



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
OF THE SAN FRANCISCO BAY AREA

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LAWYERS' COMMITTEE AND ACLU SUE ICE, HOMELAND SECURITY FOR SHACKLING NON-VIOLENT DETAINEES DURING IMMIGRATION PROCEEDINGS

Advocates Challenge Blanket Policy, Cite Negative Psychological and Legal Consequences for Detainees

SAN FRANCISCO (August 15, 2011)—The American Civil Liberties Union of Northern California (ACLU-NC), the Lawyers' Committee for Civil Rights of the San Francisco Bay Area (Lawyers' Committee), and Wilson Sonsini Goodrich & Rosati (WSGR) today filed a [class action suit](#) against the Department of Homeland Security (DHS) and the U.S. Immigrations and Customs Enforcement Agency (ICE) on behalf of adult immigration detainees, all of whom appear in immigration court shackled at the wrists, waist, and ankles, regardless of their history or capacity for disruption.

"Freedom from physical restraint during court proceedings has been recognized since the eighteenth century as a fundamental right. But you don't have to be a scholar to know that shackling a woman in belly chains and leg irons for passing a bad check is unnecessary and inhumane," said Julia Harumi Mass, Staff Attorney for the ACLU-NC. "Physical restraints are meant for those who pose significant risk to themselves or others. Shackling immigrant detainees in court violates the law and core American values of fair and decent treatment for all persons. There's a big difference between Hannibal Lecter and your neighbor's nanny."

All adult detainees are shackled for the duration of immigration court proceedings in San Francisco. There are no existing legal channels to challenge application of the practice based on individual risk level, potential for flight or medical care needs. People are held in immigration detention for a variety of reasons, including because they could not raise the money to post bond, ICE or court officials believe they pose a flight risk or other possible danger, detention is mandatory under federal immigration law, or they are not eligible for bond because they have committed a crime of "moral turpitude," such as passing a bad check.

"Thousands of immigration detainees, including the elderly and individuals with physical or mental disabilities, are being unnecessarily subjected to hours in shackles," said Audrey Daniel, an attorney at the Lawyers' Committee. "ICE's blanket policy of shackling all detained immigrants without individual determination is not only unconstitutional, it's also an affront to our societal values. In addition, it hinders immigrant detainees' ability to communicate with their attorneys, especially when they are shackled together chain-gang style, as is often the case."

The lawsuit was filed in U.S. District Court in San Francisco by four individuals on behalf of a class of people who are or will be detained for their immigration proceedings in San Francisco. The suit calls for replacement of ICE's blanket policy on shackling detainees in San Francisco immigration court with a case-by-case policy that would protect due process rights while maintaining ICE's ability to use restraints as needed for individuals who pose a true security threat.

Uelian De Abadi-Peixoto, a 35-year-old woman from Brazil currently in immigration custody in Yuba County, is one of the plaintiffs in the suit. Ms. De Abadi, who has no history of violence or disruption in court or in custody, has plastic and steel plates in her knees, legs, feet, back, and head. The shackles used during transportation and in-court proceedings aggravate her previous injury and current medical condition. An asylum applicant and domestic violence survivor, Ms. De Abadi's injury from being shackled is intensified by the memories of being bound and raped by her abusive husband and his brother. Ms. De

Abadi has been placed in metal hand and leg restraints for travel to and participation in immigration court proceedings on about five occasions. For every immigration court hearing in San Francisco since November 2010, Ms. De Abadi has appeared in full shackles—ankle and wrist restraints and a belly chain. In the event she has to testify, she will not be able to raise her hand to be sworn in.

The most current official [report](#) on immigration detention issued by DHS, the federal agency that oversees ICE, states that ICE detention standards and practices need to be changed from the current use of jails or prisons practices for people facing serious criminal charges to reflect the low security risk of most ICE detainees.

The 2009 report by DHS finds that: "ICE relies primarily on correctional incarceration standards...[that] impose more restrictions and carry more costs than are necessary to effectively manage the majority of the detained population." Homeland Security's official recommendation was that ICE should develop a new set of standards "consistent with assessed risk."

"In San Francisco, ICE's improper and unnecessary practices have more power than judges in their own courtrooms. Even when a judge finds that the use of shackles is unwarranted, he or she cannot issue an order to have them removed," said David J. Berger a partner at Wilson, Sonsini, Goodrich & Rosati, co-counsel on the lawsuit with the ACLU-NC. "It is extremely troubling that ICE officials wield more power than judges in this regard, particularly because ICE acts as both jailer and prosecutor."

ICE runs the largest civil detention program and supervised release program in the country, with more than 31,000 immigrants in detention at more than 300 facilities throughout the nation. In theory, ICE places a high priority on the removal of dangerous persons with criminal convictions. In practice, as of October 2009, only 51% of the detained immigrants had felony convictions, of which only 11 percent had committed violent crimes.

The number of people in immigration custody has grown exponentially in recent years. From 2006 to 2009, the number of non-criminal versus criminal detainees grew by 64% to 383,524 people from 233,417. The growth is due in part to a broader set of enforcement strategies that trigger immigration holds by ICE, and to an expansion in the funding and number of federal programs designed to detect undocumented residents.

ICE's 2009 report noted that despite the rapid growth of immigration detention generally, the number of convicted criminals located and detained had barely increased.

"According to our government's own most recent statistics, about 95% of immigration detainees had no violent criminal convictions and the majority of detainees fall into ICE's own 'low custody' category, meaning they have a low propensity for violence," said Sin Yen Ling, an attorney who represents many detained immigrants on behalf of the Asian Law Caucus. "But in San Francisco Immigration Court, every one of these people has to appear and testify in front of a judge and family members in hard metal chains, even those seeking asylum due to torture in their home countries. American courts are supposed to dispense justice, not trauma."

The case is expected to have national implications.

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