



July 22, 2019

Field Office Director, Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
11541 Montana Avenue, Suite E
El Paso, TX 79936

Re: [REDACTED]

Dear Director,

I am an attorney at the ACLU of Texas, a nonprofit organization dedicated to protecting civil liberties in the State of Texas. I write to address the treatment of individuals participating in a hunger strike at the El Paso Processing Center (EPPC) in El Paso, Texas. Specifically, I was informed by counsel for [REDACTED] and [REDACTED] that these three persons are on hunger strike and have been threatened with force-feeding. It is my understanding that there are additional persons at the EPPC who are likewise on hunger strike and being threatened with force-feeding.

I write specifically to raise three concerns. First, force-feeding of hunger strike participants is a cruel process that goes against medical norms and ethics. Second, such force feeding violates the free speech rights of those participating in the hunger strike. Third, ICE's own medical policies provide a readily available, less intrusive alternative to force-feeding, which is to refer the individual to outside medical care.

Force-feeding a person is an inherently cruel, inhumane, and degrading process, especially if it is forced upon a person engaged in a hunger strike.¹ Generally, the person subjected to force-feeding is strapped into a chair with restraints on his or her legs, arms, body, and sometimes

¹ World Medical Association, *Declaration of Tokyo - Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment*, 1975, as revised, 2016, available at <https://www.wma.net/policies-post/wma-declaration-of-tokyo-guidelines-for-physicians-concerning-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment-in-relation-to-detention-and-imprisonment/> ("Where a prisoner refuses nourishment and is considered by the physician as capable of forming an unimpaired and rational judgment concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially.").

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head, immobilizing the person. A tube is inserted up their nostril, and snaked down their throat into their stomach. A liquid nutritional supplement is then forced down the tube. Debilitating consequences of force-feeding can include major infections, pneumonia, collapsed lungs, heart failure, post-traumatic stress disorder and other psychological trauma.

Because of its inherently cruel and invasive nature, force-feeding is condemned by national and international medical authorities. The World Medical Association (WMA), the preeminent international organization in the field of medical ethics and practice, has repeatedly condemned force-feeding of competent prisoners. The WMA's 1975 Tokyo Declaration states that doctors shall respect a competent prisoner's right to refuse artificial feeding.² The WMA's Declaration of Malta on Hunger Strikers, adopted in 1991 and revised in 2017, states that "[h]unger strikers should not forcibly be given treatment they refuse."³

The WMA has further taken the position that when a doctor seeks to promote their patient's welfare in response to the person's fasting, they should respect the individuals' wishes and should not exclusively focus their case on minimizing damage to health especially when it would mean forcing treatment upon a competent person.⁴ The American Medical Association, a member of the WMA, has endorsed these principles.⁵ The International Committee of the Red Cross has similarly stated: "The ICRC is opposed to forced feeding or forced treatment; it is essential that the detainees' choices be respected and their human dignity preserved."⁶

Additionally, causing an individual to end their hunger strike through force feeding violates that person's free speech rights, and therefore raises significant constitutional concerns. Participating in a hunger strike is a form of expressive conduct protected by the First Amendment. As the Supreme Court has observed, "[t]he passive nonviolence of King and Gandhi are proof that the resolute acceptance of pain may communicate dedication and righteousness more eloquently than mere words ever could."⁷ Accordingly, courts have recognized the expressive nature of a hunger strike.⁸ Further, the Supreme Court has repeatedly held that competent persons have a due process right to refuse unwanted medical treatment.⁹

² *Id.* revised by the 67th WMA General Assembly, Taipei, Taiwan, October 2016.

³ World Medical Association, *Declaration of Malta on Hunger Strikers*, 1991, revised by the 68th WMA General Assembly, Chicago, United States, October 2017, available at <https://www.wma.net/policies-post/wma-declaration-of-malta-on-hunger-strikers/>.

⁴ *Id.*

⁵ Letter from AMA, to U.S. Sec'y of Defense Chuck Hagel (Apr. 25, 2013), available at http://media.miamiherald.com/smedia/2013/04/30/07/58/FRs25_So.56.pdf ("Where a prisoner refuses nourishment and is considered by the physician as capable of forming an unimpaired and rational judgment concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially.").

⁶ *Hunger strikes in prisons: the ICRC's position* (January 31, 2013), available at <https://www.icrc.org/en/document/hunger-strikes-prisons-icrc-position>.

⁷ *FTC v. Super. Ct. Trial Lawyers Ass'n*, 493 U.S. 411, 450-51 (1990).

⁸ *Stefanoff v. Hays Cnty., Tex.*, 154 F.3d 523, 527 (5th Cir. 1998) (explaining that a prison hunger strike can be expressive conduct protected by the First Amendment).

⁹ See e.g., *Cruzan by Cruzan v. Dir., Miss. Dep't of Health*, 497 U.S. 261, 270, 281 (1990) ("[T]he Due Process Clause protects . . . an interest in refusing life-sustaining medical treatment[.]"); *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) (recognizing America's "long legal tradition protecting the decision to refuse unwanted medical treatment").

Finally, while ICE has a policy with respect to hunger strikes, the 2011 PBNDS also provides a readily available, less intrusive alternative to force-feeding if a person's medical condition becomes imminently life-threatening.¹⁰ Under the 2011 PBNDS, when a detainee's medical condition "becomes life-threatening," officials are directed to "[a]rrange the transfer of the detainee to an appropriate off-site medical or community facility if appropriate and medically necessary."¹¹ Upon transfer to a community hospital, the hospital assumes medical decision-making authority, and "the hospital's internal rules and procedures concerning seriously ill, injured and dying patients shall apply to detainees."¹² In other words, ICE does not need to be in the business of force-feeding at all. To the extent ICE believes that an individual's situation has become life threatening, that person should be transferred to an appropriate off-site medical location and that location's internal rules and ethics should guide all further care decisions.

Force-feeding is a cruel, inhumane act that fails to respect the rights of those engaged in hunger strikes and is not necessary given the ability to transfer individuals to community hospitals in life-threatening situations. ICE should therefore cease engaging in this practice.

Regards,

A handwritten signature in black ink, appearing to read 'Bernardo Rafael Cruz', with a stylized, overlapping script.

Bernardo Rafael Cruz
Immigrants' Rights Fellow

Thomas Buser-Clancy
Staff Attorney

¹⁰ See 2011 PBNDS § 4.7 (Terminal Illness, Advance Directives, and Death).

¹¹ *Id.* § 4.7(V)(A).

¹² *Id.*