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HEALTHCARE STANDARDS IN IMMIGRATION DETENTION CENTERS

by ANA MARIA ECHIBURU

Hiu Lui Ng, a computer engineer from Hong Kong, moved to New York in 1992.¹ Fifteen years later, he had married a U.S. citizen and fathered two U.S.-born children. However, on July 19, 2007, Mr. Ng found himself detained by immigration officials because he remained in the U.S. beyond the time authorized by his visa.² In April 2008, while still detained, Mr. Ng began to complain of intense back pain.³ Lawyers and relatives of Mr. Ng claim that detention officials not only refused to take Mr. Ng to scheduled doctor's appointments, but even refused to supply him a wheelchair when he could not walk.⁴ Another detainee, Marino De Los Santos, briefly shared a cell with Mr. Ng, who was assigned the top bunk.⁵ Mr. De Los Santos stated that Mr. Ng's pain was so intense that he could hear Mr. Ng crying throughout the night.⁶

He also claimed that Mr. Ng could not even stand in the medication line in the detention center and had to hold on to a chair for support.⁷ Mr. De Los Santos further stated that officials at the detention center prohibited Mr. Ng from holding on to the chair and required that he stand without assistance.⁸ Mr. De Los Santos also recounted an incident when a bedridden Mr. Ng was visited by a nurse who laughed and said that Mr. Ng was faking his illness.⁹

By July 2008, Mr. Ng could no longer stand or walk.¹⁰ On August 6, 2008, Mr. Ng died with a fractured spine and untreated cancer in his lungs, liver, and bones¹¹ at the Donald W. Wyatt Detention Center, a locally owned jail in Central Fall, Rhode Island.¹² Later reports suggested that Mr. Ng had previously requested to visit the hospital in order to determine the cause of his illness. These requests, however, were refused.¹³

OVERSIGHT OF DETENTION FACILITIES

Unfortunately, Mr. Ng's story is not an uncommon account of medical treatment within a U.S. immigration detention center. Situations such as Mr. Ng's raise the question as to whether a system of oversight should be implemented for detention centers. Currently the only legislation concerning detention facility standards is found in the Immigration and Nationality Act (Act).¹⁴ The section of the Act addressing these standards is Section 241(g), which states that the Department of Homeland Security (DHS) "shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal." Section 241(h) also affects standards indirectly by rejecting "the possibility of a private right of action under the statute, such as to challenge a facility as an inappropriate place of detention."¹⁵

Between May 11 and May 14, 2008, *The Washington Post* published findings of detainee medical mistreatment which they uncovered through review of government documents and interviews with detainees, their families, and government officials.¹⁶ The emergence of these accounts has led to increased scrutiny of the Bureau of Immigration and Customs Enforcement (ICE), an agency within the DHS¹⁷ that is ultimately responsible for the detention of undocumented aliens.¹⁸

Various organizations and individuals across the nation are now pressing for more accountability and oversight of ICE's medical treatment of detainees.¹⁹

ICE has responded to these investigations and increasing pressure for additional oversight by stating that “the reporting on this issue has been misleading and exaggerated”²⁰ and that since 2004, the number of detainees in ICE detention facilities has increased over 30 percent, yet the mortality rate has decreased significantly each year.²¹

Further, ICE asserts that it has attempted to improve accountability and oversight by creating the Detention Facilities Inspection Group in February 2007.²² This independent body is responsible for reviewing and validating detention inspections as well as ensuring that agency standards are consistently applied so that corrective actions may be taken.²³ ICE has also entered into an agreement with an independent company to place full-time quality assurance professionals at their 40 largest detention facilities and to arrange for rotational visits to the smaller facilities.²⁴

PROPOSED LEGISLATION

In further response, Representative Lucille Roybal-Allard (D-CA) introduced the Immigration Oversight and Fairness Act (bill) on February 26, 2009.²⁵ This proposed bill includes various safeguards for detainees that, at a minimum, require that detention facilities “afford a continuum of prompt, high quality medical care, including care to address medical needs that existed prior to detention, at no cost to detainees.”²⁶

The bill aims to increase oversight of medical care in detention facilities by requiring that the Secretary of Homeland Security report in-custody deaths, including specific information surrounding the death, to Congress semi-annually and to the DHS Office of Inspector General within 24 hours.²⁷ Further, the bill requires that denial of medical care be made within 72 hours of the request and that the denial be accompanied by a written explanation of why the denial was appropriate.²⁸ The decision and explanation must be communicated to the detainee as well as the Secretary of DHS simultaneously.²⁹ The detainee, however, retains the right to appeal a denial of medical treatment. The appeal, then, must be decided within seven days by an independent appeals board composed of health care professionals.³⁰

Proponents of the bill, such as Ahilan Arulanantham, Director of Immigrants’ Rights and National Security for the American Civil Liberties Union of South-

ern California, feel the bill is a positive measure to protect the health of ICE detainees and if the bill is passed it “should help ICE change its institutional culture and become more accountable, paving the way for the humane treatment of those in immigration detention.”³¹ Mary Meg McCarthy, the Executive Director of the National Immigrant Justice Center, believes the bill is a “common sense, cost-effective approach to immigration enforcement that underscores American traditions of promoting justice and protecting human rights.”³²

With over 33,000 individuals detained on any given day, this bill has the potential of providing a higher quality of health care to a significant amount of individuals within the immigration system.³³ With the ongoing efforts of both our legislators and ICE, the standards of healthcare in detention centers could, and hopefully will, drastically improve, ensuring that detained individuals will no longer suffer as Mr. Ng while under the custody and care of our government.

NOTES

1 Nina Bernstein, *Ill and in Pain, Detainee Dies in U.S. Hands*, N.Y. TIMES, August 12, 2008 at A1 [hereinafter “Ill and in Pain”].

2 *Id.*; Press Release, Rhode Island Affiliate ACLU, Rhode Island ACLU Files Lawsuit on Behalf of Family of Wyatt Center Detainee Who Died in Custody; Suit Alleges Hiu Lui Ng Was Subjected to “Cruel, Inhumane, Malicious and Sadistic Behavior” (Feb. 9, 2009) (on file with author).

3 *Ill and in Pain*, *supra* note 1.

4 Nina Bernstein, *Cellmate Describes Pain of Detainee Who Died*, N.Y. TIMES, August 19, 2008 at B4 [hereinafter “Cellmate Describes Pain”].

5 *Id.*

6 *Id.*

7 *Id.*

8 *Id.*

9 *Id.*

10 *Ill and in Pain*, *supra* note 1.

11 *Id.*; *Cellmate Describes Pain*, *supra* note 4.

12 Nina Bernstein, *U.S. Issues Scathing Report on Immigrant Who Died in Detention*, N.Y. TIMES, Jan. 16, 2009 at A14.

13 *Id.*

14 Kelsey E. Papst, *Protecting the Voiceless: Ensuring ICE’s Compliance With Standards That Protect Immigration Detainees*, 40 MCGEORGE L. REV. 261, 268 (2008).

15 *Id.*

16 *Id.* at 274.

- 17 U.S. Immigration and Customs Enforcement, About, <http://www.ice.gov/about/> (last visited Apr. 3, 2009). See *Id.*; Dana Priest and Amy Goldstein, *System of Neglect*, THE WASHINGTON POST, May 11, 2008.
- 18 Pabst, *supra* note 13, at 271.
- 19 American Humane, Support Immigration Oversight and Fairness Act, Feb. 27, 2008, <http://www.americanhumane.org/assets/docs/advocacy/ADV-LI-support-immigration.pdf>; Press Release, ACLU of Southern California, House Bill Adopts Humane and Enforceable Standards for Immigration Detention Facilities (Feb. 26, 2009) (on file with author).
- 20 Press Release, Immigration and Customs Enforcement, Detainee Health Care: The Rest of the Story (May 19, 2008) (on file with author), http://www.ice.gov/pi/detention_health_care.htm.
- 21 Papst, *supra* note 13, at 274.
- 22 U.S. Immigration and Customs Enforcement, *supra* note 17.
- 23 *Id.*
- 24 *Id.*
- 25 Immigration Oversight and Fairness Act, H.R. 1215, 111th Congress (1st Sess. 2009).
- 26 *Id.*
- 27 *Id.* at § 2(J).
- 28 *Id.*
- 29 *Id.* at § 2(D).
- 30 *Id.* at § 2(E).
- 31 ACLU of Southern California, *supra* note 16.
- 32 Press Release, National Immigrant Justice Center, Immigration Oversight and Fairness Act of 2009 Will Help Restore Justice to U.S. Immigration System (Feb. 26, 2009) <http://www.immigrantjustice.org/news/legislation/immigration-oversight-and-fairness-act-of-2009-will-help-restore-justice-to-detention-system.html>.
- 33 *Id.*