

Detained and Denied: Healthcare Access in Immigration Detention



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The Health Justice Program brings a racial justice and immigrant rights focus to health care advocacy in New York City and New York State. We work to: (1) challenge health disparities; (2) eliminate racial and ethnic discrimination, and systemic and institutional barriers that limit universal access to health care; (3) promote immigrant and language access to health care, including representing undocumented and uninsured immigrants and people confined to immigration detention with serious health care needs; and (4) address the social determinants of health so that all New Yorkers can live a healthy life.

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Executive Summary

Each year, the federal government and its contractors detain thousands of New York City residents in U.S. Immigrations and Customs Enforcement (“ICE”) detention facilities throughout the New York metropolitan area.¹ These facilities are housed within local jails. Although they are confined, people in immigration detention are not charged with criminal violations; they are primarily held to ensure that they attend future administrative hearings concerning whether or not they will be removed from the U.S.³

For more than a decade, both internal federal reviews and human rights investigations have detailed egregious medical neglect in detention facilities across the country. Conditions in these facilities have not improved. As a new President who vows to conduct mass deportations on an unprecedented scale takes office, this report documents grave ongoing problems with the healthcare provided to people confined in immigration detention in New York City-area facilities in the past eighteen months.

In this report, we describe serious deficiencies in the medical care provided to people in immigration detention. These failures pose serious risks to the health and lives of people who are detained, and undermine their basic human dignity. ICE, and the New York City-area facilities with which it contracts, routinely: deny vital medical treatment, such as dialysis and blood transfusions, to people with serious health conditions; subject sick people in need of surgery to unconscionable delays; ignore repeated complaints and requests for care from people with serious symptoms; and refuse basic items such as glasses and dentures to people with medical conditions such as diabetes. ICE and its contractors’ failures have caused people to end up hospitalized in intensive care units for many months because of treatment delays. A number of people with serious mental illnesses were released from detention facilities without any interim medication or treatment plans. A man who needed surgery for gallstones was denied adequate care, which required him to receive emergency surgery after he was released. Another man’s repeated medical complaints were ignored for many months, which led to a delayed cancer diagnosis. One man with a pacemaker was denied access to a specialist, and then forced to undergo emergency surgery to replace the battery. The list goes on and on.

Between May 2015 and November 2016, New York Lawyers for the Public Interest interviewed 47 people with serious health conditions who are currently or were recently confined in immigration detention in the New York metropolitan area, at Hudson County Correctional Facility, Bergen County Jail, or Orange County Correctional Facility (collectively, “the New York City-area county facilities”). Those individuals interviewed were detained for at least six months and up to three years.

NYLPI identified the following serious, recurrent deficiencies in medical care provided to the people we interviewed:

- Incomplete intake assessments;
- Denial of continued treatment underway upon a person's admission;
- Language access barriers;
- Lengthy delays in receiving medical treatment;
- Denial of requests for off-site specialized care;
- Inadequate treatment for acute pain;
- Failure to manage chronic illnesses;
- Denial of adequate exercise and nutrition; and
- Lack of mental health discharge planning.

People with serious illnesses are particularly vulnerable when they are confined to immigration detention facilities because they require consistent and comprehensive care to manage their health. Confinement in immigration detention takes away a person's own ability to address his or her illness, something many people we interviewed did successfully for years before detention. We are particularly concerned for this vulnerable population because at this moment, as President Trump begins to carry out his campaign promises and sets forth plans to remove millions more immigrants, the number of people placed in removal proceedings and under threat of confinement in immigration detention facilities is likely to dramatically increase.

Recommendations for Future Advocacy

NYLPI recommends that advocates take the following steps to address ongoing failures by ICE and its contractors to guarantee appropriate medical care in facilities in the New York City area:

- Recruit qualified doctors to perform outside evaluations of detainees' health conditions and current treatment regimens in support of advocacy efforts.
- Promote alternatives to detention for immigrants in removal proceedings, particularly those with serious and/or chronic health conditions.
- Demand that ICE update the standards applied to each contracted facility to the most recent and comprehensive, the 2011 Performance Based Standards, and institute robust and independent monitoring measures to ensure accountability.
- Expand immigrant legal services funding to cover advocacy for the health conditions of detained people, and develop immigrant legal defense funds across New York State and the nation.
- Ensure access to Medicaid for eligible detained people upon release from a detention facility.
- Advance legal claims under the 14th Amendment for deliberate indifference to serious medical needs and claims for medical negligence under the Federal Torts Claim Act.
- Advocate for transparency in ICE's decision-making concerning denials of medical care requests made by facility doctors.

We join other advocates in calling for ongoing and increased pressure on ICE to provide adequate healthcare to sick people in its custody, and to seek accountability when ICE fails to respect this most basic right.

Methodology and Background

After receiving numerous complaints from community members, immigration legal service providers, and advocates, NYLPI launched a project in May 2015 to assist seriously ill immigrants obtain needed medical care while they were detained. This report documents the dangerous conditions of confinement that thousands of immigrant New Yorkers face. In it, we profile cases of medical neglect gleaned from our work over the past eighteen months.

The Right to Healthcare in Immigration Detention

ICE holds people in civil custody whom the United States is seeking to deport, often in local county jails that have signed contracts with ICE. Many detained people have lived in this country for decades, maintained employment, and raised families here. Many are Lawful Permanent Residents. Those in immigration detention disproportionately suffer from serious health conditions, such as cancer, HIV, diabetes, and mental illnesses.

ICE's obligation to provide medical care to people confined to immigration detention is clearly established by the U.S. Constitution, federal and state law, and ICE's own policies.

The U.S. Constitution guarantees adequate healthcare to people in immigration detention.³ Recognizing that people in detention can only rely on jail authorities for their medical care, the Supreme Court in 1976 in *Estelle v. Gamble* recognized adequate medical care as a fundamental constitutional right for people who are incarcerated. The Court thereby forbade government authorities like ICE from disregarding an excessive risk to a detainee's health or safety.⁴ The Constitution requires that ICE provide the actual care necessary to treat a medical condition.⁵

ICE-Contracted County Jail Immigration Detention Facilities

ICE itself has issued standards that require it to provide adequate medical care to detainees. Since 2000, ICE has issued four sets of "Performance Based Standards" to address conditions of confinement for people held in detention facilities.⁶ These standards act as guidelines for the hundreds of county jails and prisons operating as immigration detention facilities around the United States. ICE issued the most recent and comprehensive standards in 2011, yet many facilities are only required to follow the earlier and less robust iterations.

The New York City-area facilities examined in this report are local county jails with which ICE contracts.⁷ ICE pays the local jail to house people in civil immigration detention in the same fashion that the jail houses the facility's existing criminally incarcerated population.⁸ The New York City-area county facilities then contract with for-profit companies to provide medical services.⁹

The Process for Receiving Healthcare in Immigration Detention Facilities

Upon entry into a facility, a person is supposed to receive a full medical review to determine his or her health care needs. A person also should receive a handbook, which explains the process for requesting medical care at the facility. Hudson, Orange and Bergen County Detention Facilities have systems for receiving and processing medical requests from individuals confined to their facilities. First, a detained person requests medical care from a kiosk in the living unit; the jail's medical unit then receives the request and the medical staff is supposed to assess the request within 48 hours to determine priority for care. When specific treatment is needed, the medical providers submit requests to ICE for approval.

When a detained individual needs medical care that the facility is not equipped to provide, such as surgery or a biopsy, he or she should be referred to hospitals outside of the correctional facility.¹⁰ For example, Hudson County has formal agreements with local medical facilities where confined people should receive emergency room services.

Advocating for Access to Healthcare for People in Immigration Detention

Many of the people profiled in this report were referred to NYLPI as part of an informal partnership with advocates from the New York Immigrant Family Unity Project ("NYIFUP").¹¹ NYIFUP attorneys provide immigration representation and other services for individuals from New York City who are detained at the New York City-area county facilities. They also have social workers on staff to provide support.

Following referrals from NYIFUP, NYLPI intervened on behalf of a number of people to demand better healthcare or assist in seeking their release from detention. NYLPI's legal advocacy sought to compel ICE and the New York City-area county facilities to comply with federal law and detention standards that govern how medical care should be provided. Even with intensive legal advocacy, consistent and grave problems with healthcare access remained, and people confined to immigration detention suffered.

NYLPI has advocated for seriously ill people in detention by contacting Deportation Officers and ICE's Assistant and Acting Field Directors. We rarely received a response. NYLPI has also provided supporting letters to immigration judges outlining the lack of medical care at the detention facilities. These letters have helped detained people receive a reasonable bond and release, and thereafter to seek medical care in the community.

Between May 2015 and November 2016, NYLPI interviewed 47 people with serious health conditions who are or were recently confined to immigration detention at facilities in Hudson and Bergen Counties, New Jersey, and Orange County, New York. Each person identified significant problems with their healthcare, and these problems are described in this report.

Recurrent Problems with Access to Adequate Medical Care

Problems with the quality of healthcare provided by ICE and its contractors begins at initial intake into the immigration detention facility, and continues through to people's final discharge from the facility.

Incomplete Intake Assessments

In order to provide appropriate treatment, particularly for people with serious medical conditions, doctors must obtain their patients' medical histories. During the required medical intake process, immigration detention facilities may receive information that alerts them to the critical need to obtain medical records from previous health care providers, or to continue a course of treatment that a person was receiving in the community. However, in multiple instances, ICE and its contractors failed to act on information received during intake about people's medical histories, with dangerous consequences to those people's health. For example, one NYLPI client had a history of cancer and surgical interventions, and was HIV positive. In 2016, when he was detained and reported this medical history, ICE and the Hudson and Orange County facilities each failed to obtain his prior medical records from Dutchess County jail, where he was formerly held. At Hudson, the attending physician repeatedly requested that ICE obtain the prior records, but ICE failed to do so. Because the doctors lacked the necessary information about his previous cancer occurrence, he was not prescribed an appropriate course of Antiretroviral Treatment to treat his HIV. NYLPI intervened and obtained this individual's medical records so that he could share them with his treating physician at the facility.

Denial of Continued Treatment

Many people report that the doctors at the New York City-area county facilities refuse to continue effective treatment that they received before they were detained. For seriously ill people who are cut off from their continuing care in the community by virtue of being detained, interrupted treatment can have negative and severe consequences.

Ms. Querin: Interrupted Blood Transfusions and Dialysis Treatment

Ms. Querin was denied continuing treatment of dialysis and blood transfusions while she was detained at Hudson County from May through September 2015.¹² Before she was detained, she managed a lifelong sickle cell condition with consistent blood transfusions, mechanical ventilation, and dialysis. During her initial intake at Hudson and afterwards, she requested this necessary care. The facility doctors prescribed over-the-counter drugs, along with antibiotics and medicine for pain management. They also recommended that she drink more fluids. Her health deteriorated rapidly. She was released from ICE custody unexpectedly. On the same day of her release, she was hospitalized for two months in an intensive care unit, which she believes was a direct result of the lack of continued treatment. She is now on 24-hour oxygen therapy, in addition to returning to the treatment regimen of dialysis and blood transfusions for her sickle cell condition. ICE and Hudson County knew of Ms. Querin's medical needs and prior care regime, yet refused to provide the necessary health care.

Language Access Barriers

NYLPI's investigation found that ICE's failure to provide interpretation and translation services prevented many limited English proficient ("LEP") people from accessing medical care while they are confined to immigration detention. For people who have a limited ability to understand, speak, read, or write English well, they must receive interpretation and translation services in order to obtain adequate medical care. Language access is key to ensuring appropriate medical care in detention, yet it is often unavailable. Most seriously, people are not provided with appropriate interpreters during medical appointments so that they can communicate their needs and understand the medical advice given to them.

Mr. Sanchez: Language Access and Confidentiality Failures

NYLPI interviewed Mr. Sanchez, an LEP native-Spanish speaker who was detained at all three New York City-area county facilities from 2013 to 2016, and who has a serious mental illness. Mr. Sanchez also suffers from regular suicidal thoughts. Despite the fact that Mr. Sanchez is LEP, his monthly consultations with a psychiatrist were conducted in English, without an interpreter. Through NYLPI's interpreter, he stated that he had a hard time expressing the full extent of his symptoms to his doctor because of the language barrier. Further, he continued to have auditory and visual hallucinations, which he was unable to effectively communicate to his doctors. On rare occasions, a correctional officer acted as an interpreter, but Mr. Sanchez felt uncomfortable sharing private medical information with the officer present. Additionally, when he met with the facility social worker to share confidential information, the social worker asked another detainee to interpret.

Not only does Mr. Sanchez's situation demonstrate ICE and the New York City-area county facilities' failures to provide language access, but it implicates disturbing confidentiality breaches as non-medical personnel and other detained people are privy to personal medical information as the cost of a person receiving care.

People confined to immigration detention must be able to communicate with medical providers in a language they can understand. In order to provide language services and protect medical privacy, the New York City-area facilities must provide medical interpreters in-person or by telephone to any LEP individual receiving medical care.

Delays in Medical Treatment

One of the most pervasive problems that people confined to immigration detention report is the constant struggle to receive timely responses to their requests for medical care. Under the ICE standards, the facility should respond to people's medical requests within 48 hours.¹³ NYLPI interviewed multiple people who reported that they waited for weeks and even months to receive treatment, even for very serious symptoms of acute pain. Failures occurred at many levels: sometimes internal county jail medical or non-medical personnel caused the delays; other times, ICE's delay in determining whether to approve medical care caused the delays.

Evaluating a medical condition is the first critical step to providing adequate healthcare – even more so for people with urgent medical situations – and the delay in this initial step can have devastating consequences.

Mr. Francisco: Delays Equal Pain and Suffering

ICE ignored Mr. Francisco's gallstones for months, causing him severe pain and distress. In 2015, Mr. Francisco began experiencing acute pain in his abdomen. The pain became so severe that he made several emergency calls for assistance to Hudson County. The jail dismissed his complaints and treated him with an over-the-counter antacid. Only after two months of complaining about increasing pain did ICE approve an ultrasound, which demonstrated that Mr. Francisco had gallstones. Three months after the ultrasound, ICE finally scheduled surgery. The surgery was then postponed. Instead, Mr. Francisco was released from detention later that month without either the surgery or planning for continuity of care (discharge planning).¹⁴ After he returned home, he underwent emergency surgery to remove his gallbladder. This procedure was dangerously delayed considering ICE and Hudson County were aware of his symptoms when they first arose six months earlier.

In detention, I went through the most critical and undesirable process of my life. The health care, and the care of a detainee in detention, was something inhumane. The pain and suffering I experienced is something that cannot be expressed in words. I received inadequate health care, and almost lost my life.
-Mr. Francisco

Mr. Helvicta: Ignoring Symptoms of Cancer

Mr. Helvicta is a gay, HIV-positive man who now has advanced anal and rectal cancer because of Hudson County's delayed testing and diagnosis of his condition. Mr. Helvicta complained to facility medical personnel of severe pain in his rectum for a period of six months. These symptoms should have triggered concern and action on the part of Mr. Helvicta's doctors,¹⁵ particularly in light of his increased risk for related serious medical conditions. Hudson County doctors misdiagnosed him with hemorrhoids and provided ineffective topical treatment for the pain. After his initial complaints, a facility doctor identified a mass tumor and recommended an immediate biopsy, which did not take place for another two months. When the facility received the biopsy results demonstrating anal and rectal cancer, they did not inform Mr. Helvicta for another two weeks. A doctor never explained his diagnosis or treatment plan. About six weeks after the biopsy, Mr. Helvicta was scheduled to begin chemotherapy and radiation treatment. Six days before he was to start treatment, ICE released Mr. Helvicta from its custody without any discharge planning. When Mr. Helvicta finally saw an oncologist in the community, the doctor informed him that the cancer was in an advanced stage because it was left untreated for such a long period of time.

One night when I was in a lot of pain, I asked the guard for help but he said he could not send me to the medical unit because there was no doctor or nurse available. In the morning I put in a request to see the doctor but all he gave me was some cream and Tylenol. They suggested the pain was due to exercising. Overall, I feel like you fear for your life and have to be careful about what you say. -Mr. Helvicta

Denial of Off-Site Care

NYLPI interviewed many people who required off-site and specialized medical care, which ICE either did not provide or provided only after extensive delay. When a detained individual is in need of emergency room care, or inpatient or outpatient services, the facility medical provider refers their request to ICE Field Medical Coordinators. ICE Field Medical Coordinators approve or deny offsite services for ICE detainees. Many people reported that ICE often denies these requests without providing any alternative care or reason for the denial. Further, people in need of off-site care reported that facility doctors told them that ICE refuses the requests because of the high cost of the requested medical care.

Mr. Ahmed: Pacemaker Emergency

Mr. Ahmed suffers from second degree heart block, a condition in which the normal electrical conduction in the heart that allows for a regular heart rate and rhythm is disrupted. He uses a pacemaker to treat his condition. Pacemakers need regular monitoring and maintenance to detect malfunctioning, preserve normal cardiac function, and prevent potentially life-threatening arrhythmias. Beginning in 2015, Hudson County failed to monitor his pacemaker and put his life in jeopardy. Several times while feeling chronic symptoms of distress, Mr. Ahmed requested to see a specialist. ICE and Hudson County repeatedly refused these requests. At one of his immigration hearings, Mr. Ahmed was so obviously in bad health, weak, and short of breath, that the presiding judge called the paramedics to take him to the hospital. At the hospital, doctors performed emergency surgery to replace his pacemaker battery. When he returned to detention, Mr. Ahmed experienced symptoms suggesting that his pacemaker was malfunctioning, including fatigue, shoulder pain and swelling, cramps in his foot, heart palpitations at night, difficulty breathing, dizziness and inability to swallow. ICE and Hudson County again refused to permit him to see a specialist who would have the appropriate technology to test whether the pacemaker was working properly. Not until an Immigration Judge granted him bond did Mr. Ahmed have the opportunity to return to the community and regain ongoing care from a specialist, who has assisted in him returning to health.

When I was detained I thought that at some point I would be dead. They think we are animals and we just have to accept whatever they say. -Mr. Ahmed

Failure to Manage Chronic Conditions

The restrictive living conditions for people in immigration detention frequently exacerbate their illnesses, particularly for people living with chronic illness. In addition to taking medication, people diagnosed with chronic illnesses, such as diabetes, must often regulate their lifestyles through closely monitored diet and exercise regimes.

ICE and the New York City-area facilities maintain policies that tightly restrict opportunity for a better diet and exercise. NYLPI's investigation found that detention facilities routinely deny requests for care or make it very difficult for people to manage their chronic illness. As a result, people's symptoms were exacerbated, such as low vision, pain, rashes, and insulin levels. People with manageable chronic illnesses have faced life-threatening complications while in immigration detention.

Dangerous Complications from Ineffective Treatment for Diabetes

People at Hudson County state that Type II Diabetes is prevalent amongst detained people, yet they are unable to manage their illness and fear extreme consequences that jeopardize their lives. For three people for whom NYLPI provided advocacy, a consulting board-certified endocrinologist evaluated their medical records. This physician found that, under the current regime overseen by ICE, all three people were at risk of infections and diabetic complications such as retinopathy, renal failure, heart attack or strokes--even while on their insulin regimen. Hudson County only provided the detainees with a diet full of excessive complex carbohydrates including pasta, white bread, white rice, potatoes and cookies, all foods extremely detrimental to their health. Further, ICE refused to provide dentures to two people who, because of their diabetes, were suffering from gum disease and losing their teeth. ICE also refused to provide them with glasses despite their deteriorating vision, another type of diabetic complication. An individual reported rashes all over his body and pain in his leg and foot region that if left untreated could have led to amputation. An Immigration Judge actually granted bond releasing all three people from custody based upon evidence of inadequate healthcare that NYLPI provided, including a letter from the endocrinologist.

Failure to Manage Mental Health Problems

People with mental illnesses experience significant barriers to basic mental healthcare while in immigration detention. Beyond the well-established negative psychological impact that confinement has upon people with mental illness, NYLPI's investigation found that ICE and the New York City-area facilities routinely deny basic aspects of mental healthcare to people with mental illness.

One common problem with the quality of mental healthcare provided to people in detention is they have very limited access to it. For example, many people reported that they only received limited psychiatric care in the form of prescription medicine and brief (shorter than 10-minute) evaluations during monthly medical appointments. They did not receive regular counseling or psychotherapy. Other people reported that the response to someone who had expressed suicidal desires was to put them in solitary confinement, further exacerbating their isolation and depression. Finally, as will be discussed further below, ICE and the New York City-area facilities routinely failed to provide mental health discharge planning to people with mental illnesses, posing great risks to themselves upon their release from immigration detention.

Acute Pain Ignored

NYLPI's investigation found that ICE and the New York City-area facilities consistently denied pain management treatment, leaving those with residual pain from prior injuries like car accidents and gunshot wounds to suffer excruciating pain. Interviewees report pain so severe that they are unable to carry out activities such as walking down the stairs or getting down from their bunk bed.

Mr. Jones: No Help for Insufferable Pain

Mr. Jones, an individual detained at Hudson County since May 2016, has chronic and excruciating pain from bullet fragments that remain in his leg from a gunshot wound. Medical providers at Hudson County and ICE were aware of his condition. Despite the intensity of the pain increasing over time, ICE refused requests for a specialist to surgically evaluate. The pain is so severe that Mr. Jones has said he would prefer amputation rather than continuing to endure the pain. An outside doctor reviewed his medical records and concluded that the facility failed to properly document his condition or provide a definitive treatment plan including assessing the need for surgery to remove the bullet fragments.

Release without Discharge Planning

People released from immigration detention overwhelmingly report being released without any discharge planning. For people with serious health conditions that require immediate and ongoing care, discharge planning helps them reintegrate into their community and continue their healthcare. Discharge planning consists of providing an interim supply of medication and a plan for connecting an individual to housing opportunities, health insurance reenrollment and community medical care providers.¹⁶ Both Mr. Helvicta and another individual with a cancer diagnosis reported that they were released without warning and without discharge planning. Both men struggled to re-connect to their health insurance. They experienced delays in essential treatment, such as chemotherapy, causing their health to further deteriorate.

For people with mental illnesses, discharge planning ensures that after release from custody, they do not relapse, or face hospitalization, increased risk of suicide, homelessness, or other related instability. Widely accepted standards of medical care establish that discharge planning is an essential component of adequate institutional mental healthcare.¹⁷

Mr. Xie: Discharged and Dumped

ICE's failure to provide discharge planning caused Mr. Xie to be hospitalized in a psychiatric ward for two months. Mr. Xie has bipolar and schizoaffective disorders, and relies on a strict medicine regimen to manage his illnesses. He received regular treatment for his illnesses while in detention from 2014 to 2015. On the day of his release from immigration detention, ICE and the County Jail failed to provide Mr. Xie with any plan for his continued mental healthcare, a single referral to a mental healthcare provider, or any interim medication. Without a plan or the resources necessary to obtain care, Mr. Xie's mental health quickly spiraled downward. After two weeks without treatment, Mr. Xie suffered total psychiatric decompensation – he was incoherent, hallucinating, and suicidal. He was then admitted to a hospital's psychiatric unit where he remained under inpatient care for almost two months.

Conclusion

Even with immigration representation and with NYLPI's advocacy efforts, the people described in this report were denied the healthcare they needed while in ICE custody. The wide-ranging failures to provide medical care to seriously ill immigrants who remain in detention during their lengthy immigration proceeding is unfortunately not a new problem. Over the past decade, other human rights groups have documented the deplorable conditions in these jails, including that people who are detained lack access to adequate health care.¹⁸ Yet these conditions have not improved over time, and if anything, continue to worsen.

NYLPI has advocated for many seriously ill people in detention. ICE has ignored many of our requests, denied others, and in rare circumstances provided a minimal amount of improved care. NYLPI has also provided supporting letters to immigration judges outlining the lack of medical care at the detention facilities. NYLPI's advocacy has helped detained people receive a reasonable bond and release, and thereafter permit them to seek medical care in the community.

The many immigrants in detention who do not have healthcare advocates are in a far worse position.

ICE's unwillingness to address the systemic lack of adequate medical care in its detention facilities presents an enormous challenge to advocates, especially at this time of likely increases in the detained immigrant population. ICE and its contractors must live up to their obligations to provide appropriate medical care to all people confined to immigration detention.

Recommendations for Future Advocacy

NYLPI recommends that advocates take the following steps to address ongoing government failures to guarantee appropriate medical care in immigrant detention in the New York City area:

- **Recruit qualified doctors to perform outside evaluations of detainees' health conditions and current treatment regimens in support of advocacy efforts.** NYLPI has seen that advocacy combined with a specialist's medical review makes a substantial impact with the immigration court reviewing bond release cases.
- **Promote alternatives to detention for immigrants in removal proceedings, particularly those with serious and/or chronic health conditions.** Particularly for those who have a medical diagnosis for illnesses that require constant and comprehensive care, detention should not be mandated. Since the purpose of detention is to guarantee presence at immigration and removal proceedings, people with serious illnesses are a particularly low risk of flight; and confinement to detention - even if for a short term - has a greater chance of causing dramatic health consequences.
- **Demand that ICE update the standards applied to each contracted facility to the most recent and comprehensive, the 2011 Performance Based Standards, and institute robust and independent monitoring measures to ensure accountability.** In many cases, ICE designates the most recent care standards in each contract with a county jail. However, NYLPI found that in some circumstances, ICE and a county jail update and extend their contract without updating to the most recent standards. This omission leaves people confined to certain immigration detention facilities in conditions that no longer comport with ICE's own determination of what is appropriate. Further, NYLPI's unsuccessful attempts via the Freedom of Information Act to request regular audits or monitoring reviews of the New York City-area facilities suggesting that either the reviews are rarely, if ever, completed, or they are not being made accessible to the public.
- **Expand immigrant legal services funding to cover advocacy for the health conditions of detained people, and develop immigrant public defender style programs across New York State and the nation.** The NYIFUP program is the first of its kind in the nation. In light of the new president's plans to deport additional millions of people, the need for immigrant legal public defender services will be even greater.
- **Ensure access to Medicaid for eligible detained people upon release from a detention facility.** Many people in immigration detention, especially in New York State, received Medicaid prior to their detention. If they are detained at the time of their annual Medicaid renewal, their Medicaid is terminated.

Advocates, and City and State officials, should work together to guarantee a seamless transition back onto Medicaid upon release, thus promoting consistent care.

- **Advance legal claims under the 14th Amendment for deliberate indifference to serious medical needs and claims for medical negligence under the Federal Torts Claim Act.**
- **Advocate for transparency in ICE's decision-making concerning denials of medical care requests made by facility doctors.** During NYLPI's advocacy, we have been concerned by ICE's failure to acknowledge our requests and explain their decision-making process. This leads to speculation by people confined to immigration detention that cost leads medical decisions rather than health. Greater transparency would permit patients and advocates to understand ICE's process and develop strategies in response.

We join other advocates in calling for ongoing and increased pressure on U.S. Immigrations and Customs Enforcement to provide adequate healthcare to people in its custody, and to hold our institutions accountable when they fail to respect this most basic right.

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References

¹ The U.S. Immigration and Customs Enforcement Agency or “ICE” is the branch of the U.S. Department of Homeland Security that administers the criminal and civil enforcement of federal laws governing border control, customs, trade and immigration, including deporting people from the United States. In order to house the hundreds of thousands of people whom ICE seeks to remove each year, ICE signs “Non-Dedicated Inter-Governmental Service Agreements” (“IGSA”) with County jails across the country. ICE pays a daily per bed fee to the local jail. Pursuant to the IGSA, the County jail must provide medical care and other services to people confined to immigration detention. ICE and the county jail regularly renew these agreements. Information obtained through Freedom of Information requests.

² United States Government Accountability Office, *Immigration Detention, Additional Actions Needed to Strengthen Management and Oversight of Detainee Medical Care*, pg. 1.

³ *Estelle v. Gamble*, 429 U.S. 97, 103-05 (1976).

⁴ *Cuoco v. Moritsugu*, 222 F.3d 99, 107 (2d Cir. 2000).

⁵ *Rosemarie M. v. Morton*, 671 F. Supp. 2d 1311, 1313 (M.D. Fla. 2009).

⁶ The first set of standards were established in 2000 as the National Detention Standards (NDS). These standards were modified over time to address deficiencies. The most recent standards are from 2011. The set of standards used is established in the facility’s contract with ICE. Several contracted New York and New Jersey detention facilities operate under different iterations. At present, Bergen County Detention Facility and Orange County Detention Facility operate under the 2000 NDS iteration. Hudson County Detention Facility operates under the 2008 PBNDS iteration. Available at: <https://www.ice.gov/factsheets/facilities-pbnds>.

⁷ ICE has Inter-Governmental Service Agreements with three County jails in the New York City area to confine those in removal proceedings and relevant to this report: Hudson and Bergen County jails in New Jersey and Orange County Jail, in Orange County, New York. Information obtained through Freedom of Information requests.

⁸ United States Government Accountability Office, *Immigration Detention, Additional Actions Needed to Strengthen Management and Oversight of Detainee Medical Care*, pg. 9.

⁹ Hudson County Correctional Facility contracts medical services from the Center for Family Guidance Health Systems LLC and Westwood Pharmacy. Bergen County Correctional Facility contracts its medical services with Corizon Correctional Health and its pharmacy services from Diamond Pharmacy Services. Orange County Correctional Facility contracts its medical and pharmacy services with Quality Choice Correctional Care and Correctional Care Solutions Incorporated. Information obtained through Freedom of Information and Open Public Records requests.

¹⁰ US Immigration and Customs Enforcement, “Performance-Based National Detention Standards 2008” Medical Care “Expected Outcomes, 7.” p. 1.

¹¹ The New York Immigrant Family Unity Project is a New York City public defender program that provides detained individuals facing deportation with free immigration representation. The project seeks to prevent the separation of individuals from their communities and families and to expand access to immigration representation. The providers include The Legal Aid Society, Brooklyn Defender Services, and The Bronx Defenders.

¹² All names have been changed to protect the identities of those interviewed.

¹³ US Immigration and Customs Enforcement, "Performance-Based National Detention Standards 2008," Medical Care "N. Sick Call" pg.16.

¹⁴ Discharge planning is an essential part of healthcare in institutional settings. It consists of a plan created prior to release to ensure that upon discharge from a provider's care, people have a plan to access care in the community after release and a plan for connecting an individual to housing opportunities, health insurance reenrollment and community medical care providers. Discharge planning seeks to assure that people do not relapse or lose critical time in their treatment, and face hospitalization, increased risk of suicide, homelessness, and other related instability. See note 17.

¹⁵ Gay men who are HIV positive are at higher risk of developing anal or rectal cancer, and regular testing for this illness is routine in this patient population. Additionally, all HIV positive men with anorectal symptoms should be promptly evaluated because there is an increased risk of other potentially serious conditions such as perirectal abscesses, fistulae, ulcerations, infectious proctitis, anal warts, and other cancers and precancerous lesions. "Anal Dysplasia and Cancer". HIV Clinical Guidelines. New York State Department of Health, AIDS Institute, July 2007.

¹⁶ According to many medical associations, for people with mental illnesses adequate discharge planning includes: providing a supply of interim medication, a summary of medical records (including admission diagnosis, discharge diagnosis, all diagnostic test results, list of medications prescribed, summary of care provided, summary of detainee's response to treatment, medical complications encountered, and any outside healthcare referrals), and a continuity of care plan including referrals to community-based providers. Similar standards exist for those with non-mental illness diagnosis. See The American Psychiatric Association, *Psychiatric Services in Correctional Facilities*; The American Psychological Association *Ethical Principles of Psychologists and Code of Conduct*; American Public Health Association, *Standards for Health Services in Correctional Institutions*; The National Commission on Correctional Health Care, *Standards for Mental Health Services in Correctional Facilities*.

¹⁷ *Id.*

¹⁸ American Civil Liberties Union and Detention Watch Network, *Fatal Neglect: How ICE Ignores Death in Detention*, <https://www.aclu.org/report/fatal-neglect-how-ice-ignores-death-detention> (2016); Human Rights Watch, *US: Deaths in Detention*, <https://www.hrw.org/news/2016/07/07/us-deaths-immigration-detention> (2016); Human Rights Watch, *U.S. Immigration Detention Neglects Health*, <https://www.hrw.org/news/2009/03/17/us-immigration-detention-neglects-health> (2009); Human Rights Watch, *U.S. Immigration Detention Practices Endanger Health, Life* <https://www.hrw.org/news/2007/12/06/us-immigration-detention-practices-endanger-health-life> (2007); Available at: <http://www.nytimes.com/interactive/2016/05/11/nyregion/document-hudson-county-correctional-facility.html> (last visited October 18, 2016). See also Nina Bernstein, *Health Care at New Jersey Immigrant Jail Is Substandard, Watchdog Groups Say*, NY TIMES, (May 11, 2016), <http://www.nytimes.com/2016/05/12/nyregion/health-care-at-new-jersey-immigrant-jail-prompts-claim.html>.

