



SANTA FE
DREAMERS
PROJECT



FREEDOM
FOR IMMIGRANTS

ACLU
New Mexico

VIA EMAIL

April 16, 2019

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RE: Detention Conditions Impacting the Safety and Well-Being of Immigrants in the Cibola County Correctional Center in Milan, New Mexico

Dear Ms. Murphy and Ms. Scott:

For more than two years, we¹ have visited dozens of clients and friends in the Cibola County Correctional Center (“Cibola”)—a private detention center operated by CoreCivic (formerly the Corrections Corporation of America or CCA) in Milan, New Mexico. Almost all of the people we have spoken with are (or were) seeking asylum in the United States because of the persecution they survived in the countries they fled—in most cases, because of their gender identity or their religious or political beliefs.

¹ We write jointly from the Santa Fe Dreamers Project, the New Mexico Immigrant Law Center, the New Mexico Faith Coalition for Immigrant Justice, Familia: Trans Queer Liberation Movement, CIVIC Abq - Freedom for Immigrants, Organización Latina de Trans en T exas, the American Civil Liberties Union of New Mexico (ACLU-NM), and as community members.

We thank you for agreeing to speak with us tomorrow, Wednesday, April 17, 2019, about the serious concerns we have about conditions in Cibola. To guide our upcoming conversation, we write to give you a brief summary of civil rights and civil liberties violations we have documented. This information comes from conversations and interviews with dozens of people² detained at Cibola during the more than two years since it began incarcerating people in U.S. Immigration and Customs Enforcement (“ICE”) custody.³ **We urge CRCL to use its authority under federal law⁴ to investigate the civil rights and civil liberties violations outlined in this letter during your upcoming April 2019 visit to Cibola; recommend policy changes to address these violations; and oversee Cibola and ICE’s implementation of policy changes. We also recommend specific changes that ICE and Cibola must make immediately to stop violating the law and to comply with ICE’s own rules.**

New Mexico community members—members of faith communities, healthcare workers, activists, and attorneys—are watching Cibola. **ICE and Cibola can and must do better.**

People detained at Cibola report the following.

Inadequate Medical and Mental Health Care. Some Cibola medical staff fail to provide timely and adequate medical care. This problem is particularly significant for people living with serious medical conditions, including HIV, tuberculosis, and syphilis. Some Cibola

² Much of what we describe here is also corroborated by medical and institutional records.

³ Cibola has a troubled history. On July 29, 2016, the Bureau of Prisons (“BOP”), an agency of the U.S. Department of Justice, prematurely ended its contract with CCA at Cibola. That summer, the Cibola prison earned more “more repeat deficiencies or significant findings in health services than any other private federal prison” that was operating then. Seth Freed Wessler, *Federal Officials Ignored Years of Internal Warnings About Deaths at Private Prisons*, THE NATION, June 15, 2016, <https://www.thenation.com/article/federal-officials-ignored-years-of-internal-warnings-about-deaths-at-private-prisons>. Conditions in the medical unit at Cibola were so poor as a result of chronic understaffing and Cibola’s refusal to provide basic medical care that people died from conditions that physicians could have treated. Oliver Laughland, *Man’s death hints at wretched medical care in private immigration prison*, THE GUARDIAN, Nov. 1, 2016, <https://www.theguardian.com/us-news/2016/nov/01/jose-jaramillo-private-immigration-prisons-medical-care>. In July 2016, BOP made an unusual announcement: it was ending its Cibola contract with CCA and shutting its operations at Cibola before the contract was set to expire. Seth Freed Wessler, *The Feds Will Shut Down the Troubled Private Prison in a ‘Nation’ Investigation*, THE NATION, Aug. 15, 2016, <https://www.thenation.com/article/feds-will-shut-down-troubled-private-prison-in-nation-investigation>. It was rare for BOP to prematurely terminate contracts with private prisons. The BOP’s decision to end its Cibola contract with CCA came after extensive reporting from *the Nation*, *the Guardian*, and others about abuses, deprivations of medical care, and deaths at Cibola. Importantly, too, BOP’s decision to shut down Cibola came before then-President Barack Obama announced in August 2016 that the Department of Justice would phase out its use of private prisons—a policy decision that was later rescinded by former Attorney General Jefferson Beauregard Sessions III. Many healthcare workers, faith community members, attorneys, and activists were concerned in the fall of 2016 that within a few weeks of BOP’s prematurely ending its contract with Cibola, Cibola County announced that the Cibola County Correctional Center would reopen as a private immigration detention center. Seth Freed Wessler, *ICE Plans to Reopen the Very Same Private Prison the Feds Just Closed*, THE NATION, Oct. 27, 2016, <https://www.thenation.com/article/ice-plans-to-reopen-the-very-same-private-prison-the-feds-just-closed>.

⁴ 6 U.S.C. § 345(a).

medical staff, including mental health staff, do not use adequate interpretation services, using Google Translate instead of certified interpreters. This makes it impossible for patients to understand and consent to medical care. When Cibola medical staff refer patients to outside providers (that is, to specialists at hospitals or clinics outside of Cibola), Cibola often fails to take detained people to appointments with specialists. As a result, they do not receive medically necessary care. Cibola routinely fails to provide mental health care unless a person is experiencing severe symptoms, such as suicidal ideations.

Prolonged and Inappropriate Use of Solitary Confinement. Cibola detains people in solitary confinement for prolonged periods for both “punitive” and “administrative” reasons. In one case, ICE and Cibola detained a person in administrative segregation (solitary confinement) for nearly three months—a period so prolonged that it amounts to cruel, inhuman, or degrading treatment or punishment. Indeed, it may amount to torture under international law, in violation of U.S. legal obligations.⁵ At Cibola, segregation is near-isolation, meaning that a person in “seg” or “SHU” typically spends at least 23 hours alone each day. The segregation unit is a mixed unit with transgender women in ICE custody and cisgender men in ICE, U.S. Marshals, and county custody. Transgender women in solitary are required to shower within view of cisgender men. As a result, cisgender men in segregation sexually harass and threaten transgender women who are detained there. Further, placing a person in long-term segregation makes them vulnerable to decompensation and may exacerbate underlying mental illness. Advocates have observed that long-term segregation can result in long-term suicide watch because people develop suicidal ideations after being forced to remain in isolation for prolonged periods. In one particularly vile incident last summer, on July 9, 2018, masked Cibola staff, including medical staff, entered the solitary unit and sprayed an unidentified chemical through a hose attached to a canister into the cell of a person who was detained in county custody. One transgender woman who was detained in the solitary unit that day reported that she nearly choked on the chemical and felt like she could not breathe.

Failure to Use Interpreters; Discrimination and Verbal Abuse. Most Cibola staff fail to use interpretation services to communicate with detained people, most of whom do not speak or understand English. Instead of using interpretation services to communicate in a language that the detained person can understand, at times, staff speak louder or yell in English. This does not improve detained people’s ability to understand what Cibola staff are saying. It also results in the detained person being subjected to discipline for their failure to comply with instructions that guards give them in English. At times, some Cibola staff use homophobic and transphobic slurs against transgender women or refuse to use the pronouns that correspond with their gender identity. This is particularly a problem among Cibola’s evening guards because they have not received adequate training on understanding and protecting transgender people.

⁵ Under international law and standards, all solitary confinement imposed for a period beyond 15 days constitutes cruel, inhuman or degrading treatment or punishment. Moreover, the UN Human Rights Committee has stated that “prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by Article 7” of the International Covenant on Civil and Political Rights (prohibiting torture and other ill-treatment, a treaty which the United States has ratified and which is legally binding on the U.S. government. UN Human Rights Committee, General Comment No. 20, UN Doc. A/47/40, annex VI.A, Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), 10 March 1992).

Inadequate Grievance Process. When detained people submit grievances, Cibola does not respond to them in a timely or meaningful way. Despite repeated complaints about conditions, Cibola does little to change its practices. There is a lack of transparency and accountability regarding grievances and there is no process to accelerate the review of serious complaints.

Inappropriate Meals. Cibola does not consistently provide appropriate meals for people living with diabetes, food allergies, or other dietary needs, including those related to religious beliefs. One person lost one-third of her body weight in detention because Cibola failed to provide her with adequate meals.

Wage Violations. CoreCivic fails to pay detained people the minimum wages required under the Service Contract Act, Fair Labor Standards Act, and the New Mexico Minimum Wage Act, unjustly enriching itself from the labor of our clients and friends. CoreCivic pays as little as one dollar a day to detained people who prepare and serve meals, clean the detention center, and perform other work that is essential for Cibola to operate.

Inadequate Recreation. Cibola’s outdoor recreation space is very small. Cibola provides limited and inappropriate hours for recreation. People are only allowed to participate in recreation at two times, at 7 am and in the early evening. Moreover, because of excessive, unreasonable, and, at times, punitive “lockdowns,” people end up being allowed to be out of their cells for only a few hours each day.

Cibola and ICE’s Legal Obligations

We begin with this premise: the safest place for all people—and particularly vulnerable people, including transgender people—is to be with their communities and families, not in immigration detention.⁶ We support the abolition of immigration detention. We also urge ICE to immediately release all transgender people from civil immigration detention.

The 2015 ICE Memorandum on the Care of Detained Transgender People,⁷ acknowledges that transgender people are particularly vulnerable in detention. The memorandum explicitly states that ICE Field Office Directors (“FODs”) should “consider whether the use of detention resources is warranted for a given individual and shall consider, on a case by case basis, all relevant factors in this determination, including whether an individual identifies as transgender.” The memorandum further urges FODs to exercise prosecutorial discretion “as early

⁶ When incarcerated, LGBT people face a higher risk than heterosexual, cisgender people of being victims of sexual abuse by other prisoners and staff. NAT’L PRISON RAPE ELIMINATION COMM’N REPORT 73-74 (2009), <http://tinyurl.com/y7q96fcs>.

⁷ THOMAS HOMAN, EXECUTIVE ASSOCIATE DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, FURTHER GUIDANCE REGARDING THE CARE OF TRANSGENDER DETAINEES (June 19, 2015), <https://www.ice.gov/sites/default/files/documents/Document/2015/TransgenderCareMemorandum.pdf>.

in the case or proceedings as possible.”⁸ In other words, ICE must consider a person’s transgender status as one basis that weighs in favor of releasing them.

But when the government detains a person,⁹ it has a legal obligation to ensure that the person is safe and receives medically necessary care. Over the past two years, ICE and Cibola have repeatedly failed to meet these basic legal obligations, raising serious questions about Cibola’s and ICE’s compliance with the Prison Rape Elimination Act (“PREA”), ICE Performance-Based National Detention Standards (“PBNDS”¹⁰), the Service Contract Act and other federal and state wage laws, and the U.S. Constitution.

Moreover, under the Intergovernmental Service Agreement (“IGSA”) between Cibola County and ICE, Cibola County has the contractual obligation to comply with these laws.¹¹

Recommendations

We recommend that ICE and Cibola make the following immediate changes to stop violating the law and to comply with ICE’s own rules.

1. Provide medically necessary care, including mental health care and specialized care.

People in immigration detention have the constitutional right to receive adequate medical care, including mental health care. This means that ICE and Cibola medical staff must respond to medical complaints in a timely manner and must provide care. To ensure that ICE and Cibola do not put another detained person’s life or health at risk, we urge ICE and Cibola to make the following changes.

ICE and Cibola must provide timely medical care, including mental health care. ICE PBNDS 4.3(II)(4) expresses ICE’s expectation that “[d]etainees shall be able to request health services on a daily basis and shall receive timely follow up.”¹² Cibola consistently fails to meet this standard. ICE must ensure that Cibola’s contracted medical provider is staffed adequately to respond to detained people’s medical needs in a timely way and to all medically necessary care, including care for serious medical conditions. Additionally, when Cibola medical staff provide

⁸ *Id.* at 1.

⁹ Under the 2015 ICE memorandum regarding the care of transgender people, when ICE detains a person, it must “provide a respectful, safe, and secure environment for all detainees, including those individuals who identify as transgender. Discrimination or harassment of any kind based on a detainee’s actual or perceived sexual orientation or gender identity is strictly prohibited.” *Supra* note 7.

¹⁰ U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, PERFORMANCE-BASED NATIONAL DETENTION STANDARDS 2011 (2016), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

¹¹ Intergovernmental Service Agreement between ICE and Cibola County, NM (Oct. 26, 2016), <https://www.documentcloud.org/documents/4107885-Cibola-Contract-Part-I.html>. According to CoreCivic’s public filings, its current contract with Cibola County to detain up to 1,129 people expires in October 2021 and its remaining renewal options are “indefinite.” U.S. Securities and Exchange Commission, Form 10-K, CoreCivic, Inc. (Feb. 23, 2017), <http://pdf.secdatabase.com/2366/0001193125-17-053982.pdf>.

¹² *Supra* note 10.

referrals for specialized care outside of the facility, Cibola must ensure that detained people receive that care.

Cibola medical and mental health staff must use professional interpretation services in delivering medical care, not Google Translate. ICE PBNDS 4.3(V)(E) requires Cibola to “provide appropriate interpretation and language services for . . . detainees [with limited English proficiency] related to medical and mental health care. Where appropriate staff interpretation is not available, facilities will make use of professional interpretation services.”¹³

Doing anything less violates detained people’s constitutional right to adequate medical care.

2. End the use of solitary confinement—particularly prolonged solitary confinement—and the administrative solitary confinement of transgender people.

People in civil immigration detention are entitled to the same constitutional protections as people in civil detention who are awaiting criminal trials.¹⁴ Like people in pretrial detention, people in immigration detention are protected by the Due Process Clause.¹⁵ And because people in immigration detention have not been convicted of a crime, the government cannot punish them.¹⁶ When conditions of confinement in immigration detention amount to punishment, the government is violating the Due Process Clause.¹⁷

Cibola and ICE must stop using solitary confinement. The brutality of it—in Cibola, typically 23 hours of isolation and almost no human contact—amounts to punishment. And prolonged solitary confinement—confinement exceeding fifteen consecutive days, which may cause irreversible psychological harm—may amount to torture.¹⁸ Indeed, New Mexico federal

¹³ *Id.*

¹⁴ *Edwards v. Johnson*, 209 F.3d 772, 778 (5th Cir. 2000) (“We consider a person detained for deportation to be the equivalent of a pretrial detainee; a pretrial detainee’s constitutional claims are considered under the due process clause instead of the Eighth Amendment.”).

¹⁵ *Contant v. Sabol*, 431 Fed. Appx. 177, 178–79 (3d Cir. 2011).

¹⁶ *Id.*; see also *Bell v. Wolfish*, 441 U.S. 520, 540, 547 (1979); *Iqbal v. Hasty*, 490 F.3d 143, 168 (2d Cir. 2007) (“Pretrial detainees have not been convicted of a crime and thus ‘may not be punished in any manner—neither cruelly and unusually nor otherwise.’”).

¹⁷ *Bell*, 441 U.S. at 547; *Littlefield v. Deland*, 641 F.2d 729, 731 (10th Cir. 1981) (“[T]he court must apply the *Bell* standard to the facts underlying a s 1983 claim based on an allegedly unconstitutional policy of pretrial detention to determine whether that policy in fact constitutes punishment whatever its asserted purposes may be.”)

¹⁸ Under the United Nations Standard Minimum Rules for the Treatment of Prisoners solitary confinement “refer[s] to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement . . . refer[s] to solitary confinement for a time period in excess of 15 consecutive days.” Rule 44, <https://documents-ddsny.un.org/doc/UNDOC/GEN/N15/295/06/PDF/N1529506.pdf?OpenElement>. The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, has urged that solitary confinement for periods of more than fifteen consecutive days constitutes torture. Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc A/66/268, ¶¶ 76-78 (Aug. 5, 2011).

courts have recognized that solitary confinement may exacerbate mental illness and can cause a person's mental health to deteriorate.¹⁹

Cibola and ICE must stop using solitary confinement as “protective custody” for transgender people. PREA requires that ICE consider a detained person’s “gender self-identification and an assessment of the effects of placement on the detainee’s health and safety.”²⁰ This requirement includes considering the effects of a housing placement on a person’s mental health. Most importantly, PREA requires that Cibola use solitary confinement to “protect” a person as a last resort: “Use of administrative segregation by facilities to protect detainees vulnerable to sexual abuse or assault shall be restricted to those instance where reasonable efforts have been made to provide appropriate housing and shall be made for the least amount of time practicable, and when no other viable housing options exist, as a last resort.”²¹ When Cibola does use solitary confinement as “protective custody”—a practice that we oppose—it must follow a rigorous review process. This process includes, among other requirements, a review by a supervisor within 72 hours of a person’s placement in solitary confinement to determine whether that placement is still warranted.²² Cibola must also provide people in “protective custody” with the same “access to programs, visitation, counsel and other services available to the general population to the maximum extent practicable.”²³

Simply put, ICE cannot detain people in Cibola’s solitary confinement unit because the conditions there are punitive and may cause their mental health to deteriorate. Moreover, if Cibola and ICE cannot safely detain certain transgender people outside of isolation cells, then ICE must release them from immigration detention using alternatives to detention.²⁴

3. Train staff to use interpreters and to communicate effectively and professionally with detained people.

ICE PBNDS 2.13(V)(B) provides “[w]hen language services are needed, the facility should use bilingual staff or qualified interpretation and translation services to communicate with

¹⁹ See, e.g., *Slevin v. Bd. of Comm'rs for Cty. of Doña Ana*, 934 F. Supp. 2d 1270, 1273 (D.N.M. 2012) (Mr. Slevin alleged that “because of his mental illness, officials at the Detention Center kept him in administrative segregation for virtually the entire 22 months of his incarceration, without humane conditions of confinement or adequate medical care, and without periodic review of his confinement, causing his physical and mental deterioration” and jury returned a multimillion dollar verdict in his favor).

²⁰ 6 C.F.R. § 115.42(b).

²¹ 6 C.F.R. § 115.43(b).

²² 6 C.F.R. § 115.43(d)(1); see also *id.* at (d)(2) (requiring weekly reviews every seven days for the first 30 days and then ten-day reviews by a supervisor after that); at (f) (requiring that the ICE Field Office Director review the placement).

²³ 6 C.F.R. § 115.43(c).

²⁴ See, e.g., American Immigration Lawyers Association, Lutheran Immigration and Refugee Service, National Immigrant Justice Center, Women’s Refugee Commission, *The Real Alternatives to Detention* (June 2018), <https://www.immigrantjustice.org/sites/default/files/content-type/research-item/documents/2018-06/The%20Real%20Alternatives%20to%20Detention%20FINAL%2006.17.pdf> (noting that, according to DHS’ own data, alternatives to detention (ATD) “cost far less than detention, even if one is enrolled in ATD longer than in detention.”).

limited English proficient detainees.”²⁵ In other words, ICE and Cibola staff must use appropriate and qualified interpreters and translators to communicate with detained people who do not speak English.

PREA and the ICE PBNDS require ICE and Cibola to train staff to communicate effectively and professionally with detained people. PREA specifically requires DHS to “train, or require the training of, all employees who may have contact with immigration detainees, and all facility staff, to be able to fulfill their responsibilities under this part, including training on[,]” among other things, “[h]ow to communicate effectively and professionally with detainees, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming detainees.”²⁶ Likewise, ICE PBNDS 2.13(II)(6) reiterates the requirement for effective interpretation: “The facility will also provide detainees who are LEP with language assistance, including bilingual staff or professional interpretation and translation services, to provide them with meaningful access to its programs and activities.”²⁷

Cibola staff should never use transphobic or homophobic slurs and should never yell in English instead of providing interpretation in languages that detained people can understand.

To comply with the PBNDS and the 2015 ICE memorandum, we urge that all staff at Cibola receive adequate training on communicating effectively with all detained people and on understanding and protecting transgender people. At minimum, evening guards need to receive the same training provided to other guards, which involves community stakeholders who are experts on understanding and protecting transgender people. More broadly, we urge that all Cibola staff be trained on nonviolent communication with all detained people.

4. Provide timely and appropriate responses to grievances.

PREA and the ICE PBNDS require ICE and Cibola to respond in a timely and appropriate way to grievances. Many of the conditions we describe in this letter would be greatly improved if ICE and Cibola would respond appropriately to our clients’ and friends’ grievances.

Under ICE PBNDS 2.13(II)(3), “Detainees shall be able to submit written questions, requests, grievances and concerns to ICE/ERO staff and receive timely responses.” And ICE PBNDS 6.2 establishes detailed grievance practices and procedures that ICE and Cibola are expected to follow. For example, PBNDS 6.2(C)(1) requires Cibola staff to “a. attempt to resolve the issue informally, if the issue is within his/her scope of responsibility; or b. notify the appropriate supervisor of the grievance as soon as practical.”²⁸ Cibola staff routinely fail to do this.

Under PREA’s grievance regulations, “[f]acility staff shall bring medical emergencies to the immediate attention of proper medical personnel for further assessment.”²⁹ Nevertheless,

²⁵ *Supra* note 10.

²⁶ 6 C.F.R. § 115.31(a)(7) (“Staff Training”).

²⁷ *Supra* note 10.

²⁸ *Id.*

²⁹ 6 C.F.R. § 115.52(d).

Cibola routinely fails to respond to urgent medical needs involving serious medical conditions, including HIV, tuberculosis, and syphilis.

ICE and Cibola staff must immediately implement appropriate grievance procedures and must make detained people aware of their right to accelerate the review of emergency grievances.

5. Provide appropriate meals.

Cibola and ICE must provide appropriate meals for people living with diabetes, food allergies, other dietary needs, or religious dietary practices or restrictions. ICE PBNDS 4.1(II)(1) requires Cibola and ICE to provide “[a]ll detainees [with] nutritionally balanced diets that are reviewed at least quarterly by food service personnel and at least annually by a qualified nutritionist or dietitian.” ICE PBNDS 4.1(II)(10) states that “[t]herapeutic medical diets and supplemental food shall be provided as prescribed by appropriate clinicians” and ICE PBNDS 4.1(II)(11)-(12) state “[s]pecial diets and ceremonial meals shall be provided for detainees whose religious beliefs require adherence to religious dietary laws” and detained people “shall receive a religious or special diet free of any personal cost.”³⁰

6. Comply with federal and state wage laws.

Under the Service Contract Act, state and federal wage laws, and the intergovernmental service agreement under which Cibola County Correctional Center operates, CoreCivic must pay the applicable prevailing wage in Cibola County.³¹ CoreCivic must end its practice of unjustly enriching itself by paying our clients and friends as little as one dollar each day for their work.³²

7. Provide adequate access to recreation.

ICE PBNDS 5.4(II)(2) states “[d]etainees shall have at least four hours a day access, seven days a week, to outdoor recreation, weather and scheduling permitted. Outdoor recreation shall support leisure activities, outdoor sports and exercise as referenced and defined by the National Commission on Correctional Health Care Standards, provided outside the confines of the housing structure and/or other solid enclosures.”³³ ICE and Cibola must provide access to recreation at appropriate times and in an appropriate space every day.

We look forward to speaking with you about our concerns tomorrow, Wednesday, April 17. Again, we urge CRCL to exercise its authority to investigate the conditions we describe, recommend policy changes in line with the recommendations in this letter, and supervise ICE’s and Cibola’s implementation of policy changes. We also urge ICE and Cibola to make immediate changes to comply with the law.

³⁰ *Supra* note 10.

³¹ *Supra* note 11.

³² *See Ndambi, et al. v. CoreCivic*, 18-cv-03521 (D. Md. 2018), <https://www.cohenmilstein.com/sites/default/files/Ndambi%20et%20al%20v%20CoreCivic%20Complaint%20-%20November%2014%202018.pdf>.

³³ *Supra* note 10.

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