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ICE Is Turning to Border Patrol to Detain Migrants, Raising Alarms

Faced with an onslaught of immigrants in custody, Immigration and Customs Enforcement has had to turn to Border Patrol to help detain people. Attorneys have begun raising alarms in court that Border Patrol is not up to the task, and that the conditions detainees are being held in might violate the U.S. Constitution.

[Maya Srikrishnan](#)

August 16, 2018





A Border Patrol agent patrols the primary fence separating the United States and Mexico. / Photo by Adriana Heldiz

Faced with an onslaught of immigrants in custody under President Donald Trump’s zero tolerance policy, Immigration and Customs Enforcement has had to turn to Border Patrol to help detain people as they await criminal and immigration proceedings.

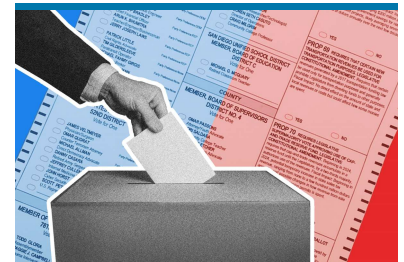
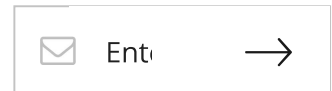
Criminal defense attorneys have begun raising alarms in court that Border Patrol is not up to the task, and that the conditions detainees are being held in might violate the U.S. Constitution.

Immigrants who have been released from criminal custody on bond and are awaiting trial are typically held in ICE custody at the Otay Mesa Detention Center, its San Diego County detention facility.

But the large number of people coming into ICE custody each day has required the agency to turn to Border Patrol as it waits for local beds to open up. ICE officials estimate that more than 100 people a week are being released into their custody either on bond, awaiting trial or after they’ve served

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their sentence, awaiting immigration proceedings – and even up to 40 or 50 on some days.

ICE officials said their staging area, where the agency temporarily holds detainees, isn't authorized to hold people for more than 12 hours, so they've turned to Border Patrol for help while they wait for open beds in Otay Mesa.

Border Patrol works to detect and prevent the unauthorized entry of people and illicit goods into the United States within 100 miles of the border. Border Patrol returns some people it catches entering without permission and sometimes keeps people in its custody for a night or so before transferring them to other agencies. People generally don't spend a long time in Border Patrol custody.

ICE, on the other hand, is charged with enforcing immigration laws in the interior of the country. Its broad array of functions includes arresting unauthorized immigrants and putting them into removal proceedings, managing immigrant detention and deporting people.

ICE has been expanding its immigrant detention capacity for years. The facility in Otay, for example, was specifically built for immigrant detention, with immigration courtrooms included. Attorneys are raising concerns over immigrants increasingly being held in Border Patrol custody under zero tolerance. Those facilities, they say, are not meant to detain people for long periods of time.

ICE officials said that for those who have already served their time for the criminal conviction but who still have to go through the immigration system – either to process an asylum claim, or for removal proceedings – the agency looks for detention beds outside of the county to prioritize bed



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space for those waiting for their criminal proceedings in the Southern District of California.

Last week, two defendants charged in federal court with misdemeanors for illegally entering the country, Dawachhiring Sherpa and Tenjing Sherpa, had a status hearing to set their trials. Their attorneys, who said they hadn't been able to contact them, were alarmed to see their clients still in the same clothes they had been arrested in.

The two individuals had paid bond and were supposed to be released into ICE custody. The clothes made their attorneys suspect they were actually in Border Patrol custody.

"Your honor, they are appearing in the same clothes that they were wearing at the date of their initial hearing on Aug. 1," said one of their attorneys, Leila Morgan of the Federal Defenders of San Diego Inc., which handles most of the pro-bono federal criminal defense cases in San Diego. "Because they've been in ICE custody since that time, I'm concerned – or they're supposed to be in ICE custody and I think they're actually in Border Patrol custody. I'm concerned they haven't had access to personal hygiene and we haven't had access to them."

"Why have you not had access?" asked Magistrate Judge Clinton Averitte.

"We didn't know where they were, because they're not showing up on the ICE locator," Morgan said.

Kimberley Trimble, another attorney, said that she had in her notes that the defendant she was representing that day was being held in Barracks 3, a Border Patrol facility in Chula Vista

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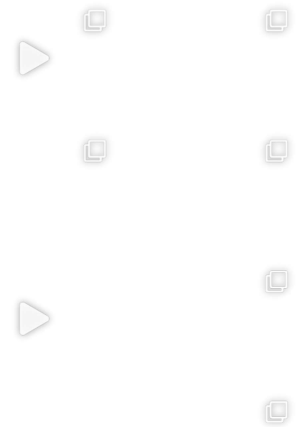
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– the prosecutor had sent the information to another attorney working on Dawachhiring Sherpa’s case.



“Part of our concern is that from communications with clients who have been held at Border Patrol stations before their appearances, they are not provided with hygiene or proper areas to sleep, and I am concerned at this point that this could be violating the 8th Amendment and be inappropriate conditions of confinement that are tantamount to punishment,” Trimble said.



A Border Patrol spokeswoman said the agency does not comment on pending litigation.

“It is important to remember that U.S. Border Patrol stations are short term hold room and processing facilities, not prisons, jails, or long-term detention facilities designed for extended detention,” according to a document laying [out national standards](#) for transportation and detention for U.S. Customs and Border Protection, under which Border Patrol is included. “Fully processed detainees in our custody are awaiting intake windows and custody transfers to other federal agencies and facilities.”



The document details the standards for medical care availability, clothing changes and the availability of showers and hygiene products, like soap, shampoo and toothbrushes in Border Patrol and Customs and Border Protection facilities that temporarily hold people.



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“Every person in the care of the U.S. Border Patrol is provided with food, medical care, and the ability to clean themselves after. We have proper drinking water, restrooms, and hygiene items, blankets, a change of clothing and sleeping mats in some cases.”

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Yet defense attorneys have raised issues of conditions in Border Patrol stations in court many times. Declarations from migrants held in them describe [more than a dozen people being held in a single cell](#), rooms that are cold with the lights on 24 hours a day, and inadequate access to food, hygiene – like showers, toothbrushes or clean clothes – and medical care.

In Arizona, there is currently [pending litigation](#) over detainment conditions in Border Patrol facilities, which echo the descriptions of the facilities coming out in San Diego’s federal courts: cold temperatures; lack of bedding, hygiene and medical care; people being held virtually incommunicado for days, unable to call attorneys or family members to notify them of their location.

Averitte agreed to let the attorneys get more information from their clients in court, while there was a Nepali interpreter on the line for the hearing.

Tenjing Sherpa told the court through the interpreter that he had been given access to a shower but had not been given a change of clothes or access to an attorney.

“No, nobody told us we could even make a call,” Sherpa said.

Trimble seized on that comment.

“I raise that issue with the court as I believe that violates the 6th Amendment and the ability to properly communicate with counsel during proceedings,” Trimble said.

“Whether it reached to the level of the 6th Amendment or not, you do need to have reasonable access to your client,” Averitte said. “You do need to know where they are so you

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can find them and make arrangements to visit them. You need to know whether or not there’s going to be interpreter facilities available where they are being held. I don’t know if this is an issue with respect to these two individuals or if it’s a recurring issue or not. From what I’m seeing, there may be a problem.”

Tags:

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