



July 13, 2018

VIA EMAIL

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Dear FOD Bonnar, AFOD LaFave, and Warden Allen:

We write to express our serious concerns about the denial of access to legal resources for immigrants incarcerated at the Mesa Verde Detention Center, operated by GEO Group, in Bakersfield, California. The lack of access to legal resources frustrates detainees' ability to adequately prepare their cases and compromises their rights to a fair hearing, in violation of the U.S. Constitution and federal law, as well as ICE's policies and GEO's contractual obligations.

We have received multiple reports that, since at least April 2018, Mesa Verde detainees have had severe problems accessing working computers and legal resources. For several weeks, all the computers located in at least one housing module have not been functional. These computers are the primary resource made available to detained individuals to prepare their cases for immigration court, administrative and federal appeals, and to communicate and send documents to their legal representatives.

While detainees are in theory permitted one hour of computer access per day in the facility's library, even this minimal access has been illusory in practice. Detainees report that the law library has been closed or non-functional for weeks at a time, and, when it has been open, detained individuals have been denied the ability to scan and photocopy materials central to their legal cases. These deficiencies have prevented or delayed the ability of detained individuals to correspond with legal representatives and family members, and to obtain information essential to their case. Indeed, in one case, after a detainee was unable to obtain publicly available materials relevant to his immigration case, an IJ was forced to pause the legal proceeding to search for the materials online, and print the materials the individual needed.

The denial of access to legal resources can have dire consequences for individuals detained at Mesa Verde. Because the majority of detainees are preparing their cases pro se—that is, without legal

counsel—they must depend on the legal resources at Mesa Verde to prepare for their hearings. For the many individuals at Mesa Verde who are asylum-seekers, the stakes of their hearings are often life or death. For others, the hearings may result in permanent banishment from their families and homes.

GEO’s failure to provide adequate legal resources at Mesa Verde violates its constitutional, statutory and contractual obligations to ensure that detainees can fully prepare their cases, access court, communicate with legal representatives, and receive a fair hearing.

GEO is contractually obligated to adhere to ICE’s 2011 Performance Based National Detention Standards (“PBNDS”) which include provisions designed to ensure detainee access to justice. Under those provisions, GEO must provide detainees with “meaningful access to law libraries, legal materials and related materials on a regular schedule and no less than 15 hours per week.”¹ The PBNDS specifies that these requirements entail access to particular digital resources, including a mandate that the facility’s “law library shall have an adequate number of computers and printers to support the detainee population”² and that “the facility provides detainees sufficient access to . . . operable computers capable of running the electronic legal research media.”³ Moreover, the Performance Work Statement, further specifying GEO’s contractual obligations, states that “[r]esidents will have access to all required legal materials and electronic legal research capability. Legal kiosks will also be provided in every dayroom (including at least 5 in male housing unit dayrooms) to provide additional access to law library functions.”⁴ The denial of access to a functioning law library, computers, photocopiers and scanners at the Mesa Verde facility since April 2018 constitute clear violations of these obligations.

Beyond GEO’s contractual breaches, the company’s denial of and limitations on access to legal resources violates the U.S. Constitution and federal law. The Supreme Court has long recognized that “prisoners have a constitutional right of access to the courts” and that this “fundamental constitutional right . . . requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries . . .”⁵ The Ninth Circuit has recognized that this principle – stemming from the Fifth Amendment’s guarantee of meaningful access to, participation and fairness in court proceedings – takes on even greater weight in the immigration context because immigration detainees are not provided appointed counsel.⁶

Moreover, under federal law, individuals in removal proceedings must be granted “a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien’s own behalf, and to cross examine witnesses presented by the Government . . .”⁷ The Ninth Circuit has recognized that a detainee’s statutory right to “a reasonable opportunity to examine [and] . . . present evidence” requires that the individual be afforded meaningful opportunity to prepare their legal case.⁸

¹ EROIGSA-15-0005 Intergovernmental Service Agreement Between the US Dept of Homeland Security US Immigration and Customs Enforcement Office of Enforcement and Removal Operations and City of McFarland, CA; Attachment 1 – PBNDS 2011 Optimal Provisions § A, Standard 6.3.

² PBNDS § 6.3.V.D.

³ PBNDS § 6.3.V.E.1.a.2.

⁴ EROIGSA-15-005; Attachment 6 – Performance Work Statement § X.E.

⁵ *Bounds v. Smith*, 430 U.S. 817, 828 (1977). See also *Ex parte Hull*, 312 U.S. 546 (1941).

⁶ See *Agyeman v. INS*, 296 F.3d 871, 877 (9th Cir. 2002) (holding that the petitioner’s Fifth Amendment right to a full and fair hearing was compromised when the Immigration Judge failed to fully develop the record, due, in part, to the fact that he was a pro se, immigrant detainee with limited access to relevant documents).

⁷ 8 U.S.C. § 1229a(b)(4)(B).

⁸ See *Cinapian v. Holder*, 567 F.3d 1067, 1074-75 (9th Cir. 2009) (holding that the petitioner’s rights to a full and fair hearing and to examine evidence against him under 8 U.S.C. § 1229a(b)(4)(B) were denied based on the government’s failure to disclose the reports it was using as evidence in advance of the hearing and to make their author available for cross-examination).

In short, GEO's failure to ensure adequate access to legal resources to individuals detained at the Mesa Verde facility constitute serious violations of law. We, therefore, urge that GEO and ICE should take immediate steps to ensure that Mesa Verde detainees can adequately prepare their legal cases and meaningfully access the courts.

First, GEO and ICE should conduct an immediate review of the functioning of all computer and law library equipment and repair or replace any non-functional equipment. Second, to ensure compliance with the PBNDS and its contractual obligations in the future, GEO must "...designate an employee to inspect [law library] equipment daily, at a minimum, to ensure it is in good working order, and to stock sufficient supplies"⁹ and have appropriate oversight and supervision of the designated employee. Third, GEO and ICE should revise the facilities' policies to permit detainees to access the law library as needed, rather than a single hour a day, to ensure that they can adequately prepare their cases.

We look forward to your prompt attention to this important issue. Given the seriousness of these violations, we request a response to this letter by no later than July 20, 2018. Should you have any questions, please contact Michael Kaufman at mkaufman@aclusocal.org or (213) 977-5232.

Sincerely,



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⁹ PBNDS § 6.3.V.D.