

SUNDAY JUL 25, 2010 20:02 ET

Report details plight of mentally ill detainees

BY DAVID CRARY, ASSOCIATED PRESS

Thousands of mentally disabled immigrants are entangled in deportation proceedings each year with little or no legal help, leaving them distraught, defenseless and detained as their fates are decided.

Their plight is detailed in a report issued Sunday by Human Rights Watch and the American Civil Liberties Union, who exhort federal authorities to do better.

Shortcomings outlined by the two groups include no right to appointed counsel, inflexible detention policies, insufficient guidance for judges on handling people with mental disabilities, and inadequately coordinated services to aid detainees while in custody.

"No one knows what to do with detainees with mental disabilities, so every part of the immigration system has abdicated responsibility," said Sarah Mehta, the report's lead author. "The result is people languishing in detention for years while their legal files -- and their lives -- are transferred around or put on indefinite hold."

The report, "Deportation by Default," documents cases of non-citizens who could not understand questions, were delusional, couldn't tell the date or time, and didn't understand the concept of deportation -- for example, saying they wanted to be deported to New York.

"Someone who doesn't know their own name or what country they're from is going through some of the most complicated legal proceedings in the United States with no right to assistance, even when everyone in the courtroom knows they need it," Mehta said.

The federal agencies involved in the deportation system are well aware of many of the problems cited in the report, and Mehta said she has been cautiously encouraged by some recent steps to better handle people with mental disabilities.

For example, the Justice Department's Executive Office of Immigration Review expanded its guidebook for immigration judges this year to include a section on mental health issues, is producing a training video covering similar ground, and recently created a new post of "assistant chief immigration judge for vulnerable populations."

U.S. Immigration and Customs Enforcement, the agency which arrests and detains people facing deportation, will host a national forum in September seeking input from mental health experts on ways to improve its practices.

"We all know it's a challenging issue," said Phyllis Coven, acting director of ICE's office of detention policy and planning.

She said her agency is taking preliminary steps to better identify mentally disabled people from the outset and ensure they are treated appropriately. Alternatives to detention would be sought for those who pose no public safety threat, she said.

The new report urges Congress to require appointment of lawyers for all people with mental disabilities in immigration courts. It recommends mandatory training for immigration judges to recognize mental disabilities, and calls for repeal of a regulation allowing a mentally disabled detainee to be represented in court by the warden of the detention facility.

Coven, in a telephone interview, said many of the recommendations were "well-placed."

"It would be in the interest of all parties to have these individuals, if they need to be in detention at all, to be assisted in their proceedings in immigration court," Coven said.

Though the vast majority of cases involve non-citizens, Human Rights Watch said some U.S. citizens with mental disabilities have ended up in ICE custody and even have been deported because they were unable to present their claims effectively.

In the most recent such case cited in the report, Mark Lyttle -- a North Carolina native diagnosed with bipolar disorder and developmental disabilities -- was deported to Mexico in 2008, even though he spoke no Spanish.

In the 2009 fiscal year, nearly 392,000 cases were processed in U.S. immigration courts -- and Mehta said a conservative estimate is that 15 percent involved people with mental disabilities.

Some were able to hire lawyers, others received pro bono representation -- but there is no automatic right to court-appointed counsel, and most were not represented, the report said.

In March, public-interest legal groups in California won the release of two immigrants who had been held more than four years in federal detention centers after judges put their deportation cases on hold due to questions about their mental competence. No lawyers had been appointed to contest the detention.

The legal groups said the cases of Guillermo Gomez Sanchez, 48, and Jose Antonio Franco Gonzalez, 29, illustrated that federal authorities were able to hold mentally ill immigrants for long periods without having to justify the decision to a judge.

"The federal government knows about this problem," said Ahilan Arulanantham, director of immigrant rights at the American Civil Liberties Union of Southern California. "But we haven't seen actual implemented steps to make any change to improve the system for dealing with it."

The groups filing the lawsuits have called on the government to identify detainees with mental competency issues and hold hearings to determine if their detention is necessary.

The report says many mentally disabled immigrants shouldn't be detained in the first place, and would be better off staying with their families or in treatment programs.

Allison Kent, an attorney with the Florida Immigrant Advocacy Center, said one of her clients fit that category -- a 36-year-old native of the Dominican Republic who's been a legal U.S. resident since childhood and has been diagnosed with paranoid schizophrenia.

Kent said the man was detained by immigration authorities in August 2009 -- initially with no legal representation -- and went more than two months without his proper medications. Eventually, Kent was recruited to be his lawyer, and he was released in January to the same residential treatment program he'd attended for years prior to detention.

Kent arranged a three-way phone interview with the man, on condition he be identified only by his first name, Luis, to protect his privacy.

"When I don't have the medications, I have extreme paranoia. I hallucinate, so I can't think straight," said Luis. "I have all my thoughts running in my head at the same time."

At one stage, he said, he was so worried how he might react without his medication that he asked guards to place him in solitary confinement until he could see a psychiatrist.

"From the correctional officers to the courts, I knew people didn't understand what it was to be confused, to not have a train of thought about what's going on," Luis said.

Online: <http://www.hrw.org/>