Maria João Guia · Robert Koulish
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Immigration Detention, Risk and Human Rights

Studies on Immigration and Crime

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Let Us In: An Argument for the Right to Visitation in U.S. Immigration Detention

Christina M. Fialho

Abstract Since the creation of U.S. Immigration & Customs Enforcement (ICE) in 2003, approximately 2.5 million individuals have passed through ICE detention facilities in a network of over 250 jails and private prisons. Men, women, and children can spend weeks, months, and sometimes years inside of these facilities with little connection to the outside world and limited access to legal, medical, or social resources. To combat the isolating experience of immigration detention and promote government accountability, communities throughout the United States are establishing volunteer-based visitation programs.

However, establishing a community visitation program (CVP) at a U.S. immigration detention facility often takes longer than a year. The problem is that no U.S. law mandates these programs or even acknowledges a right to receive visits while in immigration detention. Additionally, whether any one program remains in operation is nearly entirely within the discretion of the individual detention facility. While the right to receive visits is an emerging international norm and member states of the European Union are beginning to protect a person's right to receive visits in immigration detention, the U.S. government has been slow to recognize the benefits of visitation.

This article sets forth the first comprehensive look at the challenges associated with starting and maintaining a CVP in the U.S. immigration detention system and the domestic and international laws that affect immigration detention visitation.

1 Introduction

> How difficult would it be for the government to accept a group of people to come and give somebody else moral support and a little breath of fresh air? Why would that be a bad thing? (Carlos Hidalgo)[1]

[1] A member of Community Initiatives for Visiting Immigrants in Confinement (CIVIC) who was in immigration detention at the Adelanto Detention Center for 8 months in 2013 and redetained in February 2015.

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The United States of America imprisons over 400,000 people in 250 jails and private prisons each year as part of the country's civil immigration detention system (DHS 2013).[2] Men, women, and children can spend weeks, months, and sometimes years inside of these facilities with little connection to the outside world and limited access to legal, medical, or social resources (Amnesty International 2009). Additionally, no independent oversight system exists in immigration detention. Only U.S. Immigration and Customs Enforcement (ICE) and its umbrella agency, the Department of Homeland Security (DHS), conduct audits of immigration detention facilities. As there is no independent oversight, there are untold and unrecorded abuses. Immigrants who have been abused by detention guards are made invisible by a code of silence, the threat of retaliation, and a culture that stigmatizes incarcerated people.

To promote government accountability and combat the isolating experience of immigration detention, communities throughout the United States are establishing volunteer-based visitation programs offering a connection to the outside world and the only consistent community presence inside these detention facilities. Each community visitation program (CVP) is unique, but all of them connect people in immigration detention to community members on the outside for weekly or monthly visits. Visitor volunteers include retired teachers, formerly detained individuals, students, leaders from nearly all faith traditions, and many more. Some visitation programs operate behind Plexiglas during regular visiting hours, and others operate in a classroom-style setting outside the regular visiting hours.

Some visitation programs also operate monthly inspection tours of the facility. Others run a hotline, which provides people in immigration detention with the ability to call community volunteers for free. Other programs ensure that persons in immigration detention can maintain family and community ties by transporting family members to the detention facility for visits.

Despite these benefits, establishing a CVP at a U.S. immigration detention facility often takes longer than a year (see *infra* Sect. 3). The problem is that no U.S. law mandates these programs, and ICE's Performance-Based National Detention Standards (PBNDS) do not protect a right to receive visits while in immigration detention (see *infra* Sect. 4). Therefore, whether any one program remains in operation is almost entirely within the discretion of the individual detention facility. While the right to receive visits is an emerging international norm (see *infra* Sect. 5) and some European Union member states are beginning to protect a person's right to receive visits in immigration detention (see *infra* Sect. 5.2), the U.S. government has been slow to recognize the advantages of CVPs and the rights of volunteer visitors.

Thus, the purpose of this article is to present an overview of the law as it pertains to the right to visitation in immigration detention, as well as highlight the

[2] See section on "immigration enforcement actions" and subsection on "detentions" showing that ICE detained 477,523 people in immigration detention during 2012 and a total of 2,166,095 persons between 2004 and 2010.

restrictions and roadblocks people in detention and their visitors have encountered when trying to simply connect with one another.

Before introducing the structure of this article, it is important to carefully define immigration detention and CVPs. This article defines immigration detention as the deprivation of liberty of *persons* due to their immigration status. In the international arena, immigration detention often is described as a deprivation of liberty of *noncitizens* (Flynn 2011).[3] In the United States, immigrant rights' advocacy groups refer to persons in detention as "immigrants," choosing sometimes not to distinguish between immigrants with lawful status and immigrants who are undocumented. Conversely, U.S. statutes authorizing immigration detention refer to persons subject to immigration detention as "aliens."[4] While the all-encompassing term "persons" departs from traditional distinctions between noncitizen groups that U.S. courts have recognized (*Mathews v. Diaz*, 426 U.S. 67 1976),[5] the term "persons" underscores the humanity of each individual in detention. Furthermore, this all-encompassing classification recognizes the reality that ICE has wrongfully detained U.S. citizens on several occasions (Preston 2011; Hendricks 2009). Thus, this article intentionally places asylum seekers, undocumented immigrants, lawful permanent residents, and U.S. citizens into a single category—persons.

This article defines CVPs[6] as primarily volunteer-run groups that provide persons in immigration detention with a connection to the outside world through a volunteer visitor. University student groups and faith communities establish and manage most CVPs. While some CVPs operate with approval and minimal support from ICE and the detention facility itself, other CVPs function without these relationships. A typical CVP coordinator will connect volunteer visitors to persons in detention on a weekly basis. While some visitor volunteers act as de facto case managers who connect persons in detention to resources on the outside and monitor abuse, all visitors are invited to serve as friends to persons in immigration detention and no visitor is tasked with providing legal, psychological, or pastoral services. While each CVP is independently run and has its own unique mission, all current U.S. immigration detention visitation programs are affiliated with the national visitation network, Community Initiatives for Visiting Immigrants in Confinement (CIVIC). CIVIC's mission is to end the isolation and abuse of individuals in U.S. immigration detention through visitation, independent monitoring, storytelling, and advocacy with the ultimate goal of defunding detention.

[3] Defining "migration-related detention" as "the deprivation of liberty of noncitizens because of their status."

[4] 8 U.S.C. § 1225(b) (2000); 8 U.S.C. § 1226 (2000); 8 U.S.C. § 1231 (2000).

[5] Explaining that courts do not place all persons in a single homogeneous legal classification for due process consideration.

[6] CVPs refer to themselves as "visitation programs" or "visitation groups," and therefore this article uses the two phrases interchangeably.

This article proceeds as follows: Sect. 2 uses responses gathered from an online assessment tool, phone interviews, emails, and my own experience coestablishing a CVP in Northern California to summarize the positive effects of CVPs on persons in immigration detention, the greater community, and the government. Section 3 uses the same responses and personal experience to provide an overview of how federal and local governments hinder the creation and expansion of CVPs. Section 4 explains that notwithstanding First Amendment limits on government action, U.S. law fails to establish a person's right to receive visits while in civil immigration detention. Section 5 provides a synopsis of the international law instruments pertaining to the right to receive visitors and how the European Union and some member states encourage community visitation within the immigration detention context. The article concludes by offering three proposals in Sect. 6 for expanding community visitation in the U.S. immigration detention system.

2 CVPs Benefit People in Immigration Detention and the U.S. Government

CIVIC—and its predecessor, the National Detention Visitation Network—was originally formed in November 2009 by four existing immigration detention visitation programs. CIVIC's purpose was to address the expanding U.S. immigration detention system—only one part of the prison industrial complex—that has privileged mass incarceration over the sanctity of human life, rights, and justice. The group's mission was simply to end isolation and human rights abuses. Over the next two and a half years, these programs grew to become an alliance of 16 community-initiated visitation programs. In 2012, the group filed for 501(c)(3) nonprofit status and brought on its first two paid coordinators through the support of an Echoing Green Fellowship. In the first year and half, the visitation coalition doubled in size to a total of 32 visitation programs in 16 states. At the time of publication, visitation programs were operating at over 40 immigration detention facilities in the United States.

This section uses responses gathered from a 2012 online assessment, phone interviews, emails, and my own experience in coestablishing a CVP called Detention Dialogues and in running CIVIC to highlight the benefits of CVPs.[7] While this section focuses on the benefits of volunteer-led visitation, the volunteer model does present some noteworthy limitations. For instance, CVPs often operate on budgets less than $5000 per year and volunteers themselves have limited hours of availability. Despite these limitations, CVPs are doing remarkable work.

[7] Online assessment tool created primarily by Christina Mansfield, Cultural Anthropologist and cofounder/executive director of CIVIC with input from David Fraccaro, Executive Director, FaithAction International House, and Christina Fialho in 2012. *Available at* https://docs.google.com/spreadsheet/viewform?formkey=dEEyTU9JTUl3c256Tlp5cGFqUUExelE6MQ (data on file with author).

2.1 *CVPs Hold the Government Accountable, Ensure the Maintenance of Family and Community Ties, and Facilitate Entry or Reentry Post Release*

Community visitation accomplishes three important tasks. First, ICE has recognized that "accountability" is a "keystone to detention reform" (Schriro 2009). Visitors help ICE remain accountable to human rights standards and basic decency principles by advocating for everything from fundamental necessities—such as pillows—to sufficient medical care (Bernstein 2010). Many visitation groups also monitor compliance with ICE's PBNDS, using various means to track compliance. In fact, visitors often refer to themselves as the "eyes and ears of detention facilities." Second, preserving contact with family and the community is important for the psychological well-being of the person in detention (Loyo and Corrado 2010). Visitors facilitate contact with the outside world by making phone calls on behalf of persons in detention, receiving mail for persons in detention, compiling important personal documents, and contacting pro bono attorneys.

Third, ICE has noted, "reentry planning should be completed by caseworkers and carried out in cooperation with nearby NGOs" (Schriro 2009, p. 22). Many visitors act as de facto case managers who have the ability to ease the transition into life after detention. By assisting persons in immigration detention with maintaining communication with their families and communities, CVPs act as a vehicle for sustaining a "safety net" that will be valuable and available upon release. Furthermore, upon release, visitors can help connect those persons formerly detained to employment agencies or to refugee resettlement agencies if granted asylum in the United States (Loyo and Corrado 2010, p. 8). For those individuals who are deported, visitors can help them establish contact with family or friends in the country of origin and help tie up affairs in the United States (Loyo and Corrado 2010, p. 4).

2.2 *As CVPs Operate Independently of the Government, CVPs Do Not Burden Taxpayers but Rather Expand Services to Persons in Immigration Detention*

ICE has recognized the need to expand services, particularly visitation services, to immigrants in detention (Schriro 2009, p. 24). In fact, Dr. Dora Schriro—a former appointed Special Adviser to ICE—called on ICE to expand access to visitation (Schriro 2009, p. 3) and to "reengage" nongovernmental stakeholders in developing standards on visitation (Schriro 2009, pp. 18–19). Specifically, Dr. Schriro recommended that family visitation be improved with expanded hours, appropriate space, affordable phone calls, and accessible mail service (Schriro 2009, p. 24).

CVPs can fulfill some of these recommendations without costing ICE or each individual detention facility a dime. As volunteers run CVPs, ICE and local detention facilities have relatively no overhead cost for providing such a service to persons in immigration detention. CVPs recruit volunteers, collect the appropriate information for any necessary background checks, and train the volunteers on the applicable rules and procedures of the detention facility at which they will visit.

CVPs also help detention facilities create a more open dialogue with the communities in which they operate. In fact, CVPs offer visitors and other immigrant rights advocates, detention facilities, and ICE employees a platform for discussion. Often, to start a visitation program, CIVIC helps communities schedule meetings with ICE and detention facility staff. In these meetings, volunteers are encouraged to ask questions and learn more about the policies of the facility and the individuals administering those policies. Despite widely different beliefs about the viability of immigration detention, this opportunity gives community members a better understanding of the mindset of detention facility administrators, which can provide a foundation of respect from which communities and detention facilities can resolve future issues collaboratively.

3 The United States Government Creates Unnecessary Roadblocks for CVPs

As immigration detention has expanded, people in immigration detention have had an increasingly difficult time maintaining social support networks. Mailed letters are slow, and phone calls are prohibitively expensive. Visits from family and friends may be the best option for maintaining social support networks, but visitation is often limited.

Families, friends, and communities have a difficult time visiting people in immigration detention for three main reasons. First, most immigration detention facilities are located in rural areas far from a city center. Take Adelanto, California, or Lumpkin, Georgia, as examples. Second, few immigration detention visitation policies are designed to encourage visits. For example, at the Ramsey County Jail in Minnesota, families are allowed only 20-min visits that they must book in advance through a system that only allows them to visit their loved ones through video conferencing. Third, the government sets up roadblocks at nearly every step of the visitation process.

The purpose of this section is to illustrate the roadblocks to establishing a CVP and the ways communities have worked together to overcome them. This section uses responses gathered from an online assessment tool, phone interviews, emails, and my own experience in coestablishing a CVP in Northern California and running CIVIC. In particular, this section proceeds as follows: Sect. 3.1 discusses the difficulties CVPs have in locating detention facilities, Sect. 3.2 looks at general barriers to visiting persons detained at these facilities, Sect. 3.3 focuses on the

reasons why detention facilities often refuse to support the establishment of ICE-approved CVPs, Sect. 3.4 provides an overview of how ICE and detention facilities have tried to suspend visitation programs after volunteers exercise their First Amendment rights.

3.1 Determining the Location of Immigration Detention Facilities Is Difficult Because the Government Provides Incomplete Information

Establishing a CVP requires locating an immigration detention facility. Prior to July 2010, ICE did not publically disclose the locations of its contracted detention facilities. Therefore, communities had to file Freedom of Information Act (FOIA) requests or public record requests to determine the location of current immigration detention facilities. For example, when my colleague Christina Mansfield and I were first trying to establish Detention Dialogues in California, our research began by poring over results of FOIA requests and talking with immigration attorneys to determine where immigrants were being detained in Northern California.

We first reviewed records obtained through a FOIA request by the Switzerland-based Global Detention Project (ICE 2007). The records were overinclusive in that they showed that dozens of jails and prisons in California had the potential to house immigrants in detention, but the records also were underinclusive because they only provided a glimpse of detention during 1 month. In particular, the records indicated that 35 cities in California in September 2007 had the ability to hold "ICE detainees" in jails, state prisons, or private prisons located within their city (ICE 2007).[8] However, not all of these cities actually housed persons in immigration detention during the month of September 2007. For example, while the Santa Clara County Main Jail in San Jose housed 218 persons in immigration detention in September 2007, the Corcoran State Prison housed zero (ICE 2007). Simply knowing that a facility had an agreement with ICE did not tell us anything about how often ICE used the facility to hold immigrants in custody. Thus, in order to determine where immigrants were being detained in 2010, we had to contact individual counties.

However, counties that were holding immigrants in detention through intergovernmental service agreements were not forthcoming about these agreements. For example, Santa Clara County's public information officer provided Detention Dialogues with misinformation about its agreement with ICE. I first contacted the

[8] Lancaster, San Diego, San Pedro, El Centro, San Jose, Westminister, Bakersville, Marysville, Santa Ana, San Bernadino, El Cajon, Sacramento, Camarrillo, San Rafael, San Mateo, French Camp, Woodland, Fresno, Corcoran (California State Prison), Castro Valley, Redwood City, Milpitas, Calipatria (State Prison), Salinas, Vacaville, Merced, Santa Cruz, Oakland, Ventura, Willows, Los Angeles, Red Bluff, Atwater, Lompoc, and Riverside.

Santa Clara County Public Record Officer, Sergeant Rick Sung, in late 2010. In a phone call and in a follow-up email on November 22, 2010, Sergeant Sung said, "Please be advised that the Santa Clara County Department of Correction never had an MOU [Memorandum of Understanding] or interagency service agreement with ICE."[9] In order to obtain accurate information, I had to file a California Public Records Request, and the results revealed that Santa Clara County in fact had been detaining immigrants for the federal government since 1984 when it began contracting with the U.S. Marshals Services (before ICE's creation in 2003) and had recently ended its contract with ICE in 2010.[10]

Today, ICE does maintain a Facility Locator program on its website,[11] which allows the public to search for detention facilities by state, region, or name. However, this list is not comprehensive. For example, while it lists nine facilities in California, it fails to list all of the facilities holding immigrants in California, such as the James A. Musick Facility and Theo Lacy in Southern California.[12]

3.2 After Determining Where Persons Are Held in Immigration Custody, the Next Obstacle Is Establishing a Way to Visit Persons Detained at These Facilities

The visitation policy of a detention facility can affect whether or not a community group must obtain prior approval from the facility and from ICE to start an immigration detention CVP. For example, Detention Dialogues operates an ICE-approved program at the West County Detention Facility (WCDF) in

[9] Email from Rick Sung, Public Information Officer, Santa Clara County Sheriff's Office, to Christina Fialho (Nov. 22, 2010, 7:43 PST).

[10] California Public Records Act (Govt. Code §§ 6250-6276.48), to Christina Fialho (Dec. 17, 2010) (on file with author) ("The USM has contracted with the County to house federal prisoners since 1984. The initial agreement, followed by five subsequent amendments, was valid until January, 1998. In February, 1998 the DOC negotiated a new Agreement with the USM for an indefinite time period. The Agreement can be terminated when either party informs the other in writing 30 days in advance of the effective date of termination or a new Agreement is put into place. Two amendments to the Agreement were completed in July 1998, and February 2000. On August 19, 2003, the Board of Supervisors delegated authority to the Chief of Correction to approve two additional addendums to the Agreement: one to include transportation services for federal prisoners, and the other to include ICE as a user agency in the Agreement with the U.S. Marshall's Service.")

[11] U.S. Immigration and Customs Enforcement, Detention Facility Locator. http://www.ice.gov/detention-facilities/. Accessed 29 Jan 2014.

[12] U.S. Immigration and Customs Enforcement, Detention Facility Locator. http://www.ice.gov/detention-facilities/. Accessed 29 Jan 2014.

California, while Georgia Detention Watch operates an informal program at the Stewart Detention Center.[13]

The California-based facility requires visitors to have a prior approved visitation appointment, scheduled by the person in immigration detention. This policy requires persons in detention to request a visit with their on-duty lieutenant, fill out a paper visitation request slip in English, and then call their loved one and let them know the date and time when they can visit. This means that immigrants in detention must have enough money to make a call. This also means that visitors cannot simply obtain a person's Alien Registration Number, or A-number, from an attorney or family member and begin visits. For Detention Dialogues, this policy meant that we needed to obtain prior approval from WCDF and from ICE in order for us to start a CVP at the facility. We now are allowed to visit every Friday morning, outside of the facility's regular visitation hours.

At Stewart, community members and family members can visit a person in immigration detention without any reservation. For example, the Stewart Detention Center allows community members to visit with persons in detention after providing the detention center with the person's A-number. While this visitation policy allows for more liberal visitation in theory, the visitation program still encounters numerous roadblocks. For example, there are only a few visitation booths available for use and limited visitation hours. Each person at Stewart is allowed only one visit per week, and visits are noncontact and occur behind glass and through a telephone. As there are only five visitation booths in total at Stewart, the visitation group only visits with approximately five to ten individuals per week. Additionally, due to the lack of visitation space in a facility that detains up to 1924 people each day,[14] family members and visitor volunteers sometimes are denied visits after traveling hours to get to the rural facility in Lumpkin. This reality spurred the visitation group's creation of El Refugio, which provides hospitality to families outside the gates of Stewart Detention Center.

3.3 Detention Facilities and ICE Often Refuse to Support the Establishment of Immigration Detention CVPs

Since the creation of the first two U.S. immigration detention CVPs in the late 1990s, 42 additional CVPs have been formed across the country, as of November 2015. Most CVPs have had to overcome significant resistance from ICE and the

[13] Stewart is owned by the private prison corporation, Corrections Corporation of America.

[14] Email from Melissa Jaramillo, Chief of Staff to the Public Advocate, U.S. Immigration and Customs Enforcement, to Christina Fialho (October 24, 2012) (email contained Excel document with the top 25 authorized facilities by maximum capacity, obtained on October 15, 2012, from IIDS, which ICE defines as a data warehouse that contains dynamic data extracts from the Enforcement Integrated Database (EID). Stewart is the largest immigration detention facility by capacity).

detention facility in order to be approved. For example, it took over a year for CVPs to begin at the Middlesex County Adult Correction Center (MCACC) in New Jersey, the Ramsey County Detention Center in Minnesota, WCDF in California, and the McHenry County Jail in Illinois.

After the death of an elderly person in immigration detention at MCACC in March 2008, Middlesex County First Friends began a series of failed negotiations with county officials and the ICE Field Office in Newark to start a CVP. Eventually, the county and ICE approved a CVP over a year later in May 2009, allowing a group of visitor volunteers to meet twice a week for 2 h in a classroom space with persons in immigration detention. However, 5 months after gaining access, the program ended when the county terminated its contract with ICE in October 2009. Middlesex County First Friends received no advance notice of the contract termination and only learned about it from persons in immigration detention.

"I can't say whether our program influenced the termination," said Karina Wilkinson, program coordinator of the CVP, "If you think of it as a 'success,' 'success' has many parents." Wilkinson explains that ICE transferred persons who had been detained at MCACC to three other jails in a "very chaotic way" after the contract termination. Neither MCACC nor ICE notified attorneys or families of these transfers, and many of these individuals were transferred multiple times within a few month period due to the termination of MCACC's contract. Most of the individuals with whom Wilkinson's program visited were eventually transferred to the Essex County Correctional Facility.

Despite Wilkinson's success in establishing a CVP at MCACC, ICE and two nearby counties contracting with ICE prevented Wilkinson from replicating her CVP at other detention facilities. "We first met with Newark ICE in early 2010 to ask for a program or at least access to our former Middlesex detainees now in Essex County, and we were told we should visit during regular visiting hours," said Wilkinson. In early 2010, visitation during regular visiting hours was "a joke" at the Essex Correctional Facility, according to Wilkinson. Visitors waited usually one and a half hours before being permitted to visit with a person in immigration detention for no more than 30 min.

Therefore, Wilkinson tried to secure a CVP in Monmouth County. Approximately an hour and half away from New York City, Monmouth County is difficult to access via public transportation. "It is very difficult for any church groups and even lawyers to get to the facility on a regular basis," explains Wilkinson. Therefore, a CVP could fill an important gap in services to persons detained by ICE in this isolated county. For example, a CVP could help transport family members to the detention facility. However, Monmouth County and ICE's New York Field Office refused to work with Wilkinson. Eventually, the detention facility in Monmouth County closed, too (Lee 2013).

Like Wilkinson's former program at MCACC, Conversations with Friends obtained an in-person CVP at the Ramsey County Detention Center in Minnesota after a year of discussions with county officials. Conversations with Friends is led by Rev. John Guttermann. Rev. Guttermann explains, "We assumed that a credential as a member of the clergy gave us the right to have in-person visits with

immigrants in detention." The group soon learned that was not the case in Ramsey County. Conversations with Friends launched a public information campaign, which included coordinated vigils and the collection of support letters from groups such as the Immigrant Law Center of Minnesota and Advocates for Human Rights.

Rev. Guttermann attended countless meetings with the detention center staff, who eventually told him that a program could not be approved without the support of ICE. Therefore, Rev. Guttermann sent a letter to ICE's Field Office and obtained verbal approval from ICE. However, jail administrators remained uncomfortable about the idea of contact visits and about starting a new program just prior to the swearing in of a new Sherriff. After many more months of persistent negotiation, the group conducted its first contact visit at the Ramsey County Detention Center in March 2011.

Detention Dialogues also met resistance in establishing its approved CVP at the West County Detention Facility (WCDF) in Contra Costa County, California. Our first contact with the jail was in December 2010; we began by establishing a rapport with the county jail's program department by attending Know Your Rights (KYR) presentations at WCDF, conducted by U.C. Davis Law School and Centro Legal de la Raza. This relationship with program administrators led to an email introduction to the Director of Support Services for WCDF. Unfortunately, she could not accommodate our request: "adding a new program, at this time, would increase the daily demand on our already-strained custody staffing levels."[15] We responded with an email that explained the nature of our visitation services. A few days later, we received an email from WCDF's Federal Program Manager, which suggested that we contact ICE as WCDF could not approve our program without ICE's approval: "The very nature of your unique proposal precludes me or any one from the Contra Costa County of the Sheriff to authorize visits, of the kind you suggest to ICE detainees in our custody."[16]

Although WCDF and ICE both believed a CVP was a good idea, each group punted our request to start the program back and forth between each other. In the absence of an enforceable regulation or policy, our only recourse was polite persistence. After a month of calls, voicemails, and a mailed letter to ICE's Field Office Director, we received a voicemail from ICE's Deputy Field Office Director in May 2011. The Deputy Director thought a CVP was a great idea, but he could not approve it without the support of WCDF. When we relayed this news to WCDF, the lieutenant with whom we had previously communicated told us that we could not start the program for security purposes. However, follow-up negotiations secured us a meeting in July 2011, which resulted in approval from both ICE and WCDF to start a CVP for persons in immigration detention. Visits began in November 2011.

[15] Email from Mary Jane Robb, Director of Support Services, Office of the Sheriff, Contra Costa County, to Christina Fialho (Apr. 18, 2011, 12:32 PST).

[16] Email from Jeff Hebel, Federal Program Manager, Emergency Services Division, Contra Costa County, to Christina Fialho (Apr. 26, 2011, 13:49 PST).

Another example of the trials and tribulations of starting an immigration detention CVP arose out of the experience of two Catholic nuns in Chicago, Illinois. In an effort to establish a recognized CVP and in the hopes of creating more opportunities for persons in immigration detention to connect to the outside world, the Sisters of Mercy in Chicago, Illinois, embarked on a 3-year journey. In September 2007, Sr. Pat Murphy and Sr. JoAnn Persch approached the staff at the Broadview Staging Center, asking for the permission to visit with persons being detained and deported. The Staff referred the Sisters to ICE, and ICE's Field Office Deputy Director suggested that the Sisters try to conduct visits at McHenry County Jail. After close to a year of emails and phone calls to McHenry County Jail, the Sisters obtained a meeting in May 2008 with ICE and McHenry County Jail. Unfortunately for the Sisters, McHenry County Jail staff believed they had all they needed in terms of services for those persons held in immigration detention at their facility.

Refusing to take "no" for an answer, the Sisters worked with Fred Tsao of the Illinois Coalition for Immigrant and Refugee Rights (ICIRR) to write and lobby for a new state law to allow them to start a CVP. On November 20, 2008, H.B. 4613 passed unanimously in the Illinois House and Senate. The bill, which provided that religious workers shall be granted access to ICE-contracted facilities in Illinois, was signed into law by the Governor in December 2008 and became law in June 2009. The law created the Access to Religious Ministry Act of 2008, which amended the Illinois County Jail Act. The new law provides "that any county jail in the State of Illinois for which an intergovernmental agreement has been entered into with United States Immigration and Customs Enforcement (ICE) for detention of immigration related detainees shall be required to provide to religious workers reasonable access to such jail." The new law also provides "that the sheriff or his or her designee shall have the right to screen and approve individuals seeking access to immigration detainees at the facility under the Act."

Despite the passage of this new law, the Broadview Staging Center and McHenry County Jail continued to refuse to allow the Sisters to conduct visits. The Sisters, along with other religious leaders, threatened to lie down in front of ICE's buses as they left the Staging Center to go to the airport for deportation. "ICE did not want us to lie in front of the buses, and so, ICE negotiated with us about praying on the buses," said Sister JoAnn. The Sisters also had to request Representative Dan Burke and Representative Jack Franks, who had sponsored H.B. 4613 in the House, to meet with Sheriff Keith Nygren and the McHenry County Jail. After another 6 months, Sheriff Nygren agreed to allow the Sisters to begin a CVP at McHenry County Jail. The Sisters' first visit occurred in January 2010, almost two and a half years after their first attempt to enter a detention facility as visitors.

3.4 ICE Suspends Visitation Programs

Once a visitation program is established, ICE and the detention facilities can still terminate the visitation program without any advance notice. Between 2013 and 2015, ICE and its contractors suspended 6 CIVIC-affiliated visitation programs

after volunteers publically criticized the immigration detention system. In July 2013, ICE suspended three immigration detention visitation programs and blacklisted certain volunteers from any type of visit with people in detention, in clear violation of the ICE PBNDS (ICE 2011).[17] At the time of the suspensions, there existed 28 CIVIC-affiliated CVPs across the country, including two in Southern California: Friends of Orange County Detainees, which had been conducting visits at the Santa Ana City Jail and James A. Musick Facility since 2012, and the Friends of Adelanto Detainees, which had been recently approved by ICE and had begun visits at the Adelanto Detention Center. Together, the two groups had more than 130 volunteers.

These programs were abruptly suspended on July 24, 2013 (Linthicum 2013). The suspension occurred less than 48 h after I published a blog post on the Huffington Post in which I criticized ICE's treatment of LGBT immigrants in detention at the Santa Ana City Jail and called for certain reforms. In subsequent conversations with ICE's national office, ICE made clear that it suspended the programs because of my blog post and because of certain Facebook posts by visitor volunteers who were critical of conditions at detention centers. ICE requested that CIVIC and its volunteers remove the Facebook posts and cease public criticism of ICE.

CIVIC and the American Civil Liberties Union (ACLU) of Southern California, along with other legal service providers and advocates, sent two letters to ICE requesting that ICE reinstate the community visitation programs immediately and issue a public statement explaining its actions (ACLU 2013). The ACLU explained that the suspensions raised grave First Amendment concerns and gave the clear appearance that ICE was trying to silence its critics and shield the public's awareness of detention conditions (ACLU 2013).

After a vigil outside of the Adelanto Detention Center and media attention from the Los Angeles Times, the Associated Press, and other news media, ICE resumed visitation (Visitations resume in California immigration detention 2013; Fowler 2013).

A few months later, the visitation program at the Otay Detention Center in San Diego, California, experienced a similar suspension. This time, the SOLACE visitation program had raised the following three issues with ICE's San Diego Field Office: (1) SOLACE had received a complaint from a woman detained at Otay that a female guard had sexually assaulted her and that the guard still remained on active duty in her pod; (2) there was a severe bacterial infection in the legs of people in detention causing their legs to swell and weep fluid, and despite the spreading of this infection, it had not been addressed in the women's pod; and (3) there were concerns that transgender immigrants were not being housed according to their gender identification and were subject to harassment and abuse by other people in detention. ICE responded by providing SOLACE with a form to sign, which required volunteers to waive their First Amendment rights. As visitors

[17] Providing that visits "shall be permitted" by "non-relatives and friends."

refused to give up their Constitutional rights, the visitors were blacklisted from visiting Otay (Eichelberger 2014; CIVIC 2014). After CIVIC and SOLACE met with ICE's San Diego Field Office, sent a formal complaint to the Office of Civil Rights and Civil Liberties, and secured an exclusive article in Mother Jones, ICE resumed visitation.

In October 2014, ICE's contractor GEO Group also shut down the Friends of Broward County Detainees, a visitation program at the Broward Transitional Center in Florida. The program's leaders had presented testimony criticizing the detention system at a congressional hearing in Broward County hosted by Florida U.S. Reps. Joe Garcia and Ted Deutch. After CIVIC sent an email to the Field Office, the program was immediately restored.

A year later in August 2015, the visitation program at the Etowah County Detention Center in Alabama was terminated, after CIVIC filed a civil rights complaint on behalf of 20 currently and formerly detained men at the facility. The complaint described physical abuse, including beatings to coerce men in detention into signing deportation documents, as well as race-based harrassment, and inadequate medical care. After CIVIC and and the Southern Povery Law Center sent a formal complaint to ICE and the Etowah County Sherrif's Department and secured widespread media coverage, the County resumed the visitation program.

4 U.S. Law Does Not Protect a Person's Right to Receive Visits While in Immigration Detention

The difficulty of starting and maintaining a visitation program begs the question, is there a legally protected right to visitation? This section provides an overview of U.S. case law on the right to visitation in immigration detention.

4.1 The U.S. Constitution Does Not Establish a Legally Protected Right to Visitation

While no published case in any U.S. jurisdiction has addressed whether a person in immigration detention has a constitutional right to visitation, the right to visitation is not protected for prisoners or pretrial detainees in the U.S. criminal justice system. Although prison walls do not form a barrier separating prison inmates from the protection of the United States Constitution (*Hudson v. Palmer*, 468 U.S. 517 1984),[18] lawful incarceration brings about the withdrawal or

[18] Holding that a prisoner has no reasonable expectation of privacy in his prison cell under the Fourth Amendment and that an unauthorized intentional deprivation and destruction of a prisoner's property by a state prison guard did not constitute a violation of the due process clause of the Fourteenth Amendment.

limitation of many privileges and rights (*Sandin v. Conner*, 515 U.S. 472 1995). Traditionally, prison officials have strictly limited visitation for persons incarcerated in the criminal justice system (Palmer 2010, para. 3.1).[19] Cases concerning inmates' rights to visitation "generally hold that controlling this activity is within the prison officials' discretion and that such control is not subject to judicial reversal unless a clear abuse of discretion is shown" (Palmer 2010, p. 51). This deference to prison officials stems from the fact that courts have not found any inherent, absolute constitutional right to visits for prisoners.[20] As long as limitations on visitation are reasonably related to legitimate penological interests, an inmate's constitutional rights have not been violated (*Turner v. Safley*, 482 U.S. 78 1987). For example, in 2003, the U.S. Supreme Court held in *Overton v. Bazzetta* that it is not unconstitutional to deprive inmates, who have engaged in drug offenses while incarcerated, of all forms of family and personal visits for up to 2 years (*Overton v. Bazzetta*, 539 U.S. 126 2003). Lower courts have held similarly.[21] Moreover, it is irrelevant whether these limitations on visitation affect persons outside of prison.[22]

In addition, the U.S. Supreme Court has refused to find that the right to visitation exists for pretrial detainees in the criminal justice system. Pretrial detainees constitute a special category of inmates (Palmer 2010, para. 3.2). In *Bell v. Wolfish* (441 U.S. 520 1979), the U.S. Supreme Court held that the fact that a pretrial detainee is subject to some of the same restrictions as convicted persons does not in itself create an injury of constitutional dimension, as long as the restrictions do not amount to punishment (*Bell v. Wolfish* 1979, pp. 536–537). It is unclear whether a blanket prohibition on visitation for persons in pretrial detention would amount to punishment. However, as Justice Marshall explained in his dissent in *Bell*, in determining whether a restriction is punitive, the Court makes the "detention officials' intent the critical factor" and requires the detainee challenging these policies to bear the substantial burden (*Bell v. Wolfish* 1979, pp. 564).[23] The Court accords "virtually unlimited deference to detention officials' justifications for particular impositions" and overlooks "the most relevant factor, the impact that restrictions may have on [detainees]" (*Bell v. Wolfish* 1979, pp. 563). Thus, the

[19] Citing *Walker v. Pate*, 356 F.2d 502 (7th Cir. 1966), cert. denied, 384 U.S. 966 (1966).

[20] *See Bellamy v. Bradley*, 729 F.2d 416, 420 (6th Cir.) ("Prison inmates have no absolute constitutional right to visitation."), *cert. denied*, 469 U.S. 845 (1984).

[21] *Dunn v. Castro*, 621 F.3d 1196 (9th Cir. 2010) (holding that prisoners do not have a right to receive visits from their children); *Samford v. Dretke*, 562 F.3d 674, 682 (5th Cir. 2009) (per curiam) (holding the removal of prisoner's sons from the approved visitors list did not violate his constitutional rights); *Wirsching v. Colorado*, 360 F.3d 1191, 1198–1201 (10th Cir. 2004) (upholding prison regulation that prohibited a prisoner from receiving any visits from his children so long as he refused to participate in a treatment program).

[22] *Thornburgh v. Abbott*, 490 U.S. 401, 410 n.9 (1989) (explaining that the three cases on which the U.S. Supreme Court expressly relied in *Turner v. Safley* when it announced the reasonableness standard for inmates' constitutional rights cases all involved regulations that affected rights of prisoners *and* outsiders).

[23] Marshall, J. dissenting.

detainee's "burden will usually prove insurmountable" as most detention officials believe, erroneously but in good faith, that a specific restriction is necessary for institutional security (*Bell v. Wolfish* 1979, pp. 566).[24]

The Supreme Court's subsequent decision in *Block v. Rutherford* (468 U.S. 576 1984) advances this seemingly unlimited deference to detention officials. The Court explained that a complete prohibition on *contact* visits for any pretrial detainee is not considered punishment as long as the prohibition is a reasonable, nonpunitive response to legitimate security concerns (*Block v. Rutherford* 1984, p. 584). It is not clear from the Supreme Court's holding in *Block* whether a complete ban on all forms of visitation would be constitutional, as the Court referred specifically to "contact visits," which are visits free from any physical barrier between the inmate and the visitor. At least one lower court prior to *Block* found that pretrial detainees must be allowed reasonable visitation privileges,[25] but it is not clear this lower court case would have been decided the same way post-*Block*. In fact, post-*Block* cases have held that pretrial detainees cannot bring cognizable claims for deprivation of visitation privileges because no constitutional right to visitation exists under *Block*.[26] As the right to visitation is not protected for U.S. citizens in the criminal justice system, it is unlikely that a court would find that noncitizens have a constitutional right to visitation absent a congressional statute or state law.

4.2 No Federal Statute Provides for a Legally Protected Right to Visitation, and ICE's Standards Do Little to Support Visitation

No federal statutory right to visitation exists for persons in immigration detention. While some states, such as Texas, have passed laws requiring county jails and or state prisons to provide a certain number of visitation opportunities per week, these local laws do not guarantee an affirmative individual right to visitation. In the absence of a federal statutory right to visitation, ICE has established Performance-

[24] Marshall, J. dissenting.

[25] *E.g.*, *Nicholson v. Choctaw County, Ala.,* 498 F. Supp. 295 (S.D. Ala. 1980).

[26] The author was unable to find any cases holding that a deprivation of visitation privileges resulted in a constitutional violation post-*Block*. *See*, *e.g.*, *Dies v. Fries*, 2011 WL 3155038 (holding that a pretrial detainee denied all visitation and phone privileges did not state a claim as pretrial detainees do not have a constitutional right to visitation); *Hazel v. McElvogue*, 2011 WL 1559231 (2011) (holding that a pretrial detainee denied visits for 2 weeks did not allege any injury from the denial of his visitation privilege, and thus there was no constitutional violation); *Jones v. California Dep't of Corrections*, 2011 WL 902480 (2011) (holding that a pretrial detainee denied visitation with his wife on one occasion did not identify a liberty interest and therefore had failed to state a cognizable claim for a constitutional violation); *Hastings v. May*, 2010 WL 6560269 (2011) (holding that a pretrial detainee denied visitation with his family on one occasion did not state a cognizable claim for a constitutional violation).

Based National Detention Standards (PBNDS) for ICE and ICE-contracted facilities. Different versions of the three sets of PBNDS currently apply to ICE's various detention facilities. Standard 5.7 of the 2011 PBNDS, Standard 32 of the 2008 PBNDS, and the Standard on Visitation of the 2000 PBNDS all encourage community visitation. ICE's most recent standard on visitation, Standard 5.7 of the 2011 PBNDS, ensures that persons in detention will be able to maintain morale and ties through visitation with their families, the community, legal representatives, and consular officials, within the constraints of safety, security, and good order (ICE 2011, para. 5.7). ICE's PBNDS specifically prohibit detention facilities from blocking family and friends from visiting pursuant to the detention facilities' regular visitation policies (ICE 2011, para. 5.7.I.2.c).[27] ICE has begun implementing the 2011 PBNDS across its detention facilities, with priority given to facilities housing the largest populations of persons in immigration detention (ICE 2012).

For three reasons, ICE's PBNDS on visitation do little to incentivize detention facilities to welcome CVPs. First, these standards are neither statutory nor incorporated into regulation (Stannow 2012;[28] see also Women's Refugee Commission 2000). Therefore, they are not legally enforceable and lack disciplinary and financial consequences for facilities that fail to comply (Midwest Coalition for Human Rights & Heartland Alliance 2011, p. 5). In the absence of an enforceable regulation or policy, CVPs report that grave inconsistencies among detention facilities exist. Moreover, due to the lack of uniform application of binding detention standards, community groups hoping to establish a CVP cannot rely on the standards to help them achieve this goal. Second, Standard 5.7 of the 2011 PBNDS gives detention facilities broad discretion with regard to visitation, as visitation may be restricted for "safety, security, and good order" (ICE 2011, para. 5.7). The 2008 and 2000 PBNDS on visitation contain comparable language. Thus, without violating Standard 5.7, detention facilities can refuse to work with groups advocating for increased visitation services by simply saying that an increase in visitors might negatively impact safety or security.

Third, the phrase "constraints of safety, security, and good order" (ICE 2011, para. 5.7) sounds eerily similar to the requirement announced in *Bell v. Wolfish* and *Block v. Rutherford*. In *Bell* and *Block*, the Supreme Court was assessing restrictions within the criminal context, explaining that restrictions in that context must be reasonable, nonpunitive responses to legitimate security concerns (*Block v. Rutherford* 1984, p. 584). It is no coincidence that Standard 5.7 reflects language from cases arising out of the criminal justice setting because the PBNDS are largely derived from American Correctional Association standards (ICE 2011, para. 5.7).[29]

[27] Providing that visits "shall be permitted" by "non-relatives and friends."

[28] Explaining that the 2011 PBNDS are internal agency policies and not enforceable regulations or legally binding because they were drafted without public review or comment.

[29] See section IV, referencing American Correctional Association, *Performance-Based Standards for Adult Local Detention Facilities*, 4th Edition: 4-ALDF: 5B-01, 5B-02, 5B-03, 5B-04, 2A-21.

However, immigration detention is an entirely different context involving persons held in civil custody who are not being charged with a crime. ICE even admitted in 2009 that it's PBNDS as a whole "impose more restrictions and carry more costs than are necessary to effectively manage the majority of the detained population" (Schriro 2009, pp. 2–3).[30] Yet, when ICE revised its PBNDS in 2011, it left the standard on visitation functionally untouched.

4.3 Although No Freestanding Right to Visitation Exists, the First Amendment Places Limits on Government Action to Eliminate CVPs

While there is no freestanding right to visitation, there are limits on the government's ability to eliminate a person's ability to visit someone in immigration detention. Most notably, the U.S. Supreme Court has long held that the government cannot terminate volunteer positions or obstruct volunteer access to inmates in correctional facilities simply because the volunteer exercised his or her First Amendment rights. The very act of denying or depriving a person of a governmental benefit or privilege in retaliation against that person for his/her exercise of his/her First Amendment rights is unconstitutional and violates that person's civil rights (*Perry v. Sindermann,* 408 U.S. 593, 597 1972). There is no need to further inquire if the retaliatory denial or deprivation of governmental benefits or privileges would "chill" a person of ordinary firmness from exercising his/her First Amendment rights. The courts have long held that the retaliatory denying or depriving of someone of governmental benefits or privileges would always chill a person of ordinary firmness from exercising his/her First Amendment rights.[31] Essentially, this means that the government cannot suspend or terminate a CVP or an individual visitor volunteer in retaliation for speaking publically against the detention system, attending a vigil in protest of a detention facility, or engaging in any other activity or speech protected by the First Amendment.

[30] Discussing ICE's 2008 Performance-Based National Detention Standards.

[31] See *Perry v. Sindermann,* 408 US 593,597 (1972); *Hyland v. Wonder,* 972 F.2d 1129, 1134 (9th Cir. 1992); *Andersen v. McCotter,* 100 F.3d 723, 727 (10th Cir. 1996). Other courts have held similarly. *McCollum v. California*, No. C 0403339 CRB, 2006 U.S. Dist. LEXIS 58026, at *22-*23 (N.D.Cal. Aug. 8, 2006) (holding plaintiff had stated First Amendment retaliation claim by alleging that correctional facility had punished his speech by hindering his ability to visit inmates as volunteer chaplain). See also *Mosely v. Bd. of Educ*., 434 F.3d 527, 535 (7th Cir. 2006) (holding that retaliatory acts against volunteer were actionable because "she cannot be muzzled or denied the benefit of participating in public school governance because she engaged in constitutionally protected activity").

5 The Right to Receive Visitors in Immigration Detention Is an Emerging International Norm

Despite both the expansion of U.S. immigration detention and the restrictions on a person's ability to connect to the outside world while in detention, international law defends the right to visitation during immigration detention. This section will analyze international law, underscoring how international conventions and guidelines provide a basis for individuals to claim a right to unimpeded community visitation while in immigration detention. This section is not concerned with the enforceability of international legal standards in the United States. Instead, this section demonstrates that the right to community visitation is an emerging norm (Finnemore and Sikkink 1998)[32] in international law and that the European Union is leading the way toward a recognized right to receive visits in immigration detention.

5.1 The Right to Receive Visits While in Immigration Detention Is an Emerging International Norm

The foundational document of international human rights law, the Universal Declaration of Human Rights (United Nations General Assembly 1948),[33] established that the "human rights of people, regardless of citizenship, was to be the primary subject of international law" (Steinhardt et al. 2009, p. 264). Specifically, the Universal Declaration encouraged freedom of movement (The United Nations General Assembly 1948, art. 13) and protected against cruel, inhumane, and degrading treatment (United Nations General Assembly 1948, art. 5), as well as arbitrary detention (United Nations General Assembly 1948, art. 9). This instrument set forth the first global statement of what many countries now take for granted—the inherent dignity and equality of all human beings. In other words, the Universal Declaration took what was at the time an emerging norm and, over decades, assisted in the fight to solidify human dignity as a recognized international and domestic norm.

Today, the right to receive visits while in any form of government-imposed confinement is an emerging norm enshrined in various international law instruments. According to the Standard Minimum Rules for the Treatment of All

[32] Norm creation is a three-step process requiring the promotion of the new norm often through organized civil disobedience, adoption of the norm by a critical mass—usually one-third—of state actors, and societal internalization of the norm.

[33] The Universal Declaration was passed by the United Nations General Assembly by 48 votes in favor, none opposed, and 8 abstentions. The United States voted in favor. The Universal Declaration "established an aspirational – and gradually a legal – framework for denying the premise that human rights were strictly domestic in the first place" (Steinhardt et al. 2009, p. 264).

Prisoners (United Nations General Assembly 1955),[34] "Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits" (United Nations General Assembly 1955, art. 37; see also arts. 38–39). While this standard applies specifically to "prisoners," the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (United Nations General Assembly 1988) promotes a comparable principle for persons in detention: "communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days" (United Nations General Assembly 1988, princ. 15). If a person is detained or transferred from one detention facility to another, that person also "shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice" (United Nations General Assembly 1988, princ. 16(1)). Additionally, according to Principle 19, persons deprived of their liberty have the right to receive visits and correspond with the outside world (United Nations General Assembly 1988, princ. 19).

Other international law instruments unambiguously apply to migrants and asylum seekers in detention. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (United Nations General Assembly 1990) explains that "migrant workers and members of their families shall enjoy the same rights as nationals to visits by members of their families" while under any form of detention (United Nations General Assembly 1990, art. 17(5)). Guideline 10(iv) of the United Nations High Commissioner for Refugees (UNHCR)'s Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers (UNHCR 1999) emphasizes that asylum seekers in detention should have "the opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel" (UNHCR 1999, art. 10(iv)). Moreover, facilities should be constructed in a way to enable such visits and when "possible such visits should take place in private unless there are compelling reasons to warrant the contrary" (UNHCR 1999, art. 10 (iv)).

5.2 *Visitation Rights in the European Union Provide the United States with a Lesson for Reforming Visitation Policies*

The European Union and member states have begun to protect the right of persons in immigration detention to receive visits. European Union member states currently

[34] These Rules were adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of July 31, 1957, and 2076 (LXII) of May 13, 1977.

place persons in over 220 immigration detention centers with capacity for over 30,000 persons (United States Committee for Refugees and Immigrants 2009). In a study released in September 2013, researchers found that parliamentarians across Europe have a right to visit immigration detention facilities as part of their mandate as national parliamentarians (Committee on Migration, Refugees and Displaced Persons of the Parliamentary Assembly 2013, p. 12). More specifically, in 10 of the 36 Council of Europe member states studied, this right is "either expressed (Belgium, Italy, France, Lithuania, and Poland) or implicit in law or regulations (such as Austria and Norway) or a right that simply derives from the general status of members of parliament (Hungry, Moldova, and Portugal)" (Committee on Migration, Refugees and Displaced Persons of the Parliamentary Assembly 2013, p. 20). Despite this right for government officials, approximately 80 % of asylum seekers in the European Union's immigration detention facilities do not receive any visits from family and friends, and over half do not have any family or friends in the host country (Jesuit Refugee Service-Europe 2010, p. 4).

Therefore, the European Union has taken steps to create a framework for persons in immigration detention to receive visits from nongovernmental organizations. In 2008, the European Parliament and the Council of the European Union established the Return Directive, which is the first binding (Treaty on the Functioning of the European Union)[35] supranational document providing for a maximum length for preremoval detention in European Union member states (Return Directive 2008). It also dictates, "Relevant and competent national, international and nongovernmental organizations and bodies shall have the possibility to visit detention facilities" (Return Directive 2008, article 16 paragraph 4). The purpose of these visits is not explicit in the Return Directive, but as the Council of Europe's Committee for the Protection of Torture explains, "immigration detainees should be entitled to maintain contact with the outside world during their detention, and in particular to have access to a telephone and to receive visits from relatives and representatives of relevant organizations" (The Council of Europe 2002, p. 55).

Within this framework, some European Union member states, such as Finland and Cyprus, have passed specific laws to create a system of access to detention facilities for nongovernmental organizations, families, and friends (European Commission 2013). Other member states are still trying to conform their domestic laws to the Return Directive; for example, although Italy and Estonia provide nongovernmental organizations in theory with the possibility of visiting detention facilities, these countries—like the United States—still require the organizations to request admittance to visit detention facilities from the local authorities (European Commission 2013).

In the United Kingdom, while there is no statutory right to receive visits from nongovernmental organizations and the community, the government does offer additional incentives to detention facilities to provide persons in these facilities

[35] Article 288 states that a directive is binding upon those to whom it is addressed. It is binding in its entirety and so may not be applied incompletely, selectively, or partially.

with family and community visitation. Within the United Kingdom, a national community-based immigration detention visitation network, Association of Visitors to Immigration Detainees (AVID), has emerged over the last two decades. AVID has served as an organizational platform from and through which immigrant rights advocates have promoted visitation and have used their expertise in this area to change the behavior of detention facilities (Finnemore and Sikkink 1998, p. 899).[36] For example, AVID worked with the U.K.'s Detention Services to include a clause in the Detention Services' Operating Standards Manual for Immigration Service Removal Centres stipulating, "The Centre must maintain up-to-date lists of local befriending groups and contact details of the Association of Visitors to Immigration Detainees (AVID) and ensure that detainees are aware of their services" (United Kingdom Detention Services 2005, p. 21). While the Operating Standards, like ICE's PBNDS, are not legally enforceable, they have provided AVID with a means to advocate expanded visitation.

In fact, communities in the United Kingdom have not been prevented from starting CVPs at U.K. detention facilities since the creation of an Operation Standard that specifically addresses AVID members.[37] The standard, combined with AVID's growth as a national organization, helped CVPs expand throughout the United Kingdom. Today, an AVID-affiliated visitation group exists in every U.K. long-term detention facility, and the U.K.'s prison inspectorate (HMIP) often commends the visitor groups for their welfare and befriending support. "So for a centre to deny access to an AVID-affiliated group," says AVID's Director Ali McGinley, "would certainly reflect poorly on their inspection reports." For example, McGinley explains that when AVID was helping to develop a CVP at one of the U.K.'s newer detention centers in Lincolnshire, "the staff there were very keen to meet AVID and to ensure a voluntary group was set up, as they knew that all other centers have these groups and that they are beneficial to detainees."

However, this does not mean that visitation groups operate seamlessly in U.K. detention facilities. "I wouldn't say there is a blanket acceptance," says McGinley, "but not resistance either. Perhaps they view us as a critical friend." Some U.K. facilities place restrictions on visitation groups, while other groups encounter difficulties with providing different services at a particular facility. In these cases, AVID intervenes on behalf of the local visitation group and provides a "national voice"[38] to compare and contrast the situation in a particular facility with

[36] Explaining that all "norm entrepreneurs" at this stage need some form of organizational platform from and through which they may promote their norms.

[37] Email from Ali McGinley, Director, Association of Visitors to Immigration Detainees (AVID), to Christina Fialho (Mar. 22, 2012, 10:32 PST) (all information contained in this article regarding AVID was provided through this email).

[38] By "national voice," McGinley does not necessarily mean publicity and press but, instead, a unified voice advocating for those persons in detention who have no political voice. It is noteworthy that AVID does engage in speech against the detention system and even submitted written evidence for the first-ever Parliamentary Inquiry into the use of Immigration Detention in the U.K., advocating for a moratorium on detention expansion, increased transparency, expanded internet access, statutory detention center rules, and other recommendations.

the circumstances at other facilities. AVID's ability to provide a "national voice," says McGinley, "is immensely helpful for individual groups in those circumstances." McGinley continues, "I think there is an understanding that AVID encourages good practice, that all volunteers are properly trained, and that we've been around for so long and have such a long history of supporting detainees, that it would be *very* difficult to come up with a good solid reason to resist a new group completely."

Although the right to receive community visits while in immigration detention is not a norm that the general public has internalized (Finnemore and Sikkink 1998, p. 895)[39] and accepts without hesitation in the United Kingdom, AVID believes that the right to visitation is an emerging norm, especially given the fact that some European Union members states have already codified the right to visitation.

6 A Role for Everyone: Proposals for Expanding Community Visitation in U.S. Immigration Detention

6.1 Congress Should Pass a New Federal Statute That Provides Families and Community Groups with Reasonable Access to Visiting Persons in Immigration Detention

In 2008, the Illinois House and Senate unanimously passed a forward-thinking bill, H.B. 4613. The law created the Access to Religious Ministry Act of 2008 and provides "that any county jail in the State of Illinois for which an intergovernmental agreement has been entered into with United States Immigration and Customs Enforcement (ICE) for detention of immigration related detainees shall be required to provide to religious workers reasonable access to such jail." While this law assisted the Catholic Sisters of Mercy to establish a CVP at McHenry County Jail in Illinois, the law would not have been as useful to a nonreligious group. Additionally, this law does not apply to detention facilities run by private corporations, such as Corrections Corporation of America or GEO Group. Moreover, this law only expands community visitation access within one state, even though immigration detention is based on federal statutes.[40] To ensure that persons detained by ICE in one state are treated equally to persons detained in another state, Congress should enact a law similar to the Illinois state law.

[39] Explaining that the third stage of norm creation requires internalization, where "norms acquire a taken-for-granted quality and are no longer a matter of broad public debate."

[40] *See* 8 U.S.C. § 1225(b) (authorizing detention of aliens seeking admission), 8 U.S.C. § 1226 (authorizing detention of aliens pending a determination of removability), and 8 U.S.C. § 1231 (authorizing detention of aliens with final orders of removal).

In particular, Congress should pass a law that requires all government or private correctional facilities in the United States for which an intergovernmental service agreement or contract has been entered into with U.S. Immigration and Customs Enforcement (ICE) or other relevant government agency for detention of immigration-related detainees shall be required to provide to family and community groups reasonable access to weekly in-person visitation. Reasonable access should be clearly defined with input from relevant stakeholders.

This congressional law would ensure that persons detained in one state would be afforded reasonably similar access to the outside world—especially to their family and their community—as any other person detained in another state by ICE. Additionally, this law would encourage volunteers from communities across the country to establish CVPs without the burden of having to advocate for years for access to their local detention facility. This law also would take a cue from international human rights law, which recognizes the right to receive visits while in immigration detention (see *supra* Sect. 5.1). Furthermore, this law would assist ICE in ensuring that its Standard 5.7 on visitation is upheld at all of its contracted facilities while providing detention facilities with an incentive to capitalize on the goodwill of community volunteers to expand services to persons in immigration detention.

6.2 ICE Should Update Standard 5.7 to Ensure That Persons in Immigration Detention Are Aware of CVPs

Short of congressional action, ICE should amend its Standard 5.7 on visitation to include the following language: "Facilities are encouraged to maintain up-to-date contact lists of local community-based visitation groups and contact details of Community Initiatives for Visiting Immigrants in Confinement (CIVIC), grant reasonable access to the facilities to these groups, and ensure that detainees are aware of their services." This addition to Standard 5.7 would begin to remedy some of the problems inherent in the current provision of Standard 5.7 (see *supra* Sect. 4.2). First, while it would remain true that holding a detention facility accountable to Standard 5.7 would be almost impossible as it is not legally enforceable, visitation groups would be able to exert other pressures on the facilities to comply. For example, similar to AVID's approach, U.S.-based CVPs would be able to help ICE push for compliance with Standard 5.7 by encouraging facilities to "emulate" the facilities that have CVPs "praise" the ones that conform their behavior to the Standard and "ridicule" others for their nonconformist behavior (Finnemore and Sikkink 1998, p. 902).[41] Second, this language in the Standard would guide detention facilities and ICE Field Offices in approving CVPs.

[41] The cycle for norm creation is a three-step process requiring the promotion of the new norm, adoption of the norm by a critical mass—usually one-third—of state actors, and societal internalization of the norm.

As a practical matter, in order for this addition to Standard 5.7 to have any real effect within detention facilities, ICE should provide CIVIC and its affiliated CVPs with an ICE pro bono telephone extension at all 250 immigration detention facilities. As telephone costs are expensive in immigration detention (Bernstein 2010), those persons in detention who receive the list of local community-based visitation groups may not be able to afford to call the visitation groups. A few of ICE's Field Offices across the country already have provided pro bono extensions to CIVIC-affiliated CVPs. The advantage to ICE is twofold: first, as the extension will be run by CIVIC, the operation of the telephone line will not cost ICE a dime to operate; second, persons in immigration detention will likely use it as it is operated by a nongovernmental group.

CVPs recognize that amending the Standards may not be possible in the foreseeable future as they were recently updated in 2011. Therefore, in the meantime, ICE's intergovernmental service agreements or contracts should require the facility holding ICE detainees to maintain up-to-date contact lists of local community-based visitation groups, grant reasonable access to the facilities to these groups, and ensure that detainees are aware of their services.

6.3 ICE Should Release a Memo Explaining the Benefits of CVPs

While Congress should codify a federal statute as outlined above and ICE should amend Standard 5.7 as outlined above, CVPs recognize that there are many competing political forces that might prevent these results in the short term. Thus, ICE should release a memo explaining the benefits of CVPs. While an ICE memo will not create any right to visitation enforceable at law by any party, a memo on point will provide detention facilities and ICE Field Offices with guidance on ICE's national stance on CVPs. The memo, therefore, will create an avenue through which community groups may advocate the creation of a CVP at their local detention facility.

7 Conclusion

If the U.S. government, particularly ICE, is serious about promoting accountability and improving a deeply flawed immigration detention system, it should make improving access to family and the community a top priority. It is time for the United States to recognize visitation as a right for all people locked up. It is time to let us in.

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References

ACLU (2013) Press release: groups call on ICE to reinstate community-based visitation programs. American Civil Liberties Union of Southern California. http://www.aclusocal.org/press-release-groups-call-on-ice-to-reinstate-community-based-visitation-programs/. Accessed 29 Jan 2014

Amnesty International (2009) Jailed without justice. http://www.amnestyusa.org/pdfs/JailedWithoutJustice.pdf. Accessed 8 Aug 2014

Bell v. Wolfish, 441 U.S. 520 (1979)

Bernstein N (2010) Volunteers report on treatment of immigrant detainees. N.Y. Times, 29 Apr 2010, at A26

Block v. Rutherford, 468 U.S. 576 (1984)

CIVIC (2014) Wednesday, August 13, 2014 – Congressional Testimony. http://blog.endisolation.org/wp-content/uploads/2014/08/CIVIC_Congressional_Testimony_Final_reduced2.pdf. Accessed 2 Sept 2014

Committee on Migration, Refugees and Displaced Persons of the Parliamentary Assembly (2013) Visiting immigration detention facilities: a guide for parliamentarians. http://www.apt.ch/content/files_res/guide-for-parliamentarians-visiting-detention-centres-en.pdf. Accessed 6 Feb 2014

Council of Europe (2002) The CPT Standards – 'Substantive' sections of the CPT's General Reports [CPT/Inf/E (2002) 1, Rev. 2010]

Detention Watch Network, Visiting Immigrants in U.S. Detention Facilities, Available at http://fcnl.org/assets/detention_visitation_manual.pdf. Accessed 2 Sept 2014

DHS (2013) Annual Report, Immigration Enforcement Actions: 2012. Department of Homeland Security. http://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2012_1.pdf. Accessed 8 Aug 2014

Eichelberger E (2014) Watchdog: feds are muzzling us for reporting alleged immigrant detainee sex abuse. Mother Jones, 19 March 2014. http://www.motherjones.com/politics/2014/03/ice-sexual-abuse-immigrant-detention-oversight. Accessed 2 Sept 2014

European Commission (2013) Ad hoc query on access to detention centres. http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/ad-hoc-queries/protection/483_emn_ad-hoc_query_on_detention_of_asylum_seekerswider_dissemination_en.pdf. Accessed 6 Feb 2014

Finnemore M, Sikkink K (1998) International norm dynamics and political change. In the special issue international organization at fifty: exploration and contestation in the study of world politics. Int Organ 52(4):887–917

Flynn M (2011) Immigration Detention and Proportionality 7. Global Detention Project, Working Paper No. 4

Fowler L (2013) ICE visitation ban lifted at detention centers. San Bernardino Sun, 11 September 2013. http://www.endisolation.org/wp-content/uploads/2013/03/ICE_visitation_ban_lifted_at_detention_centers.pdf. Accessed 29 Jan 2014

Hendricks T (2009) U.S. citizens wrongly detained, deported by ICE. San Francisco Chronicle, July 27, 2009, at A-1

ICE (2007) Letter to Michael Flynn under the Freedom of Information Act (FOIA) (7 Nov 7, 2007). U.S. Immigration and Customs Enforcement. http://www.globaldetentionproject.

org/fileadmin/docs/US_Department_of_Homeland_Security_2007_1_.pdf. Accessed 29 Jan 2014
ICE (2011) Performance-Based National Detention Standards. U.S. Immigration and Customs Enforcement. http://www.ice.gov/detention-standards/2011/. Accessed 29 Jan 2014
ICE (2012) Fact Sheet: ICE Detention Standards. U.S. Immigration and Customs Enforcement. http://www.ice.gov/news/library/factsheets/facilities-pbnds.htm. Accessed 29 Jan 2014
Jesuit Refugee Service-Europe (2010) Becoming vulnerable in detention. http://www.jrseurope.org/publications/JRS-Europe_Becoming%20Vulnerable%20In%20Detention_June%202010_PUBLIC_updated%20on%2012July10.pdf. Accessed 6 Feb 2014
Lee E (2013) Immigrant detention operation shuts down at Monmouth County Jail. The Star-Ledger, 29 April 2013. http://www.nj.com/monmouth/index.ssf/2013/04/monmouth_county_jail_shuts_down_immigrant_dention_operations.html. Accessed 29 Jan 2014
Linthicum K (2013) U.S. suspends visitation programs at 3 immigrant facilities in the Southland. Los Angeles Times, 20 Aug 2013. http://articles.latimes.com/2013/aug/20/local/la-me-immigrant-detention-20130820. Accessed 29 Jan 2014
Loyo R, Corrado C (2010) Locked up but not forgotten 7–8. New York University School of Law Immigrant Rights Clinic. https://afsc.org/resource/locked-not-forgotten. Accessed 29 Jan 2014
Midwest Coalition for Human Rights & Heartland Alliance (2011) Not too late for reform. http://www.immigrantjustice.org/publications/report-not-too-late-reform. Accessed 29 2014
Palmer J (2010) Constitutional rights of prisoners. Elsevier. https://www.elsevier.com/books/constitutional-rights-of-prisoners/palmer/978-1-59345-503-3
Preston J (2011) Immigration crackdown also snares Americans, N.Y. Times, 14 Dec 2011, at A-20
Schriro D (2009) Immigration detention overview and recommendations. U.S. Immigration and Customs Enforcement, United States. http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf. Accessed 29 Jan 2014
Stannow L (2012), When good isn't enough. Huffington Post, 6 March 2012
Steinhardt RG et al (2009) International human rights Lawyering: cases and materials. West Academic Publishing. http://www.amazon.com/International-Human-Rights-Lawyering-Materials/dp/031426020X
United Kingdom Detention Services (2005) Detention Services Operating Standards Manual for Immigration Service Removal Centres, Communications Standard #22. http://www.ukba.homeoffice.gov.uk/sitecontent/documents/managingourborders/immigrationremovalcentres/operatingstandards/operatingstandards_manual.pdf?view=Binary. Accessed 6 Feb 2014
UNHCR (1999) Revised guidelines on applicable criteria and standards relating to the Detention of Asylum-Seekers. United Nations High Commissioner for Refugees. http://www.unhcr.org/refworld/docid/3c2b3f844.html. Accessed 21 Jan 2012
United Nations General Assembly (1948) Universal Declaration of Human Rights. G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (10 Dec 1948)
United Nations General Assembly (1955) United Nations, Standard Minimum Rules for the Treatment of Prisoners. http://www.unhcr.org/refworld/docid/3ae6b36e8.html. Accessed 21 Jan 2012
United Nations General Assembly (1988) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. G.A. Res. 43/173 A. U.N. Doc A/RES/23/173 (9 Dec 1988)
United Nations General Assembly (1990) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. G.A. Res. 45/158 A. U.N. Doc A/RES/45/158 (18 Dec 1990)
United States Committee for Refugees and Immigrants (2009) World Refugee Survey 2009 – Europe 17 Jun 2009. http://www.unhcr.org/refworld/country,,USCRI,,CYP,,4a40d2a6c,0.html. Accessed 5 Feb 2014

Visitations resume in California immigration detention (2013) Associated Press, 11 Sep 2013. http://www.endisolation.org/wp-content/uploads/2013/03/Visitation_Resumed_APArticle.pdf. Accessed 29 Jan 2014

Women's Refugee Commission (2000) Behind locked doors. Abuse of refugee women at the Krome Detention Center. Women's Refugee Commission, New York