AMERICAN BAR ASSOCIATION

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Statement of

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on behalf of the

AMERICAN BAR ASSOCIATION

submitted to the

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY AND INTERNATIONAL LAW

COMMITTEE ON JUDICIARY

of the

U.S. HOUSE OF REPRESENTATIVES

on the subject of

Problems with Immigration Detainee Medical Care

June 4, 2008

Chairwoman Lofgren, Ranking Member King and members of the Subcommittee:

On behalf of the American Bar Association, I am submitting this statement for your consideration as you examine the very serious issues related to adequate access to medical care for immigration detainees. We commend the subcommittee for continuing to focus on the urgent need for improvement in the provision of health care for individuals in immigration detention and appreciate this opportunity to share our views. The ABA believes detainees must be provided with a continuum of prompt, effective medical and dental care, to include both treatment and preventive services that are medically necessary, at no cost to the detainee. We recommend several steps, outlined below, that can and should be taken to assist in accomplishing this goal.

While several national news stories have heightened public awareness and focused attention on this issue in recent weeks, there have been ongoing, significant problems with the treatment of individuals in immigration detention for many years. The increasing reliance on detention, combined with enhanced enforcement activities, has resulted in a growing population of immigration detainees. Without concrete improvements to the system, the current problems with medical care, as well as other serious problems with detention conditions, will almost certainly be exacerbated in the future.

The ABA has worked for many years to ensure that foreign nationals in detention in the United States are treated fairly and humanely and that measures are in place to protect detainees' statutory and constitutional rights. During the late 1990s the ABA, along with other organizations, worked with the then-Immigration and Nationality Service (now Immigration and Customs Enforcement, or ICE) to develop the ICE National Detention Standards. The Standards, which took effect in January 2001, are comprehensive and encompass a diverse range of issues, including access to medical care.[1] As a key stakeholder in developing the Standards, the ABA is committed to their full and effective implementation. The ABA launched the Detention Standards Implementation Initiative, in a spirit of cooperation with ICE, to visit, tour, and report on observations of facilities across the country. To date, 107 ABA delegations have visited sixty-four different facilities holding ICE detainees.

The ABA also receives information relevant to detention conditions through written correspondence and telephone calls from detainees and advocates. Since 2003 we have received more than 1,300 letters from detainees at almost 200 facilities across the United States. In addition, issues are brought to our attention through our three *pro bono* programs that provide legal orientation presentations and representation to immigrants in detention: the South Texas Pro Bono Asylum Representation Project (ProBAR) in Harlingen, Texas; Volunteer Advocates for Immigrant Justice (VAIJ) in Seattle, Washington; and the Immigration Justice Project (IJP) of San Diego in California.

It is clear that despite the existence of the Detention Standards and the efforts of ICE, the ABA, and others to oversee their implementation, immigration detainees continue to face challenging,

[1] The majority of the Standards were issued and signed on September 20, 2000, and there have been a few updates and standards added in 2002, 2003, and 2004. ICE is currently in the process of redrafting the Detention Standards. Detention Standards as referenced in this statement refers to the standards that are currently in effect and available in the ICE Detention Operations Manual at http://www.ice.gov/partners/dro/opsmanual/index.htm.

sometimes life-threatening, conditions in detention. Complaints the ABA has received from immigration detainees that directly or indirectly relate to detainee health and access to medical care include: (1) medical complaints, including medication not being received in a timely fashion, delayed treatment, and pain relievers offered in response to any complaint regardless of its nature; (2) dental complaints, including that serious tooth pain, gum problems, or other issues are treated with over-the-counter pain relievers or tooth extraction rather than preventive care and routine treatment; (3) unsanitary conditions, including rodents in housing areas; (4) insufficient food, or food not meeting medical diet needs; and (5) lack of information about grievance procedures, as well as grievance procedures not being followed (including complaints not being answered and detainees being threatened with losing privileges, being reclassified, or being transferred for filing grievances).

From the many letters the ABA receives that describe problems with medical care, we draw two examples. A woman detained from October 2006 to November 2007 at three different facilities (Laredo Processing Center in Laredo, Texas, an IGSA facility operated by Corrections Corporation of America; South Texas Detention Complex, in Pearsall, Texas, a Contract Detention Facility operated by The GEO Group, Inc. under contract with ICE; and Port Isabel Detention Facility, an ICE Service Processing Center in Los Fresnos, Texas) wrote to the ABA beginning in June 2007 that she was afraid she would die in detention because she had been sick and bleeding vaginally since February 2007, and had other health problems including a hernia and back pain, but was denied treatment. She wrote that she saw a doctor on March 21, 2007 who told her she needed a sonogram and surgery to correct the bleeding problem. She had a sonogram on April 10, 2007, which revealed tumors in her uterus and a cyst in one ovary. Again a doctor recommended surgery based on the sonogram. However, Laredo Processing Center only provided her with pain relievers. After several months of filing grievances and writing to the DHS OIG, the DHS Office for Civil Rights and Civil Liberties, and advocacy organizations, she was finally scheduled for surgery in October 2007. The Director of ProBAR wrote to ICE in late October requesting that she be released on an order of supervision in order to have the complete hysterectomy that she required, and she was subsequently released on an order of supervision.

A man who was detained at Bristol County Jail, an IGSA facility in North Dartmouth, Massachusetts, wrote that he feared for his life and described his medical treatment in letters written in December 2007 and January 2008. He wrote that he is diabetic and requires dialysis as well as treatment for high blood pressure. During his arrest in November 2007 and transport to the detention facility, a process that apparently took some time, ICE denied him his medication and he became sick. At Bristol County Jail, he told officers that he was very ill but was told to “stop faking it.” A nurse who found that his blood pressure and blood sugar were elevated told him that there was nothing she could do until they got him into the system. Eventually officers took him to St. Luke’s Hospital in New Bedford, Massachusetts, where he remained for nine days. A doctor told him he could have died. A social worker had ICE sign an agreement that they would make sure he could have his dialysis. When he was returned to Bristol County Jail, to a cell in the medical unit with a mattress on the floor and no blankets, and again had medical problems, he asked an officer for medical attention and was told to just go back to his country. In January 2008 he wrote that when he was pleading for help on January 2, 2008, because he was ill and vomiting on the floor of his cell in the medical unit, officers made fun of him and threatened to do something worse to him than leave him in a cold, filthy cell if he continued banging on the door. A nurse who came in later

to administer medication reduced the number of pills that he had been prescribed, and when he told her how many he should have, she told him that she was the doctor now. This man is apparently no longer detained at Bristol County Jail.

Many of the concerns identified by the ABA very closely resemble issues raised in recent reports by the DHS Office of Inspector General and the Government Accountability Office.[2] In December 2006, the DHS OIG identified several instances of noncompliance with medical care standards at four of the five facilities it investigated.[3] Noncompliance included failure to consistently conduct the initial medical screening required for new detainees or the health appraisal and physical exam required within fourteen days, failure to timely respond to sick call requests, failure to comply with hunger strike standards, and failure to provide documentation regarding suicide prevention and intervention.[4] According to the GAO report, the U.S. Public Health Service staff providing medical services for the San Diego Correctional Facility was cited by ICE reviewers for "failing to administer the mandatory 14-day physical exam to approximately 260 detainees."[5] The process for responding to requests for medical care can be cumbersome, time-consuming, and dangerous to those who are waiting for care.[6]

It has become clear that the lack of a legal enforcement mechanism has seriously undermined the effectiveness of the Standards, and that in turn has contributed to the deficiency of medical care provided to detainees in some circumstances. For this reason, the ABA has joined in urging the Department of Homeland Security to promulgate the Detention Standards as regulations. While DHS has not yet made a final determination on this issue, in an initial response to our request Secretary Michael Chertoff expressed reservations with moving toward adopting regulations, stating agency flexibility would be undermined. Cabining agency "flexibility" in cases of medical emergencies and extreme health conditions is, of course, the very purpose of this recommendation.

The ABA therefore also welcomes legislative initiatives, such as H.R. 5950, the Detainee Basic Medical Care Act, which would require the Secretary of Homeland Security to establish procedures for the timely and effective delivery of medical and mental health care to all immigration detainees. We are particularly pleased to note the bill's requirement that such procedures take into account all detainee health needs including primary care, dental care, eye care, mental health care, medical dietary needs, and other specialized care. We urge Congress to adopt this legislation, as well as other proposals to improve detention conditions, as soon as possible.

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[2] The OIG report, "Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities" (OIG-07-01, Dec. 2006) (hereinafter OIG 2006 report), is available at http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_07-01_Dec06.pdf. The GAO report, "Alien Detention Standards: Telephone Access Problems Were Pervasive at Detention Facilities; Other Deficiencies Did Not Show a Pattern of Noncompliance," GAO-07-875 (July 2007) (hereinafter GAO 2007 report) is available at http://www.gao.gov/new.items/d07875.pdf. For more detail regarding immigration detention complaints, see *Orantes-Hernandez v. Gonzales*, 504 F.Supp.2d 825 (C.D. Cal. Jul. 26, 2007) (upholding nationwide injunction based on record documenting violations of provisions of the injunction concerning detention conditions problems including problems with access to law libraries and legal materials, telephone use, attorney visits, and other detention standards issues).

[3] OIG 2006 report at 4.

[4] OIG 2006 report at 3-4, 5, 5-6.

[5] GAO 2007 report at 18.

[6] See *Castaneda v. U.S*, Complaint and Demand for Jury Trial, C.D. Cal. (Oct. 31, 2007), available at http://www.bibdaily.com/pdfs/Castenada%20Complaint%20(10.31.07).pdf.

It also is imperative that oversight of Detention Standards implementation be improved. Currently, ICE inspects facilities once per year and rates the facilities' compliance with the Standards. In 2007, ICE established a process to provide semi-annual reports on the findings of the annual inspections and provide discussion of necessary remediation and corrective actions.[7] While this is a positive step, it does not obviate the need for oversight reviews and reports on the adequacy of the inspection process itself and of individual inspection reports. We note that a Detention Facilities Inspection Group (DFIG) has been established within the ICE Office of Professional Responsibility (OPR)[8] and is intended to provide objective oversight of the detention facility inspection program, including by independently validating detention inspections for non-compliance with the Detention Standards. However, we understand the DFIG may be understaffed and lacks the resources to review more than a selection of inspection reports, and must prioritize the facilities that hold larger numbers of detainees. This leaves an enormous gap in oversight, especially at facilities such as remote local jails that may be particularly in need of oversight and review. The ABA urges that the OPR DFIG be provided with adequate resources to review *all* detention facility inspection reports and to make public its findings.

The ABA also supports providing in-depth training on the Detention Standards, as well as periodic training updates, to all persons who supervise, are responsible for, or otherwise come into regular contact with immigration detainees, including ICE officers, contractors, and state, local, and federal corrections and related personnel. Although ICE has undertaken efforts to train its own personnel to enforce the Detention Standards, similar training is not provided for non-ICE personnel, including wardens and staff at state and local jails—the Intergovernmental Service Agreement (IGSA) facilities.[9] Since these facilities house 65%[10] of immigration detainees, this gap in training must be corrected. If ICE is unable to ensure that facility staff charged with supervision and care of immigration detainees are trained in how to follow the Detention Standards, it must seek alternatives to detaining noncitizens in these facilities.

The effective implementation of not only the Medical Care Standard, but all of the Detention Standards, has the potential to impact the accessibility and quality of medical care for detainees. For example, detainees must be provided comprehensive information on how to request medical assistance at the facility in which they are held, and in a language that they can understand; detainees must be assured that they will not face retaliation if they file a grievance for lack of care; all appropriate medical records and medication must accompany detainees who are transferred between detention facilities; detainees, particularly those with chronic health issues, should not be transferred to remote locations where specialized health services may be less accessible; access to telephones and visitation by family members must be maintained so that health issues that might not be otherwise identified or recognized by the facility may be made known to family members, attorneys, and others who may be able to help ensure the issues are appropriately addressed.

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[7] On May 9, 2008 ICE released "Protecting the Homeland: Semiannual Report on Compliance with ICE National Detention Standards January – June 2007."

[8] U.S. Senate Committee on Homeland Security and Governmental Affairs Pre-hearing Questionnaire For the Nomination of Julie Myers to be Assistant Secretary, Department of Homeland Security, at 59.

[9] Senator Kennedy Follow-up Questions, at 2.

[10] Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law Hearing, "Detention and Removal: Immigration Detainee Medical Care," (Oct. 4, 2007), comments of Representative Steve King on information provided to the Committee by ICE.

Though the issue may be beyond the scope of today's hearing, we would also note one additional measure that could help alleviate the pressures, and accompanying problems, of providing health care services to an increasingly large detained population—the use of affordable, effective alternatives to detention. The ABA has long opposed detention of noncitizens except in extraordinary circumstances (such as when there is a substantial flight risk or threat to national security or public safety), and supports humane alternatives to detention that are the least restrictive necessary to ensure that noncitizens appear in their immigration proceedings. Placing detainees with serious medical conditions, as well as other particularly vulnerable detainees, in alternative settings will both benefit the individual detainees and alleviate some of the demands on the health care system.

The ABA is deeply concerned about the state of immigration detention in the U.S. and emphasizes particularly the need for accountability to ensure that detainees are treated fairly and humanely. As stated above, we believe that a number of steps should be taken to address these concerns, including: promulgating the ICE Detention Standards as regulations; periodically reviewing and improving the Standards; increasing oversight within DHS; providing appropriate training for detention facility personnel; utilizing humane alternatives to detention; and providing detention bed space in populated areas where appropriate medical care may be more readily available and communication with family members and legal representatives can be easily maintained. We believe each of these steps would significantly increase immigration detainees' access to timely and effective medical care, and would also help address other serious problems in our immigration detention system.

Thank you, again, for this opportunity to share our views.