEO staff that coordinates Know Your Rights presentations and access to detainees in need of legal assistance.

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# The Failure to Exercise Discretion

In an effort to unclog backlogged immigration courts and better target dangerous criminals and national security threats, ICE announced in 2011 that it would review 300,000 pending deportation cases nationwide and exercise “prosecutorial discretion” to allow immigrants who were low priority cases to avoid deportation.

The previous year, 7,000 ICE union members unanimously ratified a “Vote of No Confidence.” Their statement said:

ICE “Director John Morton and Assistant Director Phyllis Coven have abandoned the Agency’s core mission of enforcing United States Immigration Laws... and have instead directed their attention to campaigning for programs and policies related to amnesty...”<sup>50</sup>

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“Prosecutorial discretion policy cannot be effectively applied in the field and has the potential to completely overwhelm ICE’s limited manpower resources or result in the indiscriminate and large scale release of aliens encountered in all ICE law enforcement operations.”

— Chris Crane, ICE Union President, Oct. 12, 2011.

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Subsequently, union members resisted efforts to decline to be trained on prosecutorial discretion, which has had a lasting impact on how well this program was implemented at immigration detention centers, including BTC.<sup>51</sup>

Two memos issued by ICE Director Morton on June 17, 2011 provide guidance, not only for a formal review of immigration court cases, but also for ICE enforcement and detention operations. The memos, for example, provide guidance on whether to detain or grant deferred action status to immigrants. In any given case, ICE officers may consider “ties and contributions to the community, including family relationships, among other factors.”<sup>52</sup>

Further, the age at which a child is brought to the U.S. and educational accomplishment are specifically mentioned as factors to consider. This refers to youth who came to the United States, have been educated here and may someday be eligible for legal status under the pending DREAM Act in Congress.<sup>53</sup>

Though the announcement sparked great expectations, few detainees actually have been granted prosecutorial discretion by ICE’s program nationwide. AI Justice remains deeply concerned with the agency’s failure to date to exercise discretion over its detained cases and its commitment to exercising its discretion going forward. The national numbers are damning: As of May 29, 2012, only 40 of 56,180 detained cases — less than 1 % — had been found eligible for administrative closure.<sup>54</sup>

## Disappointing Results

AI Justice actually saw an increase in the number of BTC detainees who are or should be among ICE’s lowest enforcement priorities and whose detention contradicts ICE’s stated policy under ICE’s 2011 memos.<sup>55</sup> At one point in 2011, BTC’s Assistant Field Office Director told an AI Justice attorney that there was absolutely no basis to grant deferred action to DREAMers because, “There is no DREAM Act.”

When the attorney noted the Administration’s repeated references to the DREAM Act and ICE’s stated intent not to target these students, BTC’s AFOD said he knew how headquarters felt, but headquarters didn’t have to review the requests from DREAM Act eligible kids like he did.<sup>56</sup> Even BTC detainees with attorneys have had an uphill battle getting prosecutorial discretion approved. Worse, the vast majority of these detainees have no legal help.

Despite ICE's stated commitment to properly screen for potential prosecutorial discretion candidates, BTC continues to detain individuals who pose no flight risk or danger to public safety or national security.

Thus, despite ICE's stated commitment to properly screen for potential prosecutorial discretion candidates, BTC continues to detain individuals who pose no flight risk or danger to public safety or national security. At a November 2012 meeting with South Florida AILA members, local ICE officials laid out their rationale:

"The [prosecutorial discretion] memos must be read in their totality, and the agency reserves the right to take action on a case that is not on the list of enforcement priorities. Finally, it is noted that, just because a case may not represent an enforcement priority does not mean that ICE will not take action in that case – it is just a question of resources."<sup>57</sup>

Meanwhile, AI Justice remains troubled that many prosecutorial discretion candidates are not being identified on a timely basis or advised that they may be eligible for release or relief from deportation. We also object to using taxpayer dollars to needlessly detain, deport and separate families.

In October 2012, AI Justice sent ICE a list of seven BTC detainees who were good candidates for prosecutorial discretion. Among them were individuals potentially eligible for a range of immigration remedies such as U and T visas, deferred action, asylum or family-based petitions.

At first, the only response to the letter seeking release came from three BTC deportation officers asking if AI Justice was going to submit detailed, formal requests. Unfortunately, the two AI Justice attorneys who regularly visit BTC do not have the resources to screen hundreds of individuals, much less to represent every BTC detainee with a worthy case. Nor would we have to screen so many BTC detainees if ICE were to follow its own guidelines.

Among the prosecutorial discretion candidates cited in the letter were:

- A detainee who came to this country at age 13 after being sexually abused. He had been in the United States for 15 years and suffered domestic violence while here. In mid December he was ordered deported.<sup>58</sup>

- A detainee who fled his Central American homeland in 1997 after gangs threatened his life and demanded payments to keep his family from being killed. His wife has TPS, and he has four U.S. citizen children, including a young daughter who has a medical issue that requires monthly visits to a specialist.<sup>59</sup> This detainee finally was released under bond in January.

Subsequently, at a November 2012 meeting, Mr. Moore, ICE's Florida Field Office Director, and Mr. Candemeres, BTC's temporary Assistant Field Office Director, informed AI Justice staff that BTC already had released a number of detainees profiled in our October 2012 letter. Soon after the meeting, BTC granted longstanding requests to release at least five other detainees.

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Why would BTC deny another ICE agency that had good reason to request the release of a cooperating victim? Why risk slowing down or compromising an ongoing criminal investigation?

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## Wasted Taxpayer Dollars

BTC detains a variety of individuals who, by ICE's own definition, should be eligible for prosecutorial discretion. They include pregnant and nursing mothers, primary caregivers of minor children, U.S. military veterans, victims of domestic violence and other serious crimes, Deferred Action for Childhood Arrivals (DACA) eligible youth, individuals without criminal records, arriving immigrants who have been found to have a credible fear or reasonable fear of returning to their home countries, and those who have lived in the United States for more than 10 years or have U.S. citizen or permanent resident family members.

In a September 2012 letter regarding concerns at BTC, U.S. Rep. Lofgren well questioned whether alternatives to detention would be

more cost-effective with these populations and “limited resources should continue to be expended on persons who appear such low priorities.”<sup>60</sup>

Indeed, why should U.S. taxpayers spend an average of \$164 a day on a detainee who is not a priority — especially at BTC where detainees, by definition, pose little to no threat to their communities or to national security?

The following are examples of low-priority detainees who, according to DHS policy, should not have been detained or, worse, targeted for deportation.

### Abused by Traffickers

Miriam<sup>61</sup>, a victim of a severe form of sex trafficking, was eligible for a T Visa, which would provide her legal status. Yet BTC refused to release her — even after another ICE agency requested her to be released from ICE detention.

Miriam’s traffickers had made false promises of legitimate work. Instead, they forced her to work as a prostitute against her will. Once her abusers learned that she lacked legal immigration status, they threatened to have her jailed and deported, pressured her to work long hours and pay them a large cut of her earnings. She even had to pay them when she was sick or was not paid by a customer. Miriam never imagined that she could be forced to work as a prostitute in the land of liberty.<sup>62</sup>

In short, traffickers used Miriam’s lack of status to force her into prostitution in the United States. Ultimately, she was picked up and detained by ICE. In 2011, AI Justice identified Miriam as a victim of human trafficking at BTC and helped her report the crimes against her to Homeland Security Investigations (HSI), an ICE agency that investigates crimes such as human trafficking. Soon thereafter, HSI initiated a criminal investigation based on the information she provided.

The following month, AI Justice sent a request for Miriam’s release to her deportation officer. We never received a response.

Though she was terrified of her traffickers, Miriam willingly continued to assist in the investigation. After careful consideration,

HSI indicated that she would be better able to assist the investigation if not detained. Thus, HSI requested BTC’s AFOD to release Miriam and place her in an alternative to detention program. For reasons unknown to AI Justice, the AFOD denied the request of the ICE trafficking investigators to release Miriam from BTC.

HSI appeared surprised and confused by BTC’s decision, and with good reason. Why would BTC deny another ICE agency that had good reason to request the release of a cooperating victim? Why risk slowing down or compromising an ongoing criminal investigation?

Ultimately, HSI pulled out all stops to expedite a request for Miriam to get “continued presence,” a temporary immigration status provided by law enforcement to people identified as victims of human trafficking who assist in the criminal investigation.<sup>63</sup> BTC released Miriam only after she was granted continued presence, and AI Justice renewed her release request, this time sending it to Mr. Moore, ICE’s Florida Field Office Director. Finally, after more than four months of detention, BTC released her.

As a trafficking victim, Miriam suffered extensive trauma and requires ongoing support, including counseling and other social services. Yet BTC provided no trauma services or mental-health therapy despite her lengthy and unwarranted detention.

AI Justice assisted Miriam in filing an application for a T visa, which offers a path to permanent legal status. The application remains pending at USCIS. She continues to cooperate with HSI in their criminal investigation of her traffickers. Meanwhile, Miriam is receiving comprehensive services from the International Rescue Committee, including the counseling she did not receive while detained at BTC.

### Victim Denied Release

Beatriz<sup>64</sup>, a victim of domestic violence, had lived in the United States for more than 10 years with no criminal record. Because she cooperated with law enforcement in the investigation of domestic violence, she was eligible to seek legal status via a U visa. Even so, after being brought to BTC in 2012, she needlessly remained detained there for more than three months.



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One day, the ex-partner attacked their son, and that was the last straw. She reported the domestic violence to the police.

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Beatriz had been a victim of domestic violence for more than a decade but was terrified to call the police. Speaking of her ex-partner, she said:

“He told me that the police would not help me if I called them because I was illegal in the United States. He said that the police would deport me if I called them. I was scared that I would be killed by the murderers if I was sent back to my country, and so I did not call the police. I felt like I had no way out. I was scared and depressed, and I felt physically sick because of what was happening to me.”<sup>65</sup>

One day, the ex-partner attacked their son, and that was the last straw. She reported the domestic violence to the police, who arrested the abusive ex-partner. Beatriz cooperated in the investigation and prosecution of the crime against her and her son and obtained a restraining order against the ex-partner. Thus, Beatriz was eligible for a U visa. According to the Morton memo regarding victims, her being a victim of domestic violence with a corroborating police report should have been sufficient to warrant a favorable exercise of discretion.<sup>66</sup>

AI Justice submitted a release request on her behalf, including a police report documenting the abuse against her.<sup>67</sup> However, her deportation officer denied the request. The denial letter failed to address Beatriz’s domestic violence and U Visa eligibility. The letter said, “There is no demonstrable evidence that her removal would visit hardship on her family beyond what is typically occasioned by removal.”<sup>68</sup> Yet family hardship is not required for release.

Subsequently, the deportation officer told AI Justice that Beatriz’s request was denied because she had entered the United States on a visa waiver program and was not eligible for bond.

That should not have barred Beatriz from being released, either, because she was not subject to mandatory detention. Moreover, Director Morton’s memo makes specific provisions for prosecutorial discretion for victims of domestic violence, such as Beatriz.

The deportation officer further told AI Justice that Beatriz would only be released once the U Visa was certified. Yet such certification is not required to release victims of crimes such as domestic violence. Still, BTC needlessly prolonged her detention. Given her clear eligibility for a path to permanent legal status via a U Visa, Beatriz should have been released much sooner, if detained at all, under ICE’s prosecutorial discretion guidelines.

Despite her trauma, she received no counseling at BTC while detained three months. Now she is receiving counseling from the Trauma Resolution Center (TRC).

### No to Prosecutorial Discretion

In Honduras, Gabriela<sup>69</sup> lived in poverty and was often unable to feed her children. So she followed her partner of more than 20 years to the United States in order to support her children. Since her arrival from Honduras about 14 years ago, Gabriela has made significant contributions to her community. A grandmother and devoted Christian, she attends church regularly, hosting a large Bible study group at her home. She also works to help those in her community, volunteering at her local food bank.<sup>70</sup>

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“I have never been arrested or convicted of any crime,” “It is very horrible for me to be in detention; I feel desperate and depressed, and I miss my husband.”

— Gabriela, a BTC detainee.

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For years she provided critical care to disabled family members and was a primary caregiver for her niece, a lawful permanent resident of the United States who was severely disabled after suffering

a horrific domestic violence attack. She also is devoted to her husband, who resides legally in the United States under Temporary Protected Status (TPS).

Gabriela had no criminal record. Even so, she was detained by CBP in February 2012 while a passenger in a car that was pulled over at a South Miami Marina, where she and her husband had gone to fish.

She had a tough time at BTC:

“I have never been arrested or convicted of any crime,” Gabriela said. “It is very horrible for me to be in detention; I feel desperate and depressed, and I miss my husband. I also know how worried my family is for me, and I wish I could comfort them.”<sup>71</sup>

AI Justice submitted a release request to her BTC deportation office based on Gabriela’s strong case for prosecutorial discretion. The letter also asked ICE to administratively close Gabriela’s deportation case.<sup>72</sup> We did not receive a response.

Gabriela endured more than a month in detention before being released under a \$1,500 bond. When AI Justice submitted her case for prosecutorial discretion to the Office of Chief Counsel (OCC), no fewer than 15 supporters provided statements testifying to her character and good deeds. Nonetheless, OCC declined to close her case. Though her status remains in limbo, she is precisely the kind of person who should benefit from immigration reform.

### Separated from Children

Barbara<sup>73</sup> was devastated when immigration agents boarded a bus she was riding and arrested her in April 2012. At the time she was a 28 year-old single mother caring for two U.S. citizen children ages 3 and nearly seven months. In the United States for about eight years, she did not fall within any of ICE’s enforcement priorities.

Her only offence was for driving without a license. Nonetheless, ICE detained Barbara and transferred her from Texas to BTC, thus, further separating her from her young children. Her detention was hard on her children as well as on Barbara.

“My daughters have been temporarily staying with extended family, but they are suffering a lot without me. My sister tells me that [the baby] is crying all of the time, and I know it is because she needs her mother to hold her and take care of her,” Barbara said. “[The older girl] has also been struggling without me.... She says that she misses me and that she loves me. I do my best to make her feel better, but it breaks my heart to know my daughters are suffering.”<sup>74</sup>

“My daughters have been temporarily staying with extended family, but they are suffering a lot without me. My sister tells me that [the baby] is crying all of the time, and I know it is because she needs her mother to hold her and take care of her.”

— Barbara, a BTC detainee

When AI Justice learned of Barbara’s case, we requested that ICE exercise prosecutorial discretion and release her so she could care for her young daughters. Further, we notified her deportation officer that she wanted to rescind her “voluntary” agreement to be deported, noting that Barbara agreed to “voluntarily” return to her Latin American homeland before receiving a legal orientation presentation and without fully understanding the options available to her. She spent one month in detention before being released.

### Assaulted at Gunpoint

Octavio<sup>75</sup> was the victim of a violent armed robbery and assault at gunpoint. He provided the police with a detailed description of the suspects and their escape vehicle. Later he identified and testified against his attackers at their trial, resulting in two convictions.

Octavio had no criminal convictions. He also was married to a U.S. citizen who suffered from arthritis, anemia, and PTSD due to the robbery. After learning of his case, AI Justice submitted a request for his release in March 2012 given that he was a victim

"As reforming our detention system and establishing sensible immigration enforcement priorities have been two of your major initiatives as Secretary of Homeland Security, I ask that you promptly conduct a review of BTC to ensure that the facility is in line with the Department's policies."

— Letter from U.S. Rep. Zoe Lofgren to Janet Napolitano, Sept. 14, 2012

of a serious crime. The request also noted that he was eligible to apply for a U visa, and as such, he qualified for a favorable exercise of prosecutorial discretion by granting his release from detention. Nearly a month later, he finally was granted a \$1,500 bond by ICE. Altogether, he needlessly spent three months in detention following his arrest by ICE.<sup>76</sup>

### Separated from Son

Sandra,<sup>77</sup> a single mother with a 15-year-old U.S. citizen son, had lived in the United States for more than 20 years. A release request had been pending for more than three weeks without response when AI Justice learned of her case in March 2012. That request and another AI Justice release request were turned down by BTC. While Sandra was detained, her son suffered by being separated from his mother and primary caretaker.

Sandra was not subject to mandatory detention. She was applying for cancellation of removal and for asylum because she feared she would be persecuted in her native Central American country due to her sexual orientation. Meanwhile, she remained detained at BTC for more than two months. Ultimately, Sandra was released and is pursuing her case in immigration court.<sup>78</sup>

### Victim of Violent Crime

Oscar, a 31-year-old Guatemalan, had been in the United States more than 10 years when he was viciously attacked by two armed men in southwest Florida. In May 2011, he was walking out of a store when approached by two men. One struck him in the head with a metal pipe, which caused Oscar to fall to the floor. The other man then held a knife to Oscar's throat, threatened him and searched his pockets. The men stole his money, gold ring, silver chain and cell phone. During this violent robbery, Oscar sustained a one inch cut to the back of his head and was treated by paramedics at the scene.<sup>79</sup>

For months, Oscar lived in fear of being attacked by his assailants because he had been told they lived in his neighborhood. He had nightmares and became tense, scared and suspicious of groups of people. Nonetheless, Oscar fully cooperated with police during the resulting criminal investigation. As a result, the County Police Department issued him a U Visa certification, which offers nonimmigrant status to victims of certain crimes who assist law

enforcement in the investigation or prosecution of a crime. Oscar also was a prime candidate for prosecutorial discretion as a victim of a serious crime.

Regardless of the Morton memo's guidance, ICE detained Oscar at BTC in December 2011. In February, AI Justice submitted a request for his release to his deportation officer.<sup>80</sup> The officer "misplaced" his release request for almost three months. She then failed to submit his first set of biometrics (orders for fingerprints and photographs). That added another 45 days of detention until a new biometrics request was issued. Despite follow up calls and emails from AI Justice, the officer never responded to the request. Months later, AI Justice met with BTC's AFOD and raised the issue of Oscar's release. AI Justice was told to resubmit the releases and did so.

Several weeks later, after getting no response, AI Justice sent the release request to Marc Moore, ICE's field director for enforcement and detention operations in Florida. The response: Oscar would not be released due to one "open container" of beer and two "driving under the influence" offenses. AI Justice continues to work on getting his U Visa approved. After more than a year in detention, Oscar remains detained at BTC as of March 13, 2013.

### A Breadwinner for U.S. Citizens

A questionable traffic stop led to the deportation of Anibal Perez Hernandez. In November 2011, Anibal's boss was giving him a ride home when CBP stopped them on I-95 in Palm Beach County. The two CBP officers offered no reason for the stop. When they questioned Anibal, he admitted that he had no papers. The CBP officers then detained him and took him to BTC where he was detained.

Anibal had lived in the United States for seven years, had no criminal history and supported five children, four of them U.S. citizens. He posed no danger or national security risk, and could have been a candidate for prosecutorial discretion. Instead he ended up detained at BTC.

While he was at BTC, his partner struggled to provide for their five children while suffering complications from the birth of their 3-month-old twins. The separation devastated the family. The Palm Beach County for Immigrant Rights publicized a petition drive

requesting ICE Director Morton to grant bond and cancel Anibal's deportation.

He was released after being detained for three months. Ultimately, Anibal accepted voluntary departure, which allows an undocumented immigrant to leave the United States without a deportation order and does not bar him from legally entering the country in the future.<sup>81</sup>

### Forced Recruitment Target

Fernando<sup>82</sup> had never been arrested and took pride in his clean criminal record. A Honduran, he had been in the United States since 1997, 15 years. He knew many Hondurans who had been targeted by criminal gangs and was afraid that if he, too, were deported, he could be targeted for forced recruitment by local gangs and would resist at the risk of being injured or killed. Facing months of continued detention while representing himself, he stopped fighting his case and took voluntary departure in September 2012.

### Cosmetology Fans

Raquel<sup>83</sup>, a 59-year-old from Latin America had lived in the United States for some 15 years. While here, she worked hard and cared for her husband when he suffered a stroke. In September 2011, she went to a cosmetology exhibition at the Ft. Lauderdale Convention Center and was arrested by Border Patrol. Raquel said that Border Patrol stood by the front entrance and asked her for her identification. When she could not provide proof that she was in the country legally, they arrested her.

Though Raquel had never been arrested or convicted of any crime, she was detained at BTC and placed into deportation proceedings. She was one of several women AI Justice interviewed who had been arrested by CBP that day. All of the women we spoke with said that CBP stood at the Convention

Center's entryway asking for their IDs and arrested anyone whose documents didn't pass CPB muster. To the best of our knowledge, none of the women arrested had histories of prior criminal convictions, or even criminal arrests, and were not taken into custody on a claim that they were "dangerous criminal aliens." They are examples of individuals who ICE should not detain, even if CBP brings them to BTC.

### The Greyhound Trap

Sonia<sup>84</sup> a middle-aged woman, was asked for her immigration papers by CBP while on a Greyhound bus in West Palm Beach. Detained at BTC for about three months, she had no criminal record and cried throughout her interview with AI Justice. She said she was emotional because she didn't understand why she was being detained like a criminal when she never hurt anyone. All she had ever done in the United States was to try to support herself and her family. Ultimately, she signed papers agreeing to take Voluntary Departure.<sup>85</sup>



BTC beauty salon for women detainees

SUN-SENTINEL



# Asylum Seekers at Risk

AI Justice has been extremely concerned that detainees fleeing persecution in their home countries have been prevented from applying for asylum in the U.S. by ICE officers. Individuals apprehended while entering the United States and those who reenter after being deported may immediately be deported by ICE without judicial process. However, if an individual expresses a fear of returning to his or her country, DHS has a legal obligation to refer the case to the USCIS asylum office for what is known as a credible or reasonable fear interview.<sup>86</sup>

Only individuals who are found to have a credible or reasonable fear may apply for asylum or withholding of removal. Those who are not found to have a credible or reasonable fear may be subject to immediate deportation. Thus, these interviews are critical to protecting asylum seekers who may face injury or death if returned to their countries.

Yet in many cases cited below, ICE officers at BTC failed to notify the asylum office to provide these crucial interviews to potential asylum seekers. As a result, detainees who expressed a fear of persecution to ICE officers at BTC have been deported without a chance to be interviewed. This issue also has surfaced in other areas of the United States, such as in Texas, New York and Pennsylvania.<sup>87</sup>

Further, asylum seekers found by USCIS to have a credible fear of persecution or torture generally should be released from detention according to a January 2010 ICE memo that describes the policy: An asylum seeker who has established credible fear should be paroled as long as the individual sufficiently establishes his identity, does not pose a flight risk or



An AI Justice client and survivor of human trafficking

danger to the community, and has no other factors that would weigh against his release.<sup>88</sup>

There is no rational basis to detain asylum seekers who are eligible for parole while their cases are adjudicated. Detaining such vulnerable individuals – many of them survivors of torture, isolation and other abuse – causes needless psychological harm and compromises their ability to present their cases. As long as they are detained, their access to legal representation and other services are very limited. Unfortunately, AI justice documented two cases in which asylum seekers remained detained at BTC months after USCIS found they had a credible fear of return to their home country.

Victims of domestic violence who establish credible or reasonable fear may be eligible for asylum or withholding of removal. Asylum seekers may additionally be eligible for immigration relief under special visas for victims of crimes, among them U Visas and T Visas.<sup>89</sup>



"I was tired, cold and scared, so I signed the papers."

— Mercedes, living in fear after deported from BTC

In April and May of 2012, AI Justice received multiple reports of victims of domestic violence who had been deported by BTC officers without being offered credible or reasonable fear interviews, despite clear requirements to do so. AI Justice has documented cases of BTC detainees with credible fear claims deported in contravention of the law. AI Justice also has received reports of DHS officers coercing immigrants into signing documents stating that they don't have a fear of returning to their home countries.

We also documented two cases of asylum seekers who established credible fear of returning to their homeland but were long denied release. One Haitian man was detained more than four months and is featured in the next section. The other asylum seeker was detained nearly six months. The following accounts include other egregious examples.

### Duped by CBP

Mercedes<sup>90</sup> fled her Central American homeland at age 25 after suffering four years of domestic violence at the hands of her partner.<sup>91</sup> Terrified of him, she said:

"I knew that he would never stop hurting me and never let me be if I left him. I ran away to the United States because I wanted to get as far away as possible from Jose<sup>92</sup> so that he could not hurt me anymore."<sup>93</sup>

Shortly after entering the country near McAllen, Texas, Mercedes was detained in a large holding cell that CBP officers call a "hielera" or icebox in English. These cells appear designed to abuse their occupants.<sup>94</sup> Mercedes recounted her ordeal:

The officers put me in a large cell with many other women. Being in the cell was horrible; it was freezing, and I was so cold. There were no beds, so I had to sleep on the floor. The only food they gave us were small sandwiches, I was really hungry."<sup>95</sup>

About three days later, CBP officers told her that she needed to sign some documents, which were written in English. Mercedes, who only understands Spanish, asked the officer what the documents said. He assured her that they had nothing to do with deportation.

Mercedes said, "I was tired, cold and scared, so I signed the papers." Afterward, the officer told her that the documents said she could not return to the United States for five years.<sup>96</sup>

Immediately Mercedes informed the officer that she was scared to return to her homeland. The officer said he could not help her but that she should talk to ICE once she was transferred. In late March 2012, Mercedes was transferred to BTC and spoke to a deportation officer as soon as she could, and that officer brought someone to translate. She recounted her conversation to AI Justice:

"I told the immigration officer I was scared to go back to [my country] because I had been abused by Jose there and that I was scared that Jose would hurt me. The officer told me that he didn't have my documents with him but he would look into my case."<sup>97</sup>

Subsequently, Mercedes learned that a deportation flight to her home country was scheduled in two days. She was scared but hoped to get an interview so she could apply for asylum. Meanwhile, AI Justice learned that she was scheduled to be deported. We alerted the BTC AFOD that Mercedes needed a credible fear interview and was at risk of being deported imminently. He assured us that he would take care of the problem.<sup>98</sup>

BTC officers deported Mercedes three days later without allowing her to speak to an asylum officer regarding her fear. She is now hiding and living in fear in her native country.

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At the airport, Julia begged the officers not to deport her because she believed she would be killed if deported and wanted to apply for asylum.

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“I am very scared that Jose will find me, and do not want to leave the house,” she told AI Justice. “I know that he is very angry with me and I am terrified that he will find me and hurt me again.”<sup>99</sup>

Since then, AI Justice has seen hundreds of detainees at BTC who have experienced brutal treatment in CBP “hieleras.” Many of them have been asylum seekers and victims of domestic violence. These holding cells have no beds, no chairs, and a single sink and toilet sitting in plain view. Detainees have no access to a bath or shower. They are not given blankets, soap or a change of clothes. They huddle on the floor for warmth and are fed sparsely. AI Justice has filed Federal Tort Claims actions seeking damages on behalf of four immigrants who were subjected to such inhumane and unlawful treatment by CBP.<sup>100</sup>

## Survived Rape, Gunshots

BTC officers also intended to deport Julia<sup>101</sup>—even after she told her BTC deportation officer that she was terrified of returning to her South American homeland and wanted to seek asylum. Julia, 49, had endured decades of severe domestic violence and sexual assault by her partner. He had repeatedly raped her, shot her, threatened to kill her, and continued to seek her in her native land.

Scars on Julia’s arms and legs attested to her abuser’s brutality. She recounted one incident during which he slammed her head against the wall repeatedly until she passed out. Her abuser attacked her when she was with her children. At one point she tried to escape, but he dragged her out of the bus she had boarded.

Julia previously had been deported and was therefore subject to immediate deportation without a right to see a judge upon re-entry. She was transferred to BTC. There, on two separate occasions, she told her deportation officer that she wanted to apply for asylum, adding that she was scared to be returned to her abuser’s country. Nonetheless, BTC attempted to deport Julia in May 2012.

At the airport, Julia begged the officers not to deport her because she believed she would be killed if deported and wanted to apply for asylum. She was so emphatic that the officers eventually relented and returned her to BTC. Had it not been for her

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ICE kept a traumatized asylum seeker locked up at BTC for nearly six months, subjecting him to racist treatment and delaying him from preparing for his asylum case in immigration court.

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determination, she could have been deported to a place where her abuser could track her down, beat and even kill her.

## Notice Ignored

During the same time period, Tania<sup>102</sup> was deported despite expressing her fear of return to her deportation officer. She had fled her Central American homeland after decades of domestic violence at the hands of the father of her children, who frequently beat her and threatened to kill her if she left him.

Border Patrol agents arrested Tania soon after she crossed the border into Texas and transferred her to BTC. Tania told her BTC deportation officer that she feared going back to her native country because she suffered terrible domestic violence there. She was afraid her abuser would find her and hurt her again.

Nonetheless, Tania’s consulate told her that she was scheduled for deportation. After Tania told AI Justice about her fear of return and belief that she would soon be deported, AI Justice included Tania’s name on a list of women who requested credible or reasonable fear interviews at BTC. Though AI Justice warned BTC ICE that Tania was scheduled for deportation the following Monday and requested a reasonable fear interview, BTC deported her as scheduled.

## Fleeing Persecution

Though Esteban<sup>103</sup> fled his native country for fear of his life, BTC detained him for more than five months. Placed at BTC in November 2011, this young man remained detained even after two U.S. citizens vouched for him and an Immigration Services (USCIS) asylum officer determined that Esteban had a credible fear of persecution. AI Justice's requests to release him — via email, voice mail and, finally a formal request to BTC's Supervisory Detention and Deportation Officer — remained unanswered for months, needlessly prolonging his detention.<sup>104</sup>

Shortly after being detained at BTC, an immigration officer laughed at Esteban's request to apply for asylum and seek help from the U.S. government. This officer pointed to her hand and rubbed her skin, a common gesture indicating skin color. At the same time, she told Esteban, who is black, "No, no help for you." Given her response, Esteban feared he would be deported and face persecution. So he gave ICE a fake name in the hope that his persecutors would remain unaware of his whereabouts if sent back to Colombia.

Esteban left his homeland at age 20 after four family members were murdered by a violent guerrilla group. As he recounted:

"There are people from my hometown all over [the country] who know me and will tell the guerillas where I am. The guerillas are everywhere and it is impossible to hide from them.... I am afraid that, if I am forced to return to [my homeland], the guerillas will kill me."<sup>105</sup>

Corroborating his claims were the numerous documents that Esteban brought with him. Among these were news articles describing the murders of his brothers as well as a letter from their hometown mayor documenting the brothers' deaths and threats to Esteban's life. He had standing offers of housing from two U.S. citizens upon release from detention and for the duration of his immigration case.<sup>106</sup> Further, Esteban clearly qualified for prosecutorial discretion under ICE guidelines.

Nonetheless, ICE kept a traumatized asylum seeker locked up at BTC for nearly six months, subjecting him to racist treatment and delaying him from preparing for his asylum case in immigration court. Only after AI Justice appealed to senior DHS officials was Esteban released from BTC.

"South Florida immigration attorney Cheryl Little, raises a more direct challenge to President Obama's Department of Homeland Security. It already has the discretionary authority to allow temporary legal status to Dreamers.

Rubio's *solution* doesn't need Congress to pass a law."

— Myriam Marquez. Miami Herald, April 21, 2012

## Sympathetic Dreamers

Among the most sympathetic undocumented immigrants are youth who came to the United States as children, have been educated here and consider themselves Americans but for the official paper. They are often called DREAMers in a nod to the pending DREAM Act in Congress, which would provide them with a path to legal status. Not surprisingly, the guidance for prosecutorial discretion issued by ICE in June 2011 specifically directs individuals "who have graduated from a U.S. high school" or went to college to pursue a degree to be given "particular consideration" for prosecutorial discretion.<sup>107</sup>

On June 15, 2012, President Obama announced a new discretionary program called Deferred Action for Childhood Arrivals (DACA), which would allow as many as 1.76 million undocumented youth to legally live and work in this country for at least two years.<sup>108</sup> Unfortunately, the following are examples of DREAMers needlessly detained and/or deported.

### A Dreamer with Relief

In May 2012, Sara<sup>109</sup> was detained by CBP upon arrival at the Fort Lauderdale airport. Sara, age 24, had come to visit her U.S. citizen stepmother. Their relationship was the basis for Sara's approved I-130 family petition. While detained, Sara also became eligible for deferred action under DACA, which would have allowed her to legally live and work in this country for at least two years. Further, she was a victim of domestic violence, which potentially could make her eligible for a U visa and a path to nonimmigrant status. Nonetheless, CBP and ICE both failed to exercise their discretion in her favor.

A record of sworn statement confirms that CBP was aware of all the facts that would argue for prosecutorial discretion. In fact, Sara showed copies of her high school diploma and her I-130 family petition to a CBP officer. Yet, rather than exercise discretion, CBP transported her to BTC. There, rather than exercising discretion and releasing her, ICE detained Sara instead of immediately releasing her. Consequently, Sara ended up in ICE detention at BTC for nearly two months. Only after

AI Justice intervened on her behalf did ICE release her.<sup>110</sup>

### Innocent Bystander

Four months after ICE announced its push for prosecutorial discretion in 2011, Shamir Ali, a young man who has lived most of his life in the United States, was arrested when the FBI raided a Miami car dealership that reportedly had not paid taxes in years. Shamir, now 26, had no knowledge or involvement in any crime and fully cooperated with federal authorities. He simply worked there. In fact, he had no criminal history. Yet the FBI turned him over to ICE after he could not prove he had legal status, and Shamir was detained at BTC in October 2011.

When Shamir was 7 years old, his mother fled persecution in Bangladesh and brought him to the United States. Though she applied for asylum, the Board of Immigration Appeals (BIA) ultimately denied her case. His father, a U.S. citizen, abandoned him years ago and has not been in contact since. After nearly 20 years here, Shamir has few ties to his native Bangladesh and cannot read or write the language. Deporting him to a land he barely recalls would be a cruel hardship.

Shamir grew up attending school and dreaming of a career as a computer engineer. After graduating from high school, he



Shamir Ali



GUILLERMO REYES

Americans: Jesus Reyes and other DREAMers at a 2010 rally in Washington, D.C.

attended Palm Beach State College, but was forced to suspend his dream because he couldn't afford to pay out-of-state tuition fees.

Though Shamir was a prime candidate for prosecutorial discretion, ICE denied his first requests for release and for a grant of deferred action, which offers temporary relief from deportation. In its denial letter, ICE noted that there was no “demonstrable evidence that his deportation would visit hardship on his family.” ICE failed to mention that Shamir had no close relatives here because ICE had deported his mother years earlier, separating the family.<sup>111</sup>

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They are often called DREAMers in a nod to the pending DREAM Act in Congress.

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Fortunately, his sympathetic story and undeserved detention inspired media attention.<sup>112</sup> After learning about Shamir's case, AI Justice submitted a legal brief asking ICE to reconsider its decision denying relief. He was released from detention within 24 hours.



"The arrest of an undocumented 18-year-old girl for being in the United States illegally isn't a question of legality. It's a question of priority. Namely, is this the best use of Border Patrol resources and time?"

— South Florida Sun-Sentinel Editorial. March 30, 2010.

"My time in jail was horrible. I had no idea what would happen to me, especially after their initial denial a few days after I was detained. Not knowing if you will be able to stay in the only country you know and love was unbearable. AI Justice saved my life. I really can't express how thankful I am."<sup>113</sup>

Now Shamir has applied for Deferred Action for Childhood Arrivals (DACA), the DHS program announced on June 15, 2012. When approved, Shamir will be able to legally live and work in this country for at least two years. The program, however, does not offer permanent legal status.

### 'Stop Expelling Talent'

Azucena<sup>114</sup> dreamed of joining the U.S. Navy. She was only 9 years old when brought from Mexico to Georgia. There she learned English and joined the Navy Junior Reserve Officers' Training Corps (JROTC) to serve her country. Azucena excelled in marksmanship, dedicated her time to helping underprivileged children and mentored other JROTC students. The top rifle shooter in her unit, she won awards for her performance.

"I loved being in the JROTC and learned leadership, discipline and how to be a better person," Azucena said. "I knew that in the United States I had been given opportunities. I want to give back to the United States and defend the country that has given me so much."<sup>115</sup>

Years into the program, Azucena was devastated to learn that her lack of legal status barred her from joining the U.S. military. After she graduated high school, she was invited to come live and study with an aunt who has a cosmetology school in Miami. While traveling on a Greyhound bus in late 2010, Azucena was arrested by Border Patrol in Broward County just north of Miami. Though never arrested or convicted of a crime, Azucena was detained by CBP and brought to BTC. There she was placed into deportation proceedings, denied bond and detained for two months. She spent Christmas 2010 in a prison instead of with her family.

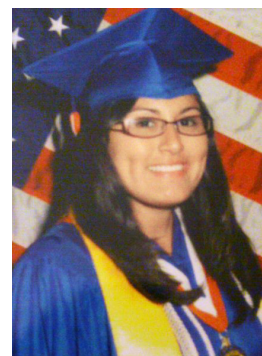
During the State of the Union Address in January 2011, President Obama discussed how such youth need to be considered and protected in immigration reform efforts. He said:

"I strongly believe that we should take on, once and for all, the issue of illegal immigration. I am prepared to work with Republicans and Democrats...let's agree to make the effort. And let's stop expelling talented, responsible young people who can staff our research labs, start new businesses, and further enrich this nation."<sup>116</sup>

Despite President Obama's clear directive to stop deporting Dreamers, ICE did not release Azucena until a month later. Her relief came only after an AI Justice attorney found her at BTC and helped her obtain deferred action, discretionary relief that allowed her to legally remain and work here for two years. It does not allow her to join the military, however.

### Handcuffed, Patted Down

Leslie Cocche, an exceptional college student committed to community service, was approached and arrested by CBP in March 2010 as she awaited the commuter train at the Fort Lauderdale's Tri-Rail station. An 18-year-old from Peru, Leslie was on her way to college when stopped by a CBP officer.



Leslie Cocche

She believes she was racially profiled, as others waiting for the train were not asked for their papers. A CBP armed agent intimidated her by aggressively and persistently questioning her about her legal status.

While she was being questioned, a Tri-Rail officer told CBP officers that he saw Leslie at the station all the time and she had never posed a problem. Once she provided the agent her student ID, Leslie was handcuffed, patted down and placed in deportation proceedings. ICE detained her at BTC,



Legalization is the Solution

despite the Obama administration's stated priorities to focus on dangerous criminals, not "low priority" immigrants with no criminal record and a long history of community service.

AI Justice soon learned of her case. We won her release as well as deferred action status, which offered temporary relief from deportation.<sup>117</sup> Altogether she spent 11 days detained at BTC.

As of June 2012, Leslie had lived in the U.S. for 10 years, nearly half of her life. She is now married to a U.S. citizen, continues studying at Miami Dade College and is close to getting an Associate's Degree in Criminal Justice. She also has applied for Deferred Action for Childhood Arrivals. Her dream is to become a forensic biologist in order to help bring unlawful perpetrators to justice.

### Cruel and Unnecessary

Though the DREAM Act has been pending in Congress for more than 11 years, many DREAMers have been detained and deported during that time. Emy Sarjina's inhumane detention at BTC is notable for its length and cruelty. After 20 months at BTC, Emy gave up. She withdrew her federal court appeal and consented to deportation. After growing up and being educated in the United States, she was returned to Bangladesh at age 20. Her parents were fleeing persecution when they brought Emy

here when she was age 4 along with her two brothers. Though they lost the asylum case, the parents thought that having a permanent labor certificate gave them legal status. They bought a home and small business in Orlando, Florida. The children all went to Timber Creek High School. The entire family worked at the business and paid taxes.

Emy was an honors student and planning to apply to colleges. She was hoping to study for a career in medicine. All that ended in June 2007 when ICE agents raided the home at 5 a.m. and her parents were deported. Many friends and advocates campaigned for her release and relief from deportation. Nonetheless, Emy grew increasingly despondent in detention.

"I am 19 years old, and I feel like my life is flying by inside here," she said after being detained seven months. "I came here when I was four years old. It wasn't my choice to come, but I made friends along the way. Now I am being punished for something I have no control over."<sup>118</sup>

The National Immigration Forum calculated that her 20 months in detention cost taxpayers \$85,000. The cost of her loss and that of other DREAM Act students is more than the United States can afford.<sup>119</sup>

# Haitians Detained Indefinitely, Again

BTC has a history of mistreating Haitians in detention, beginning with its first women detainees in 2002.<sup>120</sup> Regrettably, the practice continues today. Soon after Haiti's catastrophic earthquake in January 2010, AI Justice discovered about 30 traumatized Haitian survivors locked up at BTC. Most had been flown here on U.S. military planes, none had criminal histories, and some had U.S. citizen relatives eager to house them.

Deportations to Haiti had been suspended. Nonetheless, these Haitians were imprisoned on arrival. BTC offered little to no mental healthcare, though a Creole psychotherapist contacted by AI Justice offered to treat them at no cost.

At the time, AI Justice was overwhelmed by Temporary Protected Status (TPS) work for Haitians due to the earthquake. Nonetheless, we also decided to help earthquake survivors petition BTC for their release.

AI Justice staff coordinated translators; supervised Yale Law School interns and other interns who took statements; and prepared detailed release requests for each Haitian detainee. We contacted ICE officials at the local level, then at higher levels. For weeks we advocated for the Haitians' releases, to no avail. Finally, AI Justice contacted The New York Times, which published the story on its front page on April 1. That day, ICE released all the BTC Haitians as well as other similarly situated Haitian detainees nationwide.

"It has been three months since we have...lived a miserable life in that Center. Since June 2012 we have been detained by the American Authorities...and we all have relatives in the USA...Why have we still been detained and we do not have any criminal or drugs case even robbery."

—Haitian Petition, October 2012

Altogether some 60 detainees were freed, and ICE changed its national policy.<sup>121</sup>

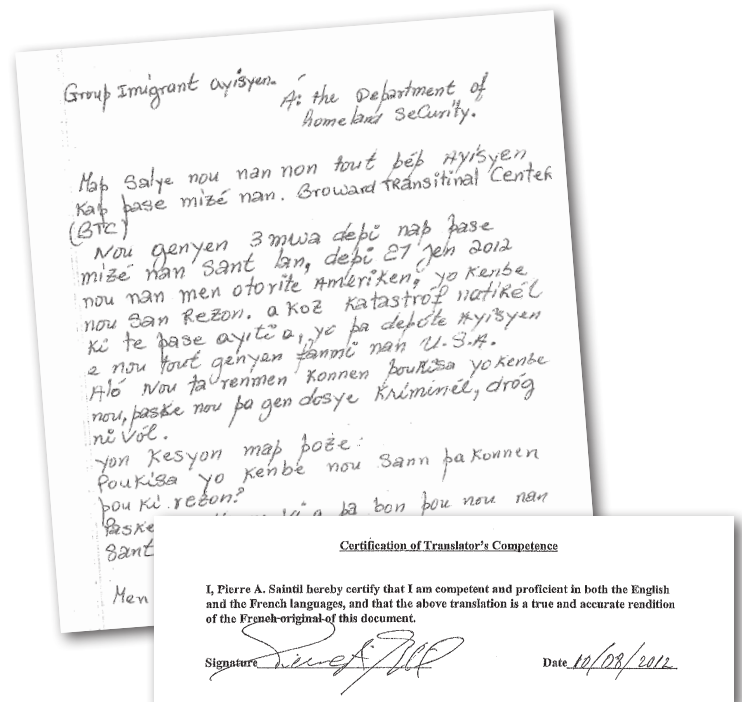
## History Forgotten

A year later, in announcing the extension of Haitian TPS due to the earthquake, DHS Secretary Napolitano emphasized that:

"Providing a temporary refuge for Haitian nationals who are currently in the United States and whose personal safety would be endangered by returning to Haiti is part of this administration's continuing efforts to support Haiti's recovery."<sup>122</sup>

Despite the sentiment at the top level of DHS, the ICE memos encouraging prosecutorial discretion for detainees with no significant criminal history, and BTC's post earthquake experience, Haitians continue to face indefinite detention at BTC.

In August 2012, an AI Justice attorney met with 35 Haitian detainees at BTC. Many were survivors of two boats that had foundered. Among them were three Haitians who had passed credible fear interviews. Yet an ICE officer said that having



passed the interview disqualified them for release – though the opposite is true.<sup>123</sup> Fortunately, AI Justice has since not encountered this mistaken interpretation of policy. In fact, we have seen Haitians released on a regular basis after passing credible fear or reasonable fear interviews.

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## BTC failed to release Pierre in contravention of its stated policy on parole for asylum seekers who pass credible fear interviews

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Still, release decisions appeared arbitrary, and some Haitian asylum seekers were told they would have to pursue their asylum cases in court at BTC – which meant going before Judge Ford, who has one of the highest asylum denial rates in the nation.<sup>124</sup> Consequently, some of the Haitians who passed credible fear and wanted to go forward with their cases gave up because so little pro bono legal help is available at BTC.<sup>125</sup>

Most of the Haitians remained detained. Thus, on October 8, 2012, 24 Haitian detainees signed a petition asking to be released from BTC. The petition noted that, “It has been three months since we have lived a miserable life in that Center.” The Haitians added:

“We have been detained for no reason. Due to the natural disaster that happened in Haiti, Haitians were not supposed to be deported and we all have relatives in the USA. So we would like to know, why we have still been detained....

“Why have we been detained without knowing the reason? Because in that center (BTC) the condition is not good.”<sup>126</sup>

To the best of AI Justice’s knowledge, these Haitians had no criminal history and posed no threat to our national security or public safety. We supported the Haitian petitioners by sending a letter to ICE Director Morton in October 2012. The letter called for the immediate review of their cases and for ICE to temporarily suspend their deportations and to grant their release.<sup>127</sup>

In late November, we received a response from Gary Mead, ICE’s Executive Associate Director, Enforcement and Removal Operations. His letter noted that the Haitians at BTC were in “the least restrictive security designation.” Further, though they

did not “have violent criminal convictions,” they could be detained for other reasons. The letter also noted that U.S. deportations of Haitians “who pose a threat to public safety or national security” had resumed in 2011.<sup>128</sup>

On the same day we received the Mead letter, at a meeting with Mr. Moore, ICE’s Florida Field Director, we were told that many of the Haitians now had been released with orders of supervision.

In late January, an AI Justice attorney discovered that at least eight Haitian women were detained at BTC. One woman had been detained at BTC for about two months, even though she had a sister and a brother-in-law who were U.S. citizens in Miami.<sup>129</sup>

The following account describes one Haitian found to have credible fear of persecution or torture by USCIS.

### Passed Credible Fear

Pierre,<sup>130</sup> came to the United States from Haiti in June 2012. A passenger of a boat that landed ashore in Puerto Rico, he soon was placed in detention. Pierre, 42, was fleeing physical abuse and persecution by Haitian police officers who assaulted him in June 2011. In November 2010, he also had been attacked and injured by three police officers in the front yard of his house. Pierre had not reported these attacks to the Haitian police department because he feared further harm and believed that the police would protect one another. If returned to Haiti, he feared that Haitian police would continue to target him as in the past.

While at BTC, Pierre passed his credible fear interview. He had a U.S. citizen sibling and two legal permanent resident siblings currently living in the United States. All of them were willing to provide him a home and financial support while he dealt with his immigration matters. Despite requests for Pierre’s release by AI Justice, BTC failed to release him in contravention of its stated policy on parole for asylum seekers who pass credible fear interviews.<sup>131</sup>

Thus, Pierre’s asylum case proceeded at the BTC court, where the only judge has one of the highest asylum denial rates in the country.<sup>132</sup> Proving an asylum case is difficult in the best circumstances. For an immigrant in detention it is almost impossible to prove such a case, particularly if he does not have an attorney or the documents, testimony and other evidence that substantiates a well-founded fear of persecution.

After four months in detention, Pierre was ordered deported by the court in October 2012.



# Medical Mistreatment

Many immigrants are detained for months or even years, though immigration detention facilities are not designed for long-term prisoners. Whether county jails or large ICE owned or contracted private prisons, few detention sites have the programs, services or medical care offered in federal prisons and other facilities that keep prisoners for more than six months. BTC is no exception.

In 2010, ICE agreed to provide detainees with constitutionally acceptable healthcare as part of an agreement to settle an ACLU lawsuit. The suit complained that deficient care at the San Diego Correctional Facility (SDCF) caused unnecessary suffering and death.<sup>133</sup> Nonetheless, the lack of competent medical care remains one of detainees' chief complaints.<sup>134</sup>

BTC has had its share of shameful medical practices. In December 2003, a client who had classic symptoms of an ectopic pregnancy was simply given Tylenol at BTC. Even after she began to bleed profusely, her complaints were ignored. When she was finally rushed to the emergency room she learned about the loss of her unborn child and the removal of her fallopian tube. Another BTC detainee who was raped by multiple men in her home country was told she couldn't consider an abortion.<sup>135</sup>

Another case involved two asylum seekers from Brazil who were detained for months at BTC. Jaime Miranda, whose father was murdered, and Daniel Padilha, who is gay, both had arrived on a boat that ran aground in South Florida on October 2008. A private doctor hired by their families diagnosed both of them with PTSD. Their symptoms included insomnia, depression, anxiety and psychotic episodes.



The line for BTC's commissary

On March 5, 2009, these two men sued ICE in federal court for failing to treat them for PTSD at BTC. That lawsuit charged that, despite repeated requests, the men had not been given medication or mental-health treatment for their disorder at BTC. ICE also rejected their requests to be released so they could get proper treatment themselves. According to their lawyer, a BTC officer said that the men would have to be moved to another detention facility to be treated. The charges raised significant concerns because many asylum seekers are detained at BTC.<sup>136</sup>

AI Justice continues to see horrific cases of medical mistreatment at BTC. The following are some examples.

## A Traumatized Victim

Rosa,<sup>137</sup> who had a professional job, was subjected to horrific abuse at the hands of her domestic partner. He attacked her with a knife, stabbing her multiple times and threatening to kill her at any cost. Her injuries were so severe that she required



emergency medical care. As a result of the abuse she suffered, Rosa sought the protection of local police in her home country as well as a restraining order from the judicial system. Nonetheless, her abuser continued to threaten her life. Fearing he would make good on his threats, Rosa fled to the United States in a desperate attempt to protect herself.

In July 2012, Rosa was detained at BTC, where she was given no trauma therapy or counseling. A month later, it became apparent that her mental state had deteriorated rapidly. She went to BTC's medical center complaining of pain and that she was nervous. Later that night she became despondent and started to cry uncontrollably. The next day she was sent to a mental health facility where she remained for 10 days.

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Why spend taxpayer dollars on expensive in-patient mental health treatment and cocktails of prescription drugs when the detention itself is exacerbating the illness?

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When returned to BTC, Rosa was given a cocktail of medications. Yet her mental health continued to deteriorate. Given the severe domestic violence she had suffered, AI Justice believed that her continued and lengthening detention was contributing to her deteriorating state of mind and that the antipsychotic drugs prescribed were doing more harm than good.

In September 2012, we requested ICE to release Rosa from BTC. AI Justice offered to refer her for counseling and mental health services at a well established trauma center. Moreover, we provided BTC with a statement from her uncle in Miami, a beneficiary of TPS who would care for her while she pursued her immigration case.

According to ICE's own policy, individuals who suffer from serious mental illness, like Rosa, should not remain in detention. A 2011 memo by ICE Director John Morton clearly states:

"Absent extraordinary circumstances or the requirements of mandatory detention, field office directors should not expend detention resources on aliens who are known to be suffering from serious physical or mental illness ...."<sup>138</sup>

Rosa also was clearly eligible for prosecutorial discretion under a Morton memo regarding "Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs." Because Rosa is a victim of domestic violence, "ICE officers, special agents, and attorneys are reminded to exercise all appropriate discretion." Since Rosa has neither a serious criminal record nor poses a national security threat, "exercising favorable discretion, such as release from detention ... will be appropriate."<sup>139</sup>

Still, BTC did not release Rosa. Less than a month after returning from the mental-health facility, BTC sent her back for further treatment. This time, she remained there nearly three weeks.

The medical records, once provided, showed that Rosa continued to suffer extreme psychological trauma due to the domestic violence she suffered in her home country. Her detention triggered a depression and Post Traumatic Stress Disorder (PTSD) and caused her mental health to deteriorate rapidly. She also had auditory hallucinations of the abuser threatening to kill her.

Why spend taxpayer dollars on expensive in-patient mental health treatment and cocktails of prescription drugs when the detention itself is exacerbating the illness? Why did BTC detain a traumatized woman who is not an enforcement priority or threat to anyone and has a strong case for immigration relief as a victim of brutal domestic violence?

AI Justice sent another request for Rosa's release. Yet she was released only after AI Justice met with Field Office Director Moore and sent an email about her case to temporary AFOD Paul Candemeres. Altogether Rosa suffered terribly while in detention nearly seven months.

In 2009, two men sued ICE in federal court for failing to treat them for PTSD. That lawsuit charged that, despite repeated requests, the men had not been given medication or mental-health treatment for their disorder at BTC.

Now living with family, Rosa is feeling better. AI Justice referred her to the TRC for mental health services. Though she continues to take medication, she is clearly improving. Meanwhile, the result of her reasonable fear interview is pending. If she passes the interview, AI Justice will represent Rosa in seeking withholding of removal.

### Failure to Provide Treatment

Angel Yat Raymundo, a 38-year-old Guatemalan, was detained at BTC in May 11, 2012. Several weeks after arriving there, he noticed a pain in his right pelvic area. Initially he thought he may have pulled a muscle. The pain, however, intensified. After 10 days of intense pain, he submitted a request to see a doctor. Two days later he was taken to BTC's medical center, where a doctor diagnosed a hernia and referred him to a medical specialist outside of BTC.

The next day, on July 13, 2012, Angel was taken to South Florida Surgical Specialists. He was examined by a specialist doctor. An examination confirmed that Angel had a large hernia. Angel described the "sharp pain." The doctor recommended surgery, and Angel consented after being informed of the risks of the procedure as well as the risks of complications without surgery.<sup>140</sup> The doctor also told Angel that ICE would find a facility for the surgery.

More than three weeks later, Angel began to feel that his condition

was deteriorating. Meanwhile, he had heard nothing from ICE about the hernia surgery. On August 14, the doctor at BTC broke the dismal news: ICE would not pay for the surgery. So he would have to continue to live with the hernia and suffer the pain. Angel was shocked.

Sure enough, early in the morning on September 9, 2012, Angel doubled over in intense pain. He was examined by two nurses at BTC, signed a release and a BTC guard took him to North Broward Hospital. There, a doctor examined him and asked if he wanted pain medication. Angel said yes, and the doctor then left for a short time. When the doctor returned, he briefly talked to the BTC guard and left again. The guard then told Angel they needed to immediately return him to BTC, without Angel getting pain medication or any other treatment.

Six months after being detained at BTC and more than a month after being rushed to the hospital, Angel still suffered pain throughout the day. Every time he ate, the pain was searing. This pain was caused by a hernia that developed at BTC, was deteriorating and could lead to life-threatening complications – all the while ICE denied to pay for a common surgical procedure. Attorneys from AI Justice and Kurzban Kurzban Weinger Tetzeli and Pratt filed a stay of removal on Angel's behalf and negotiated his release with ICE. Finally, ICE released Angel in November 2012 and placed his removal on hold for a year.<sup>141</sup> He then could seek the medical care he needed.

### A Fall in BTC's Kitchen

Martin Hernandez, age 39, was washing dishes in the BTC kitchen when he slipped on a wet floor in May 2012. As he fell head over heels, he felt something snap in his lower back. When he stood up, he found it painful to walk. He also noticed a strong pain in his neck and in his right wrist and was given over-the-counter pain medication. Later that day, he was given an ice bag and therapeutic patches commonly used for back and muscle aches by BTC's medical center.

That night in bed, Martin experienced sharp pain in his chest. Taken to the clinic again, he was given an EKG exam. Afterward



SUN-SENTINEL

Angel Raymundo

Weeks later, Martin's back, neck and wrist injuries continued to cause him significant pain. The medication given to him to treat only the symptoms — not the source — did little to relieve the pain.

a doctor pronounced everything okay. Martin subsequently felt the chest pains, but realized that the pain would subside when he changed his sleeping position.

The BTC medical center continued to give him pain medication, and Martin noted that his pain had somewhat diminished. Still, weeks later his back, neck and wrist injuries continued to cause him significant pain. The medication given to him to treat only the symptoms — not the source — did little to relieve the pain.

Martin also suffers from diverticulitis, an infection of the muscular wall of the colon that does not allow his body to produce potassium.<sup>142</sup> The doctor who had diagnosed him years before had told him to avoid certain foods and to eat fruits high in potassium in order to lessen the need for surgery due to the diverticulitis. At one point, Martin was taken for a medical exam outside of BTC due to his stomach pains. The outside doctor gave him medication that helped reduce his abdomen pain but did not eliminate it.

At BTC, Martin asked for a more appropriate diet for his condition. But his supervisors in the kitchen said they didn't have the authority to make dietary changes in meals. Thus, his inability to control his diet aggravated his diverticulitis to the point that he could need surgery. Soon afterward, Martin discovered blood in his stools.

The medical staff confirmed that Martin might need surgery and that he needed an immediate medical exam. However, because he wanted to take a short period of time to inform his family of his situation, the medical staff pressured him to sign a form waiving his right to have a medical exam or any subsequent necessary treatment.

AI Justice requested BTC to exercise prosecutorial discretion and release Martin. In an email to AI Justice's attorney regarding Martin, BTC's AFOD erroneously wrote, "[D]ocumentary evidence ... supports he actually 'refused' treatment for unknown reasons."<sup>143</sup> Martin accepted voluntary departure by July 5, 2012.

### A Basketball Injury

In another case reported by the Sun Sentinel in January, BTC detainee Luis de la Cruz said he had developed serious urological problems four months earlier after sustaining a hit from a basketball. Now he needs adult diapers. He had been given pain medicine and antibiotics and taken to see a specialist. His lawyer

said he needed more tests but has been told he'll only be given them if he pays.

A 39 year-old native of the Dominican Republic, Luis was arrested for driving a motorcycle with an expired license and had been locked up at BTC for more than eight months.<sup>144</sup>

### No Threat to Communities

Manuel<sup>145</sup> was driving to the market early in the morning in October 2010 when he was stopped by a police officer in Port Saint Lucie, Florida. The officer alleged that Manuel had not stopped at a stop sign, which Manuel denied. The officer then asked for the man's papers. When he could not produce any valid ID, the officer arrested and jailed him. Manuel only had traffic infractions and had been in this country for years. But he was transferred to BTC via ICE's Secure Communities program. This program screens the fingerprints of anyone arrested by local police, not only criminal convicts, and flags individuals suspected to be deportable.

At BTC, Manuel suffered from a diet that worsened his diabetes. He complained of weakness and dizzy spells. His eyesight faltered, and consequently he always had to use his eyeglasses to see at all. After two months in ICE detention suffering the unhealthy diet and feeling sick, Manuel took voluntary departure. His detention cost taxpayers some \$10,600 that could have been better spent targeting the "most dangerous criminals."<sup>146</sup> Before leaving Manuel said:

"We come here and we don't want to harm this country. We just want to help out and work. My family doesn't understand how after working here so many years they could do this to me. I know these are the laws, but we're not here to hurt anyone, just to work."<sup>147</sup>

### The Shortness of Breath

A former detainee from Nicaraguan, Serafin Solorzano, recalled that he was denied the use of his asthma inhaler during parts of a two-week detention at BTC in 2010. Without the inhaler, he felt like he would suffocate. In May 2012 at a protest of the GEO Group in Palm Beach, he said:

"This is something that has violated my human rights."<sup>148</sup>

## Sexual Assault

In 2011, the PBS FRONTLINE documentary *Lost in Detention* exposed numerous abuses in immigration detention. Among the most shocking revelation was the frequency of sexual abuse complaints in U.S. immigration detention facilities. More than 170 allegations were reported over a four year period ending in 2011. And that likely underestimates the problem, since many detainees may not report sexual abuse for fear of being deported. Despite the serious nature of these complaints, FRONTLINE's in-depth investigation found "no evidence that the vast majority of complaints had been investigated or resolved."<sup>149</sup>

Adding insult to injury, DHS was exempted from adopting standards to prevent and respond to such abuses as mandated by the Prison Rape Elimination Act of 2003 (PREA). In an encouraging move, a May 2012 memo by President Obama concluded that PREA applied to all federal confinement facilities, including those operated by ICE and CBP.

Thus, in December 2012, DHS Secretary Napolitano initiated the rulemaking process by publishing a proposed rule on "Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement." After a period of public comment, eventually ICE and CBP will be subject to the standards once they are finalized. Even so, current ICE Standards are not enforceable by law.

Regardless, the standards will come too late for the BTC detainees that were sexually abused in 2011 and 2012. Following are three reported cases of BTC detainee-on-detainee rape and sexual assault.

### No Medical Care or Investigation

Eliseo,<sup>150</sup> a young man detained at BTC, was repeatedly sexually assaulted by another detainee, Claudio<sup>151</sup> during more than two months. Despite complaints by fellow detainees who witnessed these abuses and ultimately by Eliseo himself, BTC ignored many complaints, delayed action to protect Eliseo and failed to provide him counseling. Though BTC staff told Eliseo there would be a formal complaint, there was little to no follow-up from BTC, ICE or DHS. We have no knowledge that Eliseo's sexual predator was ever charged or prosecuted for his heinous crimes.

Eliseo primarily speaks an indigenous language, although he also is able to speak and understand some Spanish. He and Claudio were

A young man detained at BTC was repeatedly sexually assaulted by another detainee during more than two months. Despite complaints by fellow detainees who witnessed these abuses and ultimately by Eliseo himself, BTC ignored many complaints, delayed action to protect Eliseo and failed to provide him counseling.

bunked above and below one another at BTC from about August 2011 to end of October 2011. The harassment began shortly after Claudio was assigned to a room with Eliseo. Claudio inappropriately touched Eliseo's head, stole his blanket, and farted in his face. Though Eliseo made it clear that he wanted the offensive behavior to stop, Claudio laughed off Eliseo's protestations.

The behavior only worsened. On at least three occasions, Claudio walked into their bathroom knowing that Eliseo was using it. He pulled the shower curtain back while Eliseo was showering to see him naked. To Eliseo's horror, Claudio opened the bathroom door with Eliseo exposed naked for others to see.<sup>152</sup>

### Offensive Groping

On another occasion Claudio entered the bathroom while Eliseo was urinating, reached around his waist and attempted to grab his genitals, but was unsuccessful after Eliseo avoided his lunge and escaped from the bathroom. After each of these incidents, Eliseo admonished Claudio to stop his behavior, to no avail.

Claudio's abuse quickly escalated into sexual assaults. Claudio regularly pulled Eliseo's pants down while in their room together. He would grab Eliseo's genitals while Eliseo climbed in and out of his bunk and tried to penetrate Eliseo's anus. He twice tried to penetrate Eliseo's anus with his finger. Claudio would come up from behind Eliseo, grab him, kiss his neck, grope his genitals and call Eliseo his "love" in Spanish.

Much of this behavior occurred in front of other detainees. Claudio publicly and privately teased Eliseo about the sexual abuse. He asked Eliseo to tell him how much he enjoyed being touched. He mocked Eliseo's faith and values, telling Eliseo that he owed Claudio for his "good" treatment of Eliseo.<sup>153</sup>



Eliseo knew that Claudio had fashioned a weapon by filing the handle of a toothbrush into an extremely sharp point and feared that Claudio might seriously injure him if he complained to BTC authorities.

### Physically Intimidating

Eliseo did not report the abuse at first because he was frightened for good reason. He stood less than 5 feet tall and weighed less than 130 pounds. Claudio, who was about a foot taller and easily more than 50 pounds heavier, was physically intimidating. Worse, Eliseo knew that Claudio had fashioned a weapon by filing the handle of a toothbrush into an extremely sharp point and feared that Claudio might seriously injure him if he complained to BTC authorities. Claudio also had a reputation as the leader of a group of detainees who would attack other detainees that posed a problem for any member.

Even so, some of Eliseo's detainee friends complained about Claudio's abuse of Eliseo. Eliseo recalled seeing Claudio called out of their room by GEO guards on three separate occasions, which appeared as though he was being reprimanded. On each occasion, Claudio returned to their room angry and escalated his abuse. Claudio, however, was not moved from Eliseo's room, and BTC staff never sought to verify these complaints with Eliseo.<sup>154</sup>

If BTC staff were responding to complaints about Claudio's sexual abuse of Eliseo, they did not offer Eliseo protection from further abuse. In short, BTC staff did not take sexual assault complaints seriously.

### No Investigation or Charges

At the end of October, Eliseo finally reported the abuse with the help and support of his Bible study leader and friend, a fellow detainee. He and his friend submitted written statements about the sexual abuse incidents and were interviewed by two BTC staff members. Both were told that the interview notes and statements would be used for a formal complaint. Yet Eliseo received no follow-up from BTC regarding his complaint. Nor was he provided any update or notification regarding an investigation or charges filed against Claudio for the alleged sexual assaults and harassment.

Immediately after Eliseo and his friend gave their statements, Eliseo was sent to the BTC medical center with the understanding that he was going to be examined in connection with the abuse. Yet he was never examined. After four hours Eliseo was sent back to his room to be counted. To Eliseo's utter shock and terror, he found an incensed Claudio still in his room. Claudio knew that Eliseo had complained about him, and threatened to cut Eliseo's penis with his weapon.

Fortunately, Eliseo fled the room without injury and reported the threats before Claudio was able to harm him. When Eliseo returned much later, Claudio was gone. BTC and ICE not only failed to protect Eliseo from repeated sexual assault, but also placed his life in great danger by returning him to the room still occupied by his violent tormentor.

### Lack of Response

The resulting response to complaints about sexual assaults was irresponsible and unacceptable. It also was contrary to ICE's 2011 Performance-Based National Detention Standards (PBNDS), which states, "Any detainee who alleges that he/she has been sexually assaulted shall be offered immediate protection from the assailant and shall be referred for a medical examination and/or clinical assessment for potential negative symptoms."<sup>155</sup>

In the beginning of 2012, an unidentified uniformed officer visited Eliseo at BTC and said he was responding to his complaint. During this meeting, the officer failed to address any of Eliseo's requests and complaints regarding the sexual abuse, including his request for mental health counseling. Instead, the officer suggested that Eliseo's complaint was now moot, since his abuser was no longer at BTC.

Still, Eliseo continued to feel traumatized. He feared that members of his abuser's gang would retaliate against him. Eliseo also continued to suffer harassment on a daily basis by other detainees who knew that Claudio sexually abused him. Eliseo said:

"I feel ashamed and depressed after the abuse inflicted upon me. I've come to feel broken, beaten down and traumatized from the sexual abuse and verbal abuse throughout this time. I constantly have nightmares in which I am attacked and harmed by others while helpless to stop them."<sup>156</sup>

### Therapy Not Provided

Consequently, Eliseo became very depressed, withdrawn and demoralized and complained of regular nightmares, insomnia and lack of appetite. Though he desperately wanted and needed psychological counseling due to his trauma, BTC did not provide it. This, too, ignored the 2011 PBNDS, which state: "Victims shall be provided . . . mental health services and ongoing care. . . a mental health professional shall evaluate the need for crisis intervention counseling and long-term follow-up."<sup>157</sup>



"I feel ashamed and depressed after the abuse inflicted upon me. I've come to feel broken, beaten down and traumatized from the sexual abuse and verbal abuse throughout this time. I constantly have nightmares."

— Eliseo, a victim of sexual assault at BTC

In a December 2011 letter, AI Justice requested ICE's local field office to immediately release Eliseo. We also asked for an investigation into the circumstances surrounding the repeated sexual assaults by Claudio, the lack of follow-up regarding the complaints made to the guards, and the lack of follow-up of Eliseo's own complaint to BTC staff.<sup>158</sup>

The first substantive response to the December 2011 letter came from the DHS Office for Civil Rights and Civil Liberties (CRCL)<sup>159</sup> in March 2012. In a phone call, a CRCL staff member said they conducted an investigation into the handling of the initial complaint and were going to look into the lack of follow-up on the complaint.<sup>160</sup> In a subsequent conversation with an AI Justice attorney, the CRCL staff member said he would look into Eliseo's mental-health issues. He also indicated he would investigate harassment at BTC and see how such incidents could be prevented in the future.

## Gave Up

Eliseo was not released, however. Altogether, he was detained by ICE for about eight months, including five months after making a substantiated complaint of sexual abuse by another detainee at BTC. When he tried to report the sexual abuse in Immigration Court, the presiding judge cut him off. Eliseo then lost his appeal and decided he could not endure the strain of detention any longer. He stopped fighting. Eliseo was deported in late April 2012.

The final letter from CRCL arrived at AI Justice on Jan. 25, 2013, nearly nine months after Eliseo had been deported and more than a year since we had asked local ICE to release him, to no avail. The letter said:

"Based on the information provided by ICE, and our review, we believe that ICE took appropriate steps to follow up with [Eliseo] regarding the safety and mental health care issues you identified."<sup>161</sup>

In AI Justice's estimation, CRCL's response could not have been any further from the reality at BTC. We find it difficult to understand how our government can be so indifferent to a vulnerable immigrant victim who was repeatedly sexually assaulted while in ICE custody. Regrettably, the failure of BTC staff to seriously address Eliseo's complaints was not an isolated incident.

## A Vulnerable Detainee

Not long after Eliseo was deported, Jorge<sup>162</sup> was sexually harassed and sexually abused at BTC. A trauma expert confirmed that Jorge was a naïve young man from a remote rural area who had fled his home country to escape abuse and neglect. Often beaten by his father, Jorge was forced to work in coffee fields at age 14. Yet Jorge still dreamed of continuing his education. Eventually, he fled the brutality of his life and headed north. He was one of thousands of unaccompanied minors seeking refuge each year.<sup>163</sup>

After his arrival, Jorge was placed in a shelter for unaccompanied minors and lived with other children. Eventually, when it was determined that he was no longer eligible – because he was age 18 – he was detained at BTC.

It was clear that Jorge was vulnerable due to his age and stature. Nonetheless, BTC housed him with much older adult detainees. In doing so, BTC ignored Part 2.2 of the 2011 PBNDS that provides: "Special consideration shall be given to any factor that would raise the risk of vulnerability, victimization or assault."<sup>164</sup>

It was clear that Jorge was vulnerable due to his age and stature. Nonetheless, BTC housed him with much older adult detainees.

Not surprisingly, Jorge's experience at BTC was terrifying from the start. Upon arrival, two detainees yelled out, "Fresh meat has arrived." Soon, several Brazilian detainees began to harass him on a daily basis. They blew kisses at Jorge, called him "guapo" (attractive) and made sexual comments that made him uncomfortable. The inappropriate comments encouraged other detainees to join in the harassment. Jorge described the situation:

"All these comments were often made in front of other detainees, especially the other five with whom I shared a

"I was forced to step up to the minivan and go all the way to the back, but I said that it was too painful to go up the stairs.... They put handcuffs on me and cuffed my feet and brought me to the hospital. It was excruciating"

Enrique, after being brutally raped at BTC

room, so they all made fun of me and would repeat some of the things they said. Everyone thought it was very funny, but I knew it was not a game.<sup>165</sup>

### Rude Awakening

It did not take long before the verbal harassment escalated to physical sexual abuse. On one occasion in his second week at BTC, Jorge fell asleep early in his bed — only to be rudely awakened. The two Brazilian men who had called him "fresh meat" had jumped atop him. As one assailant pinned Jorge down, the other assailant undressed him and tried to unbutton Jorge's pants. One assailant told Jorge that he was looking very good and asked if Jorge had ever had sexual relations. As Jorge pushed his hands away, an assailant pulled up Jorge's shirt and began caressing Jorge's chest.

Jorge managed to escape from the bed and ran out into the hall, in front of a security camera. He told the assailants: "If you want to do something, do it here in front of the camera." The assailants cursed Jorge and accused him of being scared, but left.

Soon afterward, Jorge tried to report the sexual harassment and sexual assault to a BTC guard. The guard refused to respond to Jorge's plea for help, telling Jorge that he did not speak Spanish and could not understand him.

Such indifference by the guard at BTC runs counter to the 2011 PBNDS, which requires detention facilities to post "Sexual Assault Awareness Information" on housing-unit bulletin boards in English and Spanish.<sup>166</sup> It follows that, if a Spanish-speaking detainee is seeking protection from sexual abuse and sexual assault, detention center staff would assist the Spanish-speaking detainee with a translator or locate Spanish-speaking staff to help the detainee report the abuse, receive protection from additional abuse, and receive appropriate medical and mental health services. That did not happen in Jorge's case.

### 'Ashamed and Embarrassed'

After the incident in his bed, Jorge remained in constant fear of being victimized, given that BTC staff had demonstrated their

unwillingness to help or even receive the report of the first incident. Jorge managed to evade some of the sexual harassment by working in BTC's kitchen and avoiding his assailants.

For nearly four months during his detention at BTC, Jorge was subjected to repeated sexual abuse and harassment. He remained in constant fear that he would be sexually assaulted.

In the end, AI Justice submitted a release request on other grounds, and Jorge was transferred back to the shelter that housed him previously. There, he also received trauma-counseling sessions with a licensed social worker who is a certified traumatologist and was familiar with Jorge from his previous stay.

The social worker noted that Jorge exhibited symptoms of trauma as she shared his traumatic experience at BTC. The trauma expert concluded that he sustained serious harm as a result of the sexual abuse he endured and BTC's failure to prevent, detect and respond to it appropriately.<sup>167</sup>

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The BTC guard refused to respond to Jorge's plea for help, telling Jorge that he did not speak Spanish and could not understand him.

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### A Brutal Rape

Enrique<sup>168</sup> is a hardworking and dedicated father of young, U.S. citizen children. One night while outside a Florida convenience store with his young son, immigration officers approached Enrique with guns drawn and place him in immigration custody. He was transferred to

BTC, hundreds of miles from his home, family, and community. He remained in detention while his immigration case was pending.

After months in detention, Enrique was attacked by a brutal rapist at BTC in summer 2012. Enrique had gone to the bathroom in the early morning hours. As he undressed to shower, the bathroom light was shut off and he found himself pinned to the wall from behind. Then he felt a sharp object pressed into his back and was paralyzed with fear. During the assault, the unknown rapist fondled Enrique's penis and penetrated Enrique's anus with both a finger and a sharp object. At no time was he able to see his abuser.

At first, Enrique was too ashamed to report the abuse. But the pain became unbearable. "I thought something inside me had ripped," he said. On the way to BTC's medical clinic, Enrique found an officer and told him what had happened:



BTC dorms for detainees

SUN-SENTINEL

“I told him that somebody hurt me, I got raped in the shower. So he took me to the clinic and I could hardly walk by then, it was so painful.”<sup>169</sup>

After determining that he needed further treatment, BTC took Enrique to a local hospital. BTC medical staff reported that he had the highest level of distress on the protocol sheet.<sup>170</sup> Rather than transport him to the hospital in an ambulance, which is equipped for emergencies, he was shackled, stuffed into a van and treated to a needlessly agonizing ride.

“I was forced to step up to the minivan and go all the way to the back, but I said that it was too painful to go up the stairs,” Enrique said. So they pulled me, sliding me up, and another officer lifted my feet. They put handcuffs on me and cuffed my feet and brought me to the hospital. It was excruciating.”<sup>171</sup>

## Handcuffed and Shackled

At the hospital Enrique was given morphine for the pain and underwent surgery to remove the object shoved inside him during the brutal assault at BTC. Enrique also received medical treatment at a local sexual assault treatment center. Though he was a rape victim who required immediate surgery to remove a foreign object from his body, he was forced to receive medical care while handcuffed and shackled virtually the entire time, which further traumatized him.<sup>172</sup>

Afterward, Enrique was transferred to Krome and placed in the short-stay medical unit. While his placement was based on safety concerns, the prolonged period in isolation threatened to magnify his trauma. Yet ICE did not offer or provide the trauma counseling he desperately needed — even though the mental health consequences of sexual violence in detention are well documented. In the absence of immediate and proper care, the long-term consequences can be devastating.<sup>173</sup>

## ICE Policy Ignored

AI Justice recognized that Enrique was deeply distressed and needed counseling. We referred him to TRC, which provided him pro bono counseling services. TRC’s expert therapist confirmed that Enrique exhibited symptoms of someone who was deeply traumatized due to the sexual assault.<sup>174</sup>

In sharp contrast, Enrique’s encounters with an ICE staff psychiatrist did not address the special needs of a sexual assault victim and were far from therapeutic.<sup>175</sup> The notes suggest that the ICE psychiatrist was more interested in Enrique’s immigration case than providing therapy to a victim of a brutal rape who was severely traumatized. Thus, the psychiatrist also ignored another standard that states: “Staff shall take seriously all statements from detainees claiming to be victims of sexual assaults, and shall respond supportively and non-judgmentally.”<sup>176</sup>



BTC detainees also have reported seeing detainees physically assaulting other detainees in the pods, where there are no cameras. These incidents apparently occurred during times BTC staff was not on guard.

While detained at Krome, Enrique's anxiety was exacerbated by his concern for his U.S. citizen son. He told AI Justice:

"My 10-year-old son has bad asthma. He uses an inhaler and a nebulizer. He spent 10 days in the hospital earlier this year. I'm real worried about him now because he needs me to take care of him. It's so hard for him now that I'm detained, and I worry about him all the time. We're so close, he's my heart."<sup>177</sup>

AI Justice formally requested Enrique's release, stay of deportation, and deferred action.<sup>178</sup> Finally, he was released on an Order of Supervision. By then he had spent more than seven long months in ICE detention, including three and a half months after being raped at BTC.

### Systemic Concerns

After discovering multiple incidents of detainee-on-detainee sexual assaults at BTC, we believe that these are not isolated episodes, but are recurring acts of sexual violence due to systemic problems. AI Justice is concerned that:

- **BTC staff does not properly screen its detainees.** At a November 2012 meeting, Miami ICE management told AI Justice that BTC detainees are screened to ensure that they fall within criteria for placement in a minimum secure facility. Though BTC allegedly is a model, minimum security detention facility, BTC detainees have described to AI Justice gang tattoos seen when other detainees are undressed. Typically, these tattoos are not visible while detainees are wearing orange jumpsuits. The tattoos reportedly resembled those of the Mara Salvatrucha and MS-18, violent street gangs based out of El Salvador and Honduras.<sup>179</sup> Under ICE 2011 PBNDS, custody classification involves assessing whether a detainee's tattoos identify a threat group such as traditional street gangs.<sup>180</sup>

BTC detainees also have reported seeing detainees physically assaulting other detainees in the pods, where there are no cameras. These incidents apparently occurred during times BTC staff was not on guard. We know detainees who, due to factors such as age, height, sexual orientation, or gender identity, were

targets for sexual abuse. Detainees say that the sexual assaults are in essence weapons of control and intimidation by bullies.

- **Sexual abuse complaints by detainees are not taken seriously by BTC staff.** In the case of Eliseo outlined above, multiple detainees and the victim himself complained to BTC staff about the sexual abuse inflicted upon him by an assigned roommate for months. Yet BTC staff did not seriously investigate or respond to those shocking complaints.

In another case, an 18-year-old detainee was sexually assaulted in his bed by two other detainees. When he tried to report the assault, the BTC guard refused to help, saying he did not speak Spanish. Nor was there any attempt to find a Spanish-speaking translator for an obviously distressed detainee.

In yet another example in early 2011, BTC denied the release of a woman who had been sexually assaulted by a CBP officer at Miami International Airport. She cooperated with DHS investigators, and ultimately in the successful prosecution of the agent. Even though she had passed her credible fear interview and should have been eligible for parole as an arriving alien, her BTC deportation officer denied her release. He told her she had to stay in custody pending interviews regarding the sexual assault.<sup>181</sup>

- **BTC sexual abuse victims are not offered counseling at BTC** after reporting that they are victims of sexual abuse. That is contrary to the 2011 PBNDS, which state: "Victims shall be provided . . . mental health services and ongoing care . . . a mental health professional shall evaluate the need for crisis intervention counseling and long-term follow-up."<sup>182</sup> BTC provided no trauma counseling in the cases featured in this section. In two of the cases, detainee victims of sexual assault did get such counseling, but only after AI Justice referred them to an organization that provides pro bono trauma therapy.

## Legal Access Concerns at BTC

One persistent issue at BTC has been the lack of private space for attorneys to meet with their clients. Attorneys are duty-bound to maintain the confidentiality of client communication. From the beginning, detention center management acknowledged the need for private space. When AI Justice (then FIAC<sup>183</sup>) staff toured the facility in 2002, they were told they would have “private, confidential attorney visitation” in a room upstairs, a room downstairs, and possibly one other room.<sup>184</sup>

In 2003, we raised concerns that as many as three attorneys were being placed in the same room for consultation with their clients, eliminating any possibility of attorney-client confidentiality. The upstairs room was not confidential, which meant we could only use the downstairs room. Yet our legal staff had to wait more than an hour before detainees requested were brought to see them in the downstairs visitation room.<sup>185</sup>

In 2004, two staff members coming to provide regularly scheduled Know Your Rights (KYR) presentations were denied access to the facility. The facility administrator had been erroneously told by an ICE official that women could go to KYR presentations only once. AI Justice staff also was wrongly denied access to a group of individual women because we did not formally represent them – even though attorneys are allowed to screen potential clients before agreeing to representation, which is what we intended to do.<sup>186</sup>

### Searching for Privacy

In 2007, we were again shut out of private, confidential attorney/client space at BTC. At one point, an AI Justice attorney requested a private setting to see a client and listed five areas that could be used for that purpose. The assistant facility administrator responded saying: “BTC is aware of the importance of attorney/client confidentiality and takes measures to ensure it.” In an Orwellian twist, she spelled out all the non-private spaces that he could use.<sup>187</sup>

In 2009, AI Justice noted that attorneys visiting BTC “often may not speak privately with clients because the only legal visitation room is an open area shared by multiple attorneys visiting with clients.”<sup>188</sup> One AI Justice attorney recalls seeing an ICE officer with a detainee several times in that visitation room. That year, construction began to expand BTC to its current size. When AI Justice reviewed the construction plans, it looked like there would be adequate confidential space as Administration officials had assured us.

Then the space was renovated with moveable partitions through which every conversation could be heard. It was not private by any stretch of the imagination. Yet GEO said that ICE and the Executive Office for Immigration Review (EOIR) had approved the space as confidential. AI Justice Attorneys continued to insist on getting confidential spaces when meeting with clients, and BTC accommodated us on an ad hoc basis.

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The space for confidential attorney/client visits was renovated with moveable partitions through which every conversation could be heard. It was not private by any stretch of the imagination.

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BTC remains a jail for a population that should not be detained: non-violent people who pose minimal flight risk or threat to their communities. Confidential space would not be in such demand if detainees were released.

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In 2010, we again demanded confidential attorney-client rooms citing ICE's own standards: "Visits between legal representatives ... and an individual detainee are confidential.... Private consultation rooms shall be made available for such meetings." We also asked BTC to clearly notify detainees with adequate lead time so they could attend KYR presentations.<sup>189</sup> GEO ultimately designated four confidential rooms for attorney-client meetings.

### **Limited Access to Law Library**

In October 2010 AI Justice again wrote ICE officials, reiterating our long-standing concern that detainee access to the law library was restricted to two hours daily, absent emergencies, and that female detainee access coincided with their morning outdoor recreation time.<sup>190</sup> This issue was resolved shortly thereafter.

BTC's failure in 2010, following the build-out, to provide an adequate and safe space for the immigration court caused the Executive Office for Immigration Review (EOIR) to remove the sole immigration judge from BTC. Beginning February 2010, all merits hearings for BTC detainees were held via teleconference, denying them an in-person hearing. Attorneys were forced to choose between appearing in person before the judge who was housed at the Miami Immigration Court or appearing via video so they could confer with their client during the hearing.<sup>191</sup> This was eventually resolved months later.

In April 2012, AI Justice attorneys met with ICE's AFOD and GEO's BTC facility manager to discuss multiple concerns, including the lack of space for meeting detainees as well as verbal abuse and discrimination of detainees. Since then, AI Justice has noted improvement in access to meeting rooms and fewer complaints of verbal abuse.

Ultimately, BTC remains a jail for a population that should not be detained: non-violent people who pose minimal flight risk or threat to their communities. Confidential space would not be in such demand if detainees were released. They then would be better able to find legal counsel and make their case for relief from deportation in immigration court. Only 16 percent of detainees are represented by a lawyer. By comparison, the figure shoots up to 42 percent for non-detained individuals in deportation proceedings.<sup>192</sup>

# Gratuitous Abuses

AI Justice often finds instances of detainee mistreatment in Florida's detention facilities. Many of the BTC detainees we have seen have been apprehended after being singled out for questioning by CBP or local police for no apparent reason other than their appearance or language — without any reasonable suspicion that they may not have lawful immigration status.<sup>193</sup> Florida Fish and Wildlife have also confirmed to AI Justice that they routinely turn suspected undocumented immigrants over to ICE.

In fall 2010, AI Justice conducted a survey at BTC, where detainees have no or only a minor criminal history. Some were passengers in cars stopped for routine traffic violations. Others included DREAM Act eligible students picked up at bus stops and train stations by Border Patrol agents. All but two of the detainees interviewed were Hispanic. For every two detainees interviewed, one minor child—generally a U.S. citizen—was separated from a parent or caregiver who was placed in immigration detention.<sup>194</sup>

Once detained at BTC, immigrants have been subject to verbal abuse by GEO officers, which AI Justice attorneys have witnessed. Detainees also have been targeted by GEO guards for punishment or preferential behavior, depending on their racial ethnicity. We also see arbitrary ICE decisions that seriously impact detainees' prospects in immigration court and their ultimate future.

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"Americans enjoy their personal space, so you should stand an arms length away at all times... Americans do not like being talked to in a loud, rapid manner."

— BTC Handbook, "tips" for detainees. 2004-2005

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Even in extremely sympathetic cases where detainees are not flight risks and pose no danger to U.S. communities, ICE unnecessarily denies and/or delays releasing them from custody. This routinely occurs at BTC, though it only detains individuals without criminal

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"The security guards at BTC treat us like we are nobody, like we are not human beings. We are not criminals. We are just immigrants."

— Told to AI Justice attorneys by a detainee. September 2012

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history or with only minor infractions, such as traffic offenses. In April 2012, AI Justice sent a letter to then BTC's Assistant Field Office Director. The letter concluded:

"The continued detention of individuals who fall outside of ICE's enforcement priorities, along with the delay in responding to release requests and our other inquiries leads to unnecessary prolonged detention, increases the suffering of detainees and their families, and wastes ICE's valuable resources. It also runs contrary to ICE's stated policies and priorities."<sup>195</sup>

The following are examples of gratuitous abuses at BTC.

## No Way Home

Lateefah,<sup>196</sup> a survivor of domestic violence, has obvious mental health issues. Thus, an AI Justice Attorney requested BTC to notify her when Lateefah was to be released so safe arrangements could be made for Lateefah to travel home, a four hour drive across the state.

It did not happen that way. BTC released Lateefah on the day before Thanksgiving without notifying her attorney or relatives. Consequently, Lateefah waited hours outside of BTC, without a phone, any money and no idea how to go home. She waited hours, hoping someone would pick her up and take her.

Luckily, a Good Samaritan who arrived to pick up another detainee bought her a bus ticket and took her to the bus station and Lateefah arrived home. Had the Good Samaritan not rescued her, there is no telling what might have happened to her outside of BTC, in front of a very busy divided highway, in an unfamiliar town, without her attorney or any relative knowing she had been released.

## Refused Papers

Early one morning in November 2009, two Reyes brothers, Jesus and Guillermo, were roused from sleep by ICE officers coming through their door. Other family members were not at home at the time. ICE detained Jesus and Guillermo at BTC and threatened to deport them to their home country of Venezuela. Both brothers had ties to Miami Dade College (MDC) at the time. Jesus, then 21, had been the president of MDC's sprawling Kendall Campus Student Government Association during 2007-2008 and remained active in student activities. Guillermo, then 25, had recently earned a computer-animation degree at MDC.

Once AI Justice learned of the brothers' plight, AI Justice represented them and requested their release from BTC. We asked Congress members for letters of support, participated in mass rallies that garnered media attention on behalf of the brothers, and garnered further support from DHS and other government contacts.

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"I don't know how you do what you do. It's not like they (detainees) are people."

— GEO Officer to AI Justice attorney 2012

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Jesus and Guillermo spent eight miserable days at BTC, separated from their family and worried that they might be deported to a country they had left years before. AI Justice got the call that the brothers were being released on a Friday. We immediately drove to BTC to pick them up. Once there, we waited some time without any sign that they had been released.

Eventually, two young men walked out of BTC, and we met Jesus and Guillermo. They were very upset because BTC staff had refused to return their immigration documents. When our



Guillermo and Jesus Reyes

attorney asked BTC staff to return those papers to our clients, BTC staff was rude and arrogant — and would not provide the papers. When we asked to see the BTC chief, staff told us that the chief was not there and to come back for the papers some other day. Ultimately AI Justice retrieved the brothers' papers at a later date.<sup>197</sup>

Since then the brothers have continued to study and contribute to the greater community. As of February 2013, Jesus is in his first year of law school and is looking forward to becoming an attorney. Married to a U.S. Citizen, he has become a Legal Permanent Resident.

In 2013, Guillermo is graduating with a Bachelor's degree with honors in Multimedia Studies: Film, Video & New Media. Additionally, he has earned a minor in Studio Art. While Guillermo has been active in community service, he and a classmate have incorporated "Unlimited Flow," a small design agency. His work and service contribute to the economy and the greater good. Both brothers clearly have talent that promises to enrich our country.

# Questionable Due Process

At BTC, a minimum-security detention facility, all detainees in deportation proceedings go to immigration court before only one judge, Rex J. Ford. Though most detainees are eligible to be released on bond and have no criminal history, Judge Ford rarely grants bond. Asylum seekers who have appeared before him have seldom been granted relief. In fiscal year 2011, he ordered asylum seekers who came before him deported 96 percent of the time.<sup>198</sup>

Judge Ford has one of the highest asylum denial rates in the nation — 93 percent for the period 2007 to 2012. Only four out of 273 immigration judges nationwide denied asylum at a higher rate.<sup>199</sup> From 2006 to 2010, Haitians represented 61 percent of his caseload and have, therefore, been disproportionately impacted by Judge Ford's decisions.

From 2000 to 2005, many Haitians fled violence in their homeland. They often ended up detained in South Florida and going before judges in South Florida's immigration courts. During that period, Haitians were the largest group of asylum seekers appearing before Judge Ford. Overall, he denied asylum in 90 percent of all the cases that he decided in the Miami court.<sup>200</sup>

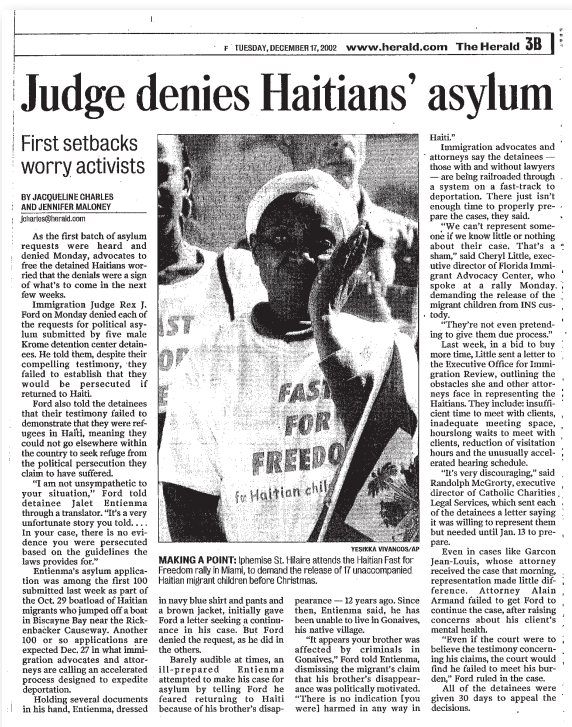
By comparison, Judge Denise Slavin denied asylum in 41 percent of the asylum cases she decided during the same time period — even though Haitians were the largest group of asylum seekers appearing before both of them and the percent of Haitian cases heard by both judges were similar.<sup>201</sup>

"Without attorneys or adequate time to prepare their asylum cases, Haitians have no due process."

— Miami Herald editorial, Dec. 23, 2002

## Haitian Rocket Docket

What happened following the October 2002 arrival of a boat with 200 Haitians was telling. As late as 2001, Haitian asylum seekers who had passed credible fear interviews had been released from custody and allowed up to a year to pursue their cases in Miami immigration court. By the time Haitians from the October boat



went before immigration judges, Haitians were detained and forced to prepare for their asylum cases in an expedited, Haitian-only docket — a policy decision dictated from Washington D.C.

In short, Haitians were denied due process under the law.<sup>202</sup>

AI Justice wrote a letter to the Executive Office for Immigration Review describing the difficulties that our attorneys and others were facing in representing these Haitians. The obstacles included insufficient time to meet with clients, inadequate meeting space, hours-long waits to meet clients, curtailed visitation hours, and the unusually accelerated hearing schedule.<sup>203</sup>

Pro bono agencies like AI Justice and Catholic Charities Legal Services were overwhelmed by the number of new cases. Thus, most Haitians came before Judge Ford without an attorney. Nonetheless, the Haitians were given less than a week to fill out asylum applications, prepare their arguments and gather supporting evidence.

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"Until recently, Haitian asylum seekers were released and given up to a year to find an attorney, collect corroborative evidence and have their cases scheduled in a downtown Miami immigration court."

— Miami Herald article, Dec. 12, 2002

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These are difficult tasks in any case, but practically impossible for detainees who cannot produce key documents and have no lawyer. During one week in December 2002, 20 of the 21 Haitian detainees with hearings in his court were denied asylum and deported by Judge Ford.<sup>204</sup>

## A National Record

More recently, Judge Ford has earned an undisputed record regarding "stipulated orders." The consequences of agreeing to a stipulated order can be drastic. According to a 2011 report:

"Immigrants who sign stipulated removal orders give up their right to a hearing before an immigration judge and agree to have a formal removal order entered against them, even if they may be eligible to remain in the U.S."

Judge Ford has approved almost 10,000 stipulated orders for deportation in the last three years: nearly 3,000 a month in the last three years. That is a national record among judges who review stipulated orders.<sup>205</sup>

## Signing Without Knowing

The numbers are disturbing. According to an immigration court rule, before an immigration judge approves a stipulated order, he or she must determine that a detainee has waived his or her rights in a "voluntary, intelligent and knowing" manner.

Unfortunately, many detainees do not know their rights. Most of them have not had the opportunity to consult with an attorney and do not understand the consequences of signing stipulated orders. Some detainees have reported feeling bullied or tricked into signing such orders. Some detainees have said they were told they had no immigration relief.

Immigration judges who review stipulated removal orders in other areas of the country have expressed serious due-process concerns about the program.<sup>206</sup> The concern is shared by high-ranking officials at EOIR, the federal agency that manages the immigration courts. In correspondence, EOIR Legal Access Counsel Beth Gibson, noted:

"[I]t seems oxymoronic that an IJ [immigration judge] who has no contact with the alien (other than taking notice of a signature) can make a reasoned determination that an alien knowingly, intelligently and voluntarily agrees to a stipulated removal."<sup>207</sup>

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"Our experience has been, in unrepresented cases, that the alien is told that if he wants go [sic] get out of jail he should sign this paper."

— Email from an immigration judge to EOIR Officials, from the report, *Deportation Without Due Process*, June 15, 2006

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Other immigration judges bring detainees to hearings to make sure that they understand the stipulated removal orders they signed. Judge Ford doesn't.<sup>208</sup>

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"I follow the law. I follow the book,  
and I don't get reversed."

– Immigration Judge Ford, quoted  
in the Sun Sentinel, March 7, 2013

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### Courtroom Demeanor

Judge Ford's practices in the courtroom have been questioned, as well. For example, he sets his own rules regarding bond. Judge Ford requires respondents to file an application for immigration relief before he will even consider bond, which has no basis in the law. When making bond determinations, judges consider factors such as whether the respondent is a danger to the community or a flight risk. Bond decisions are custody determinations and are not contingent on the merits of the case in question.

However, Judge Ford has denied bond citing case law that the detainee was unlikely to prevail on the merits of an asylum claim if, for example, it is based on gang persecution. It is troubling that when making decisions that directly impact the liberty of detainees, Judge Ford is creating both procedural and substantive requirements which are unsubstantiated by law.

### Rated by Attorneys

The 2011 South Florida American Immigration Lawyers Association (AILA) poll of immigration judges in the area has further provided a measure of Judge Ford's performance on various categories. He was the judge rated by the most AILA voters.

AILA voters who rated him placed Judge Ford in the bottom half of all South Florida immigration judges in terms of his knowledge of the law. Judge Ford fell short, as well, in other surveyed measures:

- Asked, "Does this judge remain impartial?" a full 59 percent of the AILA voters rated him not qualified; another 18 percent rated him only somewhat qualified.

- Asked, about his "judicial temperament," 65 percent of the AILA voters rated him not qualified or somewhat qualified.
- Overall, 59 percent of the AILA voters rated him not qualified or somewhat qualified.

The three cases below are further examples of Judge Ford's conduct in BTC court.

### A Machete Attack

Carmen<sup>209</sup> headed north from her home country seeking safety from a brutal ex-husband and from another assailant who had attacked her with a machete. Apprehended at the border in Texas, she was detained at BTC in 2012 and placed in deportation proceedings before Judge Ford.

Though she had evidence that documented her case for asylum, Carmen had no attorney representing her in BTC's immigration court. Early on, she told Judge Ford via translator that she wanted to request asylum. Without providing Carmen any explanation about the requirements or procedures for asylum, Judge Ford merely gave her a blank asylum application (Form I-589) and told her to return it filled out in English, which is the requirement in immigration court. Without an attorney, Carmen relied on a friend, a fellow detainee, to help her fill out the asylum application – a 10-page form with numerous boxes to fill and questions to answer.<sup>210</sup>

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Carmen headed north from her home country seeking safety from a brutal ex-husband and from another assailant who had attacked her with a machete. Apprehended at the border in Texas, she was detained at BTC in 2012.

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Maria fled her homeland after enduring a decade of domestic abuse at the hands of her husband, who pummeled and threatened to kill her almost every day. While on her way to see a friend in Florida, CBP arrested Maria on a Greyhound bus.

Months later, Carmen appeared *pro se* at her merits hearing and testified that her asylum application was filled out by a detainee friend she had met while in detention. During the proceedings, Carmen expressed a fear of return to her native country due to two men.

- One was the assailant who had attacked her with a machete when she was younger. When she asked Judge Ford if she could show him her own scars from the brutal attack she suffered, he responded: “No, ma’am. That’s not appropriate. Okay?”
- Carmen also feared her former common-law husband. She testified that he “mistreated” her and wanted to “force me to be with” him. Carmen submitted a letter from therapists who had sessions with her while she was detained. The letter noted that her comments had been consistent with those of other domestic violence victims. Despite being presented with this important information, Judge Ford failed to meaningfully question Carmen about the abuse that she had suffered.

An immigration judge has a duty to explain procedures to a *pro se* respondent. He also has a duty to probe for relevant facts in developing the record in immigration proceedings. Failure to meet these basic requirements violates the right to a fundamentally fair hearing – which is exactly what happened to Carmen.

Judge Ford violated Carmen’s Fifth Amendment right to due process by failing to explain procedures, failing to develop the record, and failing to probe all relevant facts – constitutional defects that were amplified by Carmen’s *pro se* status. The failure to develop the record prejudiced her because it closed avenues of inquiry that may have demonstrated her eligibility for asylum, withholding of removal, and Convention against Torture relief.<sup>211</sup>

After Carmen had been detained for more than six months, AI Justice informally requested ICE at BTC to release her. Though she clearly was a vulnerable victim, her release was denied. The following month, AI Justice filed an appeal with the Board of Immigration Appeals on Carmen’s behalf, which remains pending.

Both Carmen and her attorney repeatedly were told by ICE that detainees are not released while their cases are on appeal. A victim of domestic violence and torture, Carmen continued to languish in detention. Carmen was finally released in late February 2013. She likely would have remained detained much longer if not for federal budget cuts triggered by sequestration, which resulted in thousands of detainees being released.<sup>212</sup>

## Survived Domestic Violence

Maria<sup>213</sup> fled her Latin American homeland in her 20s after enduring a decade of domestic abuse at the hands of her husband, who pummeled and threatened to kill her almost every day. While on her way to see a friend in Florida, CBP arrested Maria on a Greyhound bus.

Though she had never been arrested or convicted of any crime and was not an ICE enforcement priority, she was detained at BTC in 2011 and placed in immigration proceedings. AI Justice met her at BTC and believed she had a strong claim for asylum based on the repeated and severe domestic violence she faced at the hands of her husband.

Later that month, while still detained, Maria appeared before Judge Ford without an attorney. She submitted her application for asylum, withholding of removal, and protection under the Convention Against Torture. Substantiating her case were more than a dozen documents.

Among them were statements from local police in her home town noting that Maria and two other witnesses reported that Maria’s husband threatened to kill her and had physically and mentally abused her. Other relatives and friends corroborated the horrific and unchecked violence inflicted by Maria’s abuser. One noted that Maria’s “husband beat her up, and she would come to me soaked in blood.” Another commented, “I’ll have to go to her burial” if Maria is sent back to her home country and to abuse.

Maria lost her asylum case *pro se* before Judge Ford. AI Justice continues to represent her on appeal to the Board of Immigration Appeals (BIA). Maria had testified credibly and consistently and her testimony was supported by statements and country condition documents. Yet Judge Ford relied on clear factual errors in finding that Maria’s testimony lacked credibility, including misstatements

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Maria suffered from anxiety and nightmares. Such symptoms are understandable given the trauma she had faced for so many years. Yet BTC did not provide therapy and other services that she desperately needed.

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and misinterpretations of the record. He also erred by denying Maria relief based solely on a finding of adverse credibility.

Meantime, while at BTC for months, Maria suffered from anxiety and nightmares. Such symptoms are understandable given the trauma she had faced for so many years. Yet BTC did not provide therapy and other services that she desperately needed.

AI Justice's request for Maria's release from BTC noted that she posed no danger and was not a flight risk. AI Justice had secured housing and other services that Maria needed, including counseling.<sup>214</sup> AI Justice also sent a note referencing the June 17, 2011 Morton memo, which singles out victims of domestic violence and asylum seekers among those who should be considered for prosecutorial discretion.<sup>215</sup>

ICE responded by denying Maria's release, saying that: "Cases of this nature are rarely considered for release and are held pending a decision from the Board of Immigration Appeals: the Morton memo had 'no bearing on your client.'"<sup>216</sup>

Maria spent five months in detention. Judge Ford's denial of her asylum case lengthened her stay. Only after AI Justice contacted senior DHS officials was Maria released, and only then was she able to obtain much needed services. AI Justice continues to represent Maria in her pending asylum case before the BIA.

## A Downward Spiral

In 2008 a detained Chinese woman with a history of suicide attempts and mental instability tried to fight her deportation in

immigration court without an attorney. Xiu Ping Jiang, an asylum seeker, had fled China after being forcibly sterilized at age 20.

During more than a year in detention at the Glades jail, often in solitary confinement, her mental state deteriorated. Nonetheless she was taken to her first court hearing at BTC and began to answer Judge Ford's questions in imperfect English. Judge Ford warned her not to respond until after the interpreter finished translating into Mandarin. But she did respond: "Sir, I not — cannot go home," she told the judge. "If I die, I die America."<sup>217</sup>

Jiang had no criminal history or lawyer, and her mental illness raised obvious questions about her competency before the court. Yet Judge Ford ordered her deported. He even noted on the record that she had failed to appear in court — even though she had actually been physically present.<sup>218</sup>

Fortunately, after this story appeared in The New York Times, another immigration judge reopened her case. Jiang was released on bail in her sister's custody and received desperately needed treatment. A pro bono attorney took her case. A year later, she was granted asylum in immigration court.<sup>219</sup>

Without an attorney or media attention, Jiang could easily have been deported, like many other mentally ill detainees who fall down the detention rabbit hole and are deported.

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Judge Ford ordered her deported. He even noted on the record that she had failed to appear in court — even though she had actually been physically present.

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# Recommendations

- ◆ **Systemic Reform:** Congress should comprehensively reform the nation's dysfunctional immigration system in a commonsense manner that preserves family unity, provides needed legal workers and benefits the nation as a whole. Implemented properly, most of the nation's 11 million aspiring Americans would be eligible for a path to permanent legal status and citizenship. As the need for immigrant detention facilities declines, ICE should quickly release non-citizen detainees who pose no threat to the community and radically shrink the civil detainee population at BTC and similar detention facilities — if not close such detention centers altogether.
- ◆ **Prosecutorial Discretion:** We need fewer detention beds and deportations. Non-citizens who are not a priority pursuant to ICE's prosecutorial discretion directives should not be detained in the first place.<sup>220</sup> If detained, such non-citizens should be quickly released. In other cases, so called "alternatives to detention" would be preferable and much cheaper for taxpayers.<sup>221</sup> Whether requested by detainees or their attorneys, ensure ICE officers follow up on prosecutorial discretion requests in a timely and fair manner. Also ensure that officers proactively identify potential prosecutorial discretion candidates who have no attorney.
- ◆ **Enforcement and Detainers:** DHS should cancel all agency programs requiring local law enforcement cooperation, including ICE's 287(g) agreements and the Secure Communities program. Stop Secure Communities from issuing detainers to non-citizens who pose no threat to the community.
- ◆ **Enforceable ICE Standards:** Make ICE standards legally enforceable in all contracted facilities, including BTC, by promulgating regulations. DHS contracts should include provisions mandating detention facilities to comply with ICE 2011 Performance-Based National Detention Standards (PBNDS). The contracts also should include provisions for ICE to stop payment or break the contract for non-compliance with the PBNDS and for egregious detainee abuses.
- ◆ **Independent Monitors:** ICE should establish truly independent monitors to hold accountable the private contractors and local governments that run immigration detention facilities. Facilities that ignore egregious detainee abuse, medical mistreatment, or violations of standards — such as the abuses documented in Detention Watch Network's Expose & Close reports — should be closed.<sup>222</sup>
- ◆ **Cut ICE Detention Funding:** Congress should radically cut funding for ICE Custody Operations and reduce the number of funded detention beds. Funding should be shifted to community-based supervision programs for non-citizens in immigration proceedings and to legal service providers who help non-citizens who need representation but lack the income to hire an attorney.
- ◆ **Repeal Counter-Productive Law:** Congress should repeal the noxious provisions of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), the Antiterrorism and Effective Death Penalty Act (AEDPA) and the USA Patriot Act. Those provisions radically expanded categories of non-citizens who could be deported; mandated retroactive punishment; swelled the number of non-citizens subject to mandatory detention; practically eliminated judicial review for certain non-citizens eligible for deportation; and increased the government's administrative authority and discretion to deport groups of non-citizens.<sup>223</sup> These policies have widely contributed to skyrocketing numbers of ICE detainees, deportations and broken families and should be eliminated.
- ◆ **End the Detention Quota:** DHS insists it must fill every detention bed funded by Congress, which it currently has calculated as 33,300 beds per day. Congress should clarify that the number of beds is a maximum, not a minimum.
- ◆ **Cut Ties With the Private Prison Industry:** The federal government should ban the use of private contractors for incarcerating immigrants. Currently, about half of ICE detention beds are managed by private companies. The federal prison beds reserved for immigrants serving certain crimes, (including illegal entry and reentry) are all managed privately. This provides an incentive for the private prisons industry to lobby for laws and policies that increase the number of immigrants incarcerated. In the absence of a ban, private

prisons should be subjected to Freedom of Information Act laws. Contracts with private prisons must include strict accountability and oversight mechanisms with contract termination as a clear consequence of violation. Contracts with private prisons can only be approved after independent cost comparison assessments.

- ◆ **PREA Regulations:** DHS should promptly and fully implement Prison Rape Elimination Act standards in all immigration detention facilities, including BTC, as soon as they are finalized.
- ◆ **Fear of Return:** DHS should proactively ensure that arriving immigrants who express a fear of returning to their home country are promptly referred to USCIS for credible fear or reasonable fear interviews. In no case should such detainees be deported before such interviews are conducted.
- ◆ **Officer Training:** DHS should ensure that officers treat detainees in a civil manner. ICE should seriously investigate detainee complaints and should review detention orientation and other materials to guarantee that they are not culturally offensive. To combat the culture of indifference too often tolerated in ICE detention facilities, provide mandatory training on civil treatment and cultural sensitivity to ICE officers as well as contracted officers, including those at BTC.
- ◆ **Medical Care:** ICE should provide all detainees with timely access to quality healthcare. It should also prioritize the release of those with ongoing medical or mental-health issues. Medical care should include on-site mental-health services such as screening and treatment for depression in each detainee's preferred language as well as on-site counseling and stress-management classes. Detainees should be provided translators who accurately explain their medical diagnosis, how to take prescribed medications and potential risks, and answer any questions. Detainees with urgent, painful, or life-threatening conditions who need off-site care should be transported in an ambulance without shackles or handcuffs.
- ◆ **Detainee Abuse:** ICE should seriously investigate all allegations of detainee abuse and refer the case to appropriate law enforcement agencies. ICE should also provide translators and offer trauma counseling for detainee victims and institute
- a no-tolerance policy banning sexual abuse, harassment and other forms of bullying. Abusive BTC and GEO officers should be fired or transferred to jobs that have no authority over detainees.
- ◆ **Detainee Screening:** ICE should review the process by which detainees are screened to ensure that all detainees fall within the criteria for placement in a minimum secure facility such as BTC. Ensure that the protocol for minimum secure facilities carefully screens out violent detainees, including gang members.
- ◆ **Stipulated Orders:** EOIR should order immigration courts to require in-person, individualized hearings to determine whether noncitizens understand the consequences of signing a stipulated removal order. EOIR and ICE should also institute a 72 hour waiting period from the time a detainee signs a stipulated order to when a judge considers whether to approve it. ICE should give notice of the 72 hour period and provide the detainee with a list of pro bono and low-cost legal services providers before obtaining the detainees' signature.
- ◆ **Immigration Court:** Given BTC's large volume of detainees, EOIR (the U.S. Department of Justice agency that oversees the immigration court system) should add one or two additional judges to BTC's Immigration Court in order to handle the heavy caseload. All the judges should be fair, impartial and competent.
- ◆ **Access to Legal Counsel:** Immigration law and proceedings are among the most complicated, yet 84 percent of immigration detainees lack legal representation.<sup>224</sup> Further, few detainees are prepared to adequately represent themselves, even when they have a good case for obtaining legal status. Given the lack of legal representation, the federal government should provide funds for attorneys to provide legal services at no cost to immigration detainees who cannot afford them. ICE should also provide sufficient confidential attorney-client meeting rooms based on the population and demand in each detention facility.



# Acronyms

ACLU	American Civil Liberties Union	HSI	Homeland Security Investigations
AFOD	Assistant Field Office Director	ICE	Immigration and Customs Enforcement
AI Justice	Americans for Immigrant Justice	IJ	Immigration Judge
AILA	American Immigration Lawyers Association	INS	Immigration and Naturalization Service
BIA	Board of Immigration Appeals	JROTC	Junior Reserve Officers' Training Corps
BTC	Broward Transitional Center	KYR	Know Your Rights
CAT	Convention against Torture	MDC	Miami Dade College
CBP	Customs and Border Patrol	OCC	Office of Chief Counsel
CRCL	Office for Civil Rights and Civil Liberties	PBNDIS	ICE 2011 Performance-Based National Detention Standards
DACA	Deferred Action for Childhood Arrivals	PD	Prosecutorial Discretion
DHS	Department of Homeland Security	PREA	Prison Rape Elimination Act of 2003
DREAM	Development Relief and Education for Alien Minors	PTSD	Post Traumatic Stress Disorder
EOIR	Executive Office for Immigration Review	SDCF	San Diego Correctional Facility
FIAC	Florida Immigrant Advocacy Center	TPS	Temporary Protected Status
GED	General Educational Development tests	TRC	Trauma Resolution Center
		USCIS	United States Citizenship and Immigration Services, a DHS Agency

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**Americans for Immigrant Justice**  
3000 Biscayne Boulevard, Suite 400  
Miami, Florida 33137  
Tel (305) 573-1106  
Fax (305) 576-6273  
[www.aijustice.org](http://www.aijustice.org)

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**For further information contact**  
Cheryl Little, Executive Director  
Susana Barciela, Policy Director  
or Sharon Ginter, Administrative Assistant to the Executive Director