

## **Immigrant Jail Tests U.S. View Of Legal Access**

The New York Times

November 2, 2009 Monday, Late Edition - Final

Copyright 2009 The New York Times Company

**Section:** Section A; Column 0; Metropolitan Desk; Pg. 1

**Length:** 1611 words

**Byline:** By NINA BERNSTEIN

### **Body**

---

A startling petition arrived at the New York City Bar Association in October 2008, signed by 100 men, all locked up without criminal charges in the middle of Manhattan.

In vivid if flawed English, it described cramped, filthy quarters where dire medical needs were ignored and hungry prisoners were put to work for \$1 a day.

The petitioners were among 250 detainees imprisoned in an immigration **jail** that few New Yorkers know exists. Above a post office, on the fourth floor of a federal office building in Greenwich Village, the Varick Street Detention Facility takes in 11,000 men a year, most of them longtime New Yorkers facing deportation without a lawyer.

Galvanized by the petition, the bar association sent volunteers into the **jail** to offer **legal** counsel to detainees -- a strategy the Obama administration has embraced as it tries to fix the entire detention system..

"Immigration and Customs Enforcement considers the **access to legal** services at Varick Street as a good model," said Sean Smith, a spokesman for Janet Napolitano, secretary of homeland security, who oversees immigration enforcement.

But the lawyers doing the work have reached a different conclusion, after finding that most detainees with a **legal** claim to stay in the **United States** are routinely transferred to more remote **jails** before they can be helped. The lawyers say their effort has laid bare the fundamental unfairness of a system where **immigrant** detainees, unlike criminal defendants, can be held without **legal** representation and moved from state to state without notice.

In a report to be issued on Monday, the association's City Bar Justice Center is calling for all **immigrant** detainees to be provided with counsel. And an article to be published this month in The Fordham Law Review treats the Varick **jail** as a case study in the systemic barriers to **legal** representation.

The new focus on Varick highlights the conflict between two forces: the administration's plans to revamp detention, and current policies that feed the flow of detainees through the system as it is now. A disjointed mix of county **jails** and privately run prisons, where mistreatment and medical neglect have been widely documented, the detention network churns roughly 400,000 detainees through 32,000 beds each year.

"Any attempt to get support or services for them is stymied because you don't know where they're going to end up," said Lynn M. Kelly, the director of the Justice Center.

When she asked that the lawyers' letters of **legal** advice be forwarded to detainees who had been transferred from Varick, she said the warden balked, saying he had to consider the financial interests of his private shareholders: 1,200 members of a central Alaskan tribe whose dividends are linked to Varick's profits under a \$79 million, three-year federal contract.

## Immigrant Jail Tests U.S. View Of Legal Access

Federal officials would not discuss their transfer policies, but asked for patience as they try to make the detention system more humane and cost-effective.

"We inherited an inadequate detention system from the previous administration that does not meet ICE's current priorities or needs," said Matthew Chandler, a Homeland Security spokesman. Officials say they are committed to a complete overhaul, including less-penal detention centers with better access to lawyers.

The volunteer lawyers and the petition's author, an ailing refugee from torture in Romania who spent eight months inside Varick, say many problems persist there, though the added scrutiny has led to improvements. Detainees who want a Gideon Bible no longer have to pay the commissary \$7. Immigration officials are more responsive when a lawyer complains that a detainee in pain is not getting treatment.

But most detainees do not have a lawyer, and the few who do include men who have fallen prey to incompetent or fraudulent practitioners. Recurrent complaints include frigid temperatures, mildew and meals that leave detainees hungry and willing to clean for \$1 a day to pay for commissary food. That wage is specified in the contract with the Alaskan company, which budgeted 23,000 days of such work the first year, and collects a daily rate of \$227.68 for each detainee.

The Alaska connection is one of the stranger twists in the jail's fitful history. Opened as a federal immigration detention center in 1984, Varick became chronically overcrowded after 1998, when new laws mandated the detention of all noncitizens who had ever committed a crime on a list of deportable offenses, expanded to include misdemeanors like drug possession.

A Dominican man there died of untreated pneumonia in 1999 -- the first reported death in the nationwide detention system, which now counts 106 since October 2003.

The Varick facility, which is on the corner of Houston Street, fell short of national detention standards adopted in 2000, because it lacks any outdoor recreation space. But under a grandfather clause, it was allowed to remain open until 9/11, when the terror attack, blocks away, forced its evacuation. For years, it was shuttered. It quietly reopened in February 2008, operated by Ahtna Technical Services Inc., a subsidiary of Ahtna Inc. -- still with no access to fresh air.

As an Alaska Native corporation, Ahtna has won numerous federal contracts without having to compete with other companies; last year it paid its tribal shareholders about \$500 each in dividends. It hires a Texas subcontractor to supply guards and transportation, along with the shackles and belly chains routinely used on detainees being moved in or out.

Varick's population includes illegal immigrants, asylum-seekers and legal immigrants who face deportation because they have past criminal convictions. Almost half of those screened by the volunteer lawyers have already been in detention for four to six months, according to the bar association report, and nearly 40 percent have legal grounds to contest deportation.

A few, the report says, have a possible claim to citizenship, which would make their detention unlawful. But the volunteers, including lawyers from 16 corporate firms, say they can offer only rudimentary legal triage to a handful of detainees a week.

The Department of Justice is asking Congress for money to expand the law project, and Immigration and Customs Enforcement invites Washington officials to visit the weekly triage sessions. The agency allowed a reporter to observe a session, but not to tour the jail. On a recent Thursday, only 11 of 35 detainees who had signed up made it into one of five glassed-in booths where they could consult with pairs of legal volunteers.

One, a 25-year-old Mexican, had been delivering food for an Italian restaurant on Madison Avenue until his detention. After a week in Varick, the government had not served him with a "notice to appear" telling why he was detained and setting the date and place where he would be heard by an immigration judge.

## Immigrant Jail Tests U.S. View Of Legal Access

Volunteers were researching his case a week later when he was transferred to Atlanta. It could just as easily have been Louisiana or Texas, far from any free legal help, said Maria Navarro, a Legal Aid lawyer who supervises the volunteers. Even in cities, she said, lawyers are reluctant to represent detainees who may be suddenly moved far away.

Another 25-year-old, who had come to New York as a legal immigrant from Belize at age 2, told lawyers he had worked at Kentucky Fried Chicken to support his 5-year-old daughter, a citizen, when his sickle-cell anemia permitted. After a standing huddle, the lawyers told him that because his notice listed old convictions for possession of marijuana, he was ineligible for release on bond or with an electronic monitoring bracelet.

A Haitian, who had served time for at least one drug-related offense, had a lawyer but wanted a second opinion after being held in Varick for 16 months. He described himself as a barber, interpreter and legal resident of Brooklyn for 23 years.

"It is double jeopardy," he protested, nursing a swollen jaw with teeth missing. "I become a diabetic here, because of anxiety, stress and suicidal conditions."

Yet a detainee from the former Soviet Union praised the jail. "Varick is heaven" compared with some county jails in New Jersey (Bergen and Monmouth) and Florida, he said, citing abuse by anti-immigrant guards.

A century-long line of Supreme Court decisions holds that immigration detention is not a punishment or deprivation of liberty, and does not require legal counsel for fundamental fairness.

But Daniel I. Miller, 39, the Romanian whose petition reached the bar association, said his own case showed how high the stakes can be. Mr. Miller, a chef, fled his native land in 1994 after the secret police mutilated him for advocating gay rights. In New York, he had already been paroled for a criminal conviction -- for signing his partner's name on a contract -- when immigration authorities detained him.

To no avail, records show, his lawyer and an outraged doctor at St. Vincent's Hospital Manhattan urged his release from Varick for treatment of tumors on his liver. Instead, he was transferred in April to the Orange County Jail in Goshen, N.Y., where he said he also circulated a petition. The authorities there accused him of trying to start a riot and sent him to segregation with a murder defendant.

"These people have no rules, that's the main problem," Mr. Miller said, speaking from the Midtown office where he is starting an organic catering business. He credits his lawyer, Howard Brill, for that turnaround: On Sept. 2, after almost a year in custody, an immigration judge granted him the right to stay in the United States.

<http://www.nytimes.com>

## Graphic

---

PHOTOS: Daniel I. Miller, a former detainee at the Varick Street center, complained of abuses there. "These people have no rules," he said.

The little-known detention center in Greenwich Village, on the fourth floor, reopened last year. (PHOTOGRAPHS BY SUZANNE DeCHILLO/THE NEW YORK TIMES) (pg.A4)

## Classification

---

Language: ENGLISH

**Publication-Type:** Newspaper

**Subject:** IMMIGRATION (92%); CORRECTIONS (90%); POLITICAL DETAINEES (90%); LAWYERS (90%); PETITIONS (90%); ASSOCIATIONS & ORGANIZATIONS (90%); PRISONS (89%); BUSINESS & PROFESSIONAL ASSOCIATIONS (89%); DEPORTATION (78%); MEN (78%); PRISONERS (78%); LEGAL SERVICES (78%); CRIMINAL OFFENSES (78%); JAIL SENTENCING (78%); IMMIGRATION LAW (76%); IMMIGRANT DETENTION CENTERS (76%); RIGHT TO COUNSEL (74%); CONTRACTS & BIDS (73%); PRISON PRIVATIZATION (72%); PUBLIC CONTRACTING (70%); SHAREHOLDERS (60%); NATIONAL SECURITY (52%)

**Organization:** US DEPARTMENT OF HOMELAND SECURITY (55%)

**Industry:** LAWYERS (90%); LEGAL SERVICES (78%)

**Person:** JANET NAPOLITANO (79%)

**Geographic:** NEW YORK, NY, USA (91%); NEW YORK, USA (93%); UNITED STATES (79%)

**Load-Date:** November 2, 2009