

ImmigrationTALK: *Immigration Detention & Rights while in Detention*

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On New Years Eve, President Obama signed the National Defense Authorization Act (NDAA), allowing indefinite detention to be codified into law. While President Obama issued a signing statement saying he had “serious reservations” about the provisions, the statement only applies to how his administration would use it and would not affect how the law is interpreted by subsequent administrations.

Legalizing indefinite detention is troubling in light of the many claims of abuse and unlawful detention filed against the United States. Many individuals who are detained in immigration detention facilities do not know their rights and are often misinformed by immigration officers and facility workers. Whether you are a U.S. citizen, permanent resident or undocumented immigrant, you have the right to be treated with humanity, respect and dignity while in detention. Detainees do not forgo their human rights while in detention.

Overview of Immigration Detention

Immigration detention in the United States has reached crisis proportions. Over the last 15 years, the detention system more than quintupled in size, growing from less than 6,300 beds in 1996 to the current capacity of 33,400 beds. In 2010, the Department of Homeland Security (DHS) held 363,000 immigrants in detention in over 250 facilities across the country. Among those locked up for months or years are survivors of torture, asylum seekers, victims of trafficking, families with small children, the elderly, individuals with serious medical and mental health conditions, and lawful permanent residents with longstanding family and community ties who are facing deportation because of old or minor crimes.

Scores of immigrants are detained without basic due process. Immigration detainees have no right to a lawyer, and an estimated 84% of detainees do not have attorneys. Nor are immigration detainees guaranteed a prompt bond hearing to determine whether their detention is even justified in the first place. In some cases, immigrants convicted of minor crimes are subjected to mandatory detention during their immigration cases and categorically denied bond. The sad result is that thousands of immigrants are needlessly incarcerated, often for months or even years, without ever getting a day in court to determine whether they should even be detained in the first place.

My Rights While in Detention

Although an immigrant has no right to an attorney, an immigrant can be represented by an attorney but will have to pay legal fees. There are many non-profit organizations that will represent immigrants in detention on a pro-bono (free) basis. Below are some basic rights that immigrants have while in detention:

1. You may have the right to a judicial hearing (appear in front of a judge) – do not waive your right to a judicial hearing. Some officers encourage you to sign and waive your right to a judicial hearing by claiming you have no relief. Choose to appear in front of an immigrant judge and ask for bond and any relief that may be available.
2. If you are scheduled for a judicial hearing, ask the judge for a continuance in your case so you can hire an attorney. Also, ask the judge to set a bond hearing, so the immigration court can consider your release on a bond.

3. Do not sign any paperwork given to you by an immigration officer if you do not understand the legal ramifications or language in the document. You always have the right to refuse to sign and instead of signing your name, sign “refuse to sign”.
4. The immigration officer should conduct an interview and create a “Record of Proceeding”. Please review this document carefully before signing. In the past, immigration officers would insert false statements and an immigrant’s failure to review the document still makes the document inadmissible in court.
5. The immigration officer should serve you with a “Notice to Appear” that will allege the charges against you and the grounds that the government seeks removal/deportation.
6. Write down the name of all the immigration officers you speak with.
7. You have the right to receive money from family or friends. Ask the immigration officer or facility worker for instructions on receiving money.
8. You have the right to receive “special meals” if you are vegetarian or have any other special diet.
9. You have the right to call your consulate officer.
10. You have the right to visit with your attorney and family/friends once the proper procedures are followed.

If you would like to file a complaint of misconduct of abuse by an immigration officer or detention facility, then call 1-800-323-8603, or file DETAINEE GRIEVANCE FORM (Form I-847) or send an email to DHSOIGHOTLINE@dhs.gov.

If you have any questions or comments, please email: Gail@Go2Lawyer.com.