

SENT VIA ELECTRONIC MAIL AND FAX

September 6, 2018

Annette L. Hayes [via email]
United States Attorney
Western District of Washington
United States Attorney's Office
700 Stewart St., Suite 5220
Seattle, WA 98101-1271

cc: Warden [via fax]
Northwest Detention Center
1623 E. J Street
Tacoma, WA 98421



Washington

Re: Hunger Strike at Tacoma Northwest Detention Center

Dear Ms. Hayes,

I write on behalf of the ACLU of Washington to raise concerns about the treatment of individuals currently participating in hunger strikes at the Northwest Detention Center (NWDC) in Tacoma, Washington. We also seek to remind you of constitutional standards and agency policy regarding the treatment of detainees participating in hunger strikes. This letter outlines your obligations and the rights of detainees with respect to involuntary medical treatment, including forced feeding, of detainees participating in hunger strikes.

Detainees in ICE custody have the right to engage in protected First Amendment speech, including participation in hunger strikes.¹ Detainees also have the right to make informed decisions about their own health care when engaging in hunger strikes. Under the 2011 Performance Based National Detention Standards (PBNDS), which govern this facility,² detainees have the right to refuse medical treatment, including forced feeding.³ Involuntary medical treatment should not be administered without a court order obtaining authorization.⁴ Court authorization for

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¹ *Bridges v. Wixon*, 326 U.S. 135, 148 (1945); *Stefanoff v. Hays Cnty.*, 154 F.3d 523, 527 (5th Cir. 1998) (per curiam); *Dumbrique v. Brunner*, No. 14-CV-02598-HSG, 2016 WL 3268875, at *7 (N.D. Cal. June 15, 2016).

² U.S. Immigration & Customs Enforcement, U.S. Dep't of Homeland Security, *Performance-Based National Detention Standards 2011*, § 4.2.V.E. (as revised in 2016) [hereinafter "PBNDS 2011"].

³ *Vacco v. Quill*, 521 U.S. 793, 800 (1997) ("Everyone, regardless of physical condition, is entitled, if competent, to refuse unwanted lifesaving medical treatment."); *Washington v. Glucksberg*, 521 U.S. 702, 725 (1997); *Cruzan by Cruzan v. Dir., Miss. Dep't of Health*, 497 U.S. 261, 270, 281 (1990).

⁴ PBNDS 2011, § 4.2.V.E.2.b.

involuntary medical treatment should only be pursued after the Clinical Medical Authority (CMA) has determined that the detainee's life or health is at risk.⁵ The respective physician may only recommend involuntary medical treatment "when clinical assessment and laboratory results indicate the detainee's weakening condition threatens the life or long-term health of the detainee."⁶

Involuntary medical treatment violates a detainee's rights if "the decision by the [medical] professional is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment."⁷

Finally, throughout a hunger strike, you must maintain records of "all interactions with the striking detainee, the provision of food, attempted and successfully administered medical treatment, and communications between the SMA, facility administrator, and ICE/ERO regarding the striking detainee."⁸

We welcome a conversation with you regarding treatment of individuals engaging in a hunger strike and any concerns you may have regarding your obligations.

Sincerely,



Enoka Herat
Police Practices and Immigration Counsel

⁵ PBNDS 2011, § 4.2.V.E.

⁶ PBNDS 2011, § 4.2.V.E.2.

⁷ *Youngberg v. Romeo*, 457 U.S. 307, 323 (1982).

⁸ PBNDS 2011, § 4.2.V.C.9.