

## **PRESS RELEASE**

For Immediate Release  
September 1, 2009

**Contact:** Nancy Morawetz  
nancy.morawetz@nyu.edu  
(212) 998 – 6451

### **CITY SETTLES RIKERS LAWSUIT ALLEGING VIOLATIONS OF IMMIGRANT'S RIGHTS**

*NYC Pays \$145,000 to Immigrant Alleging Unlawful Detention by Rikers Officials Who Held Inmate for Federal Immigration Authorities*

*New York, New York* –New York City has paid \$145,000 to plaintiff Cecil Harvey in settlement of a lawsuit alleging constitutional violations in the Department of Correction's handling of the detention and transfer of immigrant inmates at Rikers Island. Mr. Harvey sued the City for illegally detaining him for federal immigration authorities for over a month after a New York City criminal court judge ordered him released, setting in motion of chain of events that eventually landed him back in jail and ultimately resulted in his deportation from the U.S., where he had lived as a lawful permanent resident for over 35 years. The case has significant implications for cities across the nation that are considering importing the Rikers model of cooperation with immigration authorities into their own jails.

"Unfortunately, Mr. Harvey's case is far from an isolated incident," said Professor Peter L. Markowitz, Director of the Immigration Justice Clinic at Benjamin N. Cardozo School of Law. "The New York City Department of Correction has, for years, held immigrant detainees well beyond the conclusion of their criminal cases, in clear violation of law. Sadly, this is part of a larger pattern of illegal treatment of immigrant detainees in New York City custody – a pattern that has contributed to the unnecessary deportation of countless New Yorkers whose families are left behind."

Mr. Harvey's case began in 2003, when he was arrested on a minor drug possession charge and placed in DOC custody at Rikers. A New York City judge ordered him released on his own recognizance pending trial on the criminal charges. Instead of releasing him, however, DOC officials continued to hold him at Rikers under an immigration detainer issued by Immigration and Customs Enforcement (ICE), the federal agency charged with enforcing immigration laws.

Federal regulations allow jails to hold immigrants at ICE's request for no more than 48 hours so that they can be taken into federal custody to face deportation proceedings. In Mr. Harvey's case, however, Rikers detained him for a full 35 days beyond the time permitted under federal law. To make matters worse, DOC finally transferred him to ICE custody on the very day that he was supposed to appear in court – causing the City court to issue a bench warrant for his arrest for failing to appear.

Mr. Harvey spent the next three years in ICE detention, fighting deportation. In 2006 he finally won release from detention, but just a few months later he was arrested on the outstanding bench warrant that was caused by his transfer on his court date. After more than three months at Rikers, Mr. Harvey was eventually able to prove that he had been in ICE custody during the

initial court date, and the judge dismissed all criminal charges. By then, however, ICE had lodged yet another detainer to prevent his release, and DOC once again held Mr. Harvey beyond the 48-hours permitted. He was eventually transferred back to ICE – this time to a detention facility in Alabama, thousands of miles from his U.S. citizen wife, daughters, and young grandsons - and in 2007 he was deported to his native Barbados.

In his lawsuit, Mr. Harvey alleged that due to his unlawful imprisonment, he suffered aggravation of his medical condition, was separated from his family, and was unable to appear in his immigration case before the Second Circuit Court of Appeals, losing a crucial opportunity to argue against his deportation.

Mr. Harvey represented himself in the litigation until the NYU Law School Immigrant Rights Clinic agreed to take on the case. Students Laura Trice and Alisa Wellek represented Mr. Harvey, supervised by Nancy Morawetz, professor of clinical law at NYU's Immigrant Rights Clinic.

“We took the case because it related to a systemic problem at Rikers. For years we had heard about Rikers not releasing people who were subject to detainers within the required 48-hour period. We were impressed with Mr. Harvey's perseverance in challenging this practice without a lawyer. We sought to obtain compensation for him for the many months of unlawful detention he suffered as a result of Riker's actions,” explained Morawetz.

Mr. Harvey said that “it is illegal for the New York City Department of Corrections and the City of New York to violate the Constitutional Rights of immigrants by holding them without authority.” Mr. Harvey noted that in his case, he was even prevented from addressing the Court of Appeals at oral argument because he was illegally detained. Mr. Harvey called for “outlawing the conspiracy between New York City and ICE.”

Since its creation in 2003, ICE has maintained a constant presence on Rikers Island. ICE agents interview several thousand Rikers inmates each year – 3,979 in 2007, according to a government response to a FOIA request filed by the NYU clinic. Most of these interviews occur less than 24 hours after an inmate's admission, and ICE agents – who may appear in plain clothes and do not identify themselves as immigration officers – are not required to provide any information about inmates' right to refuse the interview or to have an attorney or interpreter present. Based in part on the information gathered at these interviews, ICE issues thousands of immigration detainers on Rikers inmates annually. ICE does not appear to prioritize immigrants with serious convictions and issues many detainers for immigrants like Mr. Harvey, who are charged with very minor, nonviolent offenses and pose no threat to their communities. Immigrants often receive no notice that they will be transferred to ICE instead of being released and are often held by Rikers beyond the time permitted by law.

The federal government and municipalities nationwide have expressed increasing interest in exporting the Rikers-ICE model to other localities. Yet few municipalities understand the costs and the risk of liability a local jail assumes when it agrees to cooperate with ICE. The detainer system targets far too many immigrants who have committed only the most minor of crimes, who pose no danger to the community, and who may have strong claims to U.S. citizenship or

continued permanent residence in the country. Local jails have more important priorities than detaining these immigrants for ICE at considerable expense and risk to the municipality.

New York immigrant advocates launched a campaign on August 25, 2009 to end ICE's presence in New York jails. For more information about the campaign, contact the New York City New Sanctuary Coalition: [angad@newsanctuarynyc.org](mailto:angad@newsanctuarynyc.org).

###