

CORRECTIONS EXPERT'S REPORT

ON

ORANGE COUNTY JAIL

Prepared by:

(b) (6)

MAS

Rocklin, CA

November 16, 2017

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ORANGE COUNTY JAIL

I. SUMMARY OF INVESTIGATION

The U.S. Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL) conducted an October 16-17, 2017 onsite investigation at the Orange County Jail (OJC) in Goshen, New York. The investigation was initiated due to multiple complaints received alleging that U.S. Immigrations and Customs Enforcement (ICE) violated the civil rights and civil liberties of persons being detained at the OJC. One complaint was referred by DHS Office of the Inspector General (OIG) on July 25, 2016¹. During the period of 2015 to 2017, CRCL received over 34 allegations concerning OJC. In addition, CRCL received notice from ICE regarding the July 28, 2016 death of a detainee in ICE custody at OJC².

In February 2017, New York Lawyers for Public Interest (NYLPI), published a report titled, *"Detained and Denied: Healthcare Access in Immigration Detention."*³ The allegations in the complaints and report include inadequate medical care; excessive use of force, language access barriers, denial of adequate exercise, inadequate intake, classification and screening, inappropriate and abusive staff-detainee communication and general claims of verbal mistreatment of detainees by OJC officers, frequent use of strip searches, unhealthy and inadequately portioned meals, denial of legal access, denial of mail, staff training, and limited access to the grievance process.

To examine the allegations in the complaints, this investigation reviewed OJC's adherence to the 2000 National Detention Standards (NDS) in the relevant areas. Allegations related to medical and mental health care are addressed by CRCL's medical and mental health experts. Allegations related to food and environmental health and safety are addressed by CRCL's expert for these areas.

Through this review, I found operational deficiencies related to some of the allegations in the complaints and NYLPI report.

This report contains recommendations to address deficiencies identified that are based on ICE's detention standards, correctional experience, and recognized correctional standards including those published by the American Correctional Association (ACA).

¹ CRCL Complaint No. 16-10-ICE-0498.

² CRCL Complaint No. 16-10-ICE-0610.

³ CRCL Complaint No. 17-05-ICE-0216.

II. PROFESSIONAL EXPERTISE
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III. RELEVANT STANDARDS

A. ICE Detention Standards

ICE's 2000 NDS currently apply to OCJ. The facility was covered by these standards during the entire period relevant to this investigation. Consequently, I relied on the 2000 NDS when looking at the specific allegations regarding conditions at the facility. Additionally, I considered PBNDS 2011 Sexual Abuse and Assault Prevention and Intervention (SAAPI), and ICE Directive 11062.2, Sexual Abuse and Assault Prevention and Intervention, issued May 22, 2014, which was in force and in effect during this period, the Department of Homeland Security Language Access Plan, February 28, 2012, and U.S. Immigration and Customs Enforcement Language Access Plan, June 14, 2015.

IV. FACILITY BACKGROUND AND POPULATION DEMOGRAPHICS

OCJ is located in Goshen, New York, and is operated and managed by the Orange County Sheriff's Office under an Inter-Governmental Service Agreement between ICE and the Orange County Correctional Facility to house male and female ICE detainees. OCJ also houses County male and female inmates. OJC has a rated population count of 753. At the time of this investigation OCJ housed 169 detainees, male 147 beds and female 22 beds.

V. REVIEW PURPOSE AND METHODOLOGY

The purpose of this review was to examine the specific allegations made in the complaints, as well as to identify other areas of concern regarding the operation of the facility. I was also tasked with reviewing facility policies and procedures. As part of this review, I examined a variety of documents; was onsite at OCJ on October 16-17, 2017, along with CRCL staff and experts who examined medical care, mental health care, food and environmental health and safety; and interviewed ICE and OCJ staff and detainees.

The staff at OCJ was helpful and cooperative during our onsite investigation, and I appreciated their assistance. I also appreciated the cooperation and assistance provided by ICE staff before, during, and after our trip.

In preparation for the onsite and completion of this report, I did the following:

- Reviewed OIG referred detainee complaints
- Reviewed the April 2016 ICE National Detainee Handbook
- Reviewed relevant ICE NDS 2000 standards:
 - Grievance Procedures
 - Detainee Handbook
 - Correspondence and Other Mail
 - Admission and Release
 - Access to Legal Material
 - Group Presentations on Legal Rights
 - Recreation
 - Religious Practices
 - Staff-Detainee Communication
 - Special Management Units (Administrative and Disciplinary)
 - Detainee Classification System
 - Population Counts
 - Disciplinary Policy
 - Sexual Abuses and Assault Prevention and Intervention (PBNDS 2011)
 - Funds and Personal Property
 - Suicide Prevention and Intervention
 - Telephone Access
 - Detention Files
 - Visitation
- Reviewed relevant ACA correctional standards

While at the OCJ on October 16-17, 2017, and post-visit, I did the following:

- Toured male and female housing units
- Interviewed housing officers
- Interviewed male and female detainees
- Reviewed detainee housing rosters
- Reviewed detainee files
- Reviewed the OCJ Inmate [Detainee] Handbook
- Inspected telephone pro bono number postings in housing units and SMUs
- Toured visiting room
- Inspected the law library
- Interviewed the law librarian and officer
- Interviewed detainees in the law library
- Reviewed the facility schedule for the law library and the library attendance log
- Inspected the recreation yards for male and female detainees
- Reviewed the recreation schedule for general population and the SMUs
- Reviewed the religious service area
- Reviewed detainee grievance logs for 2016 and 2017 (through date of review)
- Reviewed specific detainee grievances and responses
- Interviewed the grievance officer
- Reviewed detainee disciplinary reports
- Inspected the special management units
- Reviewed administrative segregation and disciplinary segregation hearing notices, reports, and detention files
- Reviewed disciplinary segregation orders
- Reviewed detainee requests made to ICE
- Reviewed the daily activity schedule
- Interviewed custody and program personnel regarding PREA/SAAPI, use of force, disciplinary system, law library and legal access, religious access and services, recreation programs, grievance system, staff-detainee communication, investigations, use of segregation, suicide prevention policies, language access, telephone access, and mail
- Met with various ICE staff during the course of the review
- Reviewed the contract between ICE and Orange County Jail
- Reviewed OCJ policies on:
 - Sexual Assault and Abuse Prevention and Intervention
 - Admissions
 - Security Classification
 - Orientation
 - Staff Rules of Conduct
 - Contraband
 - Visiting
 - Correspondence
 - Crime Scenes
 - Exercise Program

- Facility Inspections
- Housing Unit Management
- Administrative Segregation
- Disciplinary Segregation
- Use of Force
- Grievance Policy
- Discipline Program
- Evidence Procedure
- Dormitory Housing
- Detainee Handbook
- Staff and Detainee Communication
- Law Library
- Training and Staff Development
- Trustee Selection Program
- Property
- Telephones
- Mental Health Services
- Special Needs
- Staff Supervision of Detainees
- Officer Reports
- Religious Services and Programs

In the context of this report, a finding of “substantiated” refers to an allegation that was investigated and determined to have occurred; a finding of “not substantiated” refers to an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred; and a finding of “unfounded” means an allegation that was investigated and determined not to have occurred. Detainee names and alien numbers for detainees described in this report are listed in Appendix A. Staff names referred to in this report were provided to the Warden for appropriate follow-up action.

VI. CONDITIONS OF DETENTION FINDINGS AND RECOMMENDATIONS

A. Grievance System Access, Staff Misconduct, Retaliation, Staff Detainee Communication, Excessive Use of Force, Staff Investigations, Frequent Use of Strip Searches, and Denial of Mail

The NDS protects detainees’ rights and ensures they are treated fairly by providing a procedure to file both informal and formal grievances and receive timely responses related to any aspect of his or her detention, including medical care. One important aspect of the Detainee Grievance Procedure Standard is that detainees are protected from harassment, discipline, punishment, or retaliation for filing a complaint or grievance.

CRCL received approximately 34 separate allegations concerning the OJC since 2015. Many of the allegations were opened as complaints. These complaints include inappropriate and abusive staff detainee communication; general claims of verbal mistreatment by OJC Officers; frequent use of strip searches; and denial of legal access and denial of mail. On July 25, 2016, CRCL

received two complaint referrals from the Office of the Inspector General (OIG) filed by detainee #1 alleging OJ officials physically assaulted, threatened, and tampered with his medical equipment while he was hospitalized from June 18-24, 2016⁴. Detainee #1 also alleged that upon his return to OJC, one of the officials continued to physically assault him. I reviewed Officer #1's incident report (IR) dated June 24, 2016 regarding the alleged assault at the hospital. Officer #1 reported that detainee #1 was using the emergency call button for non-emergency purposes. Officer #1 also stated in the IR that detainee #1 was attempting to pull the remote back from detainee #1, and as a result, detainee #1's IV was pulled loose. The IR also reported that detainee #1 had pulled his IV out seven times. During an interview with Detention Officer (DO) #1, she reported that the hospital front desk staff called her due to the assigned Officer #1 and detainee #1 arguing loudly and creating a disturbance. DO #1 explained that the struggle between the officer and the detainee had occurred over the television remote control. Detainee #1 wanted to turn the volume down so he could rest, and Officer #1 wanted to control the loudness so he could watch television. Detainee #1 was trying to call the nurse via the remote control call button, and the IV was pulled loose during the struggle for the remote. Detainee #1 reported to DO #1, "I am in fear of my life." DO #1 was so concerned that she called and recommended to the Supervising Detention Officer (SDDO) that a different officer be assigned to provide security coverage at the hospital. DO #1 did not know if Officer #1 replaced. I reviewed the incident report prepared by Officer #1. Officer #1's reported version of the hospital incident is not consistent with hospital staff's and DO #1's reported version of the incident. Based on DO #1's and hospital staff's reported discussion, my investigation substantiates that unnecessary and excessive force was used by Officer #1 that resulted in the detainee's medical IV being pulled loose. Detainee #1's second complaint that Officer #1 continued to physically harm him upon return to the OJC is not substantiated based on my review of the detainee's grievance, inspection of the detention file, and review of the video of the detainee's return into the facility.

I also reviewed the grievance system as part of this investigation. Detainees do not have direct access to grievances. Detainees have to request a grievance form from an officer who then tries to resolve the issue, or refers the request to a sergeant who is responsible for providing a grievance by the end of the sergeant's shift. During interviews of two groups of male detainees and one group of female detainees, all detainees reported difficulty in obtaining grievance forms. Detainees reported that staff frequently ignore their requests for a grievance form or try to talk them out of filing a grievance. Male and female Detainees also reported retaliation from officers when staff mistreatment is reported. The NDS requires that "Staff must forward all detainee grievances containing allegations of officer misconduct to a supervisor or higher-level official in the chain of command. IGSA facilities must forward all detainee grievances alleging officer misconduct to ICE." My review indicated that OCJ is not forwarding every allegation of staff misconduct to ICE and ICE is not investigating every misconduct grievance – both of which are violations of the NDS. During the past year, OCJ has not consistently conducted formal investigations of staff mistreatment of detainees. cursory reviews are sometimes conducted, but only one formal investigation has been conducted.

⁴ Complaint No. 16-10-ICE-0498

During interviews, detainees described extremely disrespectful, offensive and profane language that OCJ staff use when addressing them. The detainee group reports mirror the staff misconduct formally documented in grievances. Examples of mistreatment include a Sergeant entering the female unit and greeting the female detainees by yelling, "Hello assholes and bitches." Staff also reportedly refer to female detainees as "ICE fish, tuna, or mackerel," an apparent reference to their immigration status. Both male and female detainees reported that staff yell at them as a normal course of business and make racist comments. One staff even sings "ICE, ICE Baby" when working in the unit. Multiple staff make comments such as, if detainees do not like the treatment, they should not have come to our country. A CO working in a male unit confronted a group of detainees stating, "Who's the fucking pussy who made the complaint against me?" The CO was upset that a detainee filed a complaint against him. This behavior is unprofessional, retaliatory and violates the NDS. Additionally, the behavior violates *OCJ's Rules of Conduct, Section 26 – Courtesy and Impartiality*, "Employees shall not use coarse, violent, profane or insolent language or gesture, and shall not express prejudice regarding race, religion, politics, national origin, lifestyles or similar personal characteristics," and also violates *OCJ's Supervision of Inmates policy 11.20.09, Section C. Communication* which states, "In communicating with inmates, officers should communicate clearly and concisely using words readily understandable to inmates. Profanity or crude remarks are not to be used." The American Correctional Association's Adult Local Detention Facility Performance Based Standard 4-ALDF-6A-07 mandates that inmates [detainees] are not subjected to personal abuse or harassment. DO #1 reported during our interview that OCJ staff cursing and yelling is part of the OCJ culture.

Grievance forms are not available in Spanish. I will address language access issues in a separate section below. The NDS requires that each facility maintain a detainee grievance log and grievances are listed in chronological order. OCJ does not log separately detainee grievances from inmate grievances. It is impossible to audit the grievance log for compliance with processing time constraints and patterns of mistreatment as there is no ability to identify which grievances are detainee versus inmate. Maintaining a separate detainee log is critical to enable ICE or management to effectively audit that detainee staff misconduct grievances are being processed in accordance with NDS time constraints and ensure copies are provided to ICE for investigation purposes as mandated by the NDS. Additionally, the administrator is not reviewing the grievance log or reports of the grievances for trend analysis.

During this investigation, I also reviewed frequent use of strip searches and denial of mail complaints. I did not find any evidence to support these allegations.

Findings:

Detainee #1's complaint that an OCJ Officer physically assaulted him, threatened him, and tampered with his medical equipment is **substantiated**. The Use of Force Standard only authorizes the use of force after all reasonable efforts to resolve a situation have failed. Fighting over a television volume control does not justify the level of force used that resulted in the detainee's medical IV being pulled loose.

The OCJ grievance system does not conform to the NDS and there is evidence to **substantiate** detainee claims that they suffer retaliation, verbal harassment, and disrespectful treatment by OCJ staff.

The NDS, along with additional applicable guidelines, support the following recommendations:

Recommendations

- OCJ is not logging or reporting all allegations of staff misconduct to ICE. ICE and OCJ should develop a tracking system for all staff misconduct allegations, and ensure that each allegation is reported to ICE. (NDS, Detainee Grievance Procedures)
- OCJ is not fully investigating all staff misconduct investigations or documenting the findings of the investigations. OCJ should ensure that all staff misconduct allegations are fully investigated and that the findings and results of the investigations are documented. (NDS, Detainee Grievance Procedures)
- OCJ should provide refresher training to all staff mandating staff act in a professional manner at all times and do not use discriminatory or profane language when addressing detainees. OCJ should also ensure detainees suffer no retaliation for reporting allegations of staff misconduct. (*OCJ's Rules of Conduct, Section 26 – Courtesy and Impartiality, OCJ's Supervision of Inmates policy 11.20.09, Section C., NDS, Detainee Grievance Procedures, and 4-ALDF-6A-07*)

B. Legal Access

Law Library

I reviewed the law library and legal access as part of this investigation. I interviewed male and female detainees, and I interviewed the law library officer regarding legal access. There is a main law library with Lexis-Nexis access and a satellite Lexis-Nexis station in the housing unit. The Lexis-Nexis version in the housing unit was 2015 and the law library version was 2016. When interviewed the detainees complained that the main law library Lexis-Nexis computers were not networked to a printer and that printing copies of materials needed for their cases was impaired due to not having the ability to print. When I raised this issue to the law library officer, he stated that detainees could ask him for an external stick drive and then he could print the needed documents from the external stick. The detainees reported that this was not a reliable process as the officer subjected them to verbal harassment when requests for document copies were made, and no signage is in place to educate the detainees on the process to request legal computer document copies. Detainees who are Limited English Proficient (LEP) reported a lack of available assistance to address language barrier issues.

The NDS *Access to Legal Material Standard* requires facilities to help LEP detainees obtain assistance using the law library.

Finding:

OCJ fails to provide legal access to detainees in accordance with the Access to Legal Material NDS is **substantiated**.

The NDS, along with additional applicable guidelines, support the following recommendations:

Recommendations

- OCJ's law library officer does not provide appropriate assistance to LEP detainees who use of the law library which subsequently affects meaningful legal access. OCJ should provide LEP detainees with access to language translation/interpretation to ensure legal access in the law library from staff. (NDS, Access to Legal Material)
- OCJ and ICE should provide reliable printer access in the main law library for printing legal materials. (NDS, Access to Legal Material)
- ICE should update the Lexis-Nexis software to the current version. (NDS, Access to Legal Material)

C. Limited English Proficiency (LEP)-Language Access

I reviewed the language access at this facility as part of this investigation. The NYLPI report titled *Detained and Denied: Healthcare Access in Immigration Detention*⁵ included allegations that detainees experienced language access barriers at several Tri-State Area ICE detention facilities, including OJC. The report also included allegations that an OJC detainee with serious mental illness and regular suicidal thoughts did not receive an interpreter, and officers and other detainees were used as interpreters during medical encounters. As no specific details were provided regarding the second language complaint, it could not be investigated; however, I did investigate OCJ's provision of Language Access and found numerous instances where language access is not provided to LEP detainees. During interviews with two groups of detainees, one male and one female, which included detainees who are limited English proficient (LEP), the detainees reported language access issues.⁶ LEP detainees reported being required to sign documents in a language they did not understand. A review of detainee files indicated that detainees who were or appeared to be Spanish speakers (based on requests they had written in Spanish) had signed forms written in English, with no indication of having been provided with interpretation or translation assistance. Grievance forms are not available in Spanish as stated earlier in my report. Detainees I interviewed reported that LEP detainees were required to sign documents that were written in English and that no Language Line interpretation assistance was provided. I reviewed the Language Line bills, which confirmed limited usage of this resource. I also interviewed staff in the Admissions and Discharge area of the facility where critical intake interviews occur, and all intake forms are signed. Based on intake staff interviews I determined the language line is not routinely used during intake.

⁵ CRCL Complaint No. 17-05-ICE-0216

⁶ CRCL staff and I conducted these interviews with the assistance of a qualified Spanish language interpreter.

OCJ does not currently comply with providing language access to LEP detainees. Under federal civil rights law and DHS policy, LEP detainees must be provided meaningful access to information, programs, and services within ICE detention. *Title VI of the Civil Rights Act of 1964 (Title VI)*; *Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 65 Fed. Reg. 50,121 (Aug. 11, 2000)*; *Department of Homeland Security Language Access Plan, February 28, 2012*; and *U.S. Immigration and Customs Enforcement Language Access Plan, June 14, 2015* mandate language access for individuals held in detention. This obligation includes providing access to competent interpretation (oral) and translation (written) services for a wide range of interactions and programs covered by the ICE standards, such as Admission and Release, Custody Classification, Sexual Abuse and Assault Prevention and Intervention, Special Management Units, Staff-Detainee Communication; Disciplinary System; Medical and Mental Health Care; Suicide Prevention; Detainee Handbook; Grievance System; and Law Library and Legal Materials. Furthermore, not only is this a legal requirement, but a failure to provide appropriate language services can impact the safety of detainees and staff, and undermine the facility's compliance with detention standards and its own processes and procedures. OCJ and ICE's contractual obligations require them to provide meaningful language access for all detainees.

OCJ staff do not consistently provide oral interpretation through the Language Line or translate official documents from English to other languages for LEP detainees. LEP detainees are required to sign documents that they do not understand, which invalidates the content of the documents and purpose of having detainees sign documents. Detainees can very easily violate the rules because they do not understand what the rules are due to LEP-related issues. I did not identify any instances of OCJ officers or other detainees being used as interpreters during medical encounters.

Findings:

The allegation that OCJ fails to provide meaningful access for LEP detainees in compliance with the DHS's and ICE's language access plans and the NDS is **substantiated**.

The allegation that OCJ' officers or other detainees are used as interpreters during medical encounters is **not substantiated**.

The NDS, along with additional applicable guidelines, support the following recommendations:

Recommendations

- OCJ records indicate that language access resources are rarely used to assist LEP detainees. OCJ should provide training to its staff on their obligations to provide meaningful access to LEP detainees and the resources that are available to assist them meet this obligation. OJC should document provision of this training. (DHS and ICE Language Access Plans) (NDS 2011, Multiple Standards)
- OCJ records indicate that language access resources are rarely used to assist LEP detainees. OCJ should develop a Language Line logging system that is used throughout the facility and require all staff to regularly record its use by date, alien number, and

language of interpretation. Documenting Language Line usage is essential to validating compliance with language access obligations. (DHS and ICE Access Plans) (NDS, Multiple Standards)

- OCJ records indicate that language access resources are rarely used to assist LEP detainees, and some forms and other materials contained in detainee files are written in English. To ensure compliance with the arrival screening requirements in the Admission and Release standard, OCJ should utilize qualified interpreters or professionally translated forms to ensure meaningful access for LEP detainees. (NDS , Admission and Release)
- OCJ records indicate that language access resources are rarely used to assist LEP detainees, and forms and other materials contained in detainee files are mostly written in English. OCJ should ensure forms and informational posters for detainees are professionally translated and LEP detainees are provided with qualified interpreters to assist with providing meaningful language access. (DHS and ICE Language Access Plans) (NDS, Multiple Standards)

D. Recreation Access

The NYLPI report titled *Detained and Denied: Healthcare Access in Immigration Detention*⁷ included allegations that detainees were denied access to adequate exercise. Based on a review of the OCJ Handbook, a review of the OCJ Recreation policy, posted recreation schedule, and detainee interviews, I did not find that access to exercise and recreation is being denied.

Finding:

The available evidence **did not substantiate** NYLPI's complaint of denial of adequate access to exercise.

Recommendation

- None.

E. Telephone Access

During ICE staff and detainee interviews, I identified that detainee telephone access was not being provided by OCJ in conformance with the Telephone Access standard of the NDS. A significant number of detainees at OJC are indigent. During detainee interviews, a significant number of detainees complained of the lack of telephone access. The NDS, *Telephone Access, Section III. E., Direct Calls and Free Calls*, requires, "Even if telephone service is generally limited to collect calls, the facility shall permit the detainee to make direct calls," Section E. 4 "to legal service providers in pursuit of legal representation or to engage in consultation concerning his/her expedited removal; and Section E.6 "in a personal emergency, or when the detainee can

⁷ CRCL Complaint No. 17-05-ICE-0216

otherwise demonstrate a compelling need (to be interpreted liberally).” The NDS also mandates: “Staff will allow detainees to make such calls as soon as possible after the request factoring in the urgency expressed by the detainee. Generally access will be granted within 8 waking hours of the detainees’ request excluding the hours between lights out and morning resumption of scheduled activities. The detainee will always be granted access within 24 hours of his/her request.”

I interviewed DO #1 regarding the detainee’s telephone access complaints. DO #1 stated that they have ““been turned into an overpaid telephone operator.” Because of the numerous requests and the failure of the OCJ to provide telephone access in conformance with the NDS, DO #1 spends most of the day ensuring that detainees are able to make their telephone calls consistent with the NDS. Instead, OCJ should be providing this access. DO #1 is performing the duties that should be performed by the OCJ. Even with DO #1’s efforts to provide telephone access, the volume is too high to provide detainees with the number of calls requested.

Finding:

OCJ does not comply with NDS, Telephone Access is **substantiated**.

Recommendations

- OCJ should provide detainees with Telephone Access in compliance with NDS, and ICE should ensure that Deportation Officers do not have to provide telephone access to detainees because of OCJ’s failure to comply with NDS. (NDS, Telephone Access)

F. Disciplinary and Handbook Unauthorized Charges

Based on detainee interviews and reviews of institutional Disciplinary Hearing and Grievance Forms, I identified the OCJ was charging detainees a \$25 fee as part of the penalty for Disciplinary Hearings. Staff reported that detainees were advised during the disciplinary hearing that this fee could be refunded. I determined that this was not accurate. Also, the \$25 fee was inconsistently and subjectively being applied. There was also confusion amongst OCJ staff as to what the policy is related to charging detainees the \$25 fee. New York State has a statute that allows OCJ to charge inmates the \$25. Fee; however, here is no legal authority to charge this fee to ICE detainees. The ICE-OCJ Inter-Governmental Service Agreement does not authorize charging detainees this fee, nor does the NDS. Additionally, I discovered that OCJ was charging detainees a \$5 fee if the detainee did not return the OCJ Detainee Handbook when departing the facility. Both the \$25 and the \$5 fee should not be charged to detainees. There is no legal authority to charge these fees to detainees. Charging of these unauthorized fees is punitive in nature and OCJ’s lack of responsiveness to detainee complaints related to the charges undermines the detainees’ confidence in the grievance system.

Finding:

OCJ erroneously charges detainees fees for disciplinary hearings and OCJ Detainee Handbooks is **substantiated**.

Recommendation

- OCJ should cease immediately charging detainees the \$25. Disciplinary hearing fee and the \$5 fee for not returning the OCJ Detainee Handbook.

VII. SUMMARY OF OCJ RECOMMENDATIONS

Regarding the specific deficiencies I found as part of my inquiry into these complaints, I have recommended the following based on the NDS:

1. OCJ is not logging or reporting all allegations of staff misconduct to ICE. ICE and OCJ should develop a tracking system for all staff misconduct allegations, and ensure that each allegation is reported to ICE. (NDS, Detainee Grievance Procedures)
2. OCJ is not fully investigating all staff misconduct investigations or documenting the findings of the investigations. OCJ should ensure that all staff misconduct allegations are fully investigated and that the findings and results of the investigations are documented. (NDS, Detainee Grievance Procedures)
3. OCJ should provide refresher training to all staff mandating staff act in a professional manner at all times and do not use discriminatory or profane language when addressing detainees. OCJ should also ensure detainees suffer no retaliation for reporting allegations of staff misconduct. (*OCJ's Rules of Conduct, Section 26 – Courtesy and Impartiality, OCJ's Supervision of Inmates policy 11.20.09, Section C., NDS, Detainee Grievance Procedures, and 4-ALDF-6A-07*)
4. OCJ's law library officer does not provide appropriate assistance to LEP detainees who use the law library which subsequently affects meaningful legal access. OCJ should provide LEP detainees with access to language translation/interpretation to ensure legal access in the law library from staff. (NDS, Access to Legal Material)
5. OCJ and ICE should provide reliable printer access in the main law library for printing legal materials. (NDS, Access to Legal Material)
6. ICE should update the Lexis-Nexis software to the current version. (NDS, Access to Legal Material)
7. OCJ records indicate that language access resources are rarely used to assist LEP detainees. OCJ should provide training to its staff on their obligations to provide meaningful access to LEP detainees and the resources that are available to assist them meet this obligation. OJC should, and should document provision of this training. (DHS and ICE Language Access Plans) (NDS 2011, Multiple Standards)
8. OCJ records indicate that language access resources are not frequently used to assist LEP detainees. OCJ should develop a Language Line logging system that is used throughout the facility and require all staff to regularly record its use by date, alien number, and language of interpretation. Documenting Language Line usage is essential to validating compliance with language access obligations. (DHS and ICE Access Plans) (NDS, Multiple Standards)
9. OCJ records indicate that language access resources are rarely used to assist LEP detainees, and some forms and other materials contained in detainee files are written in English. To ensure compliance with the arrival screening requirements in the Admission and Release standard, OCJ should utilize qualified interpreters or

professionally translated forms to ensure meaningful access for LEP detainees.
(NDS, Admission and Release)

10. OCJ records indicate that language access resources are rarely used to assist LEP detainees, and forms and other materials contained in detainee files are mostly written in English. OCJ should ensure forms and informational posters for detainees are professionally translated and LEP detainees are provided with qualified interpreters to assist with providing meaningful language access. (DHS and ICE Language Access Plans) (NDS, Multiple Standards)
11. OCJ should provide detainees with Telephone Access in compliance with NDS, and ICE should ensure that Deportation Officers do not have to provide telephone access to detainees because of OCJ's failure to comply with NDS. (NDS, Telephone Access)
12. OCJ should cease immediately charging detainees the \$25. Disciplinary hearing fee and the \$5 fee for not returning the OCJ Detainee Handbook.

CRCL ORANGE COUNTY JAIL INVESTIGATION

APPENDIX A

Detainee Name and A Number

(b) (6)



The names of the staff who detainees reported as mistreating or harassing them were provided to the ICE and the Facility Management while I was onsite during the investigation.

Report for the U.S. Department of Homeland Security
Office for Civil Rights and Civil Liberties

Orange County Correctional Facility, Goshen, New York

Complaint Number 17-05-ICE-0216

Prepared By:
(b) (6) R.D., L.D., R.S., CLLM
12/22/2017

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Introduction

On October 16-17, 2017, I assessed the environmental health and safety conditions at the Orange County Correctional Facility (OCCF), Goshen, New York. This onsite investigation was provided under contract with the U.S. Department of Homeland Security, Office for Civil Rights and Civil Liberties (CRCL). Accompanying me on this investigation were (b)(6) Policy Advisor, CRCL; (b)(6) CRCL; as well as two other subject matter experts who examined OCCF's medical care and correctional operations.

The purpose of this onsite was to investigate complaints made by U.S. Immigration and Customs Enforcement (ICE) detainees of various alleged violations of civil rights and civil liberties at OCCF. In particular, the allegations contained in Complaint Number 17-05-ICE-0216 were examined. This investigation was conducted to obtain an impression of the validity of the allegations by assessing the facility's adherence to applicable standards and best practices related to environmental conditions. The areas of review included the housing units, housing center medical exam and barber rooms, kitchen, laundry, intake area, and supply warehouse.

Qualifications

(b) (6)

Methodology

The basis of this report includes document reviews, a tour of the facility, detainee and facility staff interviews, visual observations, and environmental measurements. The findings and recommendations contained in this report are solely those of the author. The report cites specific examples of conditions found during this review; however, they should not be considered as all-inclusive of the conditions found during the inspection. Consideration was given to national and state standards, including the 2000 ICE National Detention Standards (NDS) and Performance-Based Standards for Adult Local Detention Facilities, Fourth Edition, published by the American Correctional Association (ACA).

Facility Overview

The facility is operated under the auspices of the Orange County Sheriff's Department, Goshen, New York. OCCF opened in 2001 with a total of 802 beds. The facility houses male and female detainees and the total detainee population was approximately 168 during the onsite

investigation. Food service is provided through a contract with Aramark Correctional Services. The 2000 ICE National Detention Standards (NDS) are applicable to this facility.

Findings

Complaint Number 17-05-ICE-0216: Food and Nutrition

Complaint Number 17-05-ICE-0216 alleges that detainees are denied adequate nutrition. The basis of this allegation is a February 2017 New York Lawyers for Public Interest (NYLPI) published report titled Detained and Denied: Healthcare Access in Immigration Detention.

Findings: The allegation that detainees are denied adequate nutrition is substantiated for the kosher meal plan because the facility does not adhere to the NDS requirements for the preparation and service of kosher meals and therefore individuals that strictly observe a kosher diet would, in principle, not be able to consume all meal components. The allegation is also partially substantiated for the milk intolerance diet as the facility does not adhere to the dietitian certified milk intolerance diet menu.

Applicable Standards: The NDS Food Service, Religious Practices, and Environmental Health and Safety standards are applicable.

Analysis:

Facility menu and nutritional analysis

The dietitian certified general adult menu provides 3,100 calories daily and complies with the NDS Food Service standard requiring that “A registered dietitian shall conduct a complete nutritional analysis of every master cycle menu planned by the FSA [Food Service Administrator]. Menus must be certified by the dietitian before implementation.” Breakfast meals include hot and cold cereals, pancakes with syrup, sausage, scrambled eggs, biscuits or bread with margarine, and frequent servings of potatoes including Lyonnaise, cottage fries, and hash browns. Lunches include hot dogs, Frito pie, bologna or salami sandwiches with cheese, charbroiled patty on a bun, and various side items such as potatoes, coleslaw, garden salad with dressing, and iced cake or fruit. Dinner meals include spaghetti with tomato sauce, stroganoff with noodles, Asian fried rice, meatballs with gravy, along with a side of starch or vegetable, a bread item, and a dessert such as cake or cookies. The menu complies with the NDS Food Service standard, which specifies, “Detainees shall be served at least two hot meals every day.” During interviews, detainees stated that the facility serves too many starches and specifically that potatoes are repeatedly served for breakfast and lunch. A review of the regular menu indicates that potatoes are frequently served for breakfast and on some occasions served for lunch on the same day. For example, the cycle week-1 menu indicates that potatoes are served on five of the seven days for breakfast and again for lunch on three of the seven days. Although food preferences are subjective, to ensure compliance with the NDS Food Service standard stating that the Food Service

Administrator is responsible for “developing nutritionally adequate menus and evaluating detainee acceptance,” Aramark and OCCF should evaluate the menu for acceptability and implement practical changes, if needed, to improve detainee acceptance while also remaining cognizant of the NDS Food Service standard stating, “The overall goal of a quality food service program is to provide nutritious and appetizing meals, efficiently and within the budgetary restrictions, manpower resources, equipment, and physical layout.”

Meal service

Service of lunch and dinner meals was observed. OCCF utilizes the satellite feeding method. Menu items are served on insulated trays in the kitchen and the carts are transported to the housing units for meal service. Foods were prepared in accordance with sanitary guidelines and appropriately presented. The kitchen was inspected by the health department on May 16, 2017 and October 5, 2017 and both inspection forms indicate that no demerits were found.

Detainees were housed in units A-2, A-3, E-1, and E-3 during my inspections. The A housing units consists of lower and upper tiers of single cells. The E housing units are open dormitories with dayrooms. Detainees housed in the A unit are required to consume meals in their cells and OCCF staff reported that this is done for reasons of security and safety because the units are direct supervision. Whereas detainees in the dorm style units are allowed to consume meals in the dayroom. The OCCF Inmate Handbook specifies that morning, afternoon, and night meals will be eaten in the cells and that eating and drinking are permitted only in the cells. However, this practice does not comply with the spirit of the NDS Food Service standard, which specifies, “Meals will be served in as unregimented a manner as possible. To this end, the Food Service Administrator’s (FSA) table arrangement must facilitate free seating, ease of movement, and ready supervision. The dining room will have the capacity to accommodate all detainees in no more than three sittings.” OCCF requires all detainees housed in the A unit to lock in their cells prior to meal service, allows a small number out at a time to pick up a tray, and then reenter their cell for lock in to consume their meals. This process is exceedingly restricted and does not comply with the NDS Food Service standard that requires the service of meals in “as unregimented manner as possible.” Furthermore, this practice does not facilitate the NDS Food Service standard stating, “The food service program significantly influences morale and attitudes of detainees and staff, and creates a climate for good public relations between the facility and the community.” Direct supervision facilities across the nation allow detainees and inmates to consume meals in the dayroom. Therefore, OCCF should evaluate this practice to ensure compliance with not only the letter but also the spirit of the NDS Food Service standard.

Milk intolerance diet

The OCCF special diets list as of October 16, 2017 indicates that two detainees were prescribed milk intolerance diets. During interviews, detainees reported that they are

served dry cereal on the milk intolerance diet and when they asked how they were supposed to consume the dry cereal, they were told that the kitchen said to put their apple juice on it, which they found to be unappetizing. The Aramark milk intolerance diet specifies that an equal portion of hot cereal is supposed to replace fluid milk and dry cereal. It is extremely important that the kitchen adhere to the dietitian approved menu plans to ensure that meals are nutritionally balanced and complete.

Kosher diet

The NDS Food Service standard requires “all facilities to provide detainees requesting a religious diet reasonable and equitable opportunity to observe their religious dietary practice within the constraints of budget limitations and the security and orderly running of the facility.” The facility offers a dietitian certified “kosher” menu for detainees requesting a religious meal accommodation. The OCCF kitchen maintains an inventory of packaged, certified kosher meals in compliance with the NDS Food Service standard specifying, “To the extent practicable, a hot entree shall be available to accommodate detainees' religious dietary needs, e.g., kosher and/or halal products. Hot entrees shall be offered three times a week and shall be purchased precooked, heated in their sealed containers, and served hot. Other cooking is not permitted in the common-fare program.” Although the NDS standard only requires the packaged meals to be served three times per week, OCCF provides them at lunch and dinner seven days per week, which is an excellent practice.

However, the other meal components served with the packaged kosher meals do not comply with the NDS standard. On October 16, 2017, during dinner meal service on housing unit 3A, I observed a kosher meal in the food cart. The meal consisted of a sealed kosher food package, a serving of green salad, and two bread slices on a brown plastic insulated tray. The tray appeared the same as those that held the medical and regular meals. The NDS Food Service standard states, “Common-fare meals shall be served with disposable plates and utensils, except when a supply of reusable plates and utensils has been set aside for common-fare service only. Separate cutting boards, knives, food scoops, food inserts, and other such tools, appliances, and utensils shall be used to prepare common-fare foods, and shall be identified accordingly. Meat and dairy food items and the service utensils used with each group shall be stored in areas separate from each other. A separate dishpan shall be provided for cleaning these items, if a separate or three-compartment sink is not available.” The facility food service director confirmed that the kosher meals are served in the same trays as the regular meals. However, he stated that he did not find it a problem because the meal recipients are not orthodox Jews and a Rabbi is satisfied with the kitchen’s practices.

The Aramark Orange County kosher menu states for the breakfast meal, “Utensils used for cooking and serving must be used only for kosher breakfast and stored in a special area. Serve a cold tray on paper with a disposable cup and utensils. Cold tray: wrap fruit, bowls of cereal, bread, margarine, jelly, peanut butter, sugar, plastic ware, and napkin together on disposable plate. Serve dry cereal in disposable bowls with lids. These foods are prepared in kosher dairy pans (kept in manager’s office).” The note for

the lunch and dinner meals indicates, "Serve a cold tray and a hot tray. Serve meal on paper with disposable cup and utensils. Cold tray: wrap cookies, bowl of salad, bread, margarine, plastic ware & napkin together on disposable plate. Top salad with dressing use disposable spoon or cup to transfer dressing from container to salad. Serve salad in a disposable bowl. Hot tray: Store, cook and serve sealed. Do not use meals that are unsealed. Follow kosher preparation methods in recipes at lunch/dinner items: salad, salad dressing. A non-dairy beverage is served." The OCCF kitchen does not comply with the preparation instructions that are printed directly on the Aramark kosher menu.

This problem has previously been brought to the attention of facility administrators as the Office of Detention Oversight Compliance Inspection Enforcement and Removal Operations Compliance Inspection for the facility, dated March 21-23, 2017, states, "ODO verified the facility maintains an inventory of kosher/halal entrees. These meals are precooked and heated in their containers, then placed on insulated trays for delivery to the housing units. The meals are supplemented with garden salad, fresh fruit, and other food items to meet nutritional requirements. ODO observed the common fare/kosher meals are served on the same trays used for other meals; also, the trays are not cleaned and stored separately." The corrective action specifies, "The facility initiated corrective action during the inspection by using new, gray-colored trays for the common fare/kosher meals, which they stated will be cleaned and stored separately." However, this corrective action was not sustained as the kitchen has reverted to serving kosher meals on the same food trays used for other diets.

Conclusion: Meal periods are highly anticipated events in a correctional environment. Therefore, the taste, appearance, and presentation of meals can affect the health and general mood of the facility, as specified by the NDS Food Service standard: "The food service program significantly influences morale and attitudes of detainees and staff, and creates a climate for good public relations between the facility and the community." The practice of requiring detainees to consume every meal confined to their cell, does not meet the intent of the NDS Food Service standard. Additionally, failing to adhere to the dietitian certified kosher and milk intolerance menus violates the facility's Food Service Operation Restricted Policy requiring that the Kitchen Supervisor, "Ensure any special dietary requirements are fulfilled" and the NDS Food Service standard, and places detainees at risk of nutritional inadequacy.

Recommendations:

1. A review of the regular menu indicates repetitive menu patterns, including serving the same food items (such as potatoes) at consecutive meals. This practice becomes unappetizing to detainees and can negatively influence detainees' attitudes toward food service. OCCF and Aramark should monitor menu patterns for palatability and revise the menus that are not well accepted by detainees to facilitate compliance with the NDS Food Service standard stating that the Food Service Administrator is responsible for "developing nutritionally adequate menus and evaluating detainee acceptance" in the spirit of the NDS

Food Service standard that specifies, “The food service program significantly influences morale and attitudes of detainees and staff, and creates a climate for good public relations between the facility and the community.” (NDS 2000, Food Service)

2. OCCF requires all detainees housed in the A unit to lock in their cells prior to meal service, allows a small number out at a time to pick up a tray, and then reenter their cell for lock in to consume their meals. Meal times are one of the most anticipated events in a detention facility and food affects the general facility health and morale. OCCF should reevaluate the exceedingly restricted feeding policy in housing unit A to ensure compliance with the NDS Food Service standard that requires the service of meals in “as unregimented manner as possible” and “The food service program significantly influences morale and attitudes of detainees and staff, and creates a climate for good public relations between the facility and the community.” (NDS 2000, Food Service)
3. The OCCF kitchen is not preparing meals in accordance with the Aramark milk intolerance diet specification that fluid milk and dry cereal is to be replaced with an equal portion of hot cereal. Failing to comply with dietitian certified menus could result in caloric and nutritional deficiencies. It is extremely important that the kitchen adhere to the dietitian approved menu plans to ensure that meals are nutritionally balanced and comply with the NDS Food Service standard requiring, “The overall goal of a quality food service program is to provide nutritious and appetizing meals.” (NDS 2000, Food Service)
4. The meal components served with the packaged kosher meals at OCCF do not comply with the NDS Food Service standard. The integrity of special diets, especially religious meals is essential to maintain the trust of detainees in the institution. The NDS Food Service standard states, “Common-fare meals shall be served with disposable plates and utensils, except when a supply of reusable plates and utensils has been set aside for common-fare service only. Separate cutting boards, knives, food scoops, food inserts, and other such tools, appliances, and utensils shall be used to prepare common-fare foods, and shall be identified accordingly. Meat and dairy food items and the service utensils used with each group shall be stored in areas separate from each other. A separate dishpan shall be provided for cleaning these items, if a separate or three-compartment sink is not available.” Furthermore, the failure to provide properly presented kosher meals violates the NDS Food Service standard requirement that “Food is appropriately presented” and as such is not fit for consumption by individuals who strictly observe kosher dietary laws and therefore could result in nutritional deficiencies. OCCF and Aramark should reassess the religious diet program and ensure compliance with the NDS Food Service standard, which requires “all facilities to provide detainees requesting a religious diet reasonable and equitable opportunity to observe their religious

dietary practice within the constraints of budget limitations.” Furthermore, OCCF and Aramark should review the preparation of the kosher diet and ensure either that it fully complies with Jewish dietary laws or label the menu as “common fare” rather than “kosher” to comply with the NDS Food Service standard indicating, “Common fare is intended to accommodate detainees whose religious dietary needs cannot be met on the main line.” (NDS 2000, Food Service)

Other Observations

Microwave and Hot Water Urn in Housing Unit E-1

In housing unit E-1, the microwave and hot water urn for detainee use are sitting on a table adjacent to the toilets, separated by a 33” wide half wall. The detainees report that they believe this to be unsanitary and they are concerned about the potential spray of toilet water each time the nearby toilets are flushed. The men’s dormitory in the E unit has a full wall that separates the toilets from the microwave and water urn area. Although scientific researchers are still investigating the likelihood of the spray from toilet flushing directly causing disease transmission, because the microwave and drinking water urn technically constitute a food preparation area, as a best practice, they should be separated from the toilet area for sanitation reasons.

The containers used to fill the hot water urns with water from the sinks were observed to be inappropriate for use as a multiuse food or beverage container and were discolored and appeared to be dirty. The container used in housing unit E-1 is an empty jug that once held an Arnold Palmer brand beverage and the container in housing unit E-3 is a plain one-gallon jug. The urns and water containers must be maintained in accordance with the NDS Food Service standard and as such empty retail beverage containers cannot be used, as they are not multiuse containers and therefore cannot be properly cleaned and sanitized as required by the NDS Food Service standard. Therefore, the facility needs to replace the current jugs that are used to refill the hot water urns, with approved containers that comply with the NDS Food Service standard requiring, “All food service equipment and utensils shall meet the National Sanitation Foundation (NSF) standards (or equivalent standards of other agencies)” and “Materials used in the construction or repair of multi-use equipment and utensils shall be nontoxic, corrosion-resistant, nonabsorbent, durable under normal use, smooth, and easily cleanable. These materials shall impart no odors, color, or taste. They shall retain their original properties under repeated use, creating no risk of food-adulteration as they deteriorate.” Furthermore, the containers should be routinely washed, rinsed, and sanitized in either a sink or dishwasher as required by the NDS Food Service standard.

Applicable Standard: The NDS Food Service standard is applicable.

Conclusion: Strict adherence to the NDS Food Service standard is vitally important in all areas of the facility where food and beverages are prepared to reduce the likelihood of foodborne illness.

Recommendations:

5. In housing unit E-1, the microwave and hot water urn for detainee use are sitting on a table adjacent to the toilets, separated by a 33" wide half wall. Detainees are understandably concerned about the possibility of disease transmission due to the proximity of the microwave and hot water urn to the toilets. Therefore, to ease detainee's fears and comport with best practices, OCCF should review the layout of dormitory E-1 and either move the microwave and water urn away from the bathroom area or construct a wall that provides a suitable barrier between the toilets and food and beverage area. (Best practices recommendation)
6. The containers used to fill the hot water urns with water from the sinks were observed to be inappropriate for use as a multiuse food or beverage container and were discolored and appeared to be dirty. Containers that are utilized for food and water can become a source of disease transmission if not suitable for the task and routinely cleaned and sanitized. OCCF should replace the jugs and containers that are used to refill the hot water urns, with approved containers that comply with the NDS Food Service standard requiring, "All food service equipment and utensils shall meet the National Sanitation Foundation (NSF) standards (or equivalent standards of other agencies)" and "Materials used in the construction or repair of multi-use equipment and utensils shall be nontoxic, corrosion-resistant, nonabsorbent, durable under normal use, smooth, and easily cleanable. These materials shall impart no odors, color, or taste. They shall retain their original properties under repeated use, creating no risk of food-adulteration as they deteriorate." Furthermore, the facility should ensure that the containers are routinely washed, rinsed, and sanitized manually in an appropriately set-up sink or mechanically cleaned in a dishwasher as required by the NDS Food Service standard. (NDS 2000, Food Service)

Exam Table Covers

The vinyl covers on the medical exam tables in the medical triage room and unit C housing center were cracked, exposing the foam cushions. Once the integrity of the vinyl cover is compromised, it can no longer be properly cleaned and disinfected. This is particularly concerning in a medical area and microorganisms and viruses, including MRSA can be spread from person to person via the exam table.

Applicable Standards: The NDS Environmental Health and Safety standard stating, "Environmental health conditions will be maintained at a level that meets recognized standards of hygiene" and further specifying that, "The standards include those from the American Correctional Association" is applicable. ACA Housekeeping standard 4-ALDF-1A-04 stipulates, "The facility is clean and in good repair."

Conclusion: Disinfection serves as an important step to kill microorganisms and prevent the spread of disease. Furthermore, it is more economical to keep people healthy than it is to treat them once they are ill. Therefore, ensuring that the exam tables are properly maintained is essential for the health and safety of detainees.

Recommendation:

7. The vinyl covers on the medical exam tables in the medical triage room and unit C housing center were cracked, exposing the foam cushions. The facility should inspect all medical exam tables to ensure that the vinyl covers are in good condition, intact, and without rips, cracks, or exposed inner foam that hinders proper cleaning and disinfection and could result in the transmission of disease causing microorganisms from person to person. In the event that the cover is found to be compromised either the cover or the table should be replaced to ensure compliance with the NDS Environmental Health and Safety standard stating, "Environmental health conditions will be maintained at a level that meets recognized standards of hygiene" and further specifying that, "The standards include those from the American Correctional Association" is applicable. ACA Housekeeping standard 4-ALDF-1A-04 stipulates, "The facility is clean and in good repair." (NDS 2000, Environmental Health and Safety)

Summary of Recommendations

NDS 2000

1. A review of the regular menu indicates repetitive menu patterns, including serving the same food items (such as potatoes) at consecutive meals. This practice becomes unappetizing to detainees and can negatively influence detainees' attitudes toward food service. OCCF and Aramark should monitor menu patterns for palatability and revise the menus that are not well accepted by detainees to facilitate compliance with the NDS Food Service standard stating that the Food Service Administrator is responsible for "developing nutritionally adequate menus and evaluating detainee acceptance" in the spirit of the NDS Food Service standard that specifies, "The food service program significantly influences morale and attitudes of detainees and staff, and creates a climate for good public relations between the facility and the community." (NDS 2000, Food Service)
2. OCCF requires all detainees housed in the A unit to lock in their cells prior to meal service, allows a small number out at a time to pick up a tray, and then reenter their cell for lock in to consume their meals. Meal times are one of the most anticipated events in a detention facility and food affects the general facility health and morale. OCCF should reevaluate the exceedingly restricted feeding policy in housing unit A to ensure compliance with the NDS Food Service standard that requires the service of meals in "as unregimented manner as possible" and "The food service program significantly influences morale and

attitudes of detainees and staff, and creates a climate for good public relations between the facility and the community.” (NDS 2000, Food Service)

3. The OCCF kitchen is not preparing meals in accordance with the Aramark milk intolerance diet specification that fluid milk and dry cereal is to be replaced with an equal portion of hot cereal. Failing to comply with dietitian certified menus could result in caloric and nutritional deficiencies. It is extremely important that the kitchen adhere to the dietitian approved menu plans to ensure that meals are nutritionally balanced and comply with the NDS Food Service standard requiring, “The overall goal of a quality food service program is to provide nutritious and appetizing meals.” (NDS 2000, Food Service)

4. The meal components served with the packaged kosher meals at OCCF do not comply with the NDS Food Service standard. The integrity of special diets, especially religious meals is essential to maintain the trust of detainees in the institution. The NDS Food Service standard states, “Common-fare meals shall be served with disposable plates and utensils, except when a supply of reusable plates and utensils has been set aside for common-fare service only. Separate cutting boards, knives, food scoops, food inserts, and other such tools, appliances, and utensils shall be used to prepare common-fare foods, and shall be identified accordingly. Meat and dairy food items and the service utensils used with each group shall be stored in areas separate from each other. A separate dishpan shall be provided for cleaning these items, if a separate or three-compartment sink is not available.” Furthermore, the failure to provide properly presented kosher meals violates the NDS Food Service standard requirement that “Food is appropriately presented” and as such is not fit for consumption by individuals who strictly observe kosher dietary laws and therefore could result in nutritional deficiencies. OCCF and Aramark should reassess the religious diet program and ensure compliance with the NDS Food Service standard, which requires “all facilities to provide detainees requesting a religious diet reasonable and equitable opportunity to observe their religious dietary practice within the constraints of budget limitations.” Furthermore, OCCF and Aramark should review the preparation of the kosher diet and ensure either that it fully complies with Jewish dietary laws or label the menu as “common fare” rather than “kosher” to comply with the NDS Food Service standard indicating, “Common fare is intended to accommodate detainees whose religious dietary needs cannot be met on the main line.” (NDS 2000, Food Service)

6. The containers used to fill the hot water urns with water from the sinks were observed to be inappropriate for use as a multiuse food or beverage container and were discolored and appeared to be dirty. Containers that are utilized for food and water can become a source of disease transmission if not suitable for the task and routinely cleaned and sanitized. OCCF should replace the jugs and containers that are used to refill the hot water urns, with approved

containers that comply with the NDS Food Service standard requiring, “All food service equipment and utensils shall meet the National Sanitation Foundation (NSF) standards (or equivalent standards of other agencies)” and “Materials used in the construction or repair of multi-use equipment and utensils shall be nontoxic, corrosion-resistant, nonabsorbent, durable under normal use, smooth, and easily cleanable. These materials shall impart no odors, color, or taste. They shall retain their original properties under repeated use, creating no risk of food-adulteration as they deteriorate.” Furthermore, the facility should ensure that the containers are routinely washed, rinsed, and sanitized manually in an appropriately set-up sink or mechanically cleaned in a dishwasher as required by the NDS Food Service standard. (NDS 2000, Food Service)

7. The vinyl covers on the medical exam tables in the medical triage room and unit C housing center were cracked, exposing the foam cushions. The facility should inspect all medical exam tables to ensure that the vinyl covers are in good condition, intact, and without rips, cracks, or exposed inner foam that hinders proper cleaning and disinfection and could result in the transmission of disease causing microorganisms from person to person. In the event that the cover is found to be compromised either the cover or the table should be replaced to ensure compliance with the NDS Environmental Health and Safety standard stating, “Environmental health conditions will be maintained at a level that meets recognized standards of hygiene” and further specifying that, “The standards include those from the American Correctional Association” is applicable. ACA Housekeeping standard 4-ALDF-1A-04 stipulates, “The facility is clean and in good repair.” (NDS 2000, Environmental Health and Safety)

Best Practices

5. In housing unit E-1, the microwave and hot water urn for detainee use are sitting on a table adjacent to the toilets, separated by a 33” wide half wall. Detainees are understandably concerned about the possibility of disease transmission due to the proximity of the microwave and hot water urn to the toilets. Therefore, to ease detainee’s fears and comport with best practices, OCCF should review the layout of dormitory E-1 and either move the microwave and water urn away from the bathroom area or construct a wall that provides a suitable barrier between the toilets and food and beverage area. (Best practices recommendation)

Orange County Jail (OCJ) – Non-Priority Recommendations

Medical

OCJ still uses a paper based medical record. Although typical for paper based charts, the charts are extremely difficult to read, and it is often impossible to reconstruct a medical timeline or determine what care was and was not provided based on a review of the medical record. This increases the chances that medical documentation and orders will be overlooked, and makes it difficult to for both outside authorities and program administrators to audit the quality of care. OCJ should modify the contract to require that medical and mental health providers secure and deploy an electronic health record (EHR).

Environmental Health and Safety

In housing unit E-1, the microwave and hot water urn for detainee use are sitting on a table adjacent to the toilets, separated by a 33” wide half wall. Detainees are understandably concerned about the possibility of disease transmission due to the proximity of the microwave and hot water urn to the toilets. Therefore, to ease detainee’s fears and comport with best practices, OCJ should review the layout of dormitory E-1 and either move the microwave and water urn away from the bathroom area or construct a wall that provides a suitable barrier between the toilets and food and beverage area.

Corrections

N/A

On-site Investigation Report

Orange County Correctional Facility (OCCF), New York

October 16-17, 2017

(b) (6)

MD, FACP

(b) (6)

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Introduction

This report responds to a request by the Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL) to review and comment on the medical care provided to detainees at the Orange County Jail (OCJ) in Goshen, New York. My opinions are based on the materials provided and reviewed in advance and an on-site investigation of the facility on October 16-17, 2017. My opinions are expressed to a reasonable degree of medical certainty. OCJ personnel were most pleasant and cooperative during my investigation.

Expert Qualifications

(b) (6)

Methods of Review

In advance of the on-site investigation, I reviewed documents provided by CRCL. During the on-site investigation, I toured the facility including cell and dormitory areas, pill lines and the medical clinic, reviewed documents and medical records, and interviewed staff and detainees. I did focused reviews of medical records for those detainees who had chronic medical conditions such as asthma or high blood pressure. Clinical performance was measured by a focused review of medical records using a standardized methodology. (The full methodology for the review is described in the document entitled *Assessment of Quality of Medical Care in Detention Facilities*, and its accompanying *Reviewer Pocket Guide*.) The measures are based on nationally published accepted clinical guidelines, or consensus guidelines where there are no published clinical guidelines. I reviewed roughly 30 individual detainee medical records in total. I conducted individual interviews with nine detainees selected at random from chronic care rosters or selected because of complaints received. Where relevant to findings, reference is made to the National Detention Standards (NDS).

Overview

This report represents the result of an off-site review of documents (including medical records) and my focused two-day on-site medical and mental health review at the facility in response to a request by CRCL to investigate specific complaints at OCJ.

OCJ is located in Goshen, New York. It houses both county inmates and detainees for ICE. Medical care is provided by a contractor, Correct Care Solutions (CCS).

Overall, I found the medical and mental health care at OCJ to be good, but there were four areas where the current program did not meet the (NDS) or the current National Commission on Correctional Health Care Jail Standards (NCCHC 2014) as required by the NDS. This report will focus on deficiencies and areas requiring further attention in order to meet those standards.

Findings of Deficiencies

- 1. Delays in Access to Dental Care.** In both chart reviews and interviews, I found that there were delays in getting detainees dental care when they presented with symptomatic dental conditions (including those requiring tooth extraction). The HSA did not disagree with this finding and felt that it was due to insufficient dental staffing in the past. The schedule contract has been modified to increase availability of the dentist.

PERFORMANCE does NOT meet the 2000 NDS (III.A and E).

- 2. Language Access:** Interviews with detainees indicated that adequate language access was

not being provided. Detainees reported that on many occasions they were not provided with interpreter services when they felt they needed them for medical encounters. We reviewed the contract language access log for the calendar year 2017 and found that the language access line had been used only ten times. The HSA said that another language line may have been used but there was no documentation to verify this. The HSA also stated that some of her staff were bilingual in Spanish, but there was no documentation in charts that noted when the health professional had fluency in the detainee's primary language. In addition, there was no independent verification that staff who report fluency in a second language had ever documented proficiency in that second language.

PERFORMANCE does NOT meet the 2000 NDS (III.D)

- 3. Suicide Cells:** OJC's Medical Housing Unit (MHU) has cells that are used to monitor detainees who are on suicide watch. While the cells do have good line of site, the interior of the cells have not been modified to a reasonable industry standard to remove anchor or attachment sites for an improvised noose. Suicide cells that mitigate risk of hanging by using widely available furniture and hardware designed to eliminate the opportunity to affix a ligature are standard in detention settings. While that suicide watch level is an individualized range of levels of monitoring determined by the mental health and health professionals following appropriate clinical evaluation, a full range of restrictions (including a safety modified cell), should be available for use as indicated.

PERFORMANCE does NOT meet the 2000 NDS (III.D) and ICE/DRO 2008 Detention Standard SUICIDE PREVENTION AND INTERVENTION V. F.

- 4. Lack of and Electronic Health Record:** While the 17-year-old 2000 National Detention Standard did not fully anticipate the future, in 2017, an electronic health record is the standard for health care institutions. In fact, in the community the federal government has required Medicare and Medicaid providers use an electronic record since 2014 ((under the American Recovery and Reinvestment Act). Given the high detainee turnover and need to transfer and receive detainees between facilities and the community, the need for an electronic record is even more critical, and failure to bring the medical record to a reasonable community standard increases the liability for errors in care related to documentation, auditing and reporting.

PERFORMANCE meets the 2000 NDS, but is not in keeping with community standards of care

Complaints

- 1. 17-05-ICE-0216 - alleged broadly inadequate medical care** at OCJ including incomplete intake assessments, denial of continued treatment underway upon a person's admission, language access barriers, lengthy delays for both on-site and off-site medical treatment, failure to manage chronic illness, inadequate treatment of pain and lack of mental health discharge planning. The complaint did not cite any specific case. I *did not substantiate* much of this complaint. However, I *substantiated* the complaint of *language*

access barriers and delay in access to dental care.

2. 16-06-ICE-0321 - **alleged inadequate dental care.** My investigation *substantiated* this complaint in finding that there was a prolonged delay of many weeks in providing dental care for an acute dental complaint.
3. 16-06-ICE-0382 - **alleged inadequate communication of a biopsy result.** My investigation *substantiated* this complaint.

Detainee Death¹

I reviewed one medical record of a detainee who died in hospital on July 28, 2016, while in ICE custody having been briefly held at OCJ prior to his death. Another office within DHS will conduct a complete audit of this death based on more complete information, therefore, my comments will be limited to my conclusion based on a review of the OCJ medical file and some hospital records provided by the facility that his death does not appear to be the result of any deficiencies in medical care at OJC.

Overall Medical Care

While this report focuses on deficiencies in the medical care at OCJ, it is important to comment briefly on the medical program as a whole. I reviewed medical records and conducted interviews with staff and detainees to assess intake screening, sick call, chronic medical care, timely access to outside specialty referrals and emergency care, among other measures relating to overall quality of medical and mental health care. Performance of the medical program met the NDS in all other areas not cited. Strengths include the quality of the personnel that make up the medical leadership team in the facility, (specifically the HSA).

Discussion

The focus of this report is on deficiencies. The deficiencies cited in this report are all correctable, and recommendations for correction are provided below.

Summary of Recommendations

Overall medical care of ICE detainees at OCJ meets 2000 NDS and NCCHC standards with the exception of the following areas where care **does not** currently meet those standards:

1. **Delays in Access to Dental Care:** There has been inadequate dental staffing to provide care for the population resulting in delays in access to dental care.

PERFORMANCE does NOT meet the 2000 NDS (III.A and E).

¹ Case #3 referenced in the Appendix

Recommendation:

- a. Dental staffing has recently been increased. Appropriate staffing must be sustained.
 - b. The HSA should use the quality assurance process to monitor response times for symptomatic dental complaints in coming months to document correction of this deficit.
2. **Language Access:** There are inadequate language services provided in the medical unit.

PERFORMANCE does NOT meet the 2000 NDS (III.D)

Recommendations:

- a. The medical unit needs to educate all medical staff about the appropriate language line to use. Staff need to be reminded that they should ask patients what language they prefer to use in the medical encounter. Assumptions or determinations of English language fluency by medical staff are notoriously unreliable (fluency in simple conversational English does not imply fluency in medical topics).
 - b. Whenever staff with fluency in a second language elect not to use an interpreter, the fluency of the medical staff in the second language should be both independently verified, and should be noted in individual chart entries.
 - c. Use of interpreter line should be monitored closely by the HSA to ensure compliance. Medical staff using the language line should include documentation of the language line (including interpreter identifier) in their note in the medical chart.
3. **Inadequate Suicide Watch Cells in the Medical Housing Unit:** There are cells in the medical housing unit that are used for suicide watch. While the cells do have adequate line of site for one-to-one observation, the interior of the cells have not been modified to eliminate structures that a suicidal detainee might use to anchor an improvised noose.

PERFORMANCE does NOT meet the 2000 NDS (III.D) and ICE/DRO 2008 Detention Standard SUICIDE PREVENTION AND INTERVENTION V. F. and 2014 NCCHC J-G-05

Recommendation:

- a. The correctional industry has widely adopted specially designed furniture and hardware to prevent the opportunity for an inmate at risk to secure an improvised noose. Modifications to eliminate hanging

risk should be made to these cells.

4. **Lack of Electronic Health Record:** OCJ still uses a paper based medical record. Although typical for paper based charts, the charts are extremely difficult to read, and it is often impossible to reconstruct a medical timeline or determine what care was and was not provided based on a review of the medical record. This increases the chances that medical documentation and orders will be overlooked, and makes it difficult to for both outside authorities and program administrators to audit the quality of care.

PERFORMANCE meets the 2000 NDS, but is not in keeping with community standards of care (best practices)

Recommendations:

- b. OCJ should modify the contract to require that medical and mental health providers secure and deploy an electronic health record (EHR).

These corrective measures will require monitoring to ensure they adequately address the substantiated deficiencies.

Appendix I

This section includes identifiers to protected health information. Disclosure/distribution of this appendix should be limited accordingly.

Identity of Cases Cited in this Report

| <u>My Case No.</u> | <u>A #</u> | <u>Name</u> | <u>CRCL Complaint #</u> |
|--------------------|------------|-------------|--|
| (b)(6) | | | 16-06-ICE-0321 16-06-ICE-0382 16-10-ICE-0610 |