



June 30, 2017

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**RE: Mistreatment of detainees participating in a hunger strike at Adelanto Detention Facility**

Dear Mr. Marin and Mr. Valdez,

We write regarding our serious concerns about the mistreatment of nine detainees at Adelanto Detention Facility who have been engaged in a peaceful hunger strike to protest the conditions of their confinement.

We are especially concerned with reports that GEO staff used excessive force against the detainees by physically assaulting and using pepper spray against detainees after they announced their hunger strike. Such excessive force against detainees violates the ICE detention standards<sup>1</sup> and detainees' constitutional rights.<sup>2</sup> ICE and GEO staff have also engaged in a troubling pattern of retaliation against the detainees for exercising their constitutional right to free speech under the First Amendment.<sup>3</sup>

We urge ICE and GEO to take immediate steps to put a stop to the ongoing mistreatment of the hunger strikers, and initiate disciplinary proceedings for staff responsible for the abuse. ICE should also meet with the detainees to address their mistreatment and to discuss the grievances that led them to initiate the hunger strike.

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<sup>1</sup> 2011 ICE Performance-Based National Detention Standards (as revised in 2016) ("2011 ICE PBNDS"), at § 2.15(V)(A)-(B).

<sup>2</sup> *Graham v. Connor*, 490 U.S. 386 (1989).

<sup>3</sup> *Pell v. Procunier*, 417 U.S. 817 (1974).

## **I. June 12<sup>th</sup>, 2017 Assault and Subsequent Retaliatory Actions Against Hunger Striking Detainees**

On Monday, June 12<sup>th</sup>, 2017, a group of nine detainees at Adelanto Detention Facility began a hunger strike. During that morning's breakfast, the detainees attempted to deliver a letter of grievances regarding their conditions of confinement to ICE officials and requested a meeting with ICE. The detainees also refused food. In response, GEO staff ordered the detainees to return to their assigned beds for the morning count. The detainees joined arms with each other and informed detention staff that they would not move from the breakfast table where they sat until ICE spoke to them about their concerns.

In response to the detainees' peaceful protest, a GEO officer screamed at the detainees and then began to pepper spray them. The detainees report that the officer unloaded a canister of pepper spray on them, leaving them drenched in the pepper spray. One detainee reports that he was sprayed on his genitals. A group of guards then surrounded the detainees and used physical force to restrain them. The detainees report that they were hit and slammed against the wall. One detainee reports that GEO staff pushed him against the wall with such force that it knocked out a dental crown from his mouth and fractured his nose. At no time did the detainees assault or retaliate against the guards.

The detainees were then handcuffed and forcibly removed from the dining hall. They were taken to the shower, where they were doused with painfully hot water that further inflamed their irritated skin. After showering, the detainees were placed in segregation cells.

The detainees continued to be held in segregation for the following 10 days. Initially, the detainees were held in administrative segregation pending disciplinary proceedings; after the completion of the proceedings, the detainees were kept in disciplinary segregation as punishment. Throughout their stay in segregation, they report receiving threats from GEO and ICE officials due to their participation in the hunger strike. According to reports, a guard visited the detainees around June 12<sup>th</sup> and informed the detainees that they could be transferred to another detention facility if they continued the hunger strike. Facility staff have also reportedly threatened the detainees that their participation in the hunger strike would be revealed to the Immigration Judge presiding over their bond determination and removal hearings if they did not stop the hunger strike. The detainees also report being taunted by guards with platters of food. Finally, facility staff have limited the detainees' ability to communicate with people outside the facility, including their counsel.

## **II. ICE and GEO's Mistreatment of The Hunger Strikers Violates Their Constitutional Rights and the Detention Standards**

ICE and GEO's use of excessive force and retaliatory actions against the detainees violate their constitutional rights and the ICE detention standards.

### **A. Detention Guards Used Excessive Force Against Peacefully Protesting Detainees in Violation of their Fourth Amendment Rights and ICE Detention Standards**

*i. Fourth Amendment Rights Violation*

Immigration detainees are entitled to protection from excessive force. The question of whether a detention officer has used excessive force is analyzed under the Fourth Amendment’s objective “reasonableness” standard.<sup>4</sup> The Fourth Amendment sets the applicable constitutional limitations for considering claims of excessive force during pretrial detention. *Kingsley v. Hendrickson*, -- U.S. --, 135 S.Ct. 2466 (2015); *Gibson v. County of Washoe, Nev.*, 290 F.3d 1175, 1197 (9th Cir. 2002). Because they are held in civil custody, immigration detainees are entitled to treatment “at least as solicitous to the rights of the detainee as . . . an individual accused but not convicted of a crime.” See *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004).

In evaluating excessive force claims under the Fourth Amendment, courts may consider the severity of the violation at issue, whether the individual poses an immediate threat to the safety of the officers or others, and whether the individual is actively resisting or fleeing. *Graham*, 490 U.S. at 396.

There is no question that GEO staff’s pepper spraying of detainees engaged in a peaceful protest was excessive under the foregoing standards. It is well-established that the use of pepper spray can constitute excessive force.<sup>5</sup> “Pepper spray is designed to cause intense pain, and inflicts a burning sensation that causes mucus to come out of the nose, an involuntary closing of the eyes, a gagging reflex, and temporary paralysis of the larynx, as well as disorientation, anxiety, and panic.” *Young v. Cty. of Los Angeles*, 655 F.3d 1156, 1162 (9th Cir. 2011) (internal quotations and citation omitted).<sup>6</sup> Because of its severe effects, the Ninth Circuit has held that police officers’ use of pepper spray on peaceful protestors—who had locked arms using restraints and refused officers’ orders to leave the protest site—was plainly excessive, and no reasonable officer could conclude otherwise. *Headwaters Forest Defense v. County of Humboldt*, 276 F.3d 1125, 1131 (9th Cir. 2002).<sup>7</sup> Here too, the “the pepper spray was unnecessary to subdue, remove, or arrest the protestors” and “the officers could safely and quickly remove the protestors” using less severe methods. *Id.*

GEO staff also used excessive force by physically striking the detainees and slamming them against the wall, resulting in serious injuries to at least one detainee. Even if the detainees failed to obey a lawful order to disperse and attend morning count, that does not justify physically assaulting them. The Ninth Circuit has held that an officer’s use of pepper spray and baton blows in response to a person’s failure to obey an order would be “plainly in excess of the force necessary under the circumstances,” and thus excessive under the Fourth Amendment. *Young*, 655 F.3d at 1167.

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<sup>4</sup> *Graham*, 490 U.S. at 386.

<sup>5</sup> See *Lolli v. County of Orange*, 351 F.3d 410, 417 (9th Cir. 2003); *Smith v. City of Hemet*, 394 F.3d 689 (9th Cir. 2005); *Cabral v. County of Glenn*, 624 F.Supp.2d 1184 (EDCA 2009).

<sup>6</sup> See also *United States v. Neill*, 166 F.3d 943, 949–50 (9th Cir. 1999) (finding that pepper spray causes “extreme pain” and is “capable of causing ‘protracted impairment of a function of a bodily organ’” as well as lifelong health problems such as asthma).

<sup>7</sup> See also *Hamilton v. City of Olympia*, 687 F.Supp.2d 1231, 1242-43 (W.D. Wash. 2009) (holding that police use of pepper spray against anti-war demonstrators was an unreasonable use of force).

ii. *ICE Detention Standards Violations*

Under the 2011 PBNDS, the use of force in detention facilities should never be used as punishment, and should involve only the degree necessary and reasonable to gain control of a detainee or provide for self-defense or defense of a third person.<sup>8</sup> GEO staff's use of force against the detainees was unnecessary and unreasonable, in clear violation of ICE's detention standards.

Although pepper spray is an authorized intermediate force weapon under the 2011 PBNDS, it is only permitted where a detainee: (a) is armed and/or barricaded; or (b) cannot be approached without danger to self or others; and (c) a delay in controlling the situation would seriously endanger the detainee or others, or would result in a major disturbance or serious property damage.<sup>9</sup> Here, the use of pepper spray against the detainees was not necessary given that (a) the detainees were not armed or barricaded; (b) they were quietly sitting down with their arms interlocked, and could therefore be approached without danger to themselves or others; and (c) any delay in controlling the peaceful protest would not have seriously endangered the detainees or others or resulted in a major disturbance or serious property damage.

Because GEO staff could have safely and quickly removed the detainees using less severe methods, the physical assault the detainees endured was unnecessary, unreasonable, and in violation of the detention standards.

B. Facility Staff Retaliated Against the Hunger Strikers for Exercising Their First Amendment Rights

We have received reports that GEO and ICE officials have engaged in several retaliatory practices against the detainees who participated in the hunger strike in violation of their First Amendment rights and ICE detention policies.

i. *Threats of Transfer*

According to reports, the detainees were visited by a facility staff member around June 12<sup>th</sup> who informed the detainees that they could be transferred to another detention facility if they continued the hunger strike. This statement appears to be a retaliatory threat in response to the detainees exercising their free speech rights under the First Amendment.

Detainees retain First Amendment rights to free speech, and to be free from retaliation for the exercise of their right to free expression.<sup>10</sup> In a long line of cases, the Ninth Circuit has

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<sup>8</sup> 2011 PBNDS, *supra* note 1, at § 2.15(V)(A)(1).

<sup>9</sup> *Id.* at § 2.15(V)(G)(3).

<sup>10</sup> *Schroeder v. McDonald*, 55 F.3d 454, 461 (9th Cir. 1995). *See also Pell v. Procunier*, 417 U.S. 817 (1974); *Barnett v. Centoni*, 31 F.3d 813, 815–16 (9th Cir. 1994).

recognized that prison officials cannot transfer a prisoner to another prison in retaliation for the prisoner's exercise of his First Amendment rights.<sup>11</sup>

*ii. Threats to Inform Immigration Judges*

The detainees who participated in the hunger strike have reportedly been threatened with having their participation in the hunger strike be revealed to the Immigration Judge presiding over their bond and removal hearings.

To the extent that these threats are intended to coerce detainees into stopping their hunger strike, such retaliatory threats chill detainees' free speech, in clear violation of detainees' First Amendment rights.<sup>12</sup> These reported retaliatory actions against the detainees also violate ICE's own detention policies. The detention standards provide that Adelanto detainees have the right to pursue a grievance without fear of retaliation.<sup>13</sup> According to the standards, detention facility staff shall not harass, discipline, punish or otherwise retaliate against a detainee who files a complaint or grievance.<sup>14</sup> Further, the standards indicate that staff shall not permit a detainee to be subjected to retaliation for seeking judicial or administrative relief or investigation of their conditions of confinement while in detention.<sup>15</sup>

*iii. Food-Based Taunts*

We are also troubled by reports that facility staff have taunted detainees who participated in the hunger strike with platters of food. To the extent the taunts attempt to punish detainees for engaging in a hunger strike, it raises significant First Amendment concerns. As detailed above, detainees' right to protest their conditions of confinement by participating in a hunger strike without retaliation is protected under the First Amendment and ICE detention standards. Moreover, only trained medical, mental health or hospital staff shall offer counseling regarding a detainee's participation in a hunger strike.<sup>16</sup>

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<sup>11</sup> *Rizzo v. Dawson*, 778 F.2d 527, 531-32 (9th Cir. 1985); *see also Gomez v. Vernon*, 255 F.3d 1118, 1127 (9th Cir. 2001) (holding that "repeated threats of transfer because of [the plaintiff's] complaints about the [prison] library" were sufficient to ground a retaliation claim); *Silva v. Di Vittorio*, 658 F.3d 1090, 1105 (9th Cir. 2011) (holding that prisoner's transfer for filing grievances and seeking access to legal process satisfied the pleading requirements of a retaliation claim); *Rhodes v. Robinson*, 408 F.3d 559, 568 (9th Cir. 2005) (holding that prison officers' threats of transfer in response to prisoner filing grievances and pursuing civil rights litigation chilled prisoner's First Amendment rights).

<sup>12</sup> *See Brodheim v. Cry*, 584 F.3d 1262, 1274 (9th Cir. 2009) (holding that a prisoner may prevail on a First Amendment claim based on a general threat that is not carried out if that threat would chill the protected activity of an ordinary prisoner); *see also Watison v. Carter*, 668 F.3d 1108, 1115 (9th Cir. 2012) (holding that prison staff's retaliatory interference with inmate's parole hearing as a response to inmate filing grievances against officer was sufficient to state a First Amendment retaliation claim).

<sup>13</sup> 2011 PBNDS, *supra* note 1, at § 3.1(V)(B).

<sup>14</sup> *Id.* at § 3.1(V)(G).

<sup>15</sup> *Id.* at § 6.3(V)(O).

<sup>16</sup> *Id.* at § 4.2(II)(5).

iv. *Blocking Detainees' Access to Telephone Calls*

Finally, we have received reports that facility staff are preventing the detainees from making outside calls, including to attorneys, that some numbers are blocked to detainees, and that attorneys and their staff have been denied a private space to conduct confidential legal visits with detainees. These actions are in clear violation of the detention standards. According to the detention standards, ICE facilities should ensure that detainees maintain ties with their families and others in the community, including legal representatives, by providing them with reasonable and equitable telephone services.<sup>17</sup> Moreover, detainees and their legal counsel shall be able to communicate effectively with each other, and telephone access procedures shall foster legal access and confidential communications with attorneys.<sup>18</sup> Finally, ICE detention standards require that “[v]isits between legal representatives or legal assistants and individual detainees are confidential and shall not be subject to auditory supervision” and that facilities provide a means for detainees to exchange documents with legal representatives or legal assistants during such visits.<sup>19</sup>

There is nothing in the detention standards that authorizes facility staff to eliminate phone access for detainees engaged in a peaceful protest. According to the standards, a facility may restrict the number and duration of general telephone calls only (1) when required by the volume of detainee telephone demand, (2) in order to ensure orderly facility operations, and (3) in case of emergency.<sup>20</sup> There is nothing to indicate that preventing the detainees from accessing telephone calls is required for any of these reasons. Further, blocking access to legal calls is prohibited by ICE detention standards, which state: “A facility may place reasonable restrictions on the hours, frequency and duration of [legal calls] but may not otherwise limit a detainee’s attempt to obtain legal representation.”<sup>21</sup> Additionally, to the extent that the facility is blocking detainees’ access to counsel, such an interference would violate detainees’ right to communicate with counsel protected by the INA and the Constitution.

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We urge ICE and GEO management to take steps to remedy the physical assault and retaliation against detainees engaged in a hunger strike. Specifically, ICE and GEO should:

1. Immediately end the ongoing retaliatory actions and threats against the detainees.
2. Initiate disciplinary proceedings for facility staff responsible for the assault of detainees on June 12 and subsequent retaliatory acts and threats against the detainees.
3. Schedule a meeting with GEO and ICE management and the detainees to discuss their mistreatment and the grievances that led them to initiate a hunger strike. Such a meeting should include all the nine detainees, as well as their legal counsel.

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<sup>17</sup> *Id.* at § 5.6(I).

<sup>18</sup> *Id.* at § 5.6(II)(4) & 5.6(II)(6).

<sup>19</sup> 2011 ICE PBNDS, *supra* note 1, § 5.7(J)(9) & 5.7(J)(10).

<sup>20</sup> *Id.* at 362.

<sup>21</sup> 2011 ICE PBNDS, *supra* note 1, § 5.6(F)(1).

We look forward to your prompt attention to these serious issues. We request that ICE and GEO inform us as to what steps they intend to take to address the mistreatment of the hunger strikers by July 3, 2017. Should you have any questions, please contact Michael Kaufman at [mkaufman@aclusocal.org](mailto:mkaufman@aclusocal.org) or (213) 977-5232.

Sincerely,

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