



May 27, 2015

Via Facsimile & U.S. Mail

Timothy Aitken, Field Office Director
Immigration and Customs Enforcement
630 Sansome Street, Room 590
San Francisco, CA 94611
Fax: (510) 267-3870

Monte LaFave, Assistant Field Office Director (*by U.S. Mail only*)
Immigration and Customs Enforcement
17645 Industrial Farm Road
Bakersfield, CA 93308

Ron Murray, Warden
GEO Group, Inc.
Mesa Verde Detention Facility
425 Golden State Avenue
Bakersfield, CA 93301
Fax: (661) 859-1108

Re: Follow-up on May 11 Tour of Mesa Verde Detention Facility

Dear Sirs:

Thank you for accommodating our request for a tour of Mesa Verde Detention Facility, which we completed May 11, 2015. We are particularly appreciative of Mr. Murray's hospitality and helpful explanations as well as the time and attention of ICE officers Ackerman and Valencia. We understand that the program and operations are still under development and we want to take this opportunity to provide some early feedback in the hope that it will improve detention conditions for the growing population there. These observations are by no means exhaustive, but we hope they will be helpful to you.

Medical and Mental Health Services

First, while we understand that staffing has not been fully realized for the facility at this point, we believe that even the intended full staff may be inadequate to meet the medical needs of your population. We were concerned to learn that medical staffing includes only 20 hours a week of a contract physician rather than having a doctor at the facility at all times. The planned 20 hours per week of psychiatric care on-site is also a

concern. Since our tour we learned that there is already a waiting list for appointments with the psychiatrist. In addition, while we were encouraged to hear from Mr. Willis that medical staff are aware of the dangers of valley fever and the fact that it is endemic to Bakersfield, we hope for significantly greater assurance that screening for immunosuppressed conditions will take place *before* detainees are transferred to the facility, and that housing decisions will take into account the high-risks for valley fever associated with certain racial and ethnic groups—again, prior to their being assigned and transferred to Mesa Verde.

Legal Visitation

As to legal needs, when two attorneys in our party—Julia Harumi Mass and Megan Sallomi—stayed behind to meet with detainees, they experienced extremely long delays in having detainees brought to attorney rooms. These delays were of two types. First, there were significant delays related to facility staffing. Ms. Mass and Ms. Sallomi waited over 20 minutes on multiple occasions for a “search and escort” staff member to become available to accommodate the requested legal visits. They were provided various operational reasons, from staff being busy assisting with “chow,” to staff needing to use the bathroom. Unfortunately, after driving nearly five hours to visit with detainee clients, Ms. Mass and Ms. Sallomi had to end their visits at 8:00 p.m. and were not able to visit with all of the detainees whose names they had sent to ICE and the facility in advance of the visit. Our experience strongly suggests that there are not enough staff members at the facility to escort detainees to attorney visiting rooms in a timely manner, particularly given the substantial advance notice that we provided. Relatedly, we learned from staff that detainees of different genders or security classifications could not be brought to the visiting rooms simultaneously. This operational limitation will severely impact the ability of the facility to accommodate attorney visitation in the four designated rooms at the same time, leading to more delays. Attorney calls and visits will become more frequent as the facility’s population increases. We urge you to enhance the “search and escort” staffing at the facility, and also to make additional rooms available to accommodate different genders and security classifications at the same time.

Second, as you may already be aware, Ms. Mass and Ms. Sallomi had already been cleared to speak to a list of nine detainees after having contacted both ICE Officer Ackerman and GEO Group staff Friday, May 8. But after our conversation concerning whether G-28s would be required for attorney visits, facility staff informed us that we could not continue our interviews because we did not have G-28 forms on file. Ms. Mass contacted Patricia Spaletta in the Office of the Chief Counsel in the San Francisco Field office to clear up the matter, but it took about 90 minutes for our interviews to resume. This week, securing confirmation of Ms. Traverso’s authorization to visit four detainees required several communications with ICE officials, including Ms. Spaletta.

Detainees have a right to consult with counsel whether or not they have already retained such counsel. They also have a right to consult with counsel who do not represent them in their removal proceedings. A policy limiting attorney visits to people with established attorney-client relationships as reflected in the G-28 will prevent consultations that could lead to representation for detainees in their immigration cases. In addition, it will interfere with existing and potential attorney-client relationships in other proceedings, such as federal court litigation, child custody matters, and criminal cases.¹ Ultimately, if facility staff refuse to allow an attorney visit (whether from the ACLU or some other attorney), the facility will be liable for any illegal restriction on attorney access. We urge you to educate both ICE and facility staff that if an attorney arrives for a consultation with a detainee and does not have a G-28 on file, the detainee nonetheless has a right to speak with the attorney.

We also noticed that the attorney visit rooms were not soundproof. During our visit, there was a GEO officer stationed outside the visiting rooms and we could hear him speaking on his radio. When we tested the privacy of the rooms, we found that we could hear what was being said from outside the doors when the person inside was speaking at a normal volume. We were required to whisper in order to maintain confidentiality. This condition also must be corrected. The detention standards require “private consultation rooms” that are “not subject to auditory supervision.” *See* Performance Based National Detention Standards, Section 5.7(V)(J)(9) (2011). ICE and the facility need to take steps to ensure that such privacy is ensured.

Finally, we would like to confirm the general parameters that Mr. Murray laid out for visitation and communication with detainees, including that the facility will:

- accommodate attorney visits with two-hours’ notice;
- permit attorney visits seven days a week, as needed;
- permit attorney visits and phone calls without restriction on the duration of such calls or visits, including by requiring facility staff to pass attorney messages to detainees requesting calls at particular times, and facilitating detainee calls back to their attorneys at those times;
- make other offices (such as the intake room) available, if the attorney visiting rooms are occupied, to ensure attorney calls and visits;
- accommodate confidential attorney phone calls and VTC calls between attorneys and their clients;² and

¹ The 2011 Performance Based National Detention Standard on Visitation expressly states that G-28 forms are not needed for attorney visits. *See* <http://www.ice.gov/doclib/detention-standards/2011/visitation.pdf> at p. 376.

² At the time of our visit, there were many unanswered questions about how VTC will operate for both hearings and attorney consultations. We request the opportunity to observe VTC hearings once they begin and to continue our conversations about this topic generally.

- permit social visits eight hours a day, seven days a week.

We also discussed the rules for visitation by legal assistants and law students, and Mr. Murray indicated that he would notify us regarding the facility's policies for such visits. We ask that you send us a written copy of your visitation policy, including the parameters for lawyers, legal assistants, law students, interpreters, medical or psychological experts, and other visitors, at your earliest convenience.

In addition to in-person visits, telephone access is an essential medium for detainees to seek advice of counsel and prepare their cases. We note that many of the telephone access and privacy concerns impacting other detainees in the San Francisco Area of Responsibility also apply in Mesa Verde. When we tested housing unit phones during our visit, none of them appeared to function at all, although we understand that they worked for visitors on a subsequent tour. In addition, as Mr. Murray acknowledged during our tour, the housing unit phones offer no privacy and are therefore not appropriate for private legal calls. We urge you to offer additional options for direct and private calls to meet the significant needs of detainees to obtain counsel or, if unrepresented, to gather evidence and contact witnesses. Such options should include, but need not be limited to, ensuring sufficient private phone rooms and staffing for 400 immigration detainees to make several lengthy telephone calls each week in order obtain legal advice, seek representation, and be in contact with family, friends, employers, and government offices as necessary to gather evidentiary and testimonial support for their immigration cases and other legal needs.³

Law Library

Immigration law is extremely complex, and having an adequate law library is imperative. We greatly appreciate your allowing us to review the law library materials, meet with the librarian, and conduct our own queries on the available search database. Having had the opportunity to log in and run a search on the Lexis-Nexis database available to detainees, we have three concerns about the system. First, given that we – trained attorneys with considerable experience using different legal search engines – could not figure out how to conduct a search without guidance from the librarian, we doubt that most detainees could do the same. We ask that you consider either training unrepresented detainees on how to use the database or inquiring about whether a more accessible system is available. Second, the database does not continuously update itself, as do the web-based databases available to non-detained individuals. As a result, detainees may not have access to recent, critical information pertaining to their cases. Finally, there were no immigration

³ As we mentioned during the tour, the American Civil Liberties Union Foundation of Northern California is currently litigating a challenge to inadequate telephone access that is focused on three detention facilities in northern California. We refer you to the complaint in *Lyon et al v. Immigration and Customs Enforcement et al.*, Case No. 13-CV-05878 – EMC (N.D. Cal.) for further information about the statutory and constitutional rights that require sufficient telephone access for immigration detainees.

forms or relevant human rights reports available in the law library. A large number of immigration detainees apply for asylum, withholding of removal, and relief under the Convention Against Torture, all of which usually require immigrants to present evidence about conditions in their home countries. Without access to current human rights reports, immigrants cannot present such evidence. We suggest the following materials be added and updated frequently:

- Lexis-Nexis should be continuously updated.
- Detainees should be offered and provided training on how to use Lexis-Nexis by a law librarian or someone qualified and certified to practice immigration law.
- Immigration forms should be made available in the law library (including but not limited to the I-589, EOIR 42A, EOIR 42B, I-485, U visa application, DACA forms, section 212(c) forms, fee waiver forms, EOIR 26, and I-130).
- Department of State Country Conditions and human rights reports should be made available from countries whose nationals are regularly in the facility, such as Mexico, El Salvador, India, Guatemala, and Honduras, as well as reports for any other country of citizenship or nationality of detainees housed in the facility.
- Copies of the Immigration Court Practice Manual, the Board of Immigration Appeals Practice Manual and the Ninth Circuit Court of Appeals Pro Se Immigration Manual.

In addition, policies and procedures should be developed to allow detainee confidentiality over the documents they draft for their legal cases, including for their lawyers on the computer system and for detainees who require assistance for printing and sending documents.

Detainee Well-Being and Additional Issues

Finally, we would like to share some concerns raised by detainees that we and others have spoken with on various occasions. Women detainees stated that they have been kept outdoors for five or more hours on several hot days, due to maintenance work in the women's pod. Detainees also stated that mealtimes are inconsistent, that portions are insufficient, and that in at least one instance, the kitchen ran out of food altogether before all of the detainees had eaten. Inconsistent or inadequate provision of food can rise to the level of a violation of detainees' rights. As you continue to develop your operations at Mesa Verde, we hope you will give serious attention to these important issues for the detainees' health and well-being.

We also understand that the female detainees do not have equal access to classes, the law library, and recreational equipment. It appeared as though the female detainees had less space and no basketball or soccer equipment. Moreover, we hope the same rehabilitative and instructional courses are offered both equally to men and women in the detention center.

We were also pleased to learn about certain aspects of facility operation, and want to mention those as well. We understand that strip searches will not be used at intake or after social or attorney visits. We were also encouraged to hear that use of segregated cells will be limited to 72 hours per detainee. While we think a rule abolishing all segregation would be preferable, we think the limitation you described is an important step in the right direction. In addition, allowing detainees to keep their property on-site is a vast improvement over other detention centers (although we did hear from detainees that have had difficulty retrieving items, such as toiletries, from their property). We also were pleased to hear that you are considering GED and other longer-term classes (for both male and female detainees), and hope that you will follow through on your plans to provide those. Contrary to ICE's public statements on this issue, we know that ICE often holds detainees for extremely long periods of time. We understand that many detainees currently in the facility have been in ICE detention for a year or more.

Thank you again for your time and efforts in accommodating our tour of the Mesa Verde Detention Facility and thank you, in advance, for your attention to the items in this letter.

Sincerely,



Julia Harumi Mass, Senior Staff Attorney
Megan Sallomi, Legal Fellow
American Civil Liberties Union Foundation of Northern California

Ahilan Arulanantham, Deputy Legal Director
Michael Kaufman, Staff Attorney
Katie Traverso, Law Fellow
ACLU Foundation of Southern California

Holly Cooper, Associate Director
University of California Davis Immigration Law Clinic

cc: Leslie Ungerman, Office of the Chief Counsel