



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

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VIA ELECTRONIC MAIL

Dr. Stephen D. Smith
Assistant Director for ICE Health Services Corps.
Enforcement and Removal Operations
Immigration and Customs Enforcement
Department of Homeland Security
Washington, DC 20528

Mr. Thomas D. Homan
Acting Director
U.S. Immigration and Customs Enforcement
Department of Homeland Security
Washington, DC 20528

Ms. Cameron Quinn
Officer for Civil Rights and Civil Liberties
Office for Civil Rights and Civil Liberties
Department of Homeland Security
Washington, DC 20528

Mr. John Kelly
Acting Inspector General
Office of the Inspector General
Department of Homeland Security
Washington, DC 20528

**RE: Failure to provide adequate medical and mental health care to individuals
detained in the Denver Contract Detention Facility**

Dear Dr. Smith, Ms. Quinn, Mr. Homan, and Mr. Kelly:

The American Immigration Council (Council) and American Immigration Lawyers Association (AILA) file this complaint on behalf of current and formerly detained individuals at the Denver Contract Detention Facility in Aurora, Colorado—commonly known as the “Aurora” facility. This complaint documents recent accounts of dangerously inadequate medical and mental health care at the facility which threaten the health and well-being of affected detainees, as well as their ability to lawfully pursue their immigration and asylum claims.

The stories shared in this complaint illustrate the government’s longstanding and systemic failure to provide adequate medical and mental health care to individuals detained in the Aurora facility, which is owned and operated by the GEO Group, Inc. (“GEO”); the largest private prison company in the United States. The following cases demonstrate repeated violations by U.S. Immigration and Customs Enforcement (“ICE”) and GEO of applicable detention standards, the U.S. Constitution, domestic law, and international law.

The individuals in immigration detention include noncitizens being held in civil custody while they pursue immigration claims, including asylum, or awaiting deportation due to a violation of immigration law. They are not in criminal custody, and their custody cannot be punitive in nature.¹ Yet when medical and mental health care becomes so profoundly deficient that detainees endure pain, serious injury, or the risk of death, it can amount to a form of punishment.² Medical and mental health care in immigration detention facilities—including Aurora—repeatedly has been flagged³ as grossly substandard, even though substantial evidence indicates that facility staff, and ICE, are aware of the grave risks to detainees’ health.⁴ The threat is particularly dire given the administration’s rapid escalation of immigration enforcement and increased reliance on detention, even for long-time residents.⁵ Last December, ICE detained a 64-year-old lawful permanent resident at the Aurora facility. He had lived in the United States for more than 40 years. Fifteen days later, he was dead.⁶

1 See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (“The proceedings at issue here are civil, not criminal, and we assume that they are nonpunitive in purpose and effect.”); see also *Jones v. Blanas*, 393 F.3d 918 (9th Cir. 2004), *cert denied*, 546 U.S. 820 (2005) (“In sum, a civil detainee awaiting adjudication is entitled to conditions of confinement that are not punitive.”)

2 See *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) (holding that a “prison official’s deliberate indifference to an inmate’s serious medical needs is a violation of the Eighth Amendment’s prohibition against cruel and unusual punishment”); see also *Mata v. Saiz*, 427 F.3d 745 (10th Cir. 2005).

3 American Civil Liberties Union, Detention Watch Network, and National Immigrant Justice Center, *Fatal Neglect: How ICE Ignores Deaths in Detention*, February 2016, <https://www.aclu.org/report/fatal-neglect-how-ice-ignores-death-detention>.

4 See “Deaths at Adult Detention Centers,” a continually updated compilation by AILA of press releases issued by ICE since December 2015 announcing deaths in adult immigration detention, last updated May 25, 2018, <http://www.aila.org/ICEdeaths>. According to a 2010 report released by Human Rights Watch and the American Civil Liberties Union, an estimated 15 percent of the total immigrant population has mental disabilities (*Deportation by Default—Mental Disability, Unfair Hearings, and Indefinite Detention in the U.S. Immigration System*, July 2010, https://www.aclu.org/files/assets/usdeportation0710_0.pdf.)

5 See DHS Memo from Secretary John Kelly, “Implementing the President’s Border Security and Immigration Enforcement Improvements Policies,” February 20, 2017, https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf.

6 See “Man, 64, dies while in ICE custody in Colorado,” The Denver Channel, December 4, 2017, <https://www.thedenverchannel.com/news/crime/man-64-dies-while-in-ice-custody-in-colorado>; An ICE Press Release regarding Mr. Samimi’s death indicates that the preliminary cause of death was cardiac arrest. However, a

Clearly, the stakes could not be higher for the detainees at Aurora and elsewhere. Detainees' lives are literally in the hands of the detention center staff and health providers. Moreover, poor care and the inordinate time and stress detainees and their attorneys must expend to obtain needed treatment can impede their ability to effectively participate in the legal proceedings that will determine whether they can remain in the United States or be deported.⁷

We urge you to immediately investigate the provision of medical and mental health care at Aurora and assess whether it provides the level of care required by law. We also call for systemic improvements to medical and mental health care across ICE detention facilities nationwide. Greater transparency, robust oversight, and independent monitoring are sorely needed to ensure the health and safety of immigrant detainees and to ensure that they may access a meaningful day in court.

Background and Legal Standards

The Denver Contract Detention Facility is located in Aurora, Colorado, on the outskirts of Denver. It is a privately owned and operated facility that can house up to 1,500 mostly adult men and women who are detained for civil immigration matters. Pursuant to a contract with ICE, GEO manages the facility and is responsible for the provision of medical and mental health care. Among other roles, the ICE Health Service Corps (IHSC) provides oversight of such care, including managing complaints and approving off-site medical and mental health care.⁸

It is difficult to get a clear picture of medical and mental health care at Aurora because there is limited transparency and public accountability regarding many aspects of detainee care. Nevertheless, the many well-documented cases of substandard care are cause for alarm and call for immediate investigation. There have been two deaths reported⁹ at the facility in the last six

full death review remains pending, <https://www.ice.gov/news/releases/denver-area-ice-detainee-passes-away-local-hospital>.

⁷ According to a national study of data from over 1.2 million deportation cases decided between 2007 and 2012, only about 14 percent of detained individuals have legal representation. The significant challenges that are caused by mental health problems or medical issues may further diminish the likelihood that detained individuals are able to acquire legal counsel during their immigration court proceedings. Ingrid Eagly and Steven Shafer, *Access to Counsel in Immigration Court* (Washington, DC: American Immigration Council, September 2016), https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf.

⁸ IHSC oversight includes authorizing any treatment at an outside doctor or hospital and conducting general oversight of contractor-provided medical care. Department of Homeland Security, "ICE Health Service Corps," last reviewed/updated January 3, 2018, <https://www.ice.gov/ice-health-service-corps>. The contract between the Denver Contract Denver Facility and GEO Group, and published inspection results conducted by Enforcement and Removal Operations (ERO) and the Office of Detention Oversight (ODO), are available on the National Immigrant Justice Center website, <https://www.immigrantjustice.org/issues/transparencyandhumanrights/denver-contract-detention-facility-co-geo-group>.

⁹ ICE issued news releases following the deaths of Mr. Evalin Ali Mandza in 2012 and Mr. Kamyar Samimi in 2016. See Department of Homeland Security, "ICE detainee passes away at Denver-area hospital," April 13, 2012, <https://www.ice.gov/news/releases/ice-detainee-passes-away-denver-area-hospital>; See also, Department of

years, at least one involving lack of access to appropriate medical care.¹⁰ There also have been multiple reports of detainees being denied essential medical or mental health care even though the facility was on notice of these detainees' specific needs and of official policies on mandated care. As detailed below, the toll on detainees includes damaged eyesight, severe urological pain, and bleeding skin. In one case, staff and other detainees at Aurora were put at unnecessary risk due to delays investigating chest pain of a pregnant woman that turned out to be caused by tuberculosis.

The decision to hold someone in government custody rightly carries with it an obligation to provide necessary medical and mental health care. This is true for those convicted of crimes, and for those—like many at Aurora—who simply may be requesting legal immigration status, including asylum.

Because immigrant detainees in Aurora are being held pursuant to administrative—not criminal—law, their care should be assessed under a Fifth Amendment due process standard, which mandates adequate medical care for civil detainees, including those held at the Aurora facility.¹¹ In the context of criminal inmates, courts have firmly established that “deliberate indifference to serious medical need” is a violation of the Eighth Amendment of the U.S. Constitution.¹² Pretrial criminal detainees or those in civil detention—like the individuals being held at Aurora—are entitled to *at least* the same standard of medical care. Some courts have held that an even higher standard of medical care is required.¹³

Homeland Security, “Denver-area ICE detainee passes away at local hospital,” December 4, 2017, <https://www.ice.gov/news/releases/denver-area-ice-detainee-passes-away-local-hospital>.

10 See Department of Homeland Security, “Report of Investigation,” October 16, 2012, <https://www.documentcloud.org/documents/2695514-MandzaEvalin-Ali.html> (issued by ICE after the death of Mr. Mandza and detailing findings following a review of his death on April 12, 2012).

11 Federal courts have ruled that the care of immigrant detainees held pursuant to administrative law be assessed under a Fifth Amendment due process standard rather than the Eighth Amendment. See *Jones v. Blanas*, 393 F.3d 918, 933-34 (9th Circ. 2004), *cert denied*, 546 U.S. 820 (2005).

12 *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). The cases included in this complaint establish a pattern of “deliberate indifference” by GEO and ICE, who are repeatedly on notice of the complainants’ medical and mental health needs. The Constitution’s Eighth Amendment guarantee against cruel and unusual punishment has been interpreted to require the government to provide adequate medical care to inmates. U.S. CONST., AMEND. VIII.

13 See *Jones v. Blanas*, 393 F.3d 918, 933-34 (9th Circ. 2004), *cert denied*, 546 U.S. 820 (2005) (finding that a civil detainee is entitled to non-punitive conditions that should be superior to those of a criminal detainee and does not have to prove “deliberate indifference” by government officials to prevail in a constitutional due process claim challenging conditions of confinement). See also *Youngberg v. Romero*, 457 U.S. 307, 321-32 (1982) (“Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.”)

Federal disability law also protects disabled detainees in ICE custody. The Americans with Disabilities Act (ADA)¹⁴ and Section 504 of the Rehabilitation Act of 1973,¹⁵ as well as other applicable federal, state, and local nondiscrimination statutes, guarantee nondiscrimination against detained people with disabilities, and require detention facilities to take affirmative steps to ensure that detainees with disabilities do not suffer discrimination, including the provision of reasonable accommodations where requested.¹⁶ These steps may include proper medical and mental health care so that detained people can participate in the programming at the facilities. ICE, as a component agency of the Department of Homeland Security, is required to comply with Section 504, as are its contractors.¹⁷ ICE's and GEO's repeated failure to provide adequate and reasonable accommodations, as well as their discrimination against people with disabilities in their custody, are a violation of the Rehabilitation Act of 1973 and the ADA.¹⁸

International human rights law also mandates adequate health care for detained persons, particularly asylum seekers, pregnant women, and other vulnerable populations. There are international legal protections for the right to health, the right to non-discrimination, and the rights of detained persons found in several international agreements ratified by the United States, including the International Covenant on Civil and Political Rights ("ICCPR"),¹⁹ the Convention against Torture ("CAT"),²⁰ and the Convention on the Elimination of All Forms of Racial

14 Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (1990), http://library.clerk.house.gov/reference-files/PPL_101_336_AmericansWithDisabilities.pdf.

15 Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355 (1973), <https://www.gpo.gov/fdsys/pkg/STATUTE-87/pdf/STATUTE-87-Pg355.pdf>.

16 U.S. Immigration and Customs Enforcement, *2011 Operations Manual: ICE Performance-Based National Detention Standards* (revised December 2016), Section 4.8 Disability Identification, Assessment, and Accommodation, <https://www.ice.gov/detention-standards/2011>.

17 See 6 C.F.R. pt. 15 ("Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Department of Homeland Security"); Instruction on Nondiscrimination For Individuals With Disabilities In DHS-Conducted Programs And Activities (Non-Employment), DHS Directives System Instruction No. 065-01-001, available at https://www.dhs.gov/sites/default/files/publications/dhs-instruction-nondiscrimination-individuals-disabilities_03-07-15.pdf (last visited Apr. 5, 2018) ("DHS Nondiscrimination Instruction").

18 The ADA and Section 504 of the Rehabilitation Act of 1973 require ICE—through its contractor—to provide appropriate accommodations for disabilities, including adequate treatment for mental health problems. Many of the medical and mental health issues highlighted in this complaint rise to the level of "disability" under relevant law; as such, the U.S. government has a specific obligation to provide appropriate care and reasonable accommodations to those individuals with disabilities. We ask that CRCL and OIG consider possible violations of the ADA and Rehabilitation Act during the course of their investigation.

19 United Nations General Assembly, *International Covenant on Civil and Political Rights*, December 16, 1966, 171, <http://www.refworld.org/docid/3ae6b3aa0.html>.

20 United Nations General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, December 10, 1984, 85, <http://www.refworld.org/docid/3ae6b3a94.html>.

Discrimination.²¹ In addition, the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”),²² which the United States has signed but not yet ratified, affirms the basic right to health.

Beyond these legal protections, medical care and other operations at the Aurora facility are governed by an array of more specific standards. Most immediately, the facility must comply with ICE’s 2011 Performance Based National Detention Standards (“PBNDS”), as updated in 2016.²³ These detention standards lay out numerous requirements for medical care. At the most basic level, the 2011 standards require access to a continuum of health care services, from screening and prevention through treatment; timely transport to a health care facility when needed; 24-hour access to emergency medical and dental care; and mental health screening and treatment.²⁴ The 2011 standards also include more specific guidance regarding disabilities and the treatment of pregnant women.²⁵ Additionally, they specify that facilities should comply with the ADA and Section 504 of the Rehabilitation Act.²⁶

Deficient Medical and Mental Health Care

21 United Nations General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, December 21, 1965, <http://www.refworld.org/docid/3ae6b3940.html>.

22 United Nations General Assembly, *International Covenant on Economic, Social and Cultural Rights*, December 16, 1966, 3, <http://www.refworld.org/docid/3ae6b36c0.html>.

23 U.S. Immigration and Customs Enforcement, *2011 Operations Manual: ICE Performance-Based National Detention Standards* (revised December 2016), <https://www.ice.gov/detention-standards/2011>.

24 U.S. Immigration and Customs Enforcement, *2011 Operations Manual: ICE Performance-Based National Detention Standards* (revised December 2016), Section 4.3 Medical Care, <https://www.ice.gov/detention-standards/2011>. The 2011 standards updated earlier standards promulgated in 2008 and 2000. However, some facilities that hold ICE detainees are still governed by the older standards and some—such as local jails—are not contractually obligated to follow any ICE medical standards.

25 In September 2017, the American Immigration Council and other NGOs filed an administrative complaint with the Office for Civil Rights and Civil Liberties (CRCL) and the Office of the Inspector General (OIG), to highlight an uptick in the number of pregnant women who were detained in ICE custody and to demand an investigation into the troubling trend. See “Increasing Numbers of Pregnant Women Facing Harm in Detention,” September 26, 2017, <https://www.americanimmigrationcouncil.org/advocacy/detained-pregnant-women>. In March 2018, ICE announced that it had ended its general presumption of releasing pregnant women from detention, yet government officials maintained that cases would be handled on an individual basis, depending on a number of factors, including medical condition. See, “Trump administration ends automatic release from immigration detention for pregnant women,” *Washington Post*, March 29, 2018, https://www.washingtonpost.com/local/immigration/trump-administration-ends-automatic-release-from-detention-for-pregnant-women/2018/03/29/8b6b1bc0-3365-11e8-8abc-22a366b72f2d_story.html?utm_term=.1e90ba3394a3.

26 Other requirements are imposed on the Aurora facility. It is accredited by the National Commission on Correctional Health Care (NCCHC), as well as the American Correctional Association. To gain NCCHC accreditation, Aurora must adhere to the organization’s detailed standards for medical and mental health care. Department of Homeland Security, Office of Detention Oversight, *Compliance Inspection report on Denver Contract Detention Facility*, April 12-14, 2016, 2, https://www.ice.gov/doclib/foia/odo-compliance-inspections/denverContractDetentionFacilityAuroraCoApr_12_14_2016.pdf.

These laws and standards have failed to translate into consistently effective medical and mental health care. Instead, records from other detention facilities similar to Aurora reveal a general and longstanding pattern of frequent and severe deficiencies in care.

In a June 2014 report, the American Civil Liberties Union (ACLU) studied conditions at certain detention centers reserved for noncitizens who have been convicted of a crime. It found “numerous reports of medical understaffing and delayed care” and was “gravely concerned about the ability of some [of these] prisons to provide timely care in urgent situations.”²⁷ A 2017 study of a wide range of detention facilities found health care deficiencies, regardless of whether medical care was supplied by private contractors (as at Aurora) or by IHSC.²⁸ The same study—basing its conclusions on information in death reviews produced by ICE’s Office of Detention Oversight (“ODO”)—found that one-third of the detainee deaths between 2012 and 2015 were due at least in part to substandard medical care.²⁹

The Aurora facility appears to be the norm rather than the exception to these problematic trends. In a review conducted of the Aurora facility in 2016, ODO found that the facility was compliant with only seven of the 16 PBNDS standards, and found 24 deficiencies in the remaining nine standards, “six of which were priority components and one of which was a repeat deficiency.”³⁰ Notably, ODO found twice as many deficiencies during their Fiscal Year (FY) 2016 inspection of the Aurora facility than an earlier inspection in FY 2012.³¹ Most glaringly, there have been two deaths at Aurora in less than six years—at least one involving deficient medical care.

The Death of Mr. Evalin-Ali Mandza, National of Gabon, 2012

Early on the morning of April 12, 2012, 46-year-old Evalin-Ali Mandza clutched at his chest and told nursing staff he had severe chest pain.³² A nurse was unable to properly evaluate him, and although a doctor authorized an ambulance to take him to the hospital at 5:50 a.m., staff failed to

27 American Civil Liberties Union, *Warehoused and Forgotten: Immigrants Trapped in our Shadow Private Prison System*, June 2014, 42, <https://www.aclu.org/other/warehoused-and-forgotten-immigrants-trapped-our-shadow-private-prison-system>.

28 Human Rights Watch and CIVIC, *Systemic Indifference: Dangerous and Substandard Medical Care in US Immigration Detention*, May 2017, <https://www.hrw.org/report/2017/05/08/systemic-indifference/dangerous-substandard-medical-care-us-immigration-detention>.

29 *Ibid.*, 30.

30 Department of Homeland Security, Office of Detention Oversight, “Compliance Inspection: Denver Contract Detention Facility, Aurora, CO,” April 12-14, 2016, https://www.ice.gov/doclib/foia/odo-compliance-inspections/denverContractDetentionFacilityAuroraCoApr_12_14_2016.pdf.

31 *Ibid.*, 3. The ODO found 24 deficiencies in the FY2016 investigation under the 2011 PBNDS compared with 11 deficiencies in the FY2012 investigation under the earlier, 2008 PBNDS.

32 American Civil Liberties Union, Detention Watch Network, and National Immigrant Justice Center, *Fatal Neglect: How ICE Ignores Deaths in Detention*, February 2016, <https://www.aclu.org/report/fatal-neglect-how-ice-ignores-death-detention>.

call 911 until around 6:20 a.m. In short, medical staff waited *nearly an hour* to call 911 after Mr. Mandza began experiencing chest pain. Mr. Mandza went into cardiac arrest and died just after 8:30 a.m.³³

Even DHS's own review process found fault with Mr. Mandza's care. An IHSC review found that he "did not have access to appropriate medical care while detained in the DCDF."³⁴ A review conducted by an ODO contractor found that facility medical staff did not know the facility's protocol for chest pain, did not give proper cardiac medication, and delayed transferring Mr. Mandza to a higher-level care facility—"all of which may have been contributing factors to Mr. Mandza's death."³⁵

As detailed in a report by advocates, Mr. Mandza's care fell short of multiple standards and requirements that GEO was required to maintain.³⁶ Nevertheless, an ODO inspection conducted soon after Mr. Mandza's death found no significant fault with medical care at Aurora.³⁷

The Death of Mr. Kamyar Samimi, National of Iran, 2017

Against the backdrop of Mr. Mandza's death, the recent death of Kamyar Samimi is particularly concerning. Mr. Samimi was a 64-year old Iranian man who had lived in the United States for decades. He died at Aurora on December 2, 2017, just two weeks after being arrested by ICE. Mr. Samimi first came to the United States as a student in 1976 and became a lawful permanent resident in 1979.³⁸ Mr. Samimi became subject to deportation following a 2005 conviction for a non-violent drug offense.

Mr. Samimi would have been a low priority for ICE in years past, but current ICE policy and practice is to pursue all potential deportees without regard to long-time residency or severity of offense. Mr. Samimi was arrested at his home in Denver on November 17, 2017, and detained at Aurora that same day. Two weeks later, he was dead. ICE reported the preliminary cause of death

33 See Department of Homeland Security, "Report of Investigation," October 16, 2012, <https://www.documentcloud.org/documents/2695514-MandzaEvalin-Ali.html> (issued by ICE after the death of Mr. Mandza and detailing findings following a review of his death on April 12, 2012); See also ICE Press Release, "ICE detainee passes away at Denver-area hospital," April 13, 2012, <https://www.ice.gov/news/releases/ice-detainee-passes-away-denver-area-hospital>.

34 DHS, Report of Investigation, 15.

35 Cited in *Fatal Neglect*, 8.

36 Ibid.

37 DHS Office of Detention Oversight, "Compliance Inspection: Denver Contract Detention Facility, Aurora, Colorado," May 15-17, 2012.

38 Mr. Samimi submitted a citizenship application at some point, but according to ICE it was rejected because it didn't include the correct documents. ICE news release, "Denver Area ICE detainee passes away at local hospital," December 4, 2017, <https://www.ice.gov/news/releases/denver-area-ice-detainee-passes-away-local-hospital>.

as cardiac arrest.³⁹ The agency reported that Mr. Samimi “fell ill” on December 2 and that emergency responders were summoned and performed CPR. ICE said Mr. Samimi later died at an area hospital.

No other details of Mr. Samimi’s death have been made publicly available and a death report remains pending.⁴⁰ Mr. Samimi’s case highlights the grave responsibility ICE takes on when it chooses to detain an individual—particularly a long-time resident like Mr. Samimi who would have been well-positioned to seek needed medical care on his own were he living in the community.

Recent Case Examples of Deficient Care

Over the past year, there have been numerous cases of serious deficiencies in medical and mental health care at Aurora. Together these stories paint a picture of medical and mental health care that falls far short of the legal requirements for detainees. Key elements of their cases are excerpted below.⁴¹ Unless otherwise noted, pseudonyms have been used to protect the identities of the complainants, many who are seeking humanitarian relief in the United States and who may fear retaliation, either at the hands of those from whom they fled, or by ICE and facility staff.

“Abdo,” Stateless Man from South Sudan

Abdo is a 39-year-old man from South Sudan. As a young child in South Sudan, Abdo was traumatized by the brutal war there. One morning, his mother woke him amid bombing and gunfire. He fled to the bush after he witnessed the murder of his father, uncle, and some of his siblings. It was also the last time he saw his mother. During the civil war, Abdo witnessed horrific atrocities. He fled that brutal life and eventually made it to a refugee camp, and then resettled in the United States. He bore deep psychological scars from his experiences and was depressed and haunted by the sight and sound of people who had died or who threatened him. He began drinking in part to cope with these hallucinations.

In the words of the psychologist who examined Abdo:

It appeared the symptoms of [Post Traumatic Stress Disorder], such as experiencing auditory and visual hallucinations, were intertwined with experiences of delirium brought on if he stopped drinking.⁴²

39 Ibid.

40 Internal ICE reviews of detainee deaths were instituted as part of a series of detention reforms in 2009. *Fatal Neglect*, 3. See also ICE policy memo on detainee deaths, October 1, 2009, https://www.ice.gov/doclib/dro/pdf/notification_and_reporting_of_detainee_deaths.pdf.

41 At the request of the detainees, pseudonyms are used.

42 Psychological Evaluation for “Abdo,” conducted December 7, 2016.

While Abdo is receiving medication for his disorder, it does not appear to be sufficient treatment. He complains that he cannot sleep at night due to the nightmares he suffers, reliving the torment of the war in South Sudan that he fled so many years ago.

Despite his significant mental health problems, Abdo was placed in solitary confinement in early 2018 for more than a month. It is unclear why Abdo was put in solitary confinement; he reports an “altercation” with a guard who was violent towards him when he attempted to file a grievance against her. Whatever the reason, the impact was clearly devastating for Abdo. Abdo reports that the isolation intensified his painful hallucinations:

Being alone makes the voices worse. When I sleep, they come and disturb me. They say the same thing over and over again. They say they are going to kill me and my parents. I get confused about what to do and why they are talking to me. I don’t know how to get rid of them so that I cannot listen to them anymore. I feel very sad when I hear those voices. I am tired all the time and feel depressed... I was placed in segregation on February 9, 2018, and was there for over a month. This was a very hard time for me. I was alone, and the voices were bothering me all day and night. I was very scared. ⁴³

“Claude,” National of Haiti

Claude is a 24-year-old gay man from Haiti who fled his home country due to abuse because of his sexual orientation. Claude’s parents beat him when they discovered he was gay, and he was subsequently kicked out of school. He began to lose his eyesight due to the beatings to his head. In fear for his safety, Claude fled to Brazil. A Brazilian doctor diagnosed Claude with a detached retina in his left eye and other eye injuries. He told Claude his best hope was surgery as quickly as possible.

Claude felt at risk in Brazil and also could not obtain care for his eyes. He subsequently fled to the United States to seek asylum. He was found to have a credible fear of returning to Haiti and was placed in immigration detention while he pursued his asylum claim. At the time he still had almost full vision in his right eye and a little vision in his left. He immediately told medical staff about his injuries and pain upon arrival to the Aurora facility, but received no care for his eyes. According to Claude, after three months, he had lost all vision in his left eye and vision in his right eye was decreasing. He feared that his “life [was] going into the darkness.”⁴⁴ He had reported extreme pain in his eye but still had not seen a doctor. Medical staff said they could do nothing to help because the medical problem predated his arrival to the detention facility.

Despite numerous requests made by both Claude and his attorney of record, Claude was essentially not able to get treatment for his eye until he was released on parole, after more than six months in

43 Declaration of “Abdo,” April 27, 2018, at ¶ 6,7.

44 Declaration of “Claude’s” Pro Bono Attorney, May 16, 2018, at ¶10.

detention.⁴⁵ According to his attorney, the medical doctor who eventually treated Claude “stated that every second he did not receive adequate care his condition worsened.”⁴⁶ Claude currently has some vision in his right eye with glasses from the doctor and is hoping to have surgery on his left eye.

While in detention, Claude had difficulty working on his asylum application because of pain, limited vision, and emotional distress. According to his attorney, “he could only look at the paper and write for a few seconds at a time... Due to the pain and lack of sleep, he struggled to think clearly and he constantly felt overwhelmed.”⁴⁷ Once he was released and able to meet regularly with an eye doctor, Claude was able to manage his eye pain and now wears glasses that have helped his vision.⁴⁸

“Miguel,” National of Mexico

Miguel is a 28-year-old Mexican man who suffers from Hemophilia A, a medical condition which causes chronic, severe pain. According to Miguel, “I frequently bleed internally from my knees, elbows, and ankles and a slight injury can cause severe bleeding.”⁴⁹ Miguel was detained in Aurora from early November 2017 until around April 19, 2018, when he was deported to Mexico.

Throughout Miguel’s more than five months of detention, he submitted multiple requests—in writing and in person—to facility staff, asking for more medication to manage the extreme pain he was experiencing. Miguel was part of a clinical trial with the University of Colorado School of Medicine in Denver prior to his detention in Aurora. He describes the difficulty in receiving the medication which his doctors at the University of Colorado had prescribed him:

I feel like my condition has worsened during my time at the detention center. It is very frustrating to be deprived from my medical treatment. In January, once I finished the first prescription that was approved, it took almost another month to have access to my medications again. I struggled a lot with my pain during this period. When I asked for my medications through a kite [a written request], by going to the clinic in person, or by asking the nurses when they did rounds, I would get mixed messages from the medical staff at the detention center. Sometimes the nurses would tell me that the doctor at the detention center

45 After Claude and his attorney repeatedly pressed the matter of his inadequate care, Claude did finally meet with an ophthalmologist three days before he was released on parole, more than six months after being placed in detention. Declaration of “Claude’s” Pro Bono Attorney, ¶ 13.

46 Ibid., at ¶ 14.

47 Declaration of “Claude’s” Pro Bono Attorney, at ¶ 10.

48 Declaration of “Claude’s” Pro Bono Attorney, at ¶ 14.

49 Declaration of “Miguel,” March 2018, at ¶ 4.

had not signed the prescription and other times, the nurses told me that the clinic had run out of pills.⁵⁰

Not only has systematic lack of medical care caused Miguel to suffer needlessly, it has also impeded his ability to access the legal process. Miguel states: “Due to the intense pain, I was not able to sleep the night before my hearing. I felt very anxious and tired during the hearing, and had difficulty concentrating.”⁵¹ He further explains the impact that the lack of care had on his psychological state: “The conditions in the center make me very sad. When I experience extreme joint pain, I feel like I can’t take it anymore and I just want to give up. I don’t try to tell the guards about my pain. They ignore me when I ask for my medications.”⁵²

“Magda,” National of Mexico

Magda is a 35-year-old pregnant Mexican woman and mother of four U.S. citizen children. She was detained in late January 2018. During the routine medical examination given to all new arrivals, Magda learned she was about 5-weeks pregnant. Magda began experiencing chest pain, cramps, and spotting. She raised these and other concerns about her pregnancy to GEO officials, but they were slow to respond. Magda was particularly anxious because she had suffered a miscarriage just six months earlier. Magda says she complained of symptoms for a few weeks before officials took her to a doctor and then the hospital, where a doctor said she was simply suffering from anxiety. According to Magda’s pro bono attorney,

[Magda] sent multiple ‘kites,’ or written requests, to the medical staff at the GEO facility, requesting medical attention and more information about her pregnancy. Magda told me that they were being nonresponsive.⁵³

Magda reports that her symptoms worsened following her visit to the hospital, including the presence of significant bloody phlegm. She says medical officials at Aurora brushed off her concerns for about two weeks before permitting her to see an outpatient doctor at the facility. At that visit, the doctor discovered Magda had TB, which is highly contagious and posed a threat to her, her unborn fetus, and the entire detained population and staff at Aurora. Magda was hospitalized and prescribed medication for the TB. For several days, she was shackled to the bed, making it difficult to use the restroom as needed. Magda reports that while she was at the hospital, neither GEO nor ICE notified her attorney or her family. Her attorney tried to contact her during

50 Declaration of “Miguel,” March 2018, at ¶ 13.

51 Declaration of “Miguel,” March 2018, at ¶ 16.

52 Declaration of “Miguel,” March 2018, at ¶ 17.

53 Declaration of “Magda’s” Pro Bono Attorney, May 22, 2018, at ¶ 2.

this time and for about four days could not learn anything about where she was.⁵⁴ After several days she was returned to Aurora and placed in isolation for two weeks. In Magda's words,

It was horrible to be alone like that. I felt like they had forgotten about me and that no one cared about me. My room was always cold, and they wouldn't bring me clean sheets or clean clothes or clean underwear... I was very depressed and spent all day and night in bed trying to sleep.

Magda was eventually returned to the general population, but continued to worry she was not getting liver function tests for herself and regular heartbeat monitoring for her unborn fetus, even though doctors had recommended she receive both. She was also extremely depressed. Yet four months into her stay at Aurora, she had had only one remote session with a psychiatrist who prescribed antidepressants.

Magda was finally released from detention in May 2018. Her illness caused delays in her court proceedings that might have been avoided had she been diagnosed and treated promptly. Magda's case is particularly concerning because of the additional requirements for care of pregnant detainees. For instance, ICE's detention performance standards for pregnant women specify that restraints should only be used in "extraordinary circumstances" and specifies that this prohibition follows the detainee if transferred to an outside medical facility.⁵⁵ There is no indication that Magda met any of the conditions that would justify such shackling, or that officials complied with the requirements for authorization and documentation.

"Raul," National of Honduras

Raul is a 31-year-old man from Honduras who repeatedly beseeched officials at the Aurora facility to help him with intense pain and swelling in his testicles, in addition to a rash, fevers, and irritated eyes. Raul submitted multiple requests complaining of intense pain and swelling "the size of a handball." He was eventually referred to a doctor, who recommended that he see a urologist. However, Raul never met with a urologist during his detention in Aurora and was instead only given ibuprofen to treat the pain. The official response to his request states simply that a referral to a urologist "can be a lengthy process."⁵⁶

Raul describes in his own words the care he received while he was in Aurora:

I was very anxious during my stay at the detention center. I did not understand why I was not getting the treatment I so desperately needed. The staff was rude, I sent almost 30 kites and even other detainees tried to help me get medical help from the medical staff. I

⁵⁴ Declaration of "Magda's" Pro Bono Attorney, May 22, 2018, at ¶ 6.

⁵⁵ PBNDS 2011 (Revised December 2016), 4.4, V. E(1).

⁵⁶ Detainee Grievance Response, March 2018 (responding to a grievance previously made by "Raul").

requested ice for the pain and did not receive it. I was getting the wrong number of pills to help with the pain. The staff was very unprofessional.⁵⁷

There is no indication that medical officers attempted to expedite his appointment with the urologist or to find better interim care to alleviate his pain. Rafael was subsequently released from Aurora in April 2018, after almost three months of detention.

“Laurenzo,” National of Mexico

Laurenzo is a 40 year-old man who came to the United States as a lawful permanent resident when he was about 10 years old. About ten years ago, Laurenzo began suffering frequent seizures, which he managed with medication.

In the spring of 2017 Laurenzo was in a car accident after losing consciousness either due to a seizure or side effects from his medication. He was subsequently detained by ICE and transferred to Aurora in April 2017. Since arriving at Aurora, Laurenzo has struggled to obtain medical care for his seizures. Laurenzo reports that before being taken into ICE custody, his regular doctor had stressed the importance of taking his anti-seizure medication at precise times—within an hour of waking up in the morning and within an hour of going to bed at night. Although Laurenzo promptly told the medical staff at Aurora about his condition and the necessity of taking his medication as specific times, it still took more than a week for him to see a doctor during which time he ran out of his medicine and was extremely fearful of having a seizure.

After seeing the doctor, he began receiving anti-seizure medicine again but not at consistent times as his original doctor stressed was necessary and as Laurenzo repeatedly requested. Laurenzo states that the medical staff at Aurora brought him his medication at different times every day and never within an hour of going to bed at night or waking up in the morning. Laurenzo estimates that he has suffered about *150 seizures* during his nearly 14 months at Aurora. According to Laurenzo:

I think the medical staff here do a horrible job of taking care of people. I have been getting so many seizures. I asked the doctors for a helmet or other protective wear that people with seizures have but they have not given me anything. When I have an episode, I pass out without warning and often fall and hurt myself. I have gotten multiple black eyes and have hurt my head, chin, knees, legs, and shoulders when I have episodes.⁵⁸

Laurenzo also suffered when he was placed in solitary confinement for almost a month due to his medical condition. According to Laurenzo,

They told me it was to monitor my seizures. I felt like they were treating me like an animal by putting me in a room by myself for weeks. They ignored me and treated me horribly.⁵⁹

57 Declaration of “Raul,” June 1, 2018, at ¶ 24.

58 Declaration of “Laurenzo,” June 1, 2018, at ¶ 12.

59 Declaration of “Laurenzo,” June 1, 2018, at ¶ 16.

Laurenzo remains detained in Aurora at the time of submission of this complaint.

“Victor,” National of Honduras

Victor, a 38-year-old Honduran detainee, was denied medicated ointment to treat a skin condition, causing it to progress and become extremely painful. According to Victor, he was born with a congenital skin condition that affects his whole body and causes the skin to peel continually.

Before his detention, Victor typically treated himself by applying Vaseline to his skin every day. He reported his condition to medical staff at Aurora when he was detained, and they gave him a medicated lotion for his skin. However, every week, he received only enough lotion to last two days, despite repeated requests for more. He was told he could buy more lotion at the commissary, but did not have money to do so. According to Victor,

I really suffered while in detention because I did not receive enough lotion to treat my skin problem. My skin was extremely dry and felt like it was burning. My skin was so dry that it began to bleed. I look like I had been cut all over with a small knife.⁶⁰

Victor was eventually released after being detained for about two months in Aurora.

Systemic Problems

The preceding accounts demonstrate systemic failure on the part of both ICE and GEO to provide appropriate medical and mental health care to individuals detained in the Aurora facility. As previously noted, the ICE detention standards are not codified in regulations and are virtually impossible to enforce. It also remains very hard to track cases. IHSC is supposed to provide oversight of health care provided by contractors, but there is little transparency to their work. A 2016 Government Accountability Office (GAO) study showed that complaints are funneled to IHSC from many entry points in the system, but that IHSC has limited ability to track these complaints and respond to them effectively.⁶¹ For instance, GAO concluded that IHSC has no real capacity to track and respond to worrisome trends illustrated by the many individual complaints. According to the report, “...IHSC has limited oversight and tracking capability over the universe of complaints, making it difficult for DHS to analyze trends in medical care complaints and assess the extent to which changes to medical care may be needed across facilities.”⁶²

60 Declaration of “Victor,” April 4, 2018, at ¶ 7.

61 U.S. Government Accountability Office, *Immigration Detention: Additional Actions Needed to Strengthen Management and Oversight of Detainee Medical Care*, GAO-16-231, February 2016, <https://www.gao.gov/products/GAO-16-231>.

62 *Ibid.*, 37.

Moreover, some private contractors have a financial incentive to deny medical care to detainees. Those contractors who receive a fixed payment for detainee care pocket more money by skimping on medical care unless it becomes so poor that ICE does not renew the contract.⁶³

In sum, the detainee health care system remains badly deficient. After reviewing documentation for a critical report on detainee health care, one correctional health expert stated: “From the evidence that I saw in the cases that I reviewed, we have a system that is broken for detainee health care and adding more detainees to that system can only make it worse.”⁶⁴

These shortcomings, if left unaddressed, could result in more significant harm to detainees, including permanent health impairments or death. We are also concerned about the negative impact of these medical problems on detainees’ ability to effectively participate in their own legal proceedings.

With these concerns in mind, we urge the following:

- 1) The DHS Office for Civil Rights and Civil Liberties and the Office of the Inspector General must conduct an immediate, independent review of medical and mental health care at Aurora, including disposition of grievances filed within the last year. A local oversight board should be created to review and report on these findings.
- 2) ICE must promulgate binding, enforceable regulations, including a private right of action, that govern the conditions of detention and the treatment of detainees. This is especially important as it relates to the provision of medical and mental health care.
- 3) ICE should ensure that legal service providers, or any party with a signed release waiver, have direct access to the medical department in Aurora to enable service providers to advocate on behalf of their clients’ medical needs with the medical service providers charged with monitoring their care.

63 Human Rights Watch, *Systemic Indifference: Dangerous & Substandard Medical Care in U.S. Immigration Detention*, May 8, 2017, 23, <https://www.hrw.org/report/2017/05/08/systemic-indifference/dangerous-substandard-medical-care-us-immigration-detention>. A letter signed by hundreds of NGOs and submitted to then-DHS Secretary Jeh Johnson, stated that ICE’s inability to provide oversight of its contractors in providing medical care, and the lack of any meaningful penalty provisions, “incentivizes private companies to minimize facility costs by rationing basic necessities for detained individuals, including medical care” (“End the U.S. Department of Homeland Security’s Use of Private, For-Profit Immigration Detention Facilities,” September 14, 2016, <https://www.detentionwatchnetwork.org/pressroom/releases/2016/340-civil-human-rights-organizations-tell-dhs-stop-detaining-immigrants>.) According to an advisory Homeland Security Council created at the recommendation of then-DHS Secretary Johnson in 2016, health-care at IHSC-staffed facilities was generally better than privately operated ICE facilities, such as the GEO facility in Aurora (Homeland Security Council, *Report of the Subcommittee on Privatized Immigration Detention Facilities*, December 1, 2016, <https://www.dhs.gov/sites/default/files/publications/DHS%20HSAC%20PIDF%20Final%20Report.pdf>.)

64 Dr. Marc Stern, MD, MPH, FACP, and former Health Services Director, Washington State Department of Corrections, quoted in May 8, 2017. Human Rights Watch news release, “U.S. Detention Hazardous to Immigrants’ Health” on *Systemic Indifference*, <https://www.hrw.org/news/2017/05/08/us-detention-hazardous-immigrants-health>.

- 4) ICE must ensure greater transparency for complaints and their resolution. It is essential to publish more data on the extent and nature of complaints about medical care. There must also be greater oversight of IHSC's handling of complaints and other work overseeing contractors that provide medical care.
- 5) ICE should limit its reliance on contractors to deliver medical and mental health care services and instead expand the role of IHSC in the provision of direct services.⁶⁵
- 6) ICE and IHSC should ensure a sustained and more independent oversight mechanism for all detention facilities, through requirements for accreditation and more regular unannounced inspections by the Inspector General or other neutral entity or other means.
- 7) ICE should promulgate a regulation of a policy mandating the termination of contracts for facilities that fail to pass more than one consecutive inspection.
- 8) ICE must complete the online accessibility of the Patient Medical Record Portal,⁶⁶ an online portal that released detainees may use to access their medical records.

Given the severity of these violations and the immediate impact on the health and safety of individuals detained in the Aurora facility, we ask that you consider our requests in an expedited manner.

If you have any questions or require additional information, please contact Katie Shepherd of the American Immigration Council at KShepherd@immcouncil.org or (202) 507-7511. Pseudonymized declarations of the above complainants may be available upon request.

65 This is consistent with the recommendation of the Homeland Security Council, which stated: "The ICE Health Service Corps (IHSC) has brought identifiable improvements to health care in ICE detention facilities. It should be provided the funding to expand coverage to a higher percentage of the facilities where ICE detainees are held, and to ensure full staffing in those facilities, as part of continuing efforts to improve medical services" (Homeland Security Council, *Report of the Subcommittee on Privatized Immigration Detention Facilities*, December 1, 2016, 2, <https://www.dhs.gov/sites/default/files/publications/DHS%20HSAC%20PIDF%20Final%20Report.pdf>.)

66 In April 2018, DHS announced an update to the electronic Health Records System ("eHR"), a case management system designed to maintain records "of medical treatment provided to individuals detained by ICE." The update follows a Privacy Act Assessment (PIA) for eHR in 2013 and reflects ICE's development of an online Patient Medical Record Portal, whereby "former detainees can access an electronic copy of their medical records." More information regarding the electronic Health Records System (eHR) can be found on ICE's website at: <https://www.dhs.gov/publication/dhsicepia-037-electronic-health-records-system> (last accessed June 1, 2018).