

Presentation on Medical Care and Deaths in ICE Custody Tom Jawetz of the ACLU National Prison Project

For a briefing on immigration detention conditions, hosted by Representative Keith Ellison (D-MN), member of the House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law

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Good afternoon. My name is Tom Jawetz and I am the immigration detention staff attorney for the ACLU National Prison Project. I am here today to speak with you about a serious and growing problem in immigration detention—horribly inadequate medical care that leads to unnecessary suffering and death.

There are currently over 27,000 immigrants in detention on any given day, and nearly 300,000 each year. These individuals are scattered across the country in hundreds of county jails as well as a handful of facilities run by the Department of Homeland Security (DHS) or by private prison companies. Not one of these individuals is serving a criminal sentence—they are all civil detainees. Although some may be detained for a matter of weeks, many are detained for months or years. Immigrant detainees are particularly vulnerable because they do not have the right to a free attorney, they often face language barriers, and they frequently fear retaliation in their immigration case for speaking up about poor treatment.

The ACLU National Prison Project has filed three lawsuits against immigration detention facilities this year. In January, we filed an overcrowding lawsuit against the San Diego Correctional Facility (SDCF), an ICE facility run by the Corrections Corporation of America, the largest for-profit correctional services provider in the nation. Hundreds of detainees were crammed into small cells where three detainees were assigned to two bunks, and one had to sleep on the floor by the toilet. Conditions were filthy and the overcrowding caused tension at the facility and diminished access to health care. This problem was most recently noted in a report released on July 6, 2007, just this past Friday, by the U.S. Government Accountability Office. In March of this year, the ACLU filed a series of lawsuits against the Hutto Facility in Taylor, Texas for holding innocent children, including toddlers, in prison-like conditions without access to recreation, proper medical care, or quality education. Last month we filed another lawsuit against SDCF for failing to provide adequate medical and mental health care to detainees held there. Plaintiffs in our most recent lawsuit against SDCF suffer from mental illness, chronic health conditions, and serious injuries that have not been appropriately treated since they have been in ICE detention.

Unfortunately, inadequate medical care is not unique to SDCF. As a member of a national civil liberties organization, I receive complaints from detainees, immigration attorneys, and people of faith from around the country, reporting abuse and mistreatment of people in the custody of the DHS Immigration and Customs Enforcement (ICE). These reports have included horrific examples of human suffering and even deaths that could have been avoided had sufficient medical care been available. I received information from over a dozen detainees in a Virginia jail who witnessed a fellow detainee become seriously ill over a period of months. Ultimately, this man collapsed in the middle of the night and died, while other detainees called 911 to get a response. I received in-person complaints while visiting the San Diego Correctional Facility, about a detainee whose leg was rotting and causing a putrid smell in his unit, yet could not access appropriate medical care. I could go on and on

with these horrendous stories... but the point is that deficient medical care in immigration detention is a systemic problem and needs to be addressed.

It is important that I say a word about *how* health care is provided to immigrant detainees because it contributes to the problem. For very basic services, on-site providers can provide treatment. Ibuprofen, basic prescription medications, ice packs can all be provided by on-site medical staff. However, before any person can receive diagnostic testing such as a biopsy or an MRI, specialty care, or surgery, on-site medical personnel must submit a Treatment Authorization Request to the Division of Immigration Health Services (DIHS). This is true whether a person is being held in a DHS-run facility, where the federal government provides direct, on-site care, or in some county jail in Minnesota. Unfortunately, the medical services package provided by DIHS is deeply flawed and illnesses frequently go untreated, as a result. For example, one detainee—Francisco Castaneda—contacted me because painful lesions on his penis were not being treated. Although Mr. Castaneda was taken to see several specialists who agreed that he needed a biopsy, DIHS determined that any specialty treatment provided to him would be “elective in nature.” He was told that if he needed surgery, he could get it when he was released or deported. Meanwhile, his condition was so bad that he regularly bled through his boxer shorts and received permission to receive extra sheets for his bed. One guard at the facility told him that he would “pray” for him. Finally, after I wrote several letters on his behalf, Mr. Castaneda was scheduled for a biopsy. But just before receiving the scheduled biopsy, ICE released him from custody due to his serious medical condition. Since his release in February of this year, he has been diagnosed with metastatic penile cancer, had surgery to remove nearly all of his penis, and has completed four rounds of chemotherapy. Nevertheless, he may have no longer than one year to live.

This grossly deficient care is inexcusable and immoral. Yet, ICE detention facilities are poorly regulated and have little oversight, so unfortunately, such treatment is common and goes unchecked. While ICE has issued 38 standards for the treatment of immigration detainees, they are not enforceable regulations. The standards do not apply to detainees held in Bureau of Prisons facilities, and ICE has been incredibly slow to ensure compliance at all of its facilities, including local and county jails, contract detention facilities, and service processing centers. The DHS Office of the Inspector General (OIG) recently released a report of an audit done at five detention facilities, and noted that ICE inspectors routinely failed to note instances of facility non-compliance with standards related to health care and general conditions of confinement. The recent GAO report similarly found problems with detention conditions, and noted that officials at various detention facilities reported difficulties in obtaining approval for outside medical and mental health care for detainees. This is not just a national problem, but also an issue of international concern; the United Nations Committee Against Torture specifically requested information about deaths in ICE custody in February 2006.

Without codifying *improved* standards, and increasing transparency of the treatment of detainees in ICE custody, we can expect abuse and avoidable human suffering to continue. Congress has a responsibility to investigate this issue and call for reforms in order to ensure that dignity and respect for *all* human beings in this country are preserved.