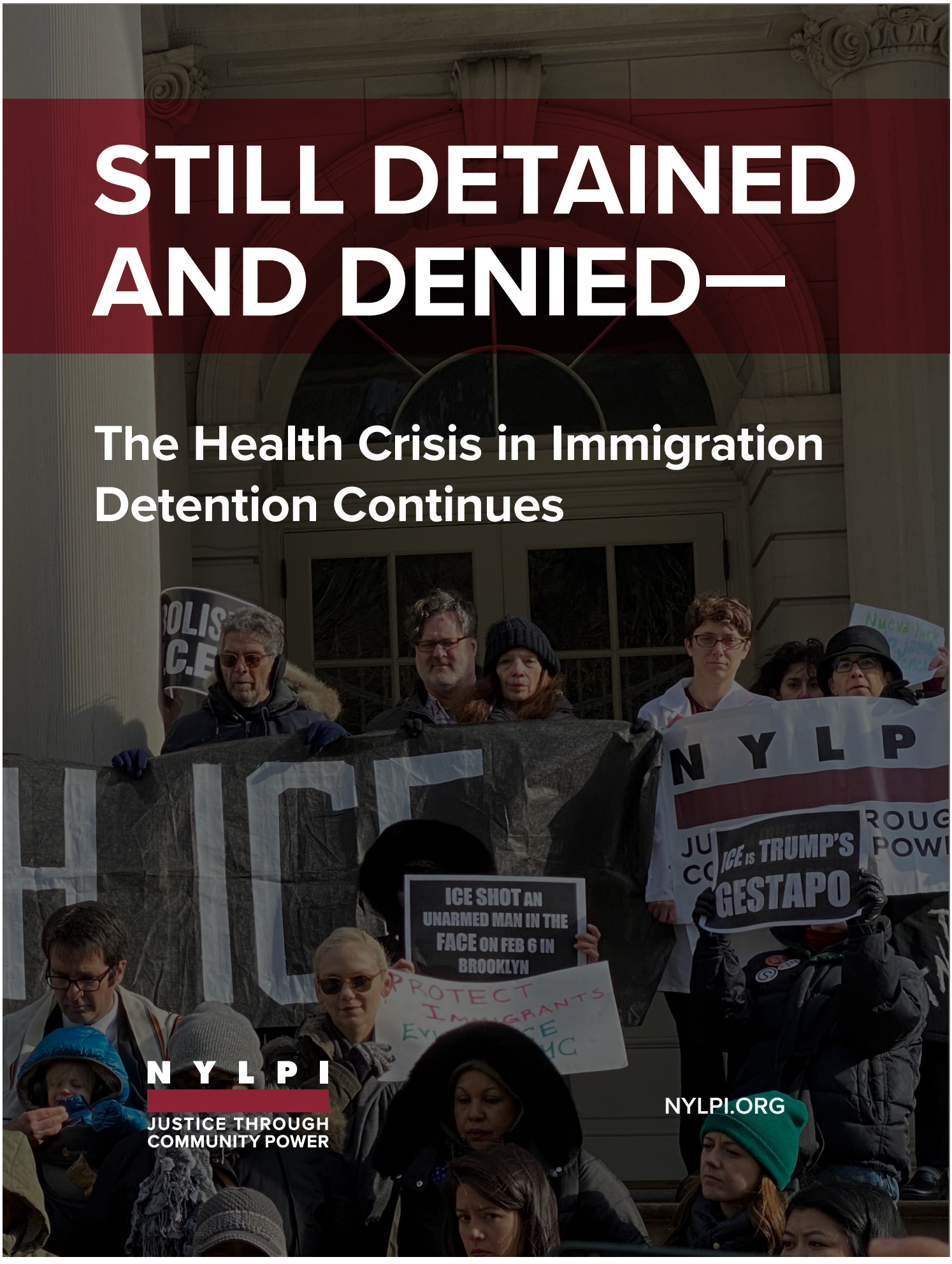
STILL DETAINED AND DENIED—

The Health Crisis in Immigration Detention Continues



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About New York Lawyers for the Public Interest

New York Lawyers for the Public Interest is a community-driven civil rights organization with a Health Justice Program that brings a racial equity and immigrant justice focus to health care advocacy. With our community partners we address the devastating human rights crisis wrought by the immigration detention machine. We run a multi-pronged program, including individual advocacy for current and recently detained individuals, high-impact reports, litigation, and other advocacy pursuing strategic, systemic solutions. We have built a medical-legal-community partnership, which includes a growing network of doctors who volunteer to perform medical record reviews for people in detention, supporting their requests for better care, requests for release, and their underlying immigration cases. New York Lawyers for the Public Interest (NYLPI) and the steering committee of our Medical Providers Network (MPN)[1] recruit additional volunteer medical providers and train them about immigration detention structures, performing reviews of medical records, performing in-person consultations in immigration detention jails, drafting advocacy letters, and raising awareness of conditions in immigration detention through public education. NYLPI's Health Justice team also connects undocumented and uninsured immigrants with serious health conditions to state-funded Medicaid, advocates for healthcare coverage for all New Yorkers, and works to address the social determinants of health. We believe health justice affects all parts of New Yorkers' lives. For more information, please visit www.nylpi.org.

'I have been involved with over a dozen cases, and what I have witnessed is a system that by design lacks humanity and is creating a public health crisis. Everyone I have spoken to in detention says that they are treated like animals. The dehumanization is reflected in the inadequate medical care that they receive. When that is the standard, you can imagine what that does to a person's health. Detention itself is a very serious health risk.'

Dr. Chanelle Diaz, NYLPI
Medical Providers Network
Steering Committee

THE NEW CRISIS OF COVID-19 AND THE DETENTION MACHINE: A CALL FOR IMMEDIATE RELEASE FROM CIVIL DETENTION IN THE FACE OF DEADLY INFECTION

New York Lawyers for the Public Interest releases this report as the novel coronavirus, COVID-19, spreads through communities around the world, including among people in the custody of U.S. Immigration and Customs Enforcement (ICE[2]), in federal detention facilities and in county and private jails. The unprecedented pandemic lays bare what we already know about medical care in detention facilities: it is grossly inadequate and puts the very lives of those held in captivity at risk.

To protect the lives of people in immigration detention, as well as of those who work at the facilities and the larger community, ICE should immediately release everyone in its custody. Under normal circumstances, detention facilities cannot meet the basic medical needs of confined people, and too frequently those with more serious health problems needlessly suffer and, in some cases, die. Designed for security, not medical care, detention facilities cannot accommodate the social distancing and vigilant hygiene measures required to reduce the spread of COVID-19. Recent reports describe hunger strikes over conditions in facilities lacking basic necessities such as soap.[3]

'There is an ever-growing human rights crisis in detention facilities across the country. People in immigration detention live in horrendous conditions, their dignity and health care needs ignored. We have seen New Yorkers endure a conscience-shocking lack of adequate medical treatment of people in New York and New Jersey jails that contract with ICE. Frequently, detention culminates in terrible health consequences, and even death. It is often difficult for doctors to even get into these facilities to meet with people suffering this kind of medical neglect. The detention machine is ruthless and cruel.'

Amber Khan, Director of Health Justice, New York Lawyers for the Public Interest

Ill, Detained, and at Risk of Deadly Infection

Mr. G, in his early fifties and diagnosed with high blood pressure, diabetes/pre-diabetes, and obstructive sleep apnea syndrome was released after a highly experienced physician assessed his health risks during the pandemic, within a prison-like facility that "puts detainees in close contact around the clock." The doctor noted that COVID-19 social distancing guidelines from the Centers for Disease Control and the White House Coronavirus Task Force could not be effectively and safely implemented in the detention facility, creating an "enormous," likely inevitable risk of COVID-19 infection and spread. Routine transfers of people in custody throughout the nationwide immigration detention network increase the likelihood of COVID-19 spread and infection, locally and nationwide. The MPN doctor observed,

> **"Given such conditions and practices, one would be hard-pressed to think of a more effective means for the spread of COVID-19 infection than immigration detention."**

Limited testing, asymptomatic shedding of virus, and interaction with immigration detention staff, contractors and vendors during daily routines contribute to risk. Furthermore, the doctor observed that immigration detention and associated profound stress and helplessness pose the risk of suppressing one's immune system.

NYLPI's Health Justice Program responded to the COVID-19 crisis with multipronged advocacy:

- NYLPI's Medical Providers Network and Doctors for Camp Closure sent an open letter,[4] with more than 4,700 healthcare professionals' signatures, urging ICE to release people from detention and implement community based alternatives. The letter received substantial media coverage and contributed to the pressure on ICE to respond to the COVID-19 health crisis.

- NYLPI's Medical Providers Network drafted an extensive template available to medical doctors advocating for the release of individuals at heightened risk of serious effects, including death, from the virus.
- In April 2020 NYLPI partnered with the New York Immigration Coalition to present a Facebook Live streaming educational event,[5] entirely in Spanish, covering immigrant rights and access to medical care, and debunking misinformation about COVID-19 circulating in immigrant communities. Within 24 hours, the program had been viewed, live or recorded, by thousands. It remains available at https://www.facebook.com/thenyic/videos/2644710855748578/
- NYLPI continues to match attorneys representing people in detention with medical providers to assist in advocacy for release and/or better medical care, and we have successfully advocated for the release of people with multiple serious medical conditions who had been confined at a New York City jail experiencing an outbreak of COVID-19.

NYLPI began working with our Medical Providers Network to analyze COVID-19-related risks for people in detention on March 23, 2020, mobilizing general practitioners, cardiologists, neurologists, and specialists in family medicine, internal medicine, infectious disease and emergency medicine. We quickly advocated for four successful releases, and we are working on many ongoing cases. We have fielded requests for help from people in detention facilities in Bergen County, Essex County, Hudson County, and in Batavia Correctional Jail in upstate New York. The immigrants seeking our help range in age from as young as 23 years to 77. Their medical problems include but are not limited to the following:

- immunocompromised status due to prescribed medication, medical treatment for prior medical concerns, cancer, or conditions such as HIV
- respiratory issues such as chronic asthma, upper respiratory infection, partially collapsed lungs, and pneumonia
- cardiac-related conditions and cardiovascular disease, including hypertension
- diabetes and obesity

Still Detained and Denied

New York historically shined as a beacon for international immigration. But while the federal government continues to attract attention for shocking conditions at its migrant camps on the southern border of the United States, conditions and access to medical care at immigration detention centers in New York and New Jersey now also shock the conscience.

Since New York Lawyers for the Public Interest in 2017 produced Detained and Denied,[6] our first comprehensive report on healthcare access for New Yorkers in immigration detention, we have seen and documented the continuation — and even worsening — of medical conditions for people in these facilities. This report, based on our chronicling of more than 100 people's experiences at New York- and New Jersey-area immigration detention jails, outlines the government's failures and outright denial of adequate medical treatment.

U.S. Immigration and Customs Enforcement and the New York City-area jails with which ICE contracts routinely deny vital medical treatment to people in detention who have serious health conditions, delay specialist care and surgery, ignore complaints, fail to treat chronic conditions, fail to keep medical records up to standards, and refuse basic health-related items. They have discharged people with serious mental illness onto the streets without interim medication or a plan, triggering dangerous decompensation. Detention interrupts successful in-community care, with damaging and sometimes deadly consequences.

Immigration detention is purportedly nonpunitive and intended to ensure appearance at immigration court to determine whether or not an individual will be removed from the U.S.[7] ICE holds in civil custody people whom the United States is seeking to deport, often in local county jails that have signed contracts with ICE. Many people confined to immigration detention have lived in this country for decades, maintained employment, and raised families here. Many are Lawful Permanent Residents. Developed under

previous administrations, the immigration detention model has reached peak cruelty in recent years. The Trump administration has expanded immigration enforcement to previously unseen levels, detaining people of varying statuses. Additionally, there has been a dramatic increase in the number of detained people who have had no interaction with the criminal justice system. Because of health disparities in the United States along lines of race and ethnicity, people in immigration detention disproportionately suffer from serious health conditions, such as cancer, HIV, diabetes, and mental illnesses. The detention machine continues to undermine human rights, abusing people as well as the United States Constitution, which guarantees adequate healthcare to people in immigration detention.[8] It also violates state law and ICE's own policies, as well as the standard of care for medical care in institutional settings.

Recognizing that people in custody rely entirely upon jail authorities for their medical care, the Supreme Court in 1976 in *Estelle v. Gamble* recognized adequate medical care as a fundamental constitutional right for people who are incarcerated. The Court thereby forbade government authorities like ICE from disregarding an excessive risk to a person's health or safety while in immigration detention.[9] The Constitution requires that ICE provide the actual care necessary to treat a medical condition.[10] These rights and responsibilities have been applied to people in civil custody, including immigration detention.[11]

Despite the unlawfulness of the current crisis and the river of reporting and legal actions addressing these problems, by NYLPI and many other organizations concerned about the wellbeing and rights of immigrant communities, serious deficiencies in medical care during detention continue to damage people's health and even lead to death, while counties and the for-profit companies contracted to provide that care continue to take large profits, funded by taxpayers.[12] Each year ICE detains thousands of New York City residents.[13] These individuals are mostly confined to county jails that contract with ICE for a daily fee per bed.

Since NYLPI's 2017 report, ICE has increased detention in New York City-area jails[14] and has extended the length of individuals' detention overall.[15] Current quotas imposed on immigration courts undermine the likelihood of court successes, and even where a person wins immigration relief, new policies trigger automatic appeals -- all while the person remains confined to immigration detention, because fewer bond applications are granted, and ICE has imposed a blanket initial detention policy on all people in removal proceedings, regardless of lack of evidence of any criminal convictions or presence of health concerns.[16]

The New York City-area facilities this report examined are local county jails with which ICE contracts.[17] ICE pays the local jail to house people in civil immigration detention in the same fashion that the jail houses the facility's existing criminally incarcerated population.[18] Counties receive a designated amount per bed. For example, Hudson County receives $120 per person detained; Bergen receives $110. In 2017 alone, Hudson County made $8 million in profit from its contract, which in 2018 was worth $28 million total.[19] The facilities often contract with outside private agencies to provide medical care to people in immigration detention.[20]

ICE itself has issued standards that require its contracting facilities to provide adequate medical care to people in immigration detention. Since 2000, ICE has issued five sets of "Performance Based Detention Standards" to address conditions of confinement for people held in detention facilities.[21] These standards provide guidelines for hundreds of county jails and prisons throughout the United States. Until December 2019, ICE's most recent and comprehensive standards had been issued in 2011, with a minimal update in December 2016 — yet ICE allows many facilities to follow the earlier and less robust iterations. Unfortunately, in December 2019, the Trump administration issued adjustments to the 2000 National Detention Standards that apply to many facilities. The new 2019 NDS further weakened many provisions related to medical care.

Since NYLPI's initial "Detained and Denied" report in 2017, some localities have increased advocacy to end ICE contracts with some jails. In March 2018, Hudson County terminated its five-year, $29 million contract with the private medical company CFG. Hudson County terminated the contract after mounting public outrage following reports of many people who were harmed or died in Hudson County Correctional Center's custody. In response to public outcry, including anger after NYLPI's client Carlos Bonilla's death, in December 2018, Hudson County officials entered a 2020 end date on their contract with ICE, although with an option to renew.[22] Subsequently, NYLPI filed a lawsuit on behalf of Mr. Bonilla's children based upon the inadequacy of the medical care he received. No other New York City-area detention jails have taken similar actions to potentially cut ties with ICE.

KEY FINDINGS

NYLPI has identified the following serious, recurrent deficiencies in medical care for the people we interviewed:

- Denial of courses of treatment ongoing before detention
- Deficient medical records, including unprofessional and inadequate recording of medical history and care
- Language access barriers
- Lengthy delays in receiving medical treatment
- Denials and delays in specialist or off-site care
- Inadequate treatment for acute pain
- Failure to evaluate and manage chronic illnesses
- Failure to evaluate and manage mental health problems
- Lack of mental health discharge planning

Overcrowding has exacerbated these already urgent concerns, and this report documents the worsening of these conditions, raising up stories from people in immigration detention. The results are based on more than 100 referrals and interviews NYLPI and our volunteer medical provider partners conducted between 2017 and early 2020 of people with serious health conditions currently or recently confined to immigration detention.[23] At the conclusion of our report, we recommend urgently needed measures to address this health disaster. Throughout, we include the stories of people we have helped, while noting that the federal government's hostility toward immigrants has reached such heights that even people who have won relief often fear any public mention of their cases.

I. Recurrent Barriers to Adequate Medical Care

Immigration detention damages health and can ultimately claim one's life. Lack of adequate healthcare pervades every moment an individual is detained. These failures often reach beyond the months or years the person is detained, with ramifications after release that include ongoing health problems due to substandard care, and slipshod medical records related to time in detention that undermine one's ability to swiftly receive appropriate care in the community.

"Immigration detention conditions are a nightmare. For advocates, the sheer process of trying to secure access to your client in detention is an arduous task. And when we are able to meet with them, we are subjected to appalling methods such as having to ask them to repeat their trauma because the phones cut out or having to place legal documents up against the window for them to review because we are denied a contact visit. But this is nothing compared to what they face on a daily basis. They suffer cruel and dehumanizing treatment, are denied vital medical treatment, and are stripped of basic human needs. This disregard of basic human rights and dignity is abysmal."

Joanna Lopez, Health Justice Intern, New York Lawyers for the Public Interest Denial of Continued Treatment Underway Upon Admission

Many individuals enter detention with medical issues that require regular treatment, including medical problems exacerbated by health disparities affecting immigrant communities. People report that medication they were taking when they entered detention, often for years to decades, is discontinued or altered once they are detained. Even with clear directions regarding prescription medication and its importance, ICE and jails refuse to continue proven treatment, often with negative health consequences. For seriously ill people cut off from their continuing care in the community due to detention, interrupted treatment can have severe consequences.

Upon entry into a facility, a person is supposed to receive a full medical review to determine individual care needs. Many people arrive with information clearly stating current medical diagnoses and treatment regimens. A person also should receive a handbook explaining the process for requesting medical care at the facility. Detention facilities in Hudson, Orange, and Bergen counties have systems for receiving and processing medical requests from individuals confined to their facilities. First, a person requests medical care from a kiosk in the living unit. The jail's medical unit then receives the request, and medical staff should assess the request within 24 hours to determine priority for care. When specific or specialist treatment is needed, the facility's medical providers should submit requests to ICE for approval. When an individual needs medical care that the facility is not equipped to provide, such as surgery or a biopsy, the person should be referred to hospitals outside of the correctional facility.[24] Hudson County, for example, has formal agreements with local medical facilities where people in its custody should receive emergency room services.

Tasered and Alone

In early 2020 NYLPI testified[25] to the New York City Council's Immigration and Hospitals committee regarding a violent ICE enforcement incident: In the course of taking Gaspar Avendaño-Hernandez into custody, ICE shot his partner's son in the face and tasered Mr. Avendaño-Hernandez multiple times. A doctor in NYLPI's Medical Providers Network reviewed his medical records, which revealed his diagnosis of rhabdomyolysis, likely caused by the repeated electric shocks Mr. Avendaño-Hernandez received when ICE tasered him. As the doctor explained, rhabdomyolysis "can result in damage to the kidneys, dangerous electrolyte abnormalities, and death if left untreated." As the doctor set forth, hydration is one of the most important treatments for this condition, and this critical information was clearly set forth in Mr. Avendaño-Hernandez's hospital discharge summary. Yet when ICE transferred Mr. Avendaño-Hernandez to Hudson County Correctional Center, his attorney reported he was placed in solitary confinement without rationale, stripped nude, and given water only every eight hours.

NYLPI's medical-legal-community partnership has documented multiple examples of arrest-related injuries that go unaddressed once the individual is in a detention center and away from community support:

- One person was handled so roughly by ICE agents that their shoulder was dislocated, with tears to musculoskeletal structures that required emergency surgery. After surgery to repair the damaged shoulder, the individual was left in an arm sling for months in detention, without any further follow-up from a surgeon or orthopedic specialist.
- In another violent arrest, a person with a metal implant in their arm had the same arm reinjured by the arresting ICE agents. The individual reported pain and loss of mobility while detained; pleas for medical assistance were ignored for weeks.

Cut Off From Treatment

Prior to his confinement in civil immigration detention, NYLPI's client Geurys Sosa was diagnosed with several complex medical conditions, including psoriatic arthritis and severe psoriasis. These conditions required that he follow a strict but manageable medical regimen to control the progression and symptoms of his diagnosed ailments and to avoid dangerous complications. At the time Mr. Sosa was arrested by ICE, he was on a medical treatment plan that was effectively bringing his recently diagnosed psoriatic arthritis and his severe psoriasis under control. Crucially, he was receiving two specialty medications. Having been evaluated at Bellevue Hospital after his arrest, Mr. Sosa arrived at detention with a written medical assessment, including one of these medications. This treatment was denied.

As a result of the inadequate medical care while he was detained at Hudson County Correctional Center, Mr. Sosa's health quickly and dangerously deteriorated. His skin lesions worsened and spread, swelling and deformity increased in his joints, his mobility decreased, and his pain became insufferable. After a year and half of detention, Mr. Sosa's immigration lawyer contacted NYLPI. Within days, one of NYLPI's MPN volunteer doctors had reviewed Mr. Sosa's records, interviewed him over the telephone, and prepared a letter outlining the grave risk to Mr. Sosa's health from the lack of adequate healthcare. NYLPI wrote to the United States Department of Justice demanding Mr. Sosa's release, including documentation of Mr. Sosa's lesions and ill health. Within 24 hours, Mr. Sosa was released. With proper medical care, Mr. Sosa's health quickly and dramatically improved.

Unprofessional and Inadequate Recording of Medical History and Care

In or out of detention, an individual's medical records are a lifeline to doctors' understanding of patient needs. Clinical notes are essential for continuity of care, and medical records in immigration detention should comport with accepted standards.[26] Good clinical notes include but are not limited to date and time, information from diagnostic test results, objective impressions

from the medical provider, updates from any provider meeting with the patient, scope of examination, treatment plans, and recommendations for future treatment. Medical professionals have an ethical obligation to manage medical records appropriately.[27]

NYLPI and MPN volunteer physicians, who have reviewed thousands of pages of medical records from New York City-area jails, observe that the medical records regularly fail to meet professional standards. Often, the records inadequately document visits, observations, and reporting. The records lack detailed information regarding updates on conditions and symptoms. Frequently neither NYLPI nor MPN doctors can decipher the care received at the jail from the records the facility provides. It can be nearly impossible to ascertain a timeline of care during detention. Without medical records up to standards, people recently detained risk losing time vital to recovery and sustaining their health. Whether released to the community or deported, people's medical records are absolutely crucial for future medical providers to assess their past treatment and for people's ability to receive appropriate care after detention.

Language Access Barriers

NYLPI's investigation found that ICE and jails fail to provide interpretation and translation services, preventing many people with limited English proficiency from accessing medical care while they are confined to immigration detention. People with limited ability to understand, speak, read, or write English need interpretation and translation services to obtain adequate medical care — but the services are often unavailable.[28] Most seriously, people do not receive adequate interpreters during medical appointments. People with limited English proficiency cannot convey their needs or understand medical advice without communication in their language. In one situation, NYLPI and our MPN volunteer spoke to an individual who was scheduled for and underwent surgery — without being provided with an interpreter. These actions violate ICE's stated policies, as well as the American Medical Association's Code of Medical Ethics, and they implicate informed consent requirements. Further, frequent improvised use of non-professional interpreters implicates disturbing confidentiality breaches, as non-medical personnel and other people in detention become privy to personal medical information.

Delays in Medical Treatment

One of the most pervasive problems people confined to immigration detention report is their ongoing struggle for timely responses to requests for medical care. Under the ICE 2011 standards (and even the 2019 downgrading), facilities should triage and respond to people's medical requests within 24 hours.[29] Even when a person is seen, most often by a nurse and not a doctor, it can be weeks or months before pain or other symptoms are addressed. Individuals may meet with nurses for months on end before seeing a doctor who can formally diagnose symptoms and appropriately create a treatment plan. During these delays pain and suffering worsen, and medical consequences become more dire. NYLPI has interviewed multiple people who reported waiting weeks and even months to address acute pain. One individual reported that over the course of two months he made ten unanswered requests for medical care.

If treatment is recommended it is often wholly inadequate, including instructions simply to drink water, take aspirin or use creams that have no impact — and additional complaints of ongoing symptoms are ignored. Further, if evaluations are finally completed, people in detention endure additional delay in carrying out medical recommendations for specific medication, specialist visits, and surgery. Failures occur at many levels: sometimes internal county jail medical or non-medical personnel cause the delays and other times ICE delays in determining whether to approve medical care.

Evaluating medical conditions and symptoms constitutes the first critical step to providing adequate healthcare – most crucially for people with urgent medical situations. Delay in this initial step can produce devastating consequences. NYLPI previously reported examples such as an individual in detention who experienced severe pain and postponement of gallbladder surgery, followed by emergency surgery upon release, and another person who for months reported severe rectal pain, was misdiagnosed with hemorrhoids, experienced a two-month delay in receiving a biopsy showing evidence of rectal cancer and an additional two-week delay even informing him of the results — and six days later was released with no discharge planning, medical records or treatment.

Fearing Amputation or Death

Inocencio Roman has insulin-dependent Type II diabetes and liver disease and was detained at Bergen County Jail for 18 months. Partners at Make the Road New York called upon NYLPI, and a doctor from NYLPI's Medical Providers Network determined that if Mr. Roman did not immediately get proper care, he risked severe complications to his long-term health, including potential amputation of his foot, coma and death. As his son, Carlos Roman, said,

> **"My father's life is at risk. My sisters and I have been separated from our father for the past year and a half, and now we could lose him if he doesn't get the medical treatment he needs."**

The NYLPI MPN letter supported a successful petition for humanitarian parole.

Denial and Delays in Specialist and Off-Site Care

NYLPI interviewed many people who required off-site and specialized medical care — which ICE denied or provided only after extensive delay. Many of our MPN volunteer physicians stated in their reviews that symptoms, earlier diagnoses, or previous treatment and surgeries required visits to specialist medical providers to maintain care and reduce health risks. In some circumstances, internal doctors or outside providers working with the facility directed treatment by a specialist, which ICE and jails ignored or delayed implementing. Many of these situations obviously required specialist visits:

- One individual experiencing rectal bleeding, which under the standard of care for a person of his age requires being seen promptly by a gastroenterologist due to risk of colon cancer, never received that care.
- A person with a variety of heart conditions was simply given aspirin, and requests for specialist visits were denied.

- Another individual who had spinal surgery days before ICE detained him was not provided neurosurgical specialist follow-up, despite reporting pain and numbness, and losing the ability to move his legs. When ICE finally approved an MRI to review his worsening post-surgical condition, the report suggested follow-up x-rays to assess the position of screws in his back – which did not take place.

When people in detention need emergency room care, or inpatient or outpatient services, the facility medical provider is supposed to refer their request to ICE Field Medical Coordinators, who approve or deny offsite services for people in ICE custody. Many people reported that ICE denied these requests, without providing any alternative care or reason for denials.

Failure to Evaluate and Manage Chronic Conditions

Chronic illnesses, such as diabetes, cirrhosis, chronic heart and coronary diseases, hypertension, depression and other mental health diagnoses require regular monitoring, evaluation, and treatment. Without consistent monitoring and treatment people with these illnesses face serious risks. But with adequate care, they can live full and healthy lives.

The restrictive living conditions for people in immigration detention frequently exacerbate damage to their health and well-being, particularly for people living with chronic illnesses. NYLPI and our volunteers spoke to individuals in detention diagnosed with all of the above-referenced chronic illnesses. In each circumstance, the person's medical records indicated failures to provide adequate medical care addressing these conditions — which had been maintained and controlled prior to detention. Medical records and interviews with people in detention indicate the following:

- ICE and jails fail to fully evaluate chronic illnesses.
- Medical staff regularly misdiagnose previously identified chronic conditions.
- Previous prescription regimens are stopped or altered.
- Facilities and staff fail to provide regular monitoring and follow-up.

- Facilities and staff fail to identify or evaluate complaints and relevant symptoms that indicate problems managing a chronic condition.

Frequently the needed treatment is straightforward, such as blood pressure and cholesterol management, or appropriate insulin regimens. In addition to taking medication, people diagnosed with chronic illnesses must often regulate their lifestyles through closely monitored diet and exercise regimes. People in immigration detention report denial or substantial delay in accessing all of these basic aspects of healthcare. People with entirely manageable chronic illnesses have faced life-threatening complications while in immigration detention, and many have died.[30]

Detention as a Death Sentence

Carlos Bonilla, a 43-year-old father of four, fatally hemorrhaged while confined to civil immigration detention. He had cirrhosis, a chronic liver disease that can cause deadly complications if left untreated, and had for years prior to his ICE arrest been receiving medical treatment, including prescriptions for medications necessary to prevent and manage complications of cirrhosis. Mr. Bonilla reported his history of cirrhosis when he arrived at immigration detention, but the facility and medical providers repeatedly failed to evaluate and treat him. They did not take the steps needed to evaluate the progression of Mr. Bonilla's illness and provide treatment for cirrhosis and cirrhosis complications. Mr. Bonilla began to bleed at least three days before he hemorrhaged to death. He was transported to the hospital on the very date that he was scheduled to appear before an immigration judge to determine whether he would be released on bond to his family and community. Mr. Bonilla's death was tragic and preventable. *Bonilla v. Hudson County,* United States District Court for the District of New Jersey, Case No 19:13137 (2019).

Acute Pain Ignored

As ICE and New York City-area jails detain more people[31] and people spend longer in detention overall,[32] a range of incidents that can cause acute pain are more likely to occur, including the following:

- falling off of top bunks
- assault
- post-surgical pain
- other sudden pains and illnesses such as hernias

NYLPI's investigation found that ICE and New York City-area jails consistently denied pain management treatment, leaving those who experienced pain for the first time in detention and those with residual pain from prior injuries to suffer excruciatingly. Interviewees have reported pain so severe that they are unable to carry out activities such as walking down stairs or descending from a bunk bed. One individual reported that his complaints were ignored until his pain became so extreme he was taken to an emergency room. At times, jail medical staff will provide only aspirin for extreme pain and deny or delay access to prescribed physical therapy to address pain and injuries.

Failure to Evaluate and Manage Mental Health Problems

Since NYLPI's 2017 report many scholars and medical professionals have started analyzing the impact of immigration detention on people's mental health. They find that experiences such as anxiety, depression, and post-traumatic stress disorder (PTSD) are the most prevalent and are exacerbated in detention.[33] Direct trauma in a country of origin or in the United States, generational trauma, and the trauma of detention itself all damage the mental health of people in detention.

NYLPI's investigation found that those who enter detention with a mental health diagnosis and daily medication needs experienced inconsistent continuation of these vital regimens. People reported a range of experiences, from the ability to receive daily medication and regular (although not necessarily substantive) psychiatric visits, to complete denial of treatment

plans that had allowed them to manage their illnesses for years prior to detention. For people without a diagnosis prior to detention or who demonstrate new symptoms while detained, the situation can be particularly dire. NYLPI and MPN physicians spoke to many people who demonstrated obvious symptoms of mental health problems — yet their requests for care and evaluation were ignored. Even after NYLPI and MPN doctors wrote advocacy letters requesting psychiatric evaluations, they were rarely performed.

Release Without Discharge Planning

Discharge planning helps people with serious health conditions that require immediate and ongoing care to reintegrate into their community and continue their healthcare. Discharge planning is medical care provided *during* detention, prior to termination of care. It may include provisions such as a discharge document summarizing the individual's diagnoses and medications, a list of referrals to outside medical providers, and an interim supply of medication to last until the individual can be expected to find new medical services.[34] People are regularly released from immigration detention without any discharge planning. Unless their attorney or advocate knows to push for discharge planning during custody, ICE and jails frequently fail to provide legally required discharge planning.

For people with diagnosed mental illnesses, discharge planning helps ensure that after release from custody they do not deteriorate, potentially facing hospitalization, increased risk of suicide, homelessness, or other related instability. Widely accepted standards of medical care establish that discharge planning is an essential component of adequate institutional mental healthcare. Since our 2017 report, NYLPI's litigation has further established the right to mental health discharge planning. In addition to caselaw from the U.S. Court of Appeals for the Ninth Circuit in the criminal context, in May 2019 the Second Circuit Court of Appeals handed down a landmark decision in *Charles v. Orange County*, NYLPI's case on behalf of two individuals with serious mental illnesses whom the county and ICE had discharged and dumped on the streets without mental health discharge planning. Deeming our challenge a "case of first impression" the U.S. Court of Appeals for the Second Circuit found a constitutional right to mental health

discharge planning as in-custody care for people in immigration detention.[35] And in NYLPI's parallel case against the United States, a federal district court in 2019 found that ICE could be held accountable for failing to provide mental health discharge planning.[36] We subsequently succeeded in negotiating settlements totaling $1.725 million.[37]

II. Recommendations for Future Advocacy

New York Lawyers for the Public Interest joins other advocates in calling for ongoing and increased pressure on ICE and local jails to provide adequate healthcare to sick people in custody, and to seek accountability when ICE fails to respect this most basic right. We offer the following measures to address ongoing government failures to provide appropriate medical care to people in immigrant detention in the New York City area — and ultimately to challenge the very existence of immigration detention:

1. **Promote alternatives to detention for immigrants in removal proceedings, particularly those with serious and/or chronic health conditions.** Detention harms everyone's health, affecting those detained, their families, neighbors and the broader community. Particularly for people with serious illnesses that require constant and comprehensive care, detention can even lead to death. The purported purpose of detention is to guarantee presence at immigration and removal proceedings, and people with serious illnesses are a particularly low risk of flight. For them, detention even for a short period has a greater likelihood of causing dramatic health consequences. The COVID-19 pandemic has spotlighted this potentially deadly vulnerability. Detention should not be mandated, and alternatives should be provided regularly and quickly. Many alternatives exist or can be developed, such as check-ins with local and trusted community-based organizations, community support through programs that include case management, or simply allowing people to return home, where they can access medical care and will appear in court as instructed.[38]

2. **Recruit qualified doctors to perform medical record reviews and in-person consultations for people in immigration detention**, addressing health conditions and current treatment regimens, in support of health justice advocacy efforts. NYLPI and the steering committee of our Medical Providers Network have to-date recruited more than 125 volunteer medical providers, We provide training on immigration detention structures, conduct reviews of medical records, perform in-person consultations in immigration detention jails, draft advocacy letters, and raise awareness of conditions in immigration detention — including with other medical providers

   Many of the people referenced in this report were referred to New York Lawyers for the Public Interest as part of a partnership with attorneys from NYIFUP and other immigration legal service providers and community-based organizations that provide immigration representation and other services for people detained at New York City-area facilities.[39] Through this collaboration, we have shown that advocacy combined with a medical expert's assessment can make a substantial impact with the immigration court reviewing release cases, as well as in underlying immigration relief requests.

3. **Build capacity for doctors and other medical professionals to bring to light their findings and observations, through advocacy, organizing, and training.** Medical providers have immense power throughout our society. They are, justifiably, regarded as heroes — all the more so during the pandemic crisis. Those who are trained at social justice-focused residency and educational programs, such as the program at Montefiore Medical Center, are well-placed to have particularly profound impact. As trained organizers and advocates, the general advocacy community has a lot to offer, including opportunities

for public education through the media and events, through legislative testimony, etc. Advocates can work with engaged medical providers to harness the power of their voices and white coats, and to push for change — and the ultimate end to detention as inhumane and bad for everyone's health.

4. **Ensure continued access to immigration detention facilities by medical providers, advocates, and interpreters, and attack any barriers local jails and ICE erect.** In recent years, NYLPI has seen jails and ICE create barriers to entry for medical providers, causing delay and requiring additional advocacy for visits — even those that are part of a legal case, and thus legally obligated. Although parties are often able to come to an agreement on a visit and instruments permitted, the extra time and effort pose unnecessary challenges for volunteer medical providers and people in detention. Furthermore, advocates and medical providers are not provided individual rooms, access to interpreters, or other necessary and basic mechanisms to perform their consultations and interviews. Consistent challenges to these barriers will help uphold the legal rights of people detained.

5. **Demand that ICE update the standards applied contracted facilities, to the highest and most comprehensive standard available — in most circumstances the 2011 Performance Based National Detention Standards — and institute robust and independent monitoring measures to ensure accountability.** In many cases, ICE designates the most recent care standards in each contract with a county jail. However, NYLPI has found that in some circumstances, ICE and the county jail extend their contract without updating to the most recent standards. This omission leaves people confined to certain immigration detention facilities in conditions that no longer comport with ICE's own determination at the time of the contract regarding what is appropriate. Furthermore, we have seen no

effective follow-up to the Department of Homeland Security Office of the Inspector General's published review in December 2017 — undertaken after immigrant justice organizations raised concerns — which found numerous failures of access to medical care at facilities across the country (including at Hudson County Correctional Facility).[40] Stonewalled Freedom of Information Act requests about regular audits or monitoring reviews of the New York City-area facilities suggest that either reviews are rarely, if ever, completed — or they are not made accessible to the public.

6. **Advocate and organize to challenge the Trump administration's downgrading of the National Detention Standards applicable to many facilities.** Unfortunately, in December 2019 the Trump administration followed through on earlier threats to diminish the standards many ICE-contracted facilities must follow.[41] The new "2019 National Detention Standards," which apply to both Bergen and Orange counties even though both facilities have recent contract renewals, affect medical care in several ways.[42] For example, the 2019 NDS

   - no longer requires the facility be under the direction of a licensed physician;
   - no longer requires the facility be accredited by National Commission on Correctional Health Care;
   - no longer requires the facility complete health assessments on entry, in accordance with correctional standards;
   - weakens reporting required when there is a death in detention.

   Any protective changes to the NDS 2019 for language or disability access were already required by law. Our observations for this report indicate that conditions in detention jails have worsened as the facilities become more crowded, yet the federal government has responded with provisions that reduce protection for people

in detention. Advocates worked together to push forward the 2011 PBNDS and should continue advocacy to challenge this recent change.

7. **Advocate for transparency in ICE's decision-making regarding denials of medical care requests made by facility and outside doctors.** Throughout NYLPI's advocacy we have been particularly dismayed by ICE's initial and at times ongoing failure to acknowledge our requests and explain. Freedom of Information requests have not penetrated the black box of decision-making to show whether there are any guidelines applied. This stonewalling leaves people in immigration detention speculating that cost — rather than health— guides medical decisions. Greater transparency would permit patients and advocates to understand the process ICE uses and to develop strategies in response.

8. **Ensure access to Medicaid and community healthcare for eligible people released from a detention facility.** Many people in immigration detention, especially in New York State, received Medicaid prior to their detention. If they are detained at the time of their annual Medicaid renewal, their Medicaid is terminated. Advocates and City and State officials should work together to guarantee a seamless transition back onto Medicaid upon release, thus promoting consistent care.

9. **Demand clear and informative medical records.** Advocates should demand clear and informative medical records to ensure that when individuals return to their communities, their reconnection to care includes records that give providers a clear and comprehensive understanding of the care they received — or did not receive — while detained.

10. **Expand immigrant legal services funding to cover advocacy for improved access to medical care, including a focus on addressing serious health conditions for people in detention.** Continue to develop and expand immigrant legal defense funds across New York State and the nation that address the ever-changing landscape of immigration enforcement. The New York Immigrant Family Unity Program[43] was the first publicly funded legal defense program in the nation and is being replicated in jurisdictions across the country. Confining more and more people in detention and increasing enforcement across the country renders the need for immigrant legal public defender services, social workers and medical providers higher than ever.

11. **Ensure immigration representation for all New York immigrants, including people with prior orders of removal or in fast-tracked removal proceedings.** Traditionally, publicly funded programs have not covered people in fast-tracked proceedings, leaving an increasing number of immigrants without legal representation. Proposed legislation such as New York's Access to Representation Act would create a statutory right to counsel for immigrants facing deportation in New York.

12. **Advance legal claims.** With appreciation for decades of oft-analogous work by prisoners' rights advocates, we must bring about change through legal challenges that build a body of case law to help people who have been harmed and to illuminate the horrible conditions in detention. The U.S. Constitution, federal and state law, and ICE's own policies clearly establish ICE and the county jails' obligation to provide medical care to people confined to immigration detention. Civil rights lawyers may employ a range of laws:

    - **Apply the 14th Amendment to address deliberate indifference to serious medical needs.** See, for example, NYLPI's successful litigation in *Charles v. Orange County*

and our pending cases such as *Bonilla v. Hudson County, and Sosa v. Hudson County*.

- **Use state law**. We have also included state claims in *Bonilla v. Hudson County,* and *Sosa v. Hudson County*.
- **Advance claims for medical negligence under the Federal Torts Claim Act.** Consider, for example, NYLPI's litigation in *Charles v. United States*.

In May 2019 the Second Circuit Court of Appeals handed down a landmark decision in *Charles v. Orange County*, NYLPI's case on behalf of two individuals with serious mental illnesses whom the county and ICE had discharged and dumped on the streets without mental health discharge planning. Deeming our lawsuit a "case of first impression" the appeals court determined that government officials can be held accountable on constitutional grounds for failing to provide mental health discharge planning for people in immigration detention.[44] The court held that the appropriate test for evaluating deprivation of in-custody care for people in civil detention is whether there is a serious medical need and whether the actor was deliberately indifferent to such need based on an objective recklessness standard.[45]

NYLPI secured a milestone federal district court ruling in March 2019, in *Charles v. United States*. The federal government had argued that it could not be held accountable, asserting independent contractor and delegated duty exceptions to liability. But the court determined that the case could proceed, as the United States had direct responsibility for our client on several occasions, was well aware of his mental illness and healthcare needs, knew the risks, and failed to provide needed medical care in the form of discharge planning.[46] With these two strong rulings in-hand, we succeeded in negotiating settlements totaling $1.725 million.[47]

In 2019 NYLPI sued Hudson County and Hudson County-contracted medical providers on behalf of the family of a man who held in immigration detention at Hudson County Detention Center, who hemorrhaged to death.[48] In early 2020, we filed another case based on failing to provide adequate healthcare to a man with several serious diagnoses, detained and harmed at Hudson County Correctional Center.[49] Through each piece of litigation, we hope to advance the law, provide redress for people who have been harmed, and expose more about the systems and processes that lead to disastrous conditions in immigration detention — all with a goal of spurring change.

NYLPI partnered with the Practicing Law Institute to present a briefing on our litigation, as well as "Championing the Rights of People with Serious Medical Needs in Immigration Detention," an article discussing the bases and strategies for this work.[50]

CONCLUSION

Since we released our original *Detained and Denied* report, conditions in New York City-area immigration detention facilities have worsened. In response to the Trump administration's draconian immigration and enforcement policies, in the years since NYLPI's initial report more people have begun challenging immigration detention conditions — and the concept of civil detention itself. We have seen legal defense programs launched across the country, lawsuits filed, doctors engaged, and regular reporting on the atrocities in detention. Many people from regions across the country have reached out to NYLPI to learn about our medical-legal-community partnership and our program to cultivate the power of doctors' voices to help people in detention.

Yet even with news-making horrors of detention, additional human rights reporting,[51] expanded immigration representation, and advocacy by New York Lawyers for the Public Interest and our allies focused on access to healthcare, the immigration detention machine grows. After NYLPI's last report, 11 U.S.

Senators wrote to the Secretary of the Department of Homeland Security at the time, posing questions about access to healthcare in immigration detention.[52] There has been no adequate response.

NYLPI has advocated for scores of seriously ill people in detention. Since we began this advocacy and made our work public, ICE has begun to acknowledge our advocacy requests for better care and treatment in detention. But in many instances our requests are ignored, denied, or officials assert no problems exist — even as doctors with whom we partner confirm that clearly they do. In rare circumstances, ICE or a jail has minimally improved care.

In many cases where we have provided immigration judges with letters outlining the lack of medical care at detention facilities, this advocacy has helped detained people receive a reasonable bond and release, allowing them to continue or seek medical care in their communities. But with recent immigration court quotas and blanket detention policies, we are concerns that such successes will dwindle, and fewer people will be able to return to health.

As detailed in this report, New York Lawyers for the Public Interest has also used the power of the courts to address access to healthcare in immigration detention. On the heels of our federal court wins in *Charles v. Orange County* and *Charles v. United States*, we succeeded in negotiating settlements totaling $1.725 million,[53] and our filings in 2019 and 2020 against Hudson County, contracted medical providers, and several individuals to challenge failures to provide healthcare proceed as we issue this report.[54] We hope our legal wins, substantial settlements, and pending cases will deter ICE, along with private and county jails from denying adequate medical care and treating people in their custody so horrifically.

Attorneys, community-based advocates, medical professionals, and people who have experienced detention all need support, funding, and the mechanisms to challenge the immigration machine and the toll it takes upon the health of people this nation confines in immigration jails.

New York Lawyers for the Public Interest joins other advocates in calling for an end to immigration detention. Far from being nonpunitive, as purportedly

intended, immigration detention can destroy people's health — and may amount to a death sentence. As a community seeking to end detention and to hold those who operate the immigration detention machine accountable, we must continue to shed light and to use health and human rights as catalysts to demonstrate the horrors of detention and bring about change.

ACKNOWLEDGEMENTS

Staff and interns of the Health Justice Program at New York Lawyers for the Public Interest worked to produce this report with the invaluable contributions of our volunteers and partners, including the hardworking and dedicated doctors in our Medical Providers Network and MPN Steering Committee; our partners throughout the New York Immigrant Family Unity Project, including Brooklyn Defender Services, Bronx Defender Services, and the Immigration Law Unit of the Legal Aid Society; Families for Freedom; First Friends of New Jersey and New York; Make the Road New York; Neighborhood Defender Service of Harlem; New Sanctuary Coalition; the New York Immigration Coalition; the Queer Detainee Empowerment Project; UnLocal; NYLPI volunteer Tasha Brown; and NYLPI Pro Bono Scholar Krystel Momplaisir. As community-driven civil rights advocates, all of us at New York Lawyers for the Public Interest continue to deeply value our alliances with our clients, their families, and immigrant communities at the core of our nation's strength.

ENDNOTES

1 New York Lawyers for the Public Interest's Medical Providers Network is part of NYLPI's medical-legal-community partnership. As of April 2020, the MPN included more than 125 trained volunteer medical providers, with a Steering Committee of doctors who serve as leaders and mentors. *See* https://nylpi.org/campaign/immigrant-health-in-detention/

2 The U.S. Immigration and Customs Enforcement Agency or "ICE" is the branch of the U.S. Department of Homeland Security that administers the criminal and civil enforcement of federal laws governing border control, customs, trade and immigration, including deporting people from the United States.

3 *See* Kate Goldman, No Masks, Disinfectant or Soap. This Is Detention Amid a Pandemic. N.Y.Times (Apr. 2, 2020), https://www.nytimes.com/2020/04/02/opinion/coronavirus-ice-immigration-detention.html. *See also* Caitlin Dickerson, *'There is a Stench': Soiled Clothes and No Baths for Children at a Texas Center*, N.Y.Times (Jun. 21, 2019), https://www.nytimes.com/2019/06/21/us/migrant-children-border-soap.html.

4 *Open Letter to ICE from Medical Professionals Regarding COVID-19*, *available at* https://nylpi.org/wp-content/uploads/2020/03/FINAL-LETTER-Open-Letter-to-ICE-From-Medical-Professionals-Regarding-COVID-19.pdf.

5 The New York Immigration Coalition, *NYLPI + NYIC Community Meeting on the Public Charge, COVID-19, and #Coverage4All*, FACEBOOK (Apr. 9, 2020), https://www.facebook.com/thenyic/videos/vb.138535527380/2644710855748578/?type=2&theater.

6 *Detained and Denied: Healthcare Access in Immigration Detention*, NYLPI (Feb. 2017), *available at* https://nylpi.org/wp-content/uploads/2017/02/HJ-Health-in-Immigration-Detention-Report_2017.pdf.

7 U.S. Gov't Accountability Office, *Immigration Detention, Additional Actions Needed to Strengthen Management and Oversight of Detainee Medical Care,* GAO 1 (Feb. 2016), *available at* https://www.gao.gov/assets/680/675484.pdf.

8 *Powlowski v. Wullich*, 479 N.Y.S.2d 89, 98 (1984) (citing *Estelle v. Gamble*, 429 U.S. 97, 103-05 (1976)).

9 *Cuoco v. Moritsugu,* 222 F.3d 99, 107 (2d Cir. 2000).

10 *Rosemarie M. v. Morton,* 671 F. Supp. 2d 1311, 1313 (M.D. Fla. 2009).

11 *Kingsley v. Hendrickson,* 576 U.S. ___, 135 S.Ct. 2466, 2473 (2015); *Darnell v. Pineiro*, 849 F.3d 17 (2d Cir. 2017).

12 For example, in 2017 alone, Hudson County made $8 million dollars in profit from its contract with ICE. *See* Mariana Alfaro, *Democrats Battle Over a N.J. Jail's Contract with ICE*, N.Y. TIMES (Aug. 31, 2018), https://www.nytimes.com/2018/08/31/nyregion/new-jersey-jails-ice.html. Additionally, Hudson County also saw a 53 percent increase in payments from ICE between 2015 and 2018. *See* Kelly Heyboer, *These 3 N.J. Counties are Raking in Millions on Trump's Immigration Crackdown. Here's How.* NJ.COM (May 14, 2019), https://www.nj.com/news/2018/07/these_3_nj_counties_are_raking_in_millions_on_trum.html.

13 To house the hundreds of thousands of people whom ICE seeks to remove each year, ICE signs "Non-Dedicated Inter-Governmental Service Agreements" ("IGSA") with County jails across the country. ICE pays a daily per bed fee to the local jail. Pursuant to the IGSA, the County jail must provide medical care and other services to people confined to immigration detention. ICE and the county jail regularly renew these agreements.

14 The Bergen County jail's detained population doubled between 2017 and 2019 and Hudson County's jail saw a 38% increase in the same time. *See* Freedom for Immigrants, *Detention by the Numbers 2019*, *available at* https://www.freedomforimmigrants.org/detention-statistics (last visited: Apr. 20, 2020).

15 Federal government data demonstrate that the average length of time in detention in 2015 was 21 days, whereas in 2017 it increased to 34 days. However, Hudson County, Orange County, and Bergen County hold people for far longer, and are within the top ten jails that hold people the longest. The average length for Hudson has reached 88 days, Bergen 92, and Orange 107.

16 *See* EIOR Performance Metrics, *available at* https://www.aila.org/infonet/eoir-memo-immigration-judge-performance-metrics; *see also* Transactional Access Records Clearinghouse, ICE Data Snapshots, *available at* https://trac.syr.edu/phptools/immigration/detention/.

17 ICE has Inter-Governmental Service Agreements with three County jails in the New York City area to confine those in removal proceedings and relevant to this report: Hudson and Bergen County jails in New Jersey and Orange County Jail, in Orange County, New York.

18 U.S. Government Accountability Office, *Immigration Detention, Additional Actions Needed to Strengthen Management and Oversight of Detainee Medical Care,* GAO 1 (Feb. 2016), *available at* https://www.gao.gov/assets/680/675484.pdf, note 6, at 9.

19 For example, in 2017 alone Hudson County made $8 million dollars in profit from its contract with ICE. *See* Mariana Alfaro, *Democrats Battle Over a N.J. Jail's Contract with ICE*, N.Y. TIMES (Aug. 31, 2018), https://www.nytimes.com/2018/08/31/nyregion/new-jersey-jails-ice.html. Additionally, Hudson County also saw a 53 percent increase in payments from ICE between 2015 and 2018. *See* Kelly Heyboer, *These 3 N.J. Counties are Raking in Millions on Trump's Immigration Crackdown. Here's How.* NJ.COM (May 14, 2019), https://www.nj.com/news/2018/07/these_3_nj_counties_are_raking_in_millions_on_trum.html.

20 Hudson County Correctional Facility contracts medical services from the Center for Family Guidance Health Systems LLC and Westwood Pharmacy. Bergen County Correctional Facility contracts its medical services with Corizon Correctional Health and its pharmacy services from Diamond Pharmacy Services. Orange County Correctional Facility contracts its medical and pharmacy services with Quality Choice Correctional Care and Correctional Care Solutions Incorporated.

21 *See* EIOR Performance Metrics, *available at* https://www.aila.org/infonet/eoir-memo-immigration-judge-performance-metrics; *see also* Transactional Access Records Clearinghouse, ICE Data Snapshots, *available at* https://trac.syr.edu/phptools/immigration/detention/.

22 Monsy Alvarado, *Hudson County is looking for other revenue so it can end contract to house ICE detainees*, NORTHJERSEY.COM (Dec. 27, 2019) *available at* https://eu.northjersey.com/story/news/new-jersey/2019/12/27/hudson-nj-seeking-other-revenue-so-can-end-contract-house-ice-detainees/2749774001/.

23 Interviewees experienced detention for at least six months — and up to three years — in the New York metropolitan area, including at Hudson County Correctional Facility, Bergen County Jail, Essex County Jail, and Orange County Correctional Facility.

24 U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, PERFORMANCE-BASED NATIONAL DETENTION STANDARDS 2008, *Medical Care Expected Outcomes no.7*, ICE.GOV 1, *available at* https://www.ice.gov/doclib/dro/detention-standards/pdf/medical_care.pdf.

25 Testimony of Hayley Gorenberg, Legal Director of New York Lawyers for the Public Interest, to the New York City Council Committees on Immigration and Hospitals (Feb. 28, 2020), available at https://nylpi.org/wp-content/uploads/2020/04/Immigration-and-Hospitals-City-Council_2.28.2020.pdf .

26 *See* U.S. Immigration and Customs Enforcement 2011 Operations Manual Performance-Based National Detention Standards, *Medical Care, Expected Outcomes No.23 and Expected Practices,* ICE.GOV 257, 260 *available at* https://www.ice.gov/doclib/detention-standards/2011/4-3.pdf.

27 American Medical Association, *Code of Medical Ethics: Medical Records, Management of Medical Records Opinion 3.3.1*, *available at* https://www.ama-assn.org/delivering-care/ethics/management-medical-records (last visited: Apr. 20, 2020).

28 *See* U.S. Immigration and Customs Enforcement 2011 Operations Manual Performance-Based National Detention Standards, *Medical Care, Expected Outcomes No.23 and Expected Practices,* ICE.GOV 257, 260 *available at* https://www.ice.gov/doclib/detention-standards/2011/4-3.pdf, § E at 264.

29 *See* U.S. Immigration and Customs Enforcement 2011 Operations Manual Performance-Based National Detention Standards, *Medical Care, Expected Outcomes No.23 and Expected Practices,* ICE.GOV 257, 260 *available at* https://www.ice.gov/doclib/detention-standards/2011/4-3.pdf, § S No.4 at 271.

30 Human Rights Watch, *US: Poor Medical Care, Deaths, in Immigrant Detention*, HRW.ORG (Jun. 20, 2018), https://www.hrw.org/news/2018/06/20/us-poor-medical-care-deaths-immigrant-detention; American Immigration Lawyers Association, Deaths at Detention Centers, AILA.ORG (Mar. 23, 2020), https://www.aila.org/infonet/deaths-at-adult-detention-centers (a compilation of press releases issued by ICE since 2015 announcing deaths in adult immigration detention centers).

31 *See* Freedom for Immigrants, *Detention by the Numbers 2019*, *available at* https://www.freedomforimmigrants.org/detention-statistics (last visited: Apr. 20, 2020).

32 *See* Freedom for Immigrants, *Detention by the Numbers 2019*, *available at* https://www.freedomforimmigrants.org/detention-statistics (last visited: Apr. 20, 2020).

33 *See e.g.* M. von Werthern, K. Robjant, Z. Chui, R. Schon, L. Ottisova, C. Mason & C. Katona, [please remove hyperlink!] *The impact of immigration detention on mental health: a systematic review*, *BMC Psychiatry* volume 18, Article number: 382 (2018).

34 Brief for American Psychiatric Association as Amicus Curiae Supporting Plaintiffs at 7, *Charles v. Orange County*, 925 F.3d 73 (No. 17-3506) (2d Cir. 2019); *See also supra* note 24, *Expected Practices* § Z no.4 at 276; *supra* note 24, Expected Practices § BB No.4(c)(2)(a-k) at 278-9.

35 *Wakefield v. Thompson,* 177 F.3d 1160 (9th Cir. 1999); *Charles v. Orange County*, 925 F.3d 73 (2d Cir. 2019).

36 *Charles v. United States*, No. 18 CV 00883 (VB), 2019 WL 1409280 (S.D.N.Y. Mar. 28, 2019).

37 *Charles v. Orange County*, 925 F.3d 73 (2d Cir. 2019).

38 *See e.g.* American Civil Liberties Union, *Alternatives to Immigration Detention: Less Costly and More Humane than Federal Lock-up, available at* https://www.aclu.org/other/aclu-fact-sheet-alternatives-immigration-detention-atd (last visited: Apr. 20, 2020); Justice for Immigrants, *The Real Alternatives to Detention, available at* https://justiceforimmigrants.org/what-we-are-working-on/immigrant-detention/real-alternatives-detention/ (last visited: Apr. 20, 2020).

39 Following referrals from legal and community partners, NYLPI matches individuals in detention with volunteer medical providers who perform in-person consultations and medical record reviews — to be used in advocacy for better care while detained, requests for release, and in underlying immigration cases. The volunteer doctors then provide a letter, and in some instances in-person testimony, based on standards of care. NYLPI also interviews people in detention to analyze patterns and experiences to inform systemic strategies. Often, NYLPI advocates for better healthcare or to assist in pursuing release from detention. NYLPI's legal advocacy seeks to compel ICE and local facilities to comply with federal law and detention standards that govern how medical care should be provided. Even with targeted and intensive legal advocacy, consistent and grave problems with healthcare access remain, and people confined to immigration detention suffer. NYLPI has provided supporting letters to immigration judges outlining the lack of medical care at the detention facilities. These letters have helped people receive a reasonable bond and release, and thereafter to seek medical care in the community.

40 U.S. Department of Homeland Security, Office of Inspector General, *Concerns About Detainees Treatment and Care at Detention Facilities*, OIG-18-32 (Dec. 11, 2017). This audit confirmed

similar issues to those observed by NYLPI including, failure to provide language services, unsafe and unhealthy conditions, failure to respond to health concerns, and failure to document requests for medical care. The report recommends improved federal oversight, which we have not seen at Hudson County in the years since. Additionally, in March 2019, the U.S. Department of Homeland Security received complaints about failure to provide adequate medical and mental health care and oversight at ICE-run facilities, including Essex County Detention Center located in New Jersey. The investigation is ongoing. *See* https://www.documentcloud.org/documents/6575024-ICE-Whistleblower-Report.html.

41 U.S. Immigration and Customs Enforcement, *2019 National Detention Standards for Non-Dedicated Facilities*, § 4.3, Medical Care, *available at* https://www.ice.gov/detention-standards/2019.

42 For a list of ICE detention facilities and the standards by which they are evaluated, *see* https://www.ice.gov/doclib/facilityInspections/dedicatedNonDedicatedFacilityList.xlsx. Hudson County is currently held to the standards outlined in the 2008 Performance Based National Detention Standards.

43 The New York Immigrant Family Unity Project (NYIFUP) is a New York City Council public defender program that provides detained individuals facing deportation with free immigration representation. The project seeks to prevent the separation of individuals with their communities and families with their families and their communities and to expand access to immigration representation. The providers include The Legal Aid Society, Brooklyn Defender Services, and The Bronx Defenders.

44 *Charles v. Orange County*, 925 F.3d 73 (2d Cir. 2019).

45 *Id.* at 86-87.

46 *Charles v. United States*, No. 18 CV 00883 (VB), 2019 WL 1409280 (S.D.N.Y. Mar. 28, 2019).

47 *Charles v. Orange County*, 925 F.3d 73 (2d Cir. 2019).

48 *Bonilla v. Hudson County,* No. 19:13137 (D.N.J. filed May 30, 2019).

49 *Sosa v. Hudson County*, No. 2:2020cv00777 (D.N.J. filed Jan. 23, 2020).

50 Laura F. Redman, "Championing the Rights of People With Serious Medical Needs in Immigration Detention," available at https://

nylpi.org/resource/pli-article-championing-the-rights-of-people-with-serious-medical-needs-in-immigration-detention/.

51 Since NYLPI's initial Detained and Denied report published in February 2017, additional human rights reports have continued to document human rights violations in immigration detention facilities, including those referenced in this report. *See e.g.* Human Rights Watch, *Systemic Indifference: Dangerous & Substandard Medical Care in US Immigration Detention* (May 8, 2017), *available at* https://www.hrw.org/report/2017/05/08/systemic-indifference/dangerous-substandard-medical-care-us-immigration-detention; Human Rights First, *Ailing Justice: New Jersey, Inadequate Healthcare, Indifference, and Indefinite Confinement in Immigration Detention* (Feb. 27, 2018), *available at* https://www.humanrightsfirst.org/resource/ailing-justice-new-jersey-inadequate-healthcare-indifference-and-indefinite-confinement; Human Rights Watch, *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention* (Jun. 20, 2018), *available at* https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration; Center for American Progress, I*mmigration Detention Is Dangerous for Women's Health and Rights* (Oct. 21, 2019), *available at* https://www.americanprogress.org/issues/women/reports/2019/10/21/475997/immigration-detention-dangerous-womens-health-rights/.

52 NYLPI Report on Medical Neglect in Immigrant Detention Facilities Inspires Senators to Demand a Response from the Trump Administration, https://nylpi.org/nylpi-report-on-medical-neglect-in-immigrant-detention-facilities-inspires-senators-to-demand-a-response-from-the-trump-administration/

53 *Charles v. Orange County*, 925 F.3d 73 (2d Cir. 2019).

54 *Bonilla v. Hudson County,* No. 19:13137 (D.N.J. filed May 30, 2019).

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