



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Office of the General Counsel

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**DRAFT: NOT FOR DISTRIBUTION**

**MEMORANDUM**

**TO: Jocelyn Mendelsohn**  
**FROM: Laura Odwazny**  
**DATE: November 9, 2000**  
**RE: Use of chemical restraints on noncompliant deportees**

The Immigration and Naturalization Service has presented the following situation for review. When being deported, some INS detainees display aggressive, violent and threatening behavior, which, in certain situations, has prevented the deportation from proceeding. Unlike Bureau of Prisons detainees, INS detainees are transported on commercial carriers.

You requested that I research the issue of whether the INS is permitted to use chemical restraints on noncompliant aliens during their deportation, and if so, in what situations.

**Background**

The U.S. Supreme Court has held that aliens have a liberty interest under the Fifth and Fourteenth Amendments of the U.S. Constitution, see *Plyler v. Doe*, 457 U.S. 202 (1982), which would be implicated in the involuntary administration of drugs by the INS. There is very little case law addressing the involuntary administration of drugs to aliens: however, we can look to case law addressing the forcible medication of state prisoners, a situation that is somewhat analogous although by no means identical.

### **Brief conclusion**

Under current INS policy, forcible medication of aliens is only appropriate for medical reasons, not for convenience. The case law, with the exceptions of *Bechera* and *Khiem*, follows this general principle. The prison cases also focus on whether or not the inmate presents a danger to himself or others, and the court's analysis changes depending on this factor. For the most part, the courts have held that the administration of antipsychotic medication to a nondangerous inmate or detainee is subject to a stricter standard of review.

In *Harper*, the Supreme Court concluded that a prisoner is entitled to some due process protections before being forced to submit to medication with antipsychotics. The Court concluded that the prison policy for involuntary medication, which established certain procedural safeguards, was sufficient to protect an inmate's liberty interest. Therefore, if such safeguards were followed, applying *Harper*, the INS could administer psychotropic drugs to a mentally ill deportee. However, the Supreme Court has not established the minimum process necessary before involuntarily medicating.

In *Bechara*, the court ordered that sedatives be administered for the sole purpose of facilitating deportation. This case has not been followed as precedent in any published cases. Even if the INS chose to adopt this holding in its policy, absent a court order, the INS should not administer sedatives to facilitate deportation.

From the sample of cases I summarize here, a general conclusion that can be drawn is that involuntary medication of a mentally ill detainee, who is dangerous to himself or others, may be appropriate if the detainee is afforded certain procedural protections. In an emergency situation, involuntary medication may be appropriate if ordered by a psychiatrist (although perhaps this need not be the case) and if the detainee is presently dangerous to himself or others. Regarding detainees who are not mentally ill, involuntary medication of such persons for the sole purpose of subduing them during deportation, without a court order, is not supported by any legal authority and raises ethical issues as well.