U.S. Immigration and Customs Enforcement

STATEMENT

OF

JAMES T. HAYES, JR.

DIRECTOR
OFFICE OF DETENTION AND REMOVAL OPERATIONS

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

"MEDICAL CARE AND TREATMENT OF IMMIGRATION DETAINEES
AND DEATHS IN DRO CUSTODY"

BEFORE THE

HOUSE APPROPRIATIONS COMMITTEE
SUBCOMMITTEE ON HOMELAND SECURITY

Tuesday, March 3, 2009 @ 10:00 pm
2359 Rayburn House Office Building

Good afternoon, Chairman Price, Congressman Rogers and distinguished Members of the Committee. My name is James Hayes, and I am the Director of Detention and Removal Operations (DRO) at U.S. Immigration and Customs Enforcement (ICE). It is my privilege to appear before you to discuss the detention processes, medical care and treatment of ICE detainees.

DRO's core mission is the arrest, detention, and removal of inadmissible and deportable aliens. In doing so, we enforce the law as enacted by Congress. Our authority to arrest and detain aliens is contained in the Immigration and Nationality Act (Sections 236 and 241), first in 1952 and subsequently revised and expanded by Congress. In carrying out our mission, one of our highest priorities is to provide a safe, secure and humane detention environment for detainees, including providing health care to those in our custody. We take this responsibility very seriously and have created a comprehensive detainee health care program and a rigorous inspection program to that end. I am personally committed to ensuring that ICE detainees are treated humanely and receive adequate medical care for the duration of their time in custody.

DRO will work closely with the Secretary's Special Advisor Dora Schriro to review and implement recommendations made by the Department's Working Group on Detainee Health Care, which considered detainee health care improvements and delivered its report to former Deputy Secretary Paul Schneider on January 26, 2008. The Working Group included the Office of Health Affairs and individual external medical experts commented on its reports. Additionally, as you are aware, this Committee funded an assessment of medical care provided to ICE detainees that will be performed by the Office of Professional Responsibility, in

consultation with the Department's Office of Health Affairs. I understand the contract for that assessment will be awarded by mid-April, and we look forward to cooperating fully with the review.

THE ICE DETENTION SYSTEM

ICE uses detention as a tool to ensure that aliens amenable to removal from the United States are in fact removed. The detention facilities that ICE uses can be grouped according to function and ownership. Service Processing Centers (SPCs) are owned by ICE and staffed by a combination of federal and contract employees. Contract Detention Facilities (CDFs) are owned by private companies that contract directly with the government and staffed by a combination of federal and contract employees. Inter-governmental Service Agreement facilities (IGSAs) are operated by local governments and are usually public facilities but can also be privately owned. Dedicated IGSAs are facilities with detention space reserved exclusively for ICE. Other facilities used by ICE include staging facilities for transportation, holding facilities, and hospitals for emergency care.

Approximately 67 percent of the current ICE population is in IGSA facilities, 15 percent in Contract Detention Facilities, and 10 percent in ICE-owned facilities; the remainder is housed by the Office of Refugee Resettlement, the Bureau of Prisons, or other, less restrictive detention settings. In Fiscal Year 2009, the ICE detention program is funded for 33,400 beds. Currently, ICE estimates that 442,941 detainees will spend time in ICE custody this year. The vast majority

of these detainees will be in ICE's care for approximately 30 days or less prior to their deportation from the United States.

ICE uses both internal and external programs to ensure that all facilities we use to house detainees provide safe, humane conditions of confinement. ICE contracts with two companies recognized for their expertise in detention management to conduct inspections and ensure ongoing quality control. Detention professionals from Creative Corrections perform annual detention facilities inspections previously performed by ICE employees on a collateral duty basis. Detention experts from the Nakamoto Group serve as on-site, full time quality assurance inspectors at our 37 largest facilities. The on-site contractor will be performing the same function on a regional basis for our other facilities by third quarter FY 2009. To ensure that identified deficiencies are immediately addressed, in January of this year, I directed that any deficiency be immediately reported to me for review so I can closely track progress in correcting the deficiency. It has always been ICE policy to address and correct deficiencies involving life and health safety issues; however, I believe the higher level of visibility will speed remediation efforts.

Internally, in 2007, ICE created the Detention Facilities Inspection Group (DFIG) to conduct specialized inspections of detention facilities and to investigate allegations of mistreatment and non-compliance with our detention standards. The Inspection Group does not report to me, but to the ICE Office of Professional Responsibility (OPR), which independently inspects and reviews ICE offices, operations, and processes.

DETAINEE HEALTH CARE SERVICES

To ensure detainees receive medical treatment in accordance with community standards of care, my office partners with U.S. Public Health Service commissioned officers to provide or arrange for health care in 23 detention facilities that ICE uses, including all seven ICE-owned Service Processing Centers. The Division of Immigration Health Services (DIHS) has more than 700 doctors, nurses, and other health care professionals. During Fiscal Year 2008, ICE spent over $128 million on detainee health care, including basic and advanced care for detainees at the above mentioned facilities as well as advanced care for detainees housed at other detention facilities.

Since the creation of ICE in 2003, more than 1.7 million individuals have passed through ICE detention facilities. ICE currently tracks all health care provided to detainees in detention facilities staffed by DIHS and advanced care authorized for all ICE detainees through the DIHS Managed Care Program. Last summer, we began developing plans to add health records to our modernization of detainee records, with the goal of tracking all health care provided to those in ICE custody.

The initial health screening must occur within 12 hours of a detainee's arrival at a facility to determine each detainee's medical, mental health, and/or dental needs. Included in this process is either a chest x-ray or skin test for tuberculosis. Immediate attention is provided to detainees who present a danger or an imminent risk to themselves or others, such as infectious diseases,

uncontrolled mental health disorders, or conditions that would deteriorate if not addressed immediately by medical personnel.

These initial health screenings have proven, in some cases, to be life saving. For example, last August, a Mexican national arrested by ICE agents during a worksite enforcement operation was diagnosed during his initial health screening in ICE custody with an abdominal aortic aneurysm, a serious and potentially life-threatening condition. DIHS took immediate action and arranged for this detainee to undergo a surgical procedure that literally saved his life.

In addition to the initial health care screening, ICE detainees receive a health appraisal and physical examination within 14 days of arrival to identify medical conditions that might require monitoring and treatment. Through the screening, physical exam and any other subsequent evaluations, medical staff ensure detainees receive prescription medications, consultations, and follow-up appointments for conditions. Scheduled visits include appointments made in advance for ambulatory care or specialty care clinics. Unscheduled visits are performed for emergent or urgent conditions.

If language difficulties prevent the health provider or officer from directly communicating with a detainee for purposes of completing a medical screening or health evaluation, the officer is required to obtain translation assistance. ICE has several translation services contracts in place to meet this need.

All ICE detainees, regardless of classification, have access to sick call. Detainees have the opportunity to request health care services provided by a physician or other qualified medical officer in a clinical setting. Procedures are in place to ensure that all requests for care are received by the health service provider in a timely manner.

The sick call process provides detainees access to non-emergency medical services, and all facilities are required to have regularly scheduled times when medical personnel will be available to see detainees who have requested service. For emergency or urgent medical services, detainees may notify any facility staff at any time that a problem occurs, and medical staff or 911 will be called immediately.

Medical care provided at each detention facility also includes access to prescription medications. Prescriptions written for detainees by the health service provider are filled either by an on-site pharmacy or by a local community pharmacy.

The ICE Medical Program articulates the health care services, medical products and treatment options that are available to any detainee in custody, including treatment for conditions that pose an imminent threat to life, limb, hearing or sight. Medical conditions which the local treating physician believes would cause suffering or deterioration of a detainee's health are also assessed and evaluated through the DIHS Managed Care Program. The Program uses a network of more than 500 hospitals, 3,000 physicians, and 1,300 other health care facilities to provide a wide range of medical services available to all ICE detainees.

Detainees who require care beyond what can be provided at their detention facility are provided those services through the Managed Care Program. Each year, DIHS handles more than 40,000 requests for outside services. The average turnaround time for a request is 2.6 days, and 98 percent of requests are approved. Relying on DIHS' managed care network, ICE ensures that detainees get access to specialized treatment for cancer, heart conditions, diabetes, as well as a variety of general surgical procedures, including those covering appendicitis, diseases of the gall bladder, and orthopedics.

CHALLENGES AND IMPROVEMENTS

Last year, ICE revised its National Detention Standards and plans to begin a phased implementation of new performance-based detention standards. ICE will begin implementing the Performance Based National Detention Standards this April in ICE-owned detention facilities; ICE expects to have the new standards fully implemented in all detention facilities housing ICE detainees by June 2010. In administering the new standards, ICE has developed a compliance monitoring program including a new unit dedicated to ensuring day-to-day compliance and expert, trained detention management staff assigned to each DRO field office.

In the five months since I became the permanent DRO Director, I have reviewed our detention system, including the health care delivery system currently used. We are faced with a variety of challenges, including: that 90 percent of our detainee population comes from 10 of the world's most underdeveloped nations and have generally not received adequate health care prior to

entering ICE custody: that of the detainees medically screened by DIHS in Fiscal Year 2008, 34 percent of detainees were identified as having chronic health care problems including cases of hypertension and diabetes that were previously undiagnosed; the lack of available detention space in areas where ICE is busiest, including southern California, New England, and the mid-Atlantic region; and the rising health care costs for a detainee population in generally poor health.

Before I conclude, I would like to make a few comments regarding detainee deaths. While a single death of a detainee is a tragedy, and potentially a failure of the system, the Detainee Health Program has an overall death rate that is well below those in comparable detention or correctional settings. Although exact comparisons of mortality rates between ICE facilities and other correctional and jail settings are difficult, mortality rates at ICE facilities have significantly decreased since 2004.

The mortality rate for ICE detainees in 2008 was 2.7 deaths per 100,000 detainees. As the Government Accountability Office (GAO) reported, given the generally poor health of detainees who enter ICE custody, the comparatively low death rate among ICE detainees provides evidence of the extraordinary measures ICE takes to prevent the death of any ICE detainee in our care.

When a death does occur, ICE reports it immediately to our Office of Professional Responsibility (OPR) and the DHS Office of the Inspector General (OIG) to determine if an investigation into the circumstances of the detainee's passing is warranted. Facilities are also required to report all

deaths to the local medical examiner or coroner's office, who will conduct an autopsy if required. DIHS also conducts an independent review of some in-custody deaths based on the individual circumstances. This year, we will start reporting all deaths in ICE custody to the Department of Justice's Bureau of Justice Statistics.

Despite steady improvement and increased investment in recent years, I believe our detention management system can be strengthened further. We have recognized the need for such improvement and have taken significant steps in working toward our goal of having the safest detention management system in the United States. I look forward to working with Dr. Schriro to build upon this progress. Our comprehensive detainee health program is based on comprehensive medical care, sound management, continuous review, and process improvement. Our detention oversight procedures work to ensure a safe, secure, and humane detention environment. ICE's detention and medical service processes are continually monitored by both internal and external experts with the ultimate goal of providing the best possible conditions of confinement and health care to those in our custody. As I mentioned at the start of my statement, the well being of our detainees is among our highest priorities and most important responsibilities.

Thank you for the opportunity to appear before you today, and I look forward to answering any questions you may have.

U.S. Immigration and Customs Enforcement

STATEMENT

OF

DORA SCHRIRO

Special Advisor to Secretary Napolitano
on Detention and Removal Operations

DEPARTMENT OF HOMELAND SECURITY

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

REGARDING A HEARING ON

"MEDICAL CARE AND TREATMENT OF IMMIGRATION DETAINEES AND DEATHS IN DRO CUSTODY"

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Tuesday, March 3, 2009 @ 10:00 AM
2359 **Rayburn House Office Building**

Good afternoon, Chairman Price, Ranking Member Rogers and distinguished Members of the Subcommittee. My name is Dora Schriro. I am newly appointed the Special Advisor on Detention and Removal Operations (DRO) at U.S. Immigration and Customs Enforcement (ICE) to Secretary Napolitano. The Secretary created this position to focus exclusively on the significant growth in immigration detention over the last five years, and to focus on arrest priorities at ICE.

Just prior to joining the Department of Homeland Security, I served as Director of the Arizona Department of Corrections in Governor Napolitano's administration during which time our agency's work was recognized by the JFK School of Government with the 2008 Innovations in American Governance award. I have also led the Missouri Department of Corrections as Director where during my tenure; the department received the Council of State Governments Innovations award. In both states we also put systems in place to find and fix the root causes of concerns and in the process, cut new law suits about conditions of confinement by greater than 70 percent. I also have considerable experience working with pretrial detainees first, as Assistant Commissioner of the NYC Department of Corrections and later, as Warden and then Commissioner of the St. Louis City jails. In each of these jurisdictions alternatives to detention and incarceration were also of concern and great strides were made in this area as well. I am otherwise active in making improvements; for example, participated in an American Bar Association (ABA) workgroup to review and revise standards for the treatment of prisoners and detainees. I appreciate the similarities and the differences in civil detention and criminal confinement and it has informed my early assessment these first several weeks of work.

Thank you for this opportunity to appear before you. I look forward to sharing my early impressions about the medical care and treatment of immigration detainees and deaths of detainees in DRO custody, and to suggest when a preliminary course of action may be available to bring about the changes we all want.

Medical Care and Treatment of Immigration Detainees

Within ICE, Detention and Removal Operations (DRO) oversees the apprehension, supervision in detention facilities and the community, and the removal of inadmissible and deportable aliens. This means of course, that DRO provides, either directly or by contract, for the safety and well-being of the detainee population pending their removal.

ICE has an affirmative obligation to ensure appropriate medical treatment to detainees in its custody and ICE is appropriated funds to provide that care. Currently, all ICE detainees, regardless of location, should expect to receive 1) a medical screening within 12 hours of admission[1], 2) a

[1] The medical screening includes: any past history of serious infectious or communicable illness, and any treatment or symptoms; current illness and health problems, including communicable diseases; pain assessment; current and past medication; allergies; Past surgical procedures; symptoms of active TB or previous TB treatment; dental problems; use of alcohol and other drugs; possibility of pregnancy; other health programs designated by the responsible clinical medical authority; observation of behavior, including state of consciousness, mental status, appearance, conduct, tremor, sweating; history of suicide attempts or current suicidal/homicidal ideation or intent; observation of body deformities and other physical abnormalities; questions and an assessment regarding past or recent sexual victimization.

physical exam within two weeks of detention[2], 3) timely and appropriate responses to emergent medical requests and 4) timely medical care appropriate to the anticipated length of detention. As documented in Government Accountability Office (GAO) reports, assessments by non-governmental organizations, ABA correspondence and news accounts, among others, we know that this does not always happen.

Detention Deaths in Custody

ICE was formed recently. Since its inception in 2003, there have been 90 detainee deaths in ICE custody including 76 of natural causes, 13 by suicide and one by accidental overdose. In several recent instances, the medical and custodial care that those detainees received before expiring appeared to be contrary to DRO policy.

Next Steps

DRO has an average daily census approaching 33,400 detainees and an end-of-year count exceeding 400,000. Unlike its pre-trial counterparts, it oversees as many as 350 facilities of which only a few are under its direct control. Its delivery of health care is shared by the Division of Immigration Health Services (DIHS) and several hundred state and local partners with which DRO maintains intergovernmental agreements. DIHS is the direct health care provider to approximately 40 percent of ICE detainees, all of whom are located at seven ICE and 16 private

[2] The health appraisal includes a physical examination on each detainee within 14 days of the detainee's arrival unless more immediate attention is required due to an acute or identifiable chronic condition, in accordance with the most recent ACA Adult Local Detention Facility standards for Health Appraisals. If there is documentation of one within the previous 90 days, the facility health care provider upon review may determine that a new appraisal is not required. Medical, dental, and mental health interviews, examinations, and procedures shall be conducted in settings that respect detainees' privacy. Detainees will be provided same sex chaperones as appropriate or as requested. The clinical medical authority shall be responsible for review of all health appraisals to assess the priority for treatment. Detainees diagnosed with a communicable disease shall be isolated according to national standards of medical practice and procedures.

detention facilities. The remaining 60 percent of the detainee population receive routine health care on-site by IGSA providers. DRO expended $128 million through per diem payments during FY 2008 and DIHS provided medical and mental health care to the administratively detained population. ICE plans to increase its detention capacity by 1,400 beds during FY 2009. It is also in the process of renegotiating inter-agency service agreements with the 100 largest state and local facilities with which it contracts. We all recognize more than that needs to occur.

The FY 2009 appropriation provided $2,000,000 to ICE to undertake immediately a review of the medical care provided to people detained by DHS. This is an important opportunity for ICE to convene stakeholders and subject matter experts to build upon the body of knowledge contained in Government Accountability Office (GAO) reports, House and Senate reports, and a recent report from a working group on detainee health care that was formed last year by Secretary Chertoff to improve the scope, the services and the system of health care. I plan to actively participate.

Clearly, many concerns have been expressed within government and by the community for some time about the medical care and treatment that the ICE detainees receive and detainee deaths in custody. In my view, there is reason for concern. There is also real opportunity for measurable, sustainable improvement. In addition to work previously mentioned, I will complete my review of reports written by GAO, the DHS Office of Inspector General, and others and continue to tour facilities in every part of the country speaking with staff and detainees whenever possible and meeting with my colleagues in state and local law enforcement and non-governmental organizations in each area that I visit. Working with DRO and DIHS, we will also begin to collect data to inform budget and planning decisions that will sustain a system of health care consistent with medically

accepted community standards of care. There will be less noise and more news. Finally, I have been asked by Secretary Napolitano to submit preliminary findings and recommendations to her shortly and I am prepared to do so. I anticipate that we will provide our findings to you shortly thereafter and it will include deliverables upon which you can count. We can make a difference, and we will.

U.S. Immigration and Customs Enforcement

STATEMENT

OF

JOSE H. RODRIGUEZ, MD, MBA, CHE
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DIRECTOR
DIVISION OF IMMIGRATION HEALTH SERVICES

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

"ADVANCES IN IMMIGRATION DETAINEE MEDICAL CARE"

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Tuesday, March 3, 2009 @ 10:00 AM
2359 Rayburn House Office Building

Good afternoon, Chairman Price, Ranking Member Rogers and distinguished Members of the Subcommittee. My name is Captain Jose Rodriguez, and I am a Medical Doctor and Commissioned Officer of the United States Public Health Service currently serving as the Director of U.S. Immigration and Customs Enforcement (ICE)'s Division of Immigration Health Services (DIHS). Thank you for allowing me to appear before you today.

The mission of DIHS is to protect America by providing health care and public health services in support of immigration law enforcement. DIHS consists of U.S. Public Health Service (PHS), General Schedule (GS) employees, and contracted medical staffing services. The dedicated medical professionals of the U.S. Public Health Service have provided health care and made medical recommendations about medical and mental health treatment of detainees in ICE facilities since ICE was created. The PHS officers are detailed from the Department of Health and Human Services to the Department of Homeland Security. These health professionals exercise their independent medical judgment about all matters pertaining to a detainee's health care and seek to ensure that everyone they see receives appropriate medical treatment consistent with accepted community standards of care.

DIHS is responsible for protecting America's borders utilizing disease screening and prevention controls for ICE detainees through the administration of a comprehensive health care delivery system incorporating medical, mental health, and environmental services. It serves as the primary focal point within ICE for the planning, management,

policy formation, program coordination, direction, and liaison for ICE detainee health matters. DIHS, through the USPHS medical staff, also oversees the financial authorization and payment for off-site specialty and emergency care for detainees in ICE custody.

DIHS provides health care to detained aliens in ICE facilities, including those who may encounter a medical emergency while in custody. DIHS provides health care to detainees at Service Processing Centers (SPC), Contract Detention Facilities (CDF), and certain Intergovernmental Service Agreement (IGSA) facilities.

ICE, through its National Detention Standards, requires that each detainee receive an initial medical screening, including a mental health and dental evaluation, within 12 hours of arrival into custody. Those remaining in ICE custody for at least 14 days also receive a comprehensive health assessment, which includes a detailed medical history and a complete physical examination. Many of these detainees learn of a medical ailment or receive medical care and treatment for the first time through this comprehensive screening. ICE requires that each detainee is provided specific treatment as medically indicated for both chronic illnesses and newly diagnosed conditions.

In FY2008, of the 236,906 detainee screenings, 81,352 detainees, or approximately 34 percent were identified as having chronic conditions, including hypertension, diabetes, and/or mental health issues. Some detainees suffer from multiple chronic conditions.

Each DIHS-staffed clinic has a written plan for the delivery of 24-hour emergency health care or immediate outside medical attention. All facilities have arrangements with nearby medical facilities or health care providers for health care not provided within the facility. When an ICE detainee is hospitalized, the hospital assumes medical decision-making authority, including the patient's drug regimen, lab tests, X-rays and treatments. Appropriate custodial officers are required to transport and remain with the detainee for the duration of any off-site treatment or hospital admission.

Each DIHS clinic has a mechanism that allows detainees to request health care services provided by a physician or other qualified medical officer in a clinical setting. Detainees, including those who are illiterate or do not speak or read English, can receive assistance in filling out the request slip to access a health care provider. Each detainee who is identified with a chronic-care issue is treated and educated on self-care needs, and appropriate treatment and follow-up are coordinated while the individual is in ICE custody.

Patients are treated in accordance with nationally- recognized standards and guidelines. This care may be given on- or off-site, as appropriate for the individual patient's clinical condition. Individuals who have acute or chronic physical health care needs are referred to a primary care provider for evaluation and medical treatment. Those found to have an infectious disease are placed in an appropriate health care setting and receive treatment for their condition. Access to health care outside DIHS facilities is available to detainees when their needed medical care cannot be provided at the onsite detention health care

facility. DIHS also oversees the financial authorization and payment for off-site specialty and emergency care for all detainees in ICE custody, wherever they are housed.

The demands on DIHS to provide mental health care services for detainees continue to grow with the size of the detainee population. To address these mental health needs, the psychologists and social workers of DIHS have provided some 27,000 combined patient encounters for psychological services. Since April 2007, psychologists and social workers have provided some of the following services: psychological and psychiatric assessments and evaluations, individual psychotherapy sessions, psychiatric medication management follow-up, acute mental health hospitalizations, suicide risk assessments, and suicide watch follow-up appointments. This list is not all-inclusive and applies only to those detainees in facilities where DIHS Mental Health officers and staff are assigned. Crises intervention services, consultations to special housing unit intakes, special housing unit follow-up appointments and other services provided to detainees are not listed in the above tally. Approximately 82 percent of the services were direct patient contact. DIHS has also developed and implemented a training program for DIHS staff members on suicide prevention.

The DIHS medical staff and the Epidemiology Branch monitor tuberculosis (TB) cases to ensure continuity of care, whether the detainee is to be released from custody into the United States or returned to his or her country of origin. Between January 1, 2007 and May 31, 2008, ICE coordinated the repatriations to home countries of 156 individuals with active or suspected active tuberculosis. DIHS seeks to minimize threats to public

health domestically and globally and prevent transmission of drug-resistant and multi-drug resistant tuberculosis.

DIHS is committed to providing quality medical care to detainees. To help ensure that consistent and quality care is provided, all DIHS facilities maintain accreditation from three nationally-recognized accrediting bodies to ensure the quality of health care meets industry standards: the American Correctional Association (ACA), the National Commission on Correctional Health Care (NCCHC), and the Joint Commission. Detainee facilities are also assessed using ICE's National Detention Standards to ensure that adequate and appropriate medical care is provided to detainees. All DIHS health care providers are required to be licensed and credentialed under the same guidelines as those serving the U.S. Bureau of Prisons and other federal or community facilities.
DIHS continues to make improvements to ensure that consistent quality medical care is accessible to all ICE detainees. This is accomplished through regular and frequent communications with ICE DRO leadership and enhancements to existing programs. DIHS is actively participating in the Electronic Medical Record (EMR) Workgroup that is evaluating several electronic health records systems.

Thank you for allowing me to provide testimony before your committee today. I'm happy to answer any questions you have.