



MillsLegalClinic

StanfordLawSchool

Immigrants' Rights Clinic

May 9, 2024

Office of the Immigration Detention Ombudsman (OIDO)
Mail Stop 0134
Department of Homeland Security
Washington, DC 20528-0134

Via e-mail

Re: Violations of Detention and Constitutional Standards at Desert View Annex

Dear Ombudsperson Brané:

We write on behalf of the Shut Down Adelanto Coalition to call attention to several violations of the Performance Based National Detention Standards (PBNDS) by GEO Group and ICE in their operation of Desert View Annex (DVA). OIDO is statutorily mandated to assist individuals affected by violations of detention standards, such as the PBNDS. *See* 6 U.S.C. §205(b). To fulfill its duty, OIDO must act to address the lack of oversight and the neglect of detainees in DVA.

After hearing about problematic conditions at DVA from advocates and detainees, we conducted 16 interviews of detainees and former detainees and 7 interviews of attorneys and advocates who regularly work with detainees at DVA. These detailed interviews revealed numerous recurring issues within the facility faced by the detainees and advocates alike. Detainees and their attorneys consistently report that GEO Group and ICE operate DVA on a substandard basis that jeopardizes the detained individuals' health, safety, and legal representation. Individuals detained at DVA live in conditions worse than prison: GEO Group and ICE repeatedly deny individuals' access to their attorneys, refuse to provide adequate, *if any*, medical care, and fail to serve nutritional and satisfying food. OIDO identified several of these same PBNDS violations in other immigration detention facilities run by GEO Group, yet they continue to run afoul of the standards at DVA.

We call on OIDO to act to prevent future harm relating to access to attorneys, physical and mental health care, food quality and safety, and recreation in DVA. OIDO should immediately conduct an unannounced investigation of the facility and publish its findings, increase

transparency around grievances filed by detained individuals at DVA, improve the function of in-person OIDO case managers, and encourage GEO Group and ICE to adopt with standards for attorney-client communications outlined in the *Torres* injunction. Our interviews are evidence that OIDO cannot wait any longer before taking action as conditions continue to worsen. OIDO must fulfill its statutory duty by identifying and correcting the improper practices and poor conditions within DVA that fail to meet the requisite PBNDS for immigrant detention centers.

I. OIDO Must Instruct GEO Group and ICE Staff at DVA to Allow Detained Individuals Access to their Attorney, Consistent with ICE Detention Standards and Constitutional Requirements.

Our conversations with detainees and their attorneys reveal that GEO Group and ICE disrupt attorney-client communications to the point of interfering with the quality of representation and basic access to legal representation. Detained individuals, advocates, and attorneys reported that GEO Group and ICE have obstructed attorney-client communications, compromised private communications, and denied detained individuals access to relevant legal resources. These restrictions severely curtail detained individuals' ability to raise effective legal claims. More gravely, GEO Group and ICE's behavior is the exact malfeasance found unlawful in *Torres v. U.S. Department of Homeland Security*, No. EDCV182604JGBSHKX, 2020 WL 3124216 (C.D. Cal. Apr. 11, 2020) (finding the Adelanto facility, run by GEO, demonstrated a likelihood of success on the merits that GEO Group violated constitutional rights by denying detained individuals access to attorneys). OIDO must investigate DVA and immediately instruct GEO Group and ICE to adopt the protections of the *Torres* injunction.

A. OIDO Must Instruct GEO Group and ICE Staff at DVA to Stop Obstructing Detained Individuals and Their Attorneys From Effectively Communicating With One Another.

1. OIDO Must Instruct GEO Group and ICE To Allow Detained Individuals to Call Their Attorneys in a Manner Consistent with Detention Standards and Constitutional Requirements.

OIDO must rectify GEO Group and ICE's failure to ensure detainees can contact their attorneys. Although ICE's detention standards promise detained individuals "free," unlimited phone calls to their attorneys, PBNDS, *supra*, at 388-89, this access does not occur in practice at DVA. Because ICE and GEO Group have adopted inconsistent phone access policies and time limitations, as well as refused to repair dysfunctional phones, detained individuals cannot rely on phones to call their attorney when necessary. And ICE and GEO Group have made the alternative method of reaching attorneys, tablets, unaffordable. ICE and GEO Group therefore have prevented detained individuals from contacting their attorneys when they need to. These conditions and policies are exactly the same as the violations the *Torres* court found to raise constitutional concerns. *See Torres*, 2020 WL 3124216, at *3, *7 (describing poor quality of phones, expensive funds, and inconsistent procedures for accessing phones as violating constitutional and statutory rights).

ICE and GEO Group restrict both of the ways in which detained individuals could try to contact their attorneys: through phone calls and through tablets. First, GEO Group and ICE restrict

detained individuals' use of the phones in common areas. Detained individuals report that GEO Group and ICE denied them calls to attorneys for days or even months. U.S. IMMIGR. AND CUSTOMS ENF'T, PERFORMANCE-BASED NATIONAL DETENTION STANDARDS 388-89 (2011) [Hereinafter PBNDS]. ICE and GEO Group consistently shut down the phone system when an individual is being deported, despite the fact phone access does not pose an "inference" to the deportation process. PBNDS, *supra*, at 387-88. Even when detained individuals can access the phones, they share that the phones are not in "working order," as they often drop calls or fill with background noise. *See* PBNDS, *supra*, at 385; *Cf. Torres*, 2020 WL 3124216, at *3 (describing similar phone quality issues). Detained individuals also share that GEO Group and ICE violate PBNDS by "restrict[ing] the number of calls" and "limit the duration" of calls to attorneys on these unsecured lines. PBNDS, *supra*, at 389. Even when detained individuals are able to make calls, they report GEO Group and ICE prevent them from leaving voicemails for their attorneys. *Cf. Torres*, 2020 WL 3124216, at *8 (describing GEO Group's inability to define their phone call procedure and general inability of detained individuals to access free phone calls).

GEO Group and ICE have also restricted detained individuals' abilities to contact their attorneys on tablets. To begin with, GEO Group and ICE do not guarantee detained individuals access to tablets. One detainee shared that GEO Group and ICE provided only 12 tablets for 40 detained individuals. Some detained individuals have hoarded up to four tablets. Even if a detainee gets access to a tablet, GEO Group and ICE insist on charging money for the calls on tablets, clearly failing to "strive to reduce telephone costs" as required by the PBNDS. PBNDS, *supra*, at 585; *cf. Torres*, 2020 WL 3124216, at *4 n.4 (describing the calls as prohibitively expensive). Many detainees lack these funds to use the tablets, but even if detainees have proper funds, they report that the connection quality on the tablets is poor.

2. OIDO Must Instruct GEO Group and ICE to Eliminate Unnecessary Delays in Coordinating Attorney-Client Contact to Avoid Compromising the Quality of Representation.

To provide effective legal counsel in asylum cases, "extended conversations are necessary to prepare clients for questioning by the Immigration Judge and make clients comfortable with revealing legally relevant traumatic episodes and personal details." *Torres*, 2020 WL 3124216, at *3. But GEO Group and ICE interfere with that preparation by imposing on attorneys unnecessary delays and obstacles to contacting clients and their deportation officers via phone, mail, and Zoom. Detained individuals' legal representation suffers as a result. *Cf. Torres*, 2020 WL 3124216, at *3. Because GEO Group and ICE's have prevented detained individuals and their attorneys from communicating "effectively" with one another, they have violated several detention standards. *See* PBNDS, *supra*, at 385. And, more gravely, GEO Group and ICE "interfered with established, ongoing attorney-client relationships," which the *Torres* court found to raise constitutional concerns. *Torres*, 2020 WL 3124216, at *7. OIDO must instruct GEO Group and ICE to ensure that attorneys and clients are able to effectively communicate.

GEO Group and ICE repeatedly violate detention standards by delaying communications between attorneys and their clients. Attorneys report GEO Group and ICE delayed sending out detained individuals' mail beyond the 48-hour limit imposed by PBNDS—or never sent out the mail in the first place. *See* PBNDS, *supra*, at 357. One attorney who has clients at multiple GEO

properties attempted to send a letter to DVA following the same protocols as other GEO centers—by including the client’s name and A#. GEO Group and ICE returned the letter to her. *Cf. Torres*, 2020 WL 3124216, at *3. Attorneys also struggle to leave detailed messages for their clients because GEO Group and ICE insist on relaying only boilerplate language or fail to relay the message at all. PBNDS, *supra*, at 390 (requiring phone messages to be delivered “as promptly as possible”); *Torres*, 2020 WL 3124216, at *3 (describing how GEO staff members “do not reliably relay messages to clients”).

GEO Group and ICE further compromise attorney-client communications by delaying confidential attorney phone calls or preventing them from happening at all. PBNDS, *supra*, at 357. Attorneys share that ICE and GEO Group delay requests to set up confidential meetings with clients by **several days**. One attorney shared that she had scheduled an appointment to call her client, and the next day, GEO Group and ICE staff informed her that it changed its policy on its operating hours and therefore could no longer accommodate the time of her request. As a result, GEO Group and ICE prevented the attorney from providing necessary legal representation in a timely manner. Another attorney reported that GEO Group and ICE brought their client to a call so late that the attorney was no longer available. This lack of punctuality can interfere with the quality of representation. For example, an attorney scheduled an hour-long meeting to prepare a client for a bond hearing the next day. GEO Group and ICE was so late in bringing the client to the meeting that the attorney’s meeting was shaved to 10 minutes, limiting the attorney’s ability to prepare their client for the bond hearing. Similarly, in March 2024, an attorney was meeting with a client when the client asked to use the restroom about halfway through the meeting. The detainee informed the attorney that one of the officers had told the detainee that if he used the restroom, he would not be able to go back to meeting with his attorney.

Finally, GEO Group and ICE violate detention and constitutional standards by obstructing attorneys’ access to Deportation Officers (“DOs”). Accessibility to DOs is crucial because DOs are the gatekeepers to a client’s legal case. DOs “(1) approve non-attorney visits, for example by interpreters or physical and mental health evaluators; (2) provide access to medicine and identifying documents; (3) process emergency requests for parole; and (4) coordinate deportation.” *Torres*, 2020 WL 3124216, at *3. But attorneys reported that GEO Group and ICE obstruct their ability to contact DOs to coordinate important legal care. Attorneys shared that GEO Group and ICE do not advertise who their client’s DO is and force them to reach out multiple times to learn that information. An attorney reported that in April 2024 it took two weeks to schedule an appointment to take photographs of his client that are needed as evidence for a Merits Hearing. The attorney left several voicemail messages for his client’s Deportation Officer. The Deportation Officer did not return his call until the attorney spent around a half hour on the phone asking front desk employees to transfer him to other employees and supervisors. Another attorney reported that DOs take *weeks* to respond to requests. The *Torres* court found this exact obfuscation raised constitutional concerns. *Torres*, 2020 WL 3124216, at *3 (explaining that “[a]ttorneys cannot readily determine which DO is assigned their client’s case” and that “DOs rarely answer, and attorneys’ messages go unreturned”).

B. OIDO Must Tell GEO Group and ICE Staff at DVA To Provide Confidential Phone Calls and Visits to Attorneys and Detained Individuals Without Delay.

OIDO must instruct GEO Group and ICE to comply with PBNDS and adopt procedures that will allow attorneys and detained individuals to communicate confidentially about the matters of their case within twenty-four hours of a request. An essential element of legal representation is the privacy of communications between a lawyer and their client to allow the free flow of information. GEO Group and ICE deny detained individuals and their lawyers this basic right by forcing attorneys to wait for confidential phone calls, denying detained individuals any method of contacting their attorney confidentially, and refusing to provide sufficient confidential rooms for in-person visits. GEO Group and ICE's interference with attorney-client relationships clearly violates PBDNS standards, which mandate them to "ensure privacy," PBDNS, *supra*, at 389, 392. And their communications policies raise concerns of constitutional and statutory violations of rights. *Torres*, 2020 WL 3124216, at *8-9. Without proper, private access to counsel, detained individuals are likely to be denied asylum and be deported despite meritorious claims. *Torres*, 2020 WL 3124216 at *11.

GEO Group and ICE have violated detention standards by preventing attorneys and detainees from scheduling emergency, confidential phone calls, in violation of detention standards. PBNDS, *supra*, at 389. Instead, they require attorneys to wait days before securing a confidential phone call or visit. *See supra* at p 4. And GEO Group and ICE prevent detainees from contacting their attorneys for emergency, confidential advice in two ways. First, the common-area phones GEO Group and ICE provide for immediate use—assuming staff allows the detainees to use them, *see supra* at pp. 3-4—are not confidential. Instead, DVA has placed phones two feet apart, which do not have sufficient partitions for confidentiality. *Cf Torres*, 2020 WL 3124216, at *3 (“[P]hones are within earshot of other detainees.”). Detained individuals also report that the phone line in the common area explicitly states that it is being monitored. *Cf Torres*, 2020 WL 3124216, at 3. As a result, detainees’ phone calls are “overheard by staff and other detainees,” PBNDS, *supra*, at 389, attorney-client confidentiality is destroyed. Second, GEO Group and ICE refuse to honor detainees’ requests for emergency confidential calls. One detained individual shared that when he had an emergency immigration issue, he asked for a confidential phone call to his attorney. Every time he asked, GEO Group and ICE denied his request, failed to respond, or responded long after the PBNDS’ 24-hour deadline. *See PBNDS, supra*, at 388 (“Access shall be granted within 24 hours of the request.”). As a result, detained individuals have to wait for their attorney to schedule a confidential call. *See supra*, at pp. 3-4.

GEO Group and ICE also are violating detention standards by preventing attorneys and detained individuals from meeting in-person confidentially. Specifically, they fail to provide the private rooms PBNDS requires to be available for confidential attorney-client meetings. *See PBNDS, supra*, at 392. Instead, GEO Group and ICE pressure attorneys to meet in a large meeting room. GEO Group and ICE station guards in these room to stand right behind attorneys and subject them to “auditory supervision,” in violation of detention standards. More gravely, detained individuals report passing documents through guards to their attorney, enabling guards to see the contents of such private files. *See PBNDS, supra*, at 392. As a result, GEO Group and ICE have adopted policies that breach confidentiality and chill productive conversations between attorney and client. *Cf Torres*, 2020 WL 3124216, at *3.

C. OIDO Must Tell GEO Group and ICE To Update DVA’s “Law Library” And Make It More Accessible So Detained Individuals Can Prepare Adequate *Pro Se* Defenses.

OIDO must instruct GEO Group and ICE to comply with detention standards and provide adequate material for pro se representation. Although detained individuals “shall have access to a properly equipped law library” to facilitate with preparing their case, PBNDS, *supra*, at 421, GEO Group and ICE failed to provide a library that is ineffective for this purpose. GEO Group and ICE filled the law library only with books from the 1990s. Even these books are inaccessible to individuals without legal training, and GEO Group and ICE have denied requests for more accessible, self-help books long after the required 5-day response requirement. PBNDS, *supra*, at 425. GEO Group and ICE have similarly failed to updated the computer in the law library with recent cases. Thus, from updating the library “weekly,” as required by the PBNDS, ICE and GEO Group have refused to update legal materials in years. *See* PBNDS, *supra*, at 424.

ICE and GEO Group similarly violate detention standards by denying detained individuals access to more updated “legal materials” and restrict access to “equipment (including photocopying resources) to facilitate the preparation of documents.” *See* PBNDS, *supra*, at 421. Although tablets have more updated legal information, ICE and GEO Group refuse to provide detained individuals with regular access to tablets to use this information. *See* PBNDS, *supra*, at 421 (requiring ICE/GEO Group to provide no less than 5 hours per week to such materials); *supra* at pp. 3-4 (discussing the lack of sufficient tablets). Further, GEO Group and ICE fail to provide any “orientation to written or electronic media and materials,” as required by PBNDS, preventing many detained individuals from knowing how to even use the library. PBNDS, *supra*, at 421-22. For example, one detained individual shared that GEO Group and ICE did not tell him he could access the internet to look up more recent case; another detained individual told him he could request such access. Even if detained individuals can find an appropriate legal resource, GEO Group and ICE arbitrarily deny them the opportunity to make sufficient copies needed for their case, again in violation of detention standards. PBNDS, *supra*, at 425.

II. OIDO Must Instruct GEO Group and ICE Staff at DVA and Adelanto To Provide Adequate Physical and Mental Health Care Consistent With Detention Standards.

As OIDO is well aware, GEO Group and ICE fail to provide basic medical care in their detention facilities. OIDO inspections of other GEO facilities found the group was not in compliance with the relevant standards related to mental and medical care. *See, e.g.*, David D. Gersten, OIDO INSPECTION: MESA VERDE ICE PROCESSING CENTER (2023) (detailing how the GEO -operated facility failed to provide necessary follow-up appointments and failed to conduct necessary welfare checks to detained individuals on suicide watch, in violation of PBNDS); David D. Gerstein, OIDO INSPECTION: FOLKSTON ICE PROCESSING CENTER (2023) (describing how the GEO -operated facility failed to provide daily mental health treatment to detained individuals on the weekend and failed to maintain medical and safety equipment, in violation of PBNDS). So too, in DVA. At DVA, GEO Group and ICE do not provide timely, necessary medical care; keep individuals with psychological conditions in devastating solitary confinement; and distribute medications without adequate care.

OIDO must investigate DVA and instruct GEO Group and ICE to comply with PBNDS. Specifically, OIDO must instruct ICE and GEO Group to 1) identify and treat detained individuals with mental health symptoms, 2) end the punitive and harmful practice of putting detained individuals with mental health symptoms in solitary confinement, 3) ensure detained individuals are able to receive independent mental health evaluations, 4) provide timely and necessary medical treatment, and 5) cease their abusive practice of prescribing medications.

A. OIDO Must Instruct GEO Group and ICE Staff to Treat Individuals with Mental Health Symptoms, Cease Punitive and Harmful Solitary Confinement of Such Individuals, and Allow Psychologists to Visit Detained Individuals.

OIDO must investigate DVA because ICE and GEO Group fail to identify and properly treat individuals with mental health illnesses. Both centers hold populations with a high demand for mental health services. Many detained individuals we spoke to require mental health care for stress, anxiety, and suicide attempts. But ICE and GEO Group do not “remain vigilant in recognizing and appropriately reporting when a [mental health] risk is identified.” PBNDS, *supra*, at 333. One detained individual shared that he knew of a mentally ill individual who was drinking shampoo and staying up all night. Instead of providing treatment to this individual, ICE and GEO Group staff kept moving him to different dorms, in violation of the PBNDS's requirement that staff “immediately ... refer[]” the individual “to the mental health provider for an evaluation” *See* PBNDS, *supra*, at 333-34.

GEO Group and ICE also violate detention standards by preventing other detained individuals from receiving adequate care through “an independent medical or mental health examination.” PBNDS, *supra*, at 403. For instance, one attorney tried to get a psychologist to come and evaluate their client. Although the attorney went through the necessary clearances, no one informed the receptionist at DVA about the appointment, and therefore the psychologist was unable to perform the evaluation. As a result, GEO Group and ICE interfered with that detained individual's ability to get prompt mental health care and jeopardized that individual's ability to “develop information useful in administrative proceedings.” PBNDS, *supra*, at 403.

When GEO Group and ICE *do* address mental health, their response *worsens* detained individuals' mental health. GEO Group and ICE respond to threats of suicide by putting detained individuals in solitary confinement, which causes cause detrimental, lasting, and even fatal effects. *See Solitary Confinement*, NAMI, <https://www.nami.org/Advocacy/Policy-Priorities/Stopping-Harmful-Practices/Solitary-Confinement> (last accessed Nov. 17, 2023). GEO Group and ICE violate the PBNDS by placing individuals with mental illness in a setting that results in the “deterioration of the detained individual's medical or mental health.” *See* PBDNS, *supra*, at 182 (requiring removal from solitary when this occurs). Due to GEO Group and ICE's punitive treatment of mental illness, detained individuals are scared to ask for necessary mental health treatment. *Cf.* MENTAL HEALTH IN DETENTION, NAT'L IMMIGRANT JUST. CTR. 4 (2022) (“I cannot ask for help because [GEO Group and ICE] will put me on suicide watch by myself and I get more depressed. It does not help. I don't trust them. So I suffer in silence.”).

B. OIDO Must Instruct GEO Group and ICE Staff to Provide Necessary, Timely, and Comprehensive Health Care to Detained Individuals.

GEO Group and ICE regularly violate detention standards by delaying necessary health care to detained individuals. GEO Group and ICE fail to provide detained individuals with their prescribed medications “on schedule and without interruption,” PBNDS, *supra*, at 273. Some detainees never receive their medications. Similarly, GEO Group and ICE do not provide detained individuals with necessary, “timely” follow-up appointments and delay medically necessary treatment. PBNDS, *supra*, at 257. Several detained individuals shared that ICE and GEO Group stalled their approved surgery for *months*. PBNDS, *supra*, at 260 (requiring timely responses to medical complaints). Another detained individual shared that ICE and GEO Group refused to give him dental care until he had been at the facility for six months. In addition to denying detained individuals “timely” and adequate medical care, providers only conduct surface-level health screenings, and thus fail to maintain complete health records, in violation of PBNDS. *See* PBNDS, *supra*, at 277.

Often, GEO Group and ICE simply *refuse* to provide any health care at all. Detained individuals share that GEO Group and ICE refuse to provide them with reading glasses. One detained individual informed his doctor that he got permission for a surgery. His doctor got so angry that he threw things and yelled that he’d refuse to help him.

GEO Group and ICE also violate detention standards by abusing how they prescribe medications. Some individuals report that GEO Group and ICE prescribed them medications that cause them negative side effects or harm other conditions they have. PBNDS, *supra*, at 260 (requiring *appropriate* pharmaceutical care). GEO Group and ICE also do not provide appropriate pharmaceutical care by overprescribing psychotropics a way of controlling detained individuals. *See* PBNDS, *supra*, at 270 (requiring rigorous documentation before administering psychotropic medications). Detainees claim they cannot report their concerns about medications to GEO Group and ICE because of language barriers.

III. OIDO Must Remedy the Food Quality and Safety Issues in DVA Through an Investigation of ICE and GEO Group’s Practices in the Facility

OIDO should conduct an unannounced investigation that closely examines the concerns regarding the quality and safety of food served by GEO Group in DVA. Individuals detained in the facility consistently raise concern about the food provided to them by ICE and GEO Group and describe the food as poor in quality and insufficient in quantity. This is consistent with OIDO’s investigation of other immigration detention facilities which revealed issues “ranging from poor quality of food to insufficient quantities of food, to instances where the food led to individuals becoming ill.” ANNUAL REPORT, *supra*, at 21. OIDO must act to correct the violations and ensure that DVA provides adequate nutrition to people who are detained there.

GEO Group and ICE serve individuals detained in DVA food that falls short of the requisite PBNDS. The food is incorrectly or poorly prepared, rendering some of the meals inedible. For example, individuals detained at the facility report that rice, beans, and eggs have been served undercooked. Immigration detention facilities are responsible for protecting food from all

sources of contamination, from pests to illness, *see* PBNDS, *supra*, at 235, yet individuals detained in DVA report that they are often served rotten food. When one individual raised concern about the rotten, slimy lettuce they were served, they were told by staff that the lettuce was not rotten but was dark in color because it was spring mix. Nothing was done to remedy the blatantly rotten food served to individuals detained in the facilities.

Individuals detained in DVA experience chronic hunger because GEO Group staff provide too little food and serve food at unreasonable times. As OIDO acknowledges, the PBNDS require “facilities to provide nutritious, appetizing meals that include a diverse selection of foods to offer variety to the detainee population.” OIDO, OIDO Inspection: Mesa Verde ICE Processing Center 6 (2023); PBNDS, *supra*, at 228. The relevant standards require food to be served no more than 14 hours between the evening meal and breakfast. *See* PBNDS, *supra*, at 232. While the standard is met in DVA, the standard fails to establish eating hours that are amenable to a typical individual’s eating habits. In DVA, detained individuals are served breakfast by GEO Group staff at either 4 a.m. or 5 a.m., lunch at 11 a.m., and dinner at 4 p.m. or 5 p.m. The PBNDS require that individuals detained in immigration detention facilities “be served three meals every day, at least two of which shall be hot meals.” PBNDS, *supra*, at 232. Some individuals are not hungry at 4am or 5am or choose to sleep in, so they miss one of their two hot meals allotted per day in violation of the PBNDS. Individuals in DVA should not be forced to choose between sleep and food, two basic human needs. OIDO must instruct ICE and GEO Group to serve plentiful, nutritious food at appropriate times so that no one goes hungry.

As a result of the poor quality and insufficient quantity of food that ICE and GEO Group provide in DVA, many individuals rely heavily on food available through the commissary to supplement their diet. As OIDO is aware, issues relating to commissary are widespread in immigration detention facilities. *See, e.g.*, ANNUAL REPORT, *supra*, at 27. In DVA, GEO Group prevents many detained individual’s access to commissary by continuing to raise prices of available items. *See, e.g.*, Shut Down Adelanto, Conditions and Updates Report 12 (“Commissary prices have increased dramatically during my time here.”) For example, one sugar packet costs 80 cents, which is a prohibitive amount for an individual who is of low means. Additionally, it reportedly costs \$7 to deposit any money into ones’ commissary account, which further expands the financial barrier individuals face to receive filling and tasteful food in the facilities. Several individuals do not have enough money to make purchases through commissary and go hungry as a result of GEO Group’s outrageous pricing. OIDO should require GEO Group to reduce the currently exorbitant prices of commissary items and ensure that detained individuals in the facility are not posed with barriers to accessing their funds.

GEO Group and ICE are worsening the health of detained individuals by failing to provide nutritious food and refusing to comply with dietary restrictions in direct violation of the PBNDS. It is widely accepted that access to plentiful, nutritional food leads to better health outcomes, both physical and mental. *See* IMPACT JUSTICE, EATING BEHIND BARS: ENDING THE HIDDEN PUNISHMENT OF FOOD IN PRISON (2023). As described above, healthcare within DVA is woefully inadequate and OIDO should urge GEO Group to improve access to nutritional food within the facility as an additional measure to address medical concerns. Several individuals detained reported that the food they were served by GEO Group staff aggravated their health conditions.

One individual was denied a special diet by ICE and GEO Group despite raising his dietary restrictions due to an underlying medical condition upon arriving to the facility. He lost 11 pounds in one week because ICE and GEO Group refused to serve him a diet that complied with his medical needs, even after he made several requests for a special diet. Detained individuals report that ICE and GEO Group regularly violate the PBNDS which state that detained individuals “shall be prescribed special diets as appropriate.” PBNDS, *supra*, at 241. Another individual reported developing diabetes while in detention at DVA, despite no prior history of the disease. *See Shut Down Adelanto, Conditions and Updates Report 8 (2023)*. OIDO must act to ensure that every individual is fed nutritional food that is in compliance with their dietary restrictions and does not worsen their health.

Similar violations in other immigration detention facilities were identified through an unannounced investigation by OIDO. *See, e.g., David D. Gersten, OIDO INSPECTION: IMPERIAL REGIONAL DETENTION FACILITY 5 (2023)* (observing violations related to “expired food items and possible food spoilage or contamination”). OIDO responded to the identified violations by providing detailed recommendations to remedy the violations and provide detained individuals with the nutritional food they are entitled to. *Id.* at 15. The same must be done here. OIDO should conduct an unannounced inspection to address known violations and identify any other violations that should be addressed.

IV. OIDO Must Instruct GEO Group and ICE to Provide the Recreational Opportunities Required by the PBNDS

GEO Group and ICE do not provide adequate recreational opportunities and are in direct violation of the PBNDS. The recreational opportunities provided to individuals detained at DVA are considered worse than prison. People detained in the facilities feel they are confined all day with limited programming in limited spacing. One individual explained that people detained in the facilities are only provided with two hours of outdoor recreation during the day by ICE and GEO Group, whereas in the state prison, they were permitted the majority of daylight hours to come and go from the outdoors as they pleased. The lack of recreation and time spent outside dorms at DVA contributes to an environment in which detained individuals are stressed, anxious, and depressed. OIDO must act to combat these conditions by instructing ICE and GEO Group to comply

GEO Group staff reduce outdoor recreation time in violation of the PBNDS by implementing misguided institutional rules. GEO Group staff changes the outdoor recreation time every day and sometimes permit outdoor recreation time during unreasonable hours, such as in the early morning, which forces people to decide whether to sleep or to see sunlight for the day. This practice is in direct violation of the PBNDS which require outdoor recreation time at a “reasonable time of day.” PBNDS, *supra*, at 371. If a detained individual has an attorney phone call or a medical appointment that conflicts with the time allotted for outdoor recreation that day, GEO Group staff deny the individual’s outdoor recreation time and require the individual to spend the entire day indoors. GEO Group staff at DVA recently implemented a rule that requires detained individuals to stay outside for a minimum of one hour, meaning that individuals can only go back into the dorms once during the allotted outdoor recreation period and cannot return

back outside. Similarly, if an individual detained at the facility concludes their attorney phone call with 30 minutes left, GEO Group does not allow them to spend any time outdoors for the entire day. This is in direct violation of the PBNDS: “each detainee in general population shall have access for at least one hour, seven days a week.” PBNDS, *supra*, at 371. OIDO must investigate GEO Group’s practices at DVA and instruct staff to adapt their policies so that every detained individual is permitted outdoors daily.

ICE and GEO Group are in direct violation of the PBNDS requiring that individuals detained in immigration detention facilities receive clothing appropriate for weather conditions. *See* PBNDS, *supra*, at 371. Individuals we spoke with said they were not provided clothing sufficient to combat the cold winter weather by ICE or GEO Group, which led many to stay indoors because they could not afford to purchase a winter coat. As a result, several individuals indicated that their depression worsened in the cooler months. OIDO must instruct ICE and GEO Group to provide heavy, warm coats to individuals detained at DVA so they can take advantage of outdoor recreation periods during cold winter months.

GEO Group and ICE primarily provide programming to detained individuals via tablets, which can be difficult to operate and are not equitably distributed. One individual explained how 30-40 detained individuals are required to share 12 or 13 tablets and, while they appreciate the availability of the tablets, there is not an organized system in place to enforce equal use of the devices, leading some individuals to have very limited access to the devices. Issues arising from the introduction of tablets in immigration detention facilities is well documented, see Xavier Becerra, The California Department of Justice’s Review of Immigration Detention in California 66 (2021), and OIDO must act to reverse the lack of oversight on the devices so that there is equitable access to important recreational opportunities.

V. OIDO Must Stop ICE and GEO Group from Mistreating Detainees and Creating a Hostile Relationship Between Guards and Detained Individuals Within DVA

ICE and GEO Group fail to abide by the PBNDS by harassing detained individuals. ICE and GEO Group share a duty to ensure “the safety, health and wellbeing” of individuals detained in immigration detention facilities. PBNDS, *supra*, at 81. Instead of assuming a role of protection, GEO Group staff often make derogatory remarks to individuals detained in the facilities. For example, GEO Group staff present at court hearings will share information about those hearings openly with other staff not in attendance and humiliate the individual in front of others in the facility using the information revealed in the court hearing. One individual’s criminal history was made public by a GEO Group staff member who called the individual a “terrible person” and was told “you deserve this” in the dorm. On a different occasion, a guard responded to a grievance raised by a detained individual by telling them, “You people should be deported.” ICE and GEO Group actively jeopardize the safety, health, and wellbeing of detained individuals through a culture of disrespect and harassment. OIDO must act to stop the reprehensible behavior and hold ICE and GEO Group accountable for abusing their power.

ICE and GEO Group are required by the PBNDS to encourage informal communication between staff in detainees, but instead act in direct violation of the standard by fostering an environment of distrust and unease. *See* PBNDS, *supra*, at 188. Individuals detained in the facility are not willing to speak with GEO Group staff for fear of derogatory remarks or retaliatory actions. This is particularly concerning given that the standard grievance process requires that individuals speak up about their circumstances to detention staff. *See* PBNDS, *supra*, at 414. One individual described several instances in which they were mocked by GEO Group staff for frequently raising grievances. Several individuals reported that ICE and GEO Group staff outwardly laughed at them for their attempts to file a grievance and correct the wrongs within the facility. OIDO must conduct a more thorough investigation of ICE and GEO Group staff at DVA to address the unacceptable treatment of individuals detained in the facility and ensure that there is a functioning system through which grievances can be filed.

RECOMMENDATIONS

OIDO's statutory mandate requires it to step in where, like here, GEO Group and ICE fail to comply with detention standards and the law. OIDO is required by statute to "provide assistance to individuals affected by potential misconduct, excessive force, or violations of law or detention standards." 6 U.S.C. §205(b). The PBNDS are detention standards. And violations of PBDNDs are, in California, violations of state law. *See* CAL. GOV'T CODE § 7320 (West) ("Any private detention facility operator shall comply with, and adhere to, the detention standards of care and confinement agreed upon in the facility's contract for operations."). Therefore, the OIDO must investigate and rectify DVA's failure to comply with detention standards and the law.

Our interviews with detained individuals, attorneys, and advocates raised four concrete steps OIDO must take to comply with its statutory mandate and mission. Specifically, OIDO must: 1) conduct an independent, unannounced investigation of DVA; 2) require DVA to share the statistics on the grievances it receives; 3) clearly identify its caseworkers on site and provide greater transparency on how they address complaints from detained individuals; and 4) require DVA to meet the standards outlined in the *Torres* preliminary injunction for attorney-client communications, which GEO Group and ICE already implemented at Adelanto.

1. OIDO Must Conduct an Independent, Unannounced Investigation of DVA and Publish Its Findings.

OIDO's mission requires it to "independently examine" conditions at detention centers. 6 U.S.C. §205(b). In the past, OIDO has conducted "unannounced inspections" of detention facilities, such as its 2022 inspection of the Imperial Facility. OFFICE OF THE IMMIGR. DET. OMBUDSMAN, ANNUAL REPORT 32 (2022). It should do the same, here. An unannounced inspection will allow OIDO to ensure that GEO Group and ICE comply with detention standards and contract terms, as well as follow up on "deficiencies"—or violations of detention standards—identified. David D. Gerstein, OIDO INSPECTION: FOLKSTON ICE PROCESSING CENTER 3 (2023).

An unannounced inspection is particularly important because so many detained individuals are unrepresented or unable to communicate with their attorneys. OIDO therefore is one of the only actors that can access the facility and communicate the conditions that detained individuals

experience. Further, detained individuals report that the grievance system, the other mechanism by which to ensure the center's compliance with PBNDS, fails to provide timely responses and resolutions to the issue, as required by detention standards. PBNDS, *supra*, at 414. With detained individuals unable to resolve their grievances, and with no one else from the outside able to access detained individuals and advocate for them, the conditions at DVA and Adelanto go unreported and unresolved.

In their unannounced inspection of DVA, OIDO inspectors should assess:

- **Legal Representation:** Ability of detained individuals and attorneys to contact each other confidentially through mail, phone, and in-person visits in line with detention and constitutional standards.
- **Pro-Se Representation:** The contents of DVA's legal library and access to it.
- **Mental Health:** DVA's policy of identifying individuals with mental health concerns and its policy of using solitary confinement on detained individuals with mental health conditions.
- **Physical Health:** DVA's distribution of medications, physical care, and psychological care in a timely, adequate manner.
- **Food:** DVA's distribution of food that is free of contamination, edible, nutritious, and of sufficient quantity. DVA's disbursement of food at reasonable hours.
- **Recreation:** DVA's ability to provide sufficient recreation time, at a reasonable hour, with clothing that will allow detained individuals to make use of such time.
- **Professionalism:** DVA staff's compliance with professional standards.

This list is not exhaustive. OIDO should look to grievances filed with GEO Group and ICE to identify additional areas to investigate and rectify. Consistent with other investigations, OIDO should deploy personnel and medical and mental health experts to the site to conduct interviews with employees, staff, and detained individuals, directly observe conditions and operations, and review documentary evidence. David D. Gerstein, OIDO INSPECTION: FOLKSTON ICE PROCESSING CENTER 3 (2023). Further, OIDO must **publish the results** of its investigation, as it has done with prior investigations, to ensure GEO Group and ICE are externally accountable as well. *Id.* In so doing, OIDO should identify the precise areas where DVA is deficient and should schedule an unannounced follow-up visit to ensure that GEO Group and ICE have implemented OIDO's recommendations. A follow-up is particularly important because detained individuals report that conditions immediately worsen after an investigation.

2. OIDO Must Require ICE and GEO Group to Share the Statistics on the Grievances It Receives From Detained Individuals.

To maintain proper oversight over DVA and fully investigate conditions there, OIDO must review DVA's grievance process and require ICE and GEO Group to share statistics on the grievances they receive. GEO Group and ICE have closed DVA to the outside world since the COVID-19 pandemic. In fact, GEO Group and ICE created DVA because COVID safety protocols preventing them from admitting new detained individuals to Adelanto. As a result, the public has limited information about conditions at DVA. But even attorneys who have access to

the facility are unable to fully assess conditions at the facilities because they restrict access to basic information. To understand the conditions in DVA and promote transparency, OIDO should review grievances from detained individuals. Grievances are an “essential tool” for documenting the conditions in facilities and for demonstrating if “individuals in detention have any protections for asserting their basic human rights.” *See* Complaint for Declaratory and Injunctive Relief at 6, *ACLU v. U.S. Immigration and Customs Enforcement*, 3:23-cv-03112 (N.D. Cal. 2023). Often, grievances are the only way a detained individual can memorialize conditions of detention.

OIDO should focus its attention on DVA’s grievance process particularly because it will reaffirm the concerns outlined in this letter and demonstrate GEO Group and ICE’s unwillingness to rectify known violations. Detained individuals report that some grievances never receive a response. Some detainees report that GEO Group staff berate detained individuals for using the grievance process. One detained individual shared that guards made sounds of disgust or displeasure after he filed grievances. Several detained individuals reported ICE and GEO staff laughing at them when they tried to file grievances. Another detained individual shared that ICE and GEO Group revoked his permission for a special diet after he complained they weren’t abiding by it. And a detained individual reported that GEO Group and ICE taunted and threatened him when he filed grievances. As a result, detained individuals fear filing grievances because they are worried GEO Group and ICE will embarrass, humiliate, or retaliate against them in response.

To that end, OIDO must require GEO Group and ICE staff at DVA to publish the statistics of the grievances it receives. The detention centers should publish the number of grievances, sort the grievances by topic, and briefly explain it resolved those grievances. As a guide, GEO Group and ICE should look to The California Immigration Detention Database, which has attempted to do precisely this with the little information that is publicly available. *The California Immigration Detention Database: Tracking Grievances in ICE’s For-Profit Detention Facilities*, ACLU NORCAL, https://www.aclunc.org/CA_database#:~:text=On%20June%202023%2C%202023%2C%20ACLU,our%20state's%20immigration%20detention%20facilities (last accessed Nov. 18, 2023).

3. OIDO Must Clearly Identify its Caseworkers on Site and Provide Greater Transparency on How They Address Complaints.

OIDO has failed to abide its own objectives of monitoring and addressing concerns at DVA. OIDO’s April 2022 newsletter states that it has case managers accepting in-person submissions from individuals detained at Desert View Annex and Adelanto. *Welcome to the OIDO newsletter!*, OFFICE OF THE IMMIGR. DET. OMBUDSMAN, Apr. 2022, at 4; ANNUAL REPORT, *supra*, at 63 (“By the end of 2021, OIDO had placed case managers in Stewart, Adelanto, Eloy, Desert View, Mesa Verde, Florence, and Golden State facilities.”). OIDO states that has sought to help detained individuals identify OIDO staff by wearing uniforms and providing pamphlets to “visibly” distinguish itself from DHS. ANNUAL REPORT, *supra*, at 38. These case workers aim to speak with detained individuals and evaluate concerns and violations on site. *Id.* at 23.

However, detained individuals, attorneys, and advocates report that **they are unaware of OIDO's presence** at Desert View. As a result, OIDO has failed to “[e]nsure all immigration detainees can readily access an OIDO case manager at each detention facility where OIDO has a presence.” *Id.* at 21. Yet, OIDO claims it has opened at least 14 cases in Desert View Annex. *Id.* at 61. This statistic is concerning given that OIDO has not demonstrated its presence in the facility. For example, one detained individual who contacted OIDO three times shared that OIDO said they would come to interview him but never did. It is therefore unclear how OIDO exactly is addressing or resolving conditions in Desert View Annex. Detained individuals, advocates, and the public therefore cannot assess if OIDO is complying with its statutory objectives.

OIDO must rectify this lack of transparency. Specifically, OIDO must take steps to ensure their representatives are identifiable and accessible to detained individuals. Because OIDO's current process for addressing complaints has failed to accord with its own disclosures, OIDO must further explain how it addresses detained individual complaints and what it considers a “resolution” of them.

4. OIDO Must Encourage DVA to Meet the Standards Outlined in the *Torres* Preliminary Injunction for Attorney-Client Communications.

As this letter has detailed, at DVA, GEO Group and ICE adopted the same obstructive policies they used in Adelanto, policies *Torres* found to raise constitutional concerns. DVA management is well aware of the detention and constitutional standards of attorney-client communications, because Adelanto management is the same as DVA management. OIDO must therefore instruct GEO Group and ICE staff to **immediately ensure** adequate attorney-client communication consistent with detention and constitutional standards.

CONCLUSION

This letter has detailed how GEO Group and ICE's management of Desert View Annex Detention Center consistently violates federal detention standards, state law, and the constitutional standards laid out in *Torres*. OIDO must rectify these violations, starting with conducting an unannounced investigation of DVA, requiring DVA to adopt the procedures outlined in *Torres*, and publicizing grievances. In so doing, OIDO must clarify how it is resolving and addressing the complaints it receives.

These steps are only the beginning of OIDO's oversight obligations. Where, as here, GEO Group and ICE **repeatedly** fail to abide by the most basic standards and laws, OIDO must prevent GEO Group and ICE from reverting to their prior behavior once OIDO's investigation has ceased. Larger reforms to the grievance process, delivery of medical care, and structure of recreation time, among others, may be necessary.

The conditions described in the letter are not merely a matter of inadequate supervision and guidance. Rather, they are a reflection of the fact that the for-profit enterprise of detention encourages unnecessary detention, waste of taxpayer resource, and irreparable harm to the individuals detained there. “The end result is that immigration imprisonment brings substantial material and political benefits to the most privileged members of our society while denying some of the least privileged members access to their basic liberties.” See César Cuauhtémoc García Hernández, *Abolishing Immigration Prisons*, 97 B.U. L. REV. 245, 249 (2017).

Put simply, OIDO must correct the conditions at DVA for its oversight to be anything but Sisyphean. If it is unable to do so, OIDO must terminate its contact with GEO Group and close DVA.

Please contact Eva Bitrán, ebitran@aclusocal.org or 909.380.7505, with any follow-up questions.

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