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ALIEN DETENTION STANDARDS

Observations on the Adherence to ICE's Medical Standards in Detention Facilities

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Highlights of [GAO-08-869T](#), a testimony to the Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law, Committee on the Judiciary, House of Representatives

Why GAO Did This Study

In fiscal year 2007, Department of Homeland Security's (DHS) U.S. Immigration and Customs Enforcement (ICE) detained over 311,000 aliens, with an average daily population of over 30,000 and an average length of stay of about 37 days in one of approximately 300 facilities. The care and treatment of aliens while in detention is a significant challenge to ICE, as concerns continue to be raised by members of Congress and advocacy groups about the treatment of the growing number of aliens while in ICE's custody. This testimony focuses on (1) the extent to which 23 facilities complied with medical care standards, (2) deficiencies found during ICE's annual compliance inspection reviews, and (3) the types of complaints filed by alien detainees about detention conditions. This testimony is based on GAO's July 2007 report evaluating, among other things, the extent to which 23 facilities complied with aspects of eight of ICE's 38 National Detention Standards. This report did not address quality of care issues.

What GAO Recommends

While this testimony contains no new recommendations, GAO made recommendations to DHS to, among other things, establish improved internal control procedures to help ensure that detainee complaints are properly documented and their disposition recorded. DHS agreed with GAO's recommendations and is making progress implementing them.

To view the full product, including the scope and methodology, click on [GAO-08-869T](#). For more information, contact Richard M. Stana at (202) 512-8777 or stanar@gao.gov.

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Observations on the Adherence to ICE's Medical Standards in Detention Facilities

What GAO Found

At the time of its visits, GAO observed instances of noncompliance with ICE's medical care standards at 3 of the 23 facilities visited. These instances related to staff not administering a mandatory 14-day physical exam to approximately 260 detainees, not administering medical screenings immediately upon admission, and first aid kits not being available as required. However, these instances did not show a pervasive or persistent pattern of noncompliance across all 23 facilities. Officials at some facilities told GAO that meeting the specialized medical and mental health needs of detainees had been challenging, citing difficulties they had experienced in obtaining ICE approval for outside nonroutine medical and mental health care. On the other hand, GAO observed instances where detainees were receiving specialized care at the facilities visited.

At the time of its study, GAO reviewed the most recently available ICE annual inspection reports for 20 of the 23 detention facilities that it visited; these reports showed that ICE reviewers had identified a total of 59 instances of noncompliance with National Detention Standards, 4 of which involved medical care. One facility had sick call request forms that were available only in English whereas the population was largely Spanish speaking. Another did not maintain alien medical records on-site. One facility's staff failed to obtain informed consent from the detainee when prescribing psychiatric medication. Finally, another facility did not have medical staff on-site to screen detainees arriving after 5 p.m. and did not have a properly locked medical cabinet. GAO did not determine whether these instances of noncompliance were subsequently corrected as required.

The types of grievances at the facilities GAO visited typically included the lack of timely response to requests for medical treatment, missing property, high commissary prices, poor food quality and insufficient food quantity, high telephone costs, problems with telephones, and questions concerning detention case management issues. ICE's detainee grievance standard states that facilities shall establish and implement procedures for informal and formal resolution of detainee grievances. Four of the 23 facilities GAO visited did not comply with all aspects of ICE's detainee grievance standards. For example, one facility did not properly log all grievances that GAO found in their facility files. Detainee complaints may also be filed with several governmental and nongovernmental organizations. The primary way for detainees to file complaints is to contact the DHS Office of Inspector General (OIG). About 11 percent of detainee complaints to the OIG between 2005 and 2006 involved medical treatment issues. However, we found that the OIG complaint hotline 1-800 number was blocked or otherwise restricted at 12 of the facilities we tested. OIG investigates the most serious complaints and refers the remainder to other DHS components. GAO could not determine the number of cases referred to ICE's Detention Removal Office and concluded that ICE's detainee complaint database was not sufficiently reliable.

Chairman Lofgren, Mr. King, and members of the Subcommittee:

Thank you for inviting me here today to discuss our observations on the adherence to medical standards in alien detention facilities. According to the Department of Homeland Security's (DHS) U.S. Immigration and Customs Enforcement (ICE) officials, they maintain custody of one of the most highly transient and diverse populations of any correctional or detention system in the world. In fiscal year 2007, ICE detained over 311,000 aliens, with an average daily population of over 30,000 and an average length of stay of about 37 days (50 percent stay 18 days or less). This diverse population includes individuals from different countries; with varying medical conditions and security risks (criminal and noncriminal); and includes males, females, and families of every age group.

The care and treatment of aliens while in detention is a significant challenge to ICE, as concerns continue to be raised by members of Congress and advocacy groups about the treatment of the growing number of aliens while in ICE's custody. ICE has 38 National Detention Standards to help ensure that alien detainees are housed under appropriate conditions of confinement. These standards relate to a range of detainee services, including medical services. ICE policy is to conduct annual compliance inspection reviews of all adult, juvenile, and family detention facilities to check compliance with these standards. In doing so, ICE inspection staff are to review each detention facility's compliance with about 300 factors that are related to these standards (e.g., whether under the medical care standard the facility established a policy and procedures for responding to a detainee hunger strike). In addition to being required to comply with ICE's National Detention Standards, some ICE detention facilities are accredited by The Joint Commission, the predominant standards-setting and accrediting body in health care, and the National Commission on Correctional Health Care (NCCHC), which offers a health services accreditation program to determine whether correctional institutions meet its standards in their provision of health services.

From May 2006 through May 2007 we conducted a review to determine the extent to which selected facilities complied with aspects of 8 of the 38 standards, whether similar deficiencies were disclosed by ICE's annual compliance inspection review process, and the nature and disposition of complaints filed by aliens in detention facilities. We selected these eight National Detention Standards to review on the basis of interviews with officials from the United Nations High Commissioner for Refugees (UNHCR), the American Bar Association, and DHS Office of the Inspector General (OIG). These eight standards we reviewed were telephone access,

medical care, hold room procedures, use of force, food services, recreation, access to legal materials, and detainee grievance procedures. During the course of our review we visited 23 detention facilities under ICE oversight—18 of 330 adult, 2 of 19 juvenile, and all 3 family detention facilities. Because we did not randomly select our detention facilities, the results of our field observations from these facilities cannot be generalized to the full universe of detention facilities nationwide. However, these observations provided us with an overview of compliance with detention standards at different sizes and types of facilities in various locations across the country. We reviewed policies, procedures, documents, and inspection and grievance reports pertaining to detainee conditions of confinement, and interviewed facility and ICE staff responsible for compliance with the eight standards that we reviewed. In addition, we interviewed some individual detainees concerning their treatment at detention facilities, particularly with respect to the eight standards, but did not independently assess the merits of detainee complaints.

My statement today is based on our results regarding medical care standards that we reported in July 2007¹ and addresses the extent to which the 23 facilities complied with ICE's medical care standards, deficiencies found during ICE's annual compliance inspections of these facilities, and the types of complaints filed by alien detainees about detention conditions. With respect to ICE medical care standards, we ascertained whether (1) a range of medical and mental health services specified in ICE's standards were available, (2) detainees received initial medical screening upon admission and a more complete physical exam within 14 days of admission,² (3) detainees had the opportunity to request medical services, (4) specialized medical and mental health services could be arranged, (5) procedures and facilities for suicide prevention were available, and (6) a plan for 24-hour emergency care was available. We did not systematically review individual detainee medical cases or ICE decisions on the type or extent of nonroutine treatment that is medically necessary, nor did we otherwise investigate quality of care.

¹GAO, *Alien Detention Standards: Telephone Access Problems Were Pervasive at Detention Facilities; Other Deficiencies Did Not Show a Pattern of Noncompliance*, [GAO-07-875](#) (Washington, D.C.: July 6, 2007).

² ICE standards state that detainees are to receive an initial medical screening immediately upon admission and a more complete medical assessment within 14 days. The policy also states that a health care specialist shall determine needed medical treatment.

Some Instances of Noncompliance with Medical Care Standards Occurred

At the time of our visits, we observed instances of noncompliance with ICE's medical care standards at 3 of the 23 facilities we visited. However, these instances did not show a pervasive or persistent pattern of noncompliance across the facilities like we those identified with the telephone system.³ Detention facilities that we visited ranged from those with small clinics with contract staff to facilities with on-site medical staff, diagnostic equipment such as X-ray machines, and dental equipment. Medical service providers include general medical, dental, and mental health care providers that are licensed by state and local authorities. Some medical services are provided by the U.S. Public Health Service (PHS), while other medical service providers may work on a contractual basis.

At the San Diego Correctional Facility in California, an adult detention facility, ICE reviewers that we accompanied cited PHS staff for failing to administer the mandatory 14-day physical exam to approximately 260 detainees. PHS staff said the problem at San Diego was due to inadequate training on the medical records system and technical errors in the records system. At the Casa de San Juan Family Shelter in California, we found that the facility staff did not administer medical screenings immediately upon admission, as required in ICE medical care standards. At the Cowlitz County Juvenile Detention Center in Washington state, we found that no medical screening was performed at admission and first aid kits were not available, as required.

Officials at some facilities told us that meeting the specialized medical and mental health needs of detainees can be challenging. Some also cited difficulties they had experienced in obtaining ICE approval for outside nonroutine medical and mental health care as also presenting problems in caring for detainees. On the other hand, we observed instances where detainees were receiving specialized medical care at the facilities we visited. For example, at the Krome facility in Florida we observed one detainee sleeping with the assistance of special breathing equipment (C-

³The most persistent and pervasive problem we found was with the detention facility telephone systems. Many facilities used an ICE contractor-provided telephone system, known as the "pro bono telephone system," to satisfy the standard that requires the facilities to provide a means for detainees to make calls to certain entities at no charge to themselves or the recipient. At 16 of the 17 facilities we visited that used this system, we had significant problems making connections to consulates, pro bono legal providers, and the DHS OIG complaint hotline.

PAP machine) to address what we were told was a sleep apnea condition. At the Hampton Roads Regional jail in Virginia we observed a detainee receiving treatment from a kidney dialysis machine. Again, assessing the quality of care and ICE's decision—making process for approval of nonroutine medical procedures were outside the scope of our review.

ICE Compliance Inspections Also Show Some Instances of Noncompliance With Medical Standards

We reviewed the most recently available ICE annual inspection reports for 20 of the 23 detention facilities that we visited. With the exception of the San Diego facility in California, the reports covered a different time period than that of our review.⁴ The 20 inspection reports showed that ICE reviewers had identified a total of 59 instances of noncompliance, 4 of which involved medical care. According to ICE policy, all adult, juvenile, and family detention facilities are required to be inspected at 12-month intervals to determine that they are in compliance with detention standards and to take corrective actions if necessary. As of November 30, 2006, according to ICE data, ICE had reviewed approximately 90 percent of detention facilities within the prescribed 12-month interval. Subsequent to each annual inspection, a compliance rating report is to be prepared and sent to the Director of the Office of Detention and Removal or his representative within 14 days. The Director of the Office of Detention and Removal has 21 days to transmit the report to the field office directors and affected suboffices. Facilities receive one of five final ratings in their compliance report—superior, good, acceptable, deficient, or at risk.⁵ ICE officials reported that as of June 1, 2007, 16 facilities were rated “superior,” 60 facilities were rated “good,” 190 facilities were rated “acceptable,” 4 facilities were rated “deficient,” and no facilities were rated “at risk.” ICE officials stated that this information reflects completed

⁴ Our review was done from May 2006 to May 2007, whereas the ICE inspection reports were done at various times during 2004, 2005 and 2006.

⁵ According to Detention Management Control Program policies and procedures, a superior rating means that the facility is performing all of its functions in an exceptional manner, has excellent internal controls, and exceeds expectations. A good rating means that a facility is performing all of its functions, and there are few deficient procedures, but internal controls are not limited by these deficiencies. An acceptable rating means that detention functions are being adequately performed. Although deficiencies may exist, they do not detract from the acceptable accomplishment of the vital functions. Deficient ratings mean that one or more detention functions are not being performed at an acceptable level. Internal controls are weak, thus allowing for serious deficiencies in one or more program areas. At-risk ratings mean the detention operations are impaired to the point that they are not presently accomplishing their overall mission. That is, internal controls are not sufficient to reasonably ensure acceptable performance can be expected in the future.

reviews, and some reviews are currently in process and pending completion. Therefore, ICE could not provide information on the most current ratings for some facilities.

Four inspection reports disclosed instances of noncompliance with medical care standards. The Wakulla County Sheriffs Office in Florida had sick call request forms that were available only in English whereas the population was largely Spanish speaking. The Cowlitz County Juvenile Detention Facility in Washington state did not maintain the alien juvenile medical records on-site. The San Diego Correctional facility staff, in addition to the deficiencies noted earlier in this statement, failed to obtain informed consent from the detainee when prescribing psychiatric medication. Finally, the Broward Transitional Center in Florida did not have medical staff on-site to screen detainees arriving after 5 p.m. and did not have a properly locked medical cabinet. We did not determine whether these deficiencies were subsequently addressed as required.

Alien Detainee Complaints Included Concerns About Medical Care

Our review of available grievance data obtained from facilities and discussions with facility management showed that the types of grievances at the facilities we visited typically included the lack of timely response to requests for medical treatment, missing property, high commissary prices, poor quality or insufficient quantity of food, high telephone costs, problems with telephones, and questions concerning detention case management issues. ICE's detainee grievance standard states that facilities shall establish and implement procedures for informal and formal resolution of detainee grievances. Four of the 23 facilities we visited did not comply with all aspects of ICE's detainee grievance standards. Specifically, Casa de San Juan Family Shelter in San Diego did not provide a handbook to those aliens in its facility, the Cowlitz County Juvenile Detention Center in Washington state did not include grievance procedures in its handbook, Wakulla County Sheriff's Office in Florida did not have a log, and the Elizabeth Detention Center in New Jersey did not record all grievances that we observed in their facility files.

The primary mechanism for detainees to file external complaints is directly with the OIG, either in writing or by phone using the DHS OIG complaint hotline. Detainees may also file complaints with the DHS Office for Civil Rights and Civil Liberties (CRCL), which has statutory responsibility for investigating complaints alleging violations of civil rights and civil liberties. In addition, detainees may file complaints through the Joint Intake Center (JIC), which is operated continuously by both ICE and U.S. Customs and Border Protection (CBP) personnel, and is responsible

for receiving, classifying, and routing all misconduct allegations involving ICE and CBP employees, including those pertaining to detainee treatment. ICE officials told us that if the JIC were to receive an allegation from a detainee, it would be referred to the OIG. OIG may investigate the complaint or refer it to CRCL or DHS components such as the ICE Office of Professional Responsibility (OPR) for review and possible action. In turn, CRCL or OPR may retain the complaint or refer it to other DHS offices, including ICE Office of Detention and Removal (DRO), for possible action. Further, detainees may also file complaints with nongovernmental organizations such as ABA and UNHCR. These external organizations said they generally forward detainee complaints to DHS components for review and possible action.

The following discussion highlights the detainee complaints related to medical care issues where such information is available. We did not independently assess the merits of detainee complaints.

- Of the approximately 1,700 detainee complaints in the OIG database that were filed in fiscal years 2003 through 2006, OIG investigated 173 and referred the others to other DHS components. Our review of approximately 750 detainee complaints in the OIG database from fiscal years 2005 through 2006 showed that about 11 percent involved issues relating to medical treatment, such as a detainees alleging that they were denied access to specialized medical care.⁶
- OPR stated that in fiscal years 2003 through 2006, they had received 409 allegations concerning the treatment of detainees. Seven of these allegations were found to be substantiated,⁷ 26 unfounded,⁸ and 65

⁶In connection with the persistent and pervasive telephone problems we found, the OIG complaint hotline telephone number was blocked or otherwise restricted at 12 of the 23 facilities that we visited. Therefore, while some detainees at these facilities may have filed written complaints with the OIG, the number of reported allegations may not reflect the universe of detainee complaints.

⁷OPR defines “substantiated allegation” as an allegation for which the evidence would cause a reasonable person to conclude that the alleged act of misconduct is likely to have occurred.

⁸An allegation is unfounded in OPR’s definition when the evidence would cause a reasonable person to conclude that the subject employee did not commit the alleged misconduct, or that, in fact, no misconduct occurred.

unsubstantiated.⁹ Four of the seven substantiated cases involved employee misconduct, resulting in four terminations. According to OPR officials, three cases were still being adjudicated and the nature of the allegations was not provided. Additionally, 200 of the allegations were classified by OPR as either information only to facility management, requiring no further action, or were referred to facility management for action, requiring a response.

- CRCL also receives complaints referred from the OIG, nongovernmental organizations, and members of the public. Officials stated that from the period March 2003 to August 2006 they received 46 complaints related to the treatment of detainees, although the nature of the complaints was not identified. Of these 46 complaints, 14 were closed, 11 were referred to ICE OPR, 12 were retained for investigation, and 9 were pending decision about disposition.
- We could not determine the number of cases referred to DRO or their disposition. On the basis of a limited review of DRO's complaints database and discussions with ICE officials knowledgeable about the database, we concluded that DRO's complaint database was not sufficiently reliable for audit purposes. We recommended that ICE develop a formal tracking system to ensure that all detainee complaints referred to DRO are reviewed and the disposition, including any corrective action, is recorded for later examination.
- We reviewed 37 detention monitoring reports compiled by UNHCR from the period 1993 to 2006. These reports were based on UNHCR's site visits and its discussions with ICE officials, facility staff, and detainee interviews, especially with asylum seekers. Eighteen of the 37 UNHCR reports cited concerns related to medical care, such as detainee allegations that jail staff were unresponsive to requests for medical assistance and UNHCR's concern about the shortage of mental health staff.
- While American Bar Association officials informed us that they do not keep statistics regarding complaints, they compiled a list for us of common detainee complaints received through correspondence. This list indicated that of the 1,032 complaints it received from January 2003 to February 2007, 39 involved medical access issues such as a detainee

⁹An allegation is unsubstantiated in OPR's definition when the evidence is not sufficient for a reasonable person to determine whether the subject employee committed the alleged misconduct.

alleging denial of necessary medication and regular visits with a psychiatrist, allegations of delays in processing sick call requests, and allegations of a facility not providing prescribed medications.

Madam Chairman, this concludes my prepared remarks. I would be happy to answer any questions you or the members of the subcommittee have.

Contacts and Acknowledgments

For further information on this testimony, please contact Richard M. Stana at (202) 512-8777 or by e-mail at stanar@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement.

In addition to the contact named above, William Crocker III, Assistant Director; Minty Abraham; Frances Cook; Robert Lowthian; and Vickie Miller made key contributions to this statement.

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