



**Homeland
Security**

December 04, 2012

MEMORANDUM FOR: Gary Mead
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U.S. Immigration and Customs Enforcement

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SUBJECT: Complaint No. 11-06-ICE-0128
Otero County Processing Center

As you know, the U.S. Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL), is conducting an investigation into conditions of detention for U.S. Immigration and Customs Enforcement (ICE) detainees at the Otero County Processing Center (OCPC) in Chaparral, New Mexico.

Between March 2011 and November 2011, CRCL received several complaints¹ relating to a wide range of issues in regard to conditions of detention at OCPC. The complaints alleged: (a) inadequate medical care; (b) a due process violation by extending detainee's detention; (c) inappropriate response to detainee grievances by use of abusive language; (d) discriminatory treatment of detainees based on race or religion; (e) retaliation against detainees for participation in hunger strikes; (f) inappropriate disciplinary and segregation policies and procedures; (g) excessive force; (h) inadequate time for meal consumption; (i) a lack of nutrition in detainees' meals; (j) sanitation and environmental health concerns; (k) inappropriate mail procedures; and (l) limited access to recreation, telephones, and religious services.

In response to these complaints, CRCL conducted a site review at OCPC from March 13-15, 2012. We greatly appreciated the cooperation and assistance provided by ICE and OCPC personnel before and during the review. As part of the review, CRCL used four independent subject-matter experts: a medical consultant; a mental health consultant; an environmental health and safety consultant; and a penologist. As a result of detainee and staff interviews, document

¹ In addition to the primary complaint number listed above, CRCL is also investigating the following complaint numbers related to OCPC: 12-01-ICE-0041, 12-02-ICE-0016, and 12-02-ICE-0017.

reviews, and direct observations, the subject-matter experts identified concerns related to the allegations made in the complaints. Broadly, our experts substantiated many of the medical and mental health care concerns raised in the complaints, and also substantiated numerous environmental health and safety concerns, as well as concerns related to grievances, recreation, access to legal materials, and use of abusive language.

Enclosed with this memorandum are the reports prepared by our subject-matter experts following the site review.² We expect to conclude this matter with a full report and recommendations, but that will take additional time to prepare. Given that the experts' reports contain a variety of important and valuable findings and recommendations, all of which we endorse, we wanted to send them to you now so that you would have the benefit of this feedback while we continue to work on our final report.

CRCL's medical consultant made the following recommendations regarding medical care, including grievances. All references to the 2008 Performance-Based National Detention Standards (PBNDS)³ are to the standard titled *Medical Care*, and all references to the National Commission on Correctional Health Care (NCCHC) are to the section titled *Standards for Health Services in Jails 2008*:

1. OCPC needs to shift the bulk of Sick Call from nurses to practitioners. Nurses can collect data, but the cases should be contemporaneously discussed with a practitioner. In this setting, protocols can be used as a *guide* to information collection, not as a blueprint for diagnosis and treatment. A very limited number of protocols for independent nurse management of common and benign problems can be contemplated if the system conforms to the conditions described in Footnote 3.⁴

A. Applicable standards: PBNDS V.N and NCCHC J-E-07.

² In general, CRCL's subject-matter experts relied on the applicable 2008 Performance-Based National Detention Standards (PBNDS), National Commission on Correctional Health Care (NCCHC) standards, American Correctional Association (ACA) standards, and related professional standards in conducting their work and preparing their reports and recommendations. However, some of their analysis or recommendations may be based on constitutional or statutory requirements that exceed the detention or professional standards.

³ OCPC is governed by the 2008 PBNDS.

⁴ Footnote 3 of the expert's report states in full: As an adjunct to SC care provided by practitioners, some care may be able to be safely delivered by nurses under protocols with certain provisos: (a) there would be a VERY limited number of protocols; (b) the problems covered by the protocols would have to be common problems which are very obvious and which are rarely symptoms of more severe diseases, e.g. athlete's foot, common cold; (c) the protocols would have to be very well written and have clear instructions (as opposed to simply guiding the nurse through a number of history and exam questions, but then leave the actual decision making very much up to the nurse's discretion; (d) the nurses would have to be very well trained in the protocols; (e) the nurses who do this would have to do it on a regular basis; (f) the nurses chosen to do this are ones with solid nursing experience, not fresh out of nursing school; (g) there is close supervision and support by a practitioner, including having completed protocols reviewed periodically and assuring that practitioners are close at hand in case the nurse has a question or feels the case goes beyond the protocol; (h) there is a low threshold for the nurse to refer the patient to the practitioner if the patient does not respond to treatment after one or two visits; (i) this can ONLY be done by RNs, not LVNs.

2. The intake assessment form should be expanded to prompt for, and provide room to record additional information, such as past medical history, past surgical history, family history, social history, and a review of systems and current symptoms.
 - A. Applicable standard: PBNDS II.19.
3. If RNs are to conduct intake assessments, they should be properly trained (this can either be done *de novo* or by evidence that they have received this training previously) and supervised. They should only be assigned to conduct H&Ps on detainees expected to be healthy, and when they encounter information to the contrary, meaningful practitioner involvement should be mandatory.
 - A. Applicable standard: Accepted practice and NCCHC J-E-04.
4. Whenever an EKG is obtained urgently (i.e. not ordered as a routine test), the EKG should be read *immediately* by a qualified clinician. This can be accomplished in a number of ways, e.g. providing specialized training to the nurses; faxing the EKG to the practitioner; subscribing to an EKG service which automatically transmits the EKG from the machine to a cardiologist who provides an immediate reading.
 - A. Applicable standard: Accepted practice.
5. OCPC must ensure that medical staff practice competently. A number of tools may be helpful, including closer supervision by the facility medical director and regional managers.
 - A. Applicable standards: PBNDS II.29 and NCCHC J-C-07.
6. OCPC should strengthen its policies for medication refusals. These changes should consider situations in which fewer than three missed doses in a row, or multiple non-consecutive misses trigger clinical action. Policies should also ensure that paperwork is handled in a consistent manner and monitoring should be implemented to assure that this happens. The changes should also eliminate the need for clinical judgments to be made by LVNs.
 - A. Applicable standard: PBNDS V.T.
7. PNA management should assure that prescribers are familiar with the formulary with regard to opiates and any barriers to their use – official or unofficial – should be removed.
 - A. Applicable standards: Accepted practice and PBNDS II.1.
8. The process for transmitting prescriptions to the pharmacy must be done in a safe manner and by staff who are trained and licensed for the tasks they perform. This does not necessarily require a change in personnel. For example, orders might be faxed to the pharmacy in their original form (as written by the practitioner), and any requests from clarification from the pharmacy can be given directly to a practitioner for action.

- A. Applicable standards: PBNDS V.F., NCCHC J-D-01, New Mexico Administrative Code 16.19.11, and New Mexico Statutes Annotated 26-3-3.
9. Incomplete TARs should be returned to a practitioner for completion.
- A. Applicable standard: NCCHC J-A-03.
10. Medical records (or a comprehensive summary) should accompany detainees upon transfer out. Any pending work-up should be highlighted.
- A. Applicable standards: PBNDS V.S and NCCHC J-H-04.
11. The Medical and Psychiatric Directors must be integrated into the leadership team in meaningful ways.
- A. Applicable standards: NCCHC J-A-06 and the intent of PBNDS V.X.1.
12. CQI must be done in a meaningful way. CQI needs to become about finding problems and fixing them, rather than just reporting data.
- A. Applicable standards: NCCHC J-A-06 and the intent of PBNDS V.X.1.
13. The waiting system for SC should be redesigned. There are a number of ways this can be done with minimal impact on health and security operations. For example, detainees might be seen in order of severity, or detainees could be brought in smaller batches.
- A. Applicable standards: PBNDS I and NCCHC J-A-01.
14. Grievances should be investigated, underlying problems addressed and fixed, and responses provided which show the detainee that their concern received due consideration (this does not require providing them with confidential personnel or other sensitive information). When appropriate, detainees should be interviewed in person. Finally, complaints about the HSA should not be routed to the HSA for response.
- A. Applicable standards: PBNDS V.X.2 and NCCHC J-A-11.

CRCL’s medical consultant made the following best practice recommendations:

15. (b)(5) [Redacted]

(b)(5) [Redacted] (Best Practice)

16. (b)(5) [Redacted]

A. Applicable standard: Accepted practice for good fiscal stewardship. (Best Practice)

17

(b)(5)

- A. Applicable standard: Accepted practice for good fiscal stewardship. (Best Practice)

CRCL's mental health consultant made the following recommendations regarding mental health care. Unless stated otherwise, these recommendations relate to the NCCHC *Standards for Health Services in Jails*:

18. During segregation rounds OCPC officers should position themselves far enough from the medical or mental health practitioner in order to provide a fair degree of auditory privacy. Exceptions to this should be at the practitioner's request, should they determine there would be a safety risk if the officer was further away. Likewise, during face-to-face private encounters, the officer should be positioned outside of the interview room unless closer observation is requested by the clinician, or by consensus between security and the clinician if security is aware of a safety concern.
19. OCPC should develop a minimum of a four hour initial training in suicide prevention and the recognition and approach to the mentally ill detainee. This training should be offered at least biennially although annual training is the NCCHC preferred recommendation.
20. The current suicide risk assessment form should be revised to incorporate the relevant mental health history, the nature of the detainee's suicide plan, and an adequate treatment plan. In addition, the level of supervision and the property the detainee is allowed to have in their possession while on suicide watch should be specified in writing. Follow-up dates for reassessments should be added to the form, as well as increased space for documenting the narrative psychological evaluation and mental status examination data. A step-down procedure and follow up should be included in the policy and procedure for detainees released from suicide observation and for those detainees being returned to the facility from a psychiatric hospital.
21. OCPC must develop a plan to provide better access to psychiatric assessment and management of detainees with mental health needs.
 - A. Applicable Standard: 2008 PBNDS *Medical Care* standard at V.F., bullet 2.
22. The facility should address urgent medical needs of all seriously mentally ill detainees and initiate necessary treatments with the greatest haste possible. Medications should be administered within 24 hours of the physician's order, especially in states of acute illness requiring special observation.
23. OCPC must develop a plan to improve the documentation deficiencies identified in this report.

CRCL's environmental health and safety consultant made the following recommendations regarding environmental health and safety:

24. A registered dietitian should immediately evaluate the common fare menu for nutritional adequacy. The menu should be modified to ensure the caloric value is adequate to meet the needs of detainees at OCPC. The menu must be reevaluated by the registered dietitian in the event of significant menu changes, as required by the PBNDS Food Service standard.
 - A. Applicable standards: The PBNDS *Food Service* standard and the Institute of Medicine of the National Academies' 2006 *Dietary Reference Intakes (DRIs)*.
25. Dietitian approved menus must be available for all diet plans offered and served.
 - A. Applicable standards: The PBNDS *Food Service* standard and the *DRIs*.
26. The approved recipes must be strictly adhered to by the kitchen staff when preparing common fare menu items as required by the PBNDS Food Service standard. A best practices recommendation is for the registered dietitian to provide the OCPC FSM with a substitution list. Substitution lists serve as a guide of nutritionally equivalent foods for use by kitchen employees when making menu changes. Additionally, all substitutions must be logged. A best practices recommendation is for the dietitian to periodically review the substitution logs and ensure menu changes are nutritionally adequate.
 - A. Applicable standards: The PBNDS *Food Service* standard and the *DRIs*.
27. The registered dietitian and FSM should comply with the PBNDS Food Service standard Expected Practices, which require evaluating detainee acceptance of the menus and utilize the feedback to develop a common fare menu that is more acceptable to detainees.
 - A. Applicable standards: The PBNDS *Food Service* standard and the *DRIs*.
28. Medical staff should monitor detainees receiving the common fare menu for weight loss. In the event of weight loss due to inadequate food intake, their meal plan should be reevaluated for adequacy.
 - A. Applicable standards: The PBNDS *Food Service* standard and the *DRIs*.
29. Food service employees must be properly trained on all food service rules and regulations, including proper food storage.
 - A. Applicable standard: The PBNDS *Food Service* standard.
30. Food stock should be rotated to ensure older foods are used before newer foods. All food that has exceeded its use-by or expiration date must be discarded.
 - A. Applicable standard: The PBNDS *Food Service* standard.

31. Produce should be carefully checked before it is placed on the service line and only wholesome produce should be served.
 - A. Applicable standard: The PBNDS *Food Service* standard.
32. Food products that are removed from the original packaging should be stored in tightly sealed, labeled containers. New food product should not be mixed with old product. Food storage containers should be emptied, cleaned, and sanitized before being filled with new product.
 - A. Applicable standard: The PBNDS *Food Service* standard.
33. OCPC administration must take immediate corrective action to refinish or replace the dining room tables.
 - A. Applicable standard: The PBNDS *Food Service* standard.
34. A policy and procedure should be developed and implemented requiring dining room tables are cleaned and sanitized between detainee use, during the same meal period, as well as between the different meals.
 - A. Applicable standard: The PBNDS *Food Service* standard.
35. Comprehensive policies and procedures should be developed and implemented for the laundry operation. A standardized professional development plan should be implemented for the training of staff regarding proper laundry procedures. On-duty staff must be knowledgeable of all laundry procedures and be held accountable for the laundry operation in the absence of the laundry supervisor.
 - A. Applicable standards: The PBNDS *Personal Hygiene* standard and ACA Standard 4-ALDF-1A-04.
36. A laundry scale should be installed in the laundry and all laundry should be weighed to ensure machines are loaded in accordance with the manufacturer's recommended capacity.
 - A. Applicable standards: The PBNDS *Personal Hygiene* standard and ACA Standard 4-ALDF-1A-04.
37. OCPC housing and laundry staff must strictly adhere to the quarterly blanket exchange schedule and require detainees to exchange their blankets.
 - A. Applicable standards: The PBNDS *Personal Hygiene* standard and ACA Standard 4-ALDF-1A-04.
38. The laundry dryer lint filtration system should be immediately inspected and cleaned. A preventive maintenance program must be developed and consistently implemented.

- A. Applicable standards: The PBNDS *Personal Hygiene* standard and ACA Standard 4-ALDF-1A-04.
39. OCPC must immediately implement policy and procedures related to the handling, storage, and disposal of biohazard materials, including contaminated laundry. The procedures must be specific and include the definition of “biohazard,” how to handle biohazard materials, including the proper personal protective equipment to be used, and identify exactly where in the facility the disposal containers are to be stored. Additionally, all employees must be trained on biohazard policies and procedures.
- A. Applicable standards: The PBNDS *Personal Hygiene* standard and ACA Standard 4-ALDF-1A-04.
40. Revise cleaning policies and procedures to require routine dusting of the walls and fixtures in the dorms and ensure this task is performed.
- A. Applicable standards: The PBNDS *Environmental Health and Safety* standard and ACA Standard 4-ALDF-1A-04.
41. The germicidal detergent/disinfectant must be used in accordance with the manufacturer’s directions, including the wet contact time required for the product. Revise all policies and procedures related to the use of the germicidal detergent/disinfectant to include the ten-minute wet contact time required for proper disinfection. Train all employees on the germicidal detergent/disinfectant directions for use.
- A. Applicable standards: The PBNDS *Environmental Health and Safety* standard and ACA Standard 4-ALDF-1A-04.
42. Develop and implement a routine drain cleaning and maintenance program.
- A. Applicable standards: The PBNDS *Environmental Health and Safety* standard and ACA Standard 4-ALDF-1A-04.
43. Include the shower squad on the housekeeping schedule, delineate their duties, and develop detailed written procedures for completing the tasks assigned to the shower squad.
- A. Applicable standards: The PBNDS *Environmental Health and Safety* standard and ACA Standard 4-ALDF-1A-04.
44. Mattresses and pillows must be discarded when damaged, ripped, torn, or cracked. OCPC officials should immediately inspect all pillows and mattresses and replace those that are damaged or cracked.
- A. Applicable standard: The PBNDS *Personal Hygiene* standard.

45. Written procedures for cleaning and disinfection of pillows and mattresses need to be developed and implemented, including the requirement for the ten-minute wet contact time for the germicidal detergent/disinfectant on all sides of the mattresses and pillows. Furthermore, officers should be trained and the procedures should be posted in all areas where mattresses and pillows are cleaned and disinfected.

A. Applicable standard: The PBNDS *Personal Hygiene* standard.

CRCL's environmental health and safety consultant made the following best practice recommendation regarding environmental health and safety:

46. (b)(5) [redacted] (b)(5) [redacted] (Best Practice)

CRCL's penologist made the following best practice recommendations regarding grievances, recreation, access to legal materials, and use of abusive language:

47. (b)(5) [redacted] (b)(5) [redacted] (Best Practice)

48. (b)(5) [redacted] (b)(5) [redacted] (Best Practice)

49. (b)(5) [redacted] (Best Practice)

50. (b)(5) [redacted] (b)(5) [redacted] (Best Practice)

It is CRCL's statutory role to advise department leadership and personnel about civil rights and civil liberties issues, ensuring respect for civil rights and civil liberties in policy decisions and implementation of those decisions. As a result, we hope that you will take immediate action to address the recommendations contained in this memorandum. We request that ICE provide a response to CRCL within 60 days that indicates whether ICE concurs with the recommendations made and include an action plan to address the recommendations. We will take account of the progress you have made in addressing these recommendations when we issue our final report. You can send your response by email. If you have any questions about this complaint, please

contact (b)(6) at (b)(6) or by telephone at (b)(6). You may also contact Jeffrey Blumberg directly.

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