HEALTH RIGHTS ADVOCATE

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Still Not Out Of "El Pozo": Immigrants With Mental Disabilities Face Continuing Threats to Their Health and Human Rights

By Erin Hustings and Kristen Ochoa on October 15, 2010 Tweet this

Confinement in detention is among the most painful indignities that a mentally ill immigrant can suffer. Consider the words of detainees themselves:

It was when I got into detention that I started losing hope and thought that it is useless to live. I grabbed a bed sheet and tied it to a piece of metal between the television and the wall…[but] one of my friends, a roommate, saw what I was about to do. She came and calmed me down. I didn't tell the health staff, because if they had found out about it, they would have put me in a room that was much worse. I think many detainees would not tell the medical staff if they were thinking about killing themselves. They would be afraid of being put in segregation." *(*From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers*, p. 76-78.)*

This interview took place in the early part of the George W. Bush administration. Physicians for Human Rights has been working to preserve the health and human rights of immigrants with mental disabilities since then. Sadly, in all this time, little has changed.

Accounts published in 2010 seem to concern the very same overzealous detention system and abusive practices documented close to ten years ago. One contemporary report states, *"detainees are frequently segregated into special housing units or isolation when they are on suicide watch, [or] when they have exhibited symptoms of mental illness"* (*Justice for Immigration's Hidden Population*, Texas Appleseed, p. 22). A recently released detainee told this report's authors:

When they put you in "el pozo" *["the hole," or solitary confinement]* you only have a little space. You have a toilet and a little place where you can sleep. And there is a little place where they put the food, but they throw it without caring. They throw it as if you were an animal. It makes you lose control mentally. That is why I did not come out so well, mentally. I would lose my mind—I would lose my mind severely. I even wanted to commit suicide.

Throughout the duration of immigration hearings—not just in detention—the deck is stacked against people with mental illnesses. Unlike in criminal court, immigrants who can't understand and defend their own interests due to mental disability are not entitled to any legal help, or even to representation by a guardian. Upon being taken into immigration custody, people with mental illness are particularly likely to be transferred to long-term detention. The Department of

Homeland Security (DHS) does not have authority to exempt many non-dangerous immigrants with mental illnesses from mandatory detention provisions. Caring for people with advanced mental health needs in the detention context is never easy, and anecdotal reports abound of immigrants decompensating due to misdiagnosis, questionable medication choices, harsh punitive reactions to manifestations of mental illness, and simple lack of mental health care resource availability. No attempts are currently made to uniformly determine immigrants' competence to participate in immigration hearings, nor are incompetent individuals offered treatment to restore them to competency.

As a result of these unethical practices, U.S. citizens with mental illnesses have been mistakenly deported. Green card holders have been indefinitely confined to detention for years because Immigration Courts were uncertain about what to do with people with severe mental disability who could not participate meaningfully in their hearings. Severely traumatized survivors of persecution have given up their requests for humanitarian protection because they could not endure the conditions they faced while their cases were being decided.

With more information coming to light about the human rights abuses and suffering to which people with mental disabilities are subjected in the immigration detention system, there is renewed energy behind demands for reformed policies. In recent communications with officials at DHS, the Department of Justice (DOJ), and in Congress, PHR has been joined by numerous colleague organizations in calling for:

- Use of proven methods to protect the rights of immigrants with mental disabilities: appointment of attorneys and requisition of competency evaluation by licensed health professionals trained in forensic psychology/psychiatry.
- Reduction in detention of immigrants with mental illnesses, so that only those who are dangerous or flight risks are incarcerated.
- Improvement in detention care, practices and record-keeping, including instituting mental health screening performed by health professionals, making more treatment options available to detainees at their choice, and limiting use of restraint and seclusion to instances in which there is an immediate threat of harm.
- Release under safe circumstances: detainees with mental illnesses have a particular need for time to communicate with family and friends who may meet them on the outside; for help with basic needs such as climate-appropriate clothing, money for transportation, and a supply of medication; and for release at appropriate times and places—not in rural areas or the middle of the night, as has happened in the past.

Some of these recommendations would be implemented by passage of the *Comprehensive Immigration Reform Act of 2010*, recently introduced by Senators Menendez (D-NJ) and Leahy (D-VT). This bill would place strict limitations on the detention of vulnerable people like immigrants with mental disabilities, as well as on the use of solitary confinement, shackling, and strip searches. It would also impose higher and more effective standards for detention health care systems and for discharge medical planning.

Some recommendations are within DHS's and DOJ's discretion to implement. These agencies need to know that health professionals support common sense reforms to protect the health and

human rights of immigrants with mental disabilities. Please consider weighing in by signing a petition started by our colleagues at Change.org.

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