



Homeland
Security

September 1, 2021

MEMORANDUM FOR: Corey A. Price
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Enforcement and Removal Operation
U.S. Immigration and Customs Enforcement

FROM: Dana Salvano-Dunn (b)(6)
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Office for Civil Rights and Civil Liberties

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SUBJECT: Otay Mesa Detention Center
Complaint Nos. 20-06-ICE-0490, 20-07-ICE-0611, 20-08-ICE-0693,
and 20-10-ICE-0833

The U.S. Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL) conducted an investigation into conditions of detention for U.S. Immigration and Customs Enforcement (ICE) detainees at the Otay Mesa Detention Center (OMDC). CRCL's virtual investigation occurred from October 26-28, 2020 and was in response to complaints alleging civil rights and civil liberties violations at OMDC related to general medical and mental health care, conditions of detention, and environmental health and safety.

We greatly appreciate the cooperation and assistance provided by ICE and OMDC personnel before and during the investigation. As part of the investigation, CRCL engaged the assistance of four subject-matter experts: a medical expert, a mental health expert, a conditions of detention expert, and an environmental health and safety expert. As a result of detainee and staff interviews, document and record reviews, and direct observation, the subject-matter experts identified concerns in each of their areas.

On October 28, 2020, as part of the OMDC onsite out-brief, CRCL and the subject-matter experts discussed general concerns with ICE Enforcement and Removal Operations (ERO) field office management, personnel from ICE ERO headquarters, and OMDC management. During the discussion, the subject-matter experts provided initial recommendations to address the concerns identified. Shortly following the virtual onsite, CRCL sent an email to ICE on December 4, 2020, summarizing these initial recommendations to ensure ICE had enough information to initiate corrective action.

Enclosed with this memorandum are the reports prepared by our subject-matter experts.¹ They have been divided into priority and non-priority recommendations. Priority recommendations are listed in the body of this memorandum, and CRCL requests that ICE formally concur or non-concur with these recommendations and provide an implementation plan for all accepted recommendations within 60 days of issuance. Non-priority recommendations are contained in a separate attachment to this memorandum. Although CRCL is not requesting formal responses to these, we encourage ICE to consider and implement these recommendations to the fullest extent possible.

Medical Care

OMDC has had three different medical contractors since CRCL's last site visit in September 2017. At the time of the investigation, medical and mental health care at OMDC is provided by Core Civic's own medical contractor who replaced the ICE Health Service Corps (IHSC) about six weeks prior, on September 10, 2020. Because of this change, detainee medical and mental health records regarding treatment that was provided before the medical contractor change took longer to retrieve; in some cases, these health records could not be obtained and reviewed in a timely fashion during the onsite investigation. Furthermore, the short duration of time that Core Civic had in providing medical and mental health care prior to this investigation limited the available data for review and made it difficult to assess the performance of the new medical contractor. In any case, CRCL's medical and mental health experts evaluated the general operation of the facility in relation to the 2011 Performance-Based National Detention Standards (PBNDS 2011), which requires detainee access to appropriate and necessary medical, dental, and mental health care, including emergency services. The medical expert made the following priority recommendations regarding medical and dental care at OMDC:

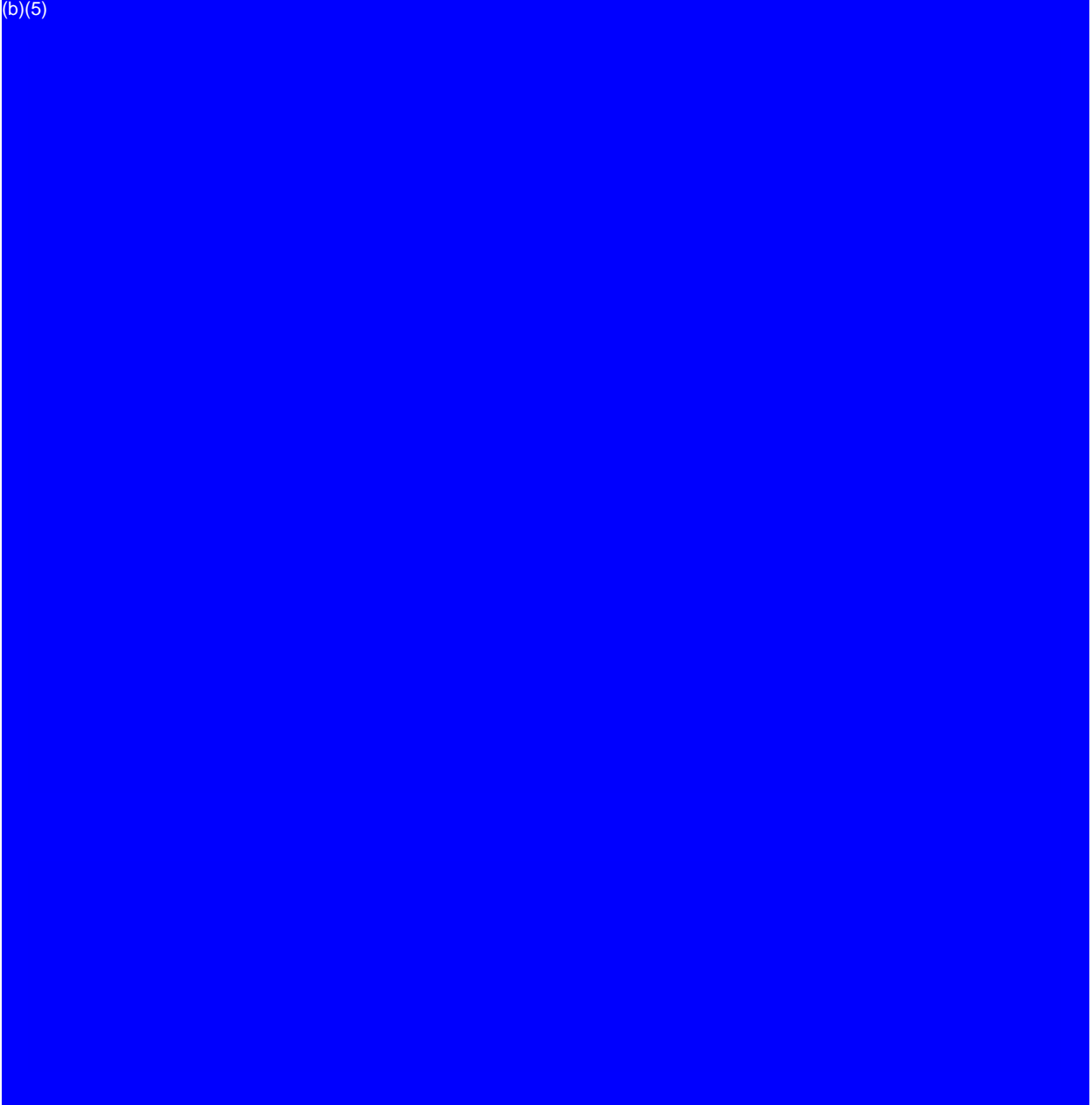
1. Frequent changes in medical contractors have resulted in disruptions to medical services including continuity in staffing, access to the electronic health record, and continuity of medication orders and other chronic care. The OMDC multidisciplinary quality assurance (QA) committee should develop a plan to address disruptions to care created by recent contractor change in at least three areas: (1) medical staffing, (2) access to the entire medical detention health records across all platforms, and (3) continuity of medications and other chronic or ongoing care needs of the detainee. *(2011 PBNDS, 4.3 Medical, II. 1, 4, 5, 21, V.W., Y.1.b., BB. 2)*
2. Pill pass times vary day-to-day by as much as four hours. The current pill pass system appears to be under-resourced and the pill pass times need to be improved so that medications are administered at consistent times and reasonably close to the actual prescribed time. OMDC should add additional medication carts with additional nursing staff to shorten the time required to complete each medication pass. Additionally, OMDC should increase use of keep on person (KOP) procedures already employed by the facility to help mitigate the burden of daily pill passes. *(2011 PBNDS, 4.3 Medical V. G. 12, V.S.4)*

¹ In general, CRCL's experts relied on the applicable Performance Based National Detention Standards (PBNDS 2011) and related professional standards in conducting their work and preparing their reports and recommendations. Some of their analyses or recommendations, however, may be based on constitutional or statutory requirements that exceed the detention or professional standards.

3. Medical interactions with detainees do not appear to be conducted consistently using language line services in the preferred language of the detainee when the caregiver is not fluent in the detainee's preferred language. OMDC should use the telephonic language line service more consistently and document all medical encounters that use these interpreter services. The quality assurance (QA) committee should monitor utilization of interpreter services by chart audit and review of billing. (2011 PBNDS, 4.3 Medical II.3, V. E)

Mental Health Care

CRCL's mental health expert made the following priority recommendations (relevant PBNDS standard is cited within each recommendation):

4. (b)(5) 
- 5.

6. There were delays in access to psychiatric care. At the time of the investigation, which was at the end of October 2020, the tele-psychiatrist had not visited OMDC since he started working for Core Civic in September 2020. Medication orders significantly exceeded the timeframe in which a psychiatric contact is warranted by PBNDS 2011. It is recommended that: ^{(b)(5)} [REDACTED]; 2) implement a process for automatic psychiatric referrals for detainees admitted to OMDC on psychiatric medication to minimize delays in care; 3) implement a process to address medication non-adherence that includes timely notification of the psychiatrist and clinically appropriate follow-up; 4) implement a process for regular communication between on-site mental health staff and the tele-psychiatrist for clinical discussions, particularly high profile and at-risk detainees; and 5) provide close supervision of clinical work, schedule, and responsiveness. (2011 PBNDS; 4.3, Medical Care, O. Mental Health Program).
7. ^{(b)(5)} [REDACTED]
8. Access to mental health care is crucial at any period during the pandemic, particularly when detainees are isolated or quarantined. Specifically, the pandemic is a stressful experience which is compounded by the stress of isolation and quarantine in a correctional environment. Relatedly, as of this writing, the pandemic has been identified as having a negative impact on one's mental health. OMDC should ensure that: 1) regular mental health programming continues; 2) alternatives to cancelled group activities are offered; 3) detainees under medical observation have access to mental health services; and 4) detainees isolated in segregation units are provided with supportive services such as increased telephone access, television, and radio. (*ICE ERO COVID-19 Pandemic Response Requirements.*)
9. A review of detainee health records found that documentation was insufficient. In all reviewed records, documentation lacked clinical rationale for diagnosis including symptoms and functional impairment. There also appeared to be minimal improvement in treatment planning since this issue was cited during CRCL's site visit in September 2017. A treatment plan should be a collaborative document developed and signed by all assigned mental health providers and the detainee, reviewed on a regular basis and/or after a crisis, and updated accordingly. The treatment plans reviewed, however, found that content was not clearly individualized to the detainee's specific treatment needs and appeared generic. Documentation of the language line use to assist with interpretation and translation was also lacking. CRCL recommends that OMDC should: 1) document symptoms to support diagnostic conclusions and include specific symptoms with targeted

interventions on multi-disciplinary treatment plan; and 2) ensure documentation of language line use in the detainee's healthcare record. (2011 PBNDS, 4.3 Medical Care, V. O. Mental Health Program and NCCHC, Standards for Health Services in Jails, Mental Health Services, J-A-08, essential)

10. A review of the suicide prevention training showed that de-escalation strategies were not clearly identified as an intervention to prevent a suicide attempt. There was also a complaint that OC spray was used on a detainee who was engaging in a suicide attempt. The lack of de-escalation training and the facility's use of OC spray on detainees engaging in self-harm behaviors without mental health intervention violates the PBNDS 2011, 2.15 Use of Force and Restraints. CRCL recommends that OMDC: 1) revise its suicide prevention training to include specific de-escalation techniques; (b)(5)

[REDACTED]

4) ensure a process exists for consultation with the psychiatrist during business and non-business hours to discuss the use of emergency medication (voluntary and involuntary) and therapeutic restraints.

11. (b)(5)
12. [REDACTED]

13. It was identified during the CRCL site visit of OMDC in September 2017 that padded cells were used as suicide watch cells and that the cells did not have a toilet in the cell; instead detainees used a hole in the ground. Access to a sink was unknown; healthcare records provided after that site visit showed that water was provided to detainees on suicide watch. However, it remains unclear if cells identified for suicide watch are suicide resistant or include toilets and running water as visual inspection of the cell was not feasible during the virtual investigation. Padded rooms do not ensure safety and, in some cases, can increase self-harm behavior. Additionally, documentation of observation for detainees on suicide watch did not occur at the required staggered intervals. CRCL recommends that OMDC: 1) ensure all cells used for suicide watch and mental health observation are retrofitted to remove all possible ligature attachment points and cleaned

daily and between detainees; 2) points all detainees in need of mental health observation be maintained on 1:1 direct observation (b)(5) and 3) (b)(5): if a detainee engages in self-harm while under observation, contact the psychiatrist for emergency medication or therapeutic restraints; (b)(5); and 5) ensure documentation of observation occurs at staggered intervals not to exceed 15 minutes. (PBNDS 2011, 4.6 Significant Self-Harm and Suicide Prevention and Intervention and NCCHC, Standards for Health Services in Jails, Suicide Prevention and Intervention, J-B-05, essential.)

14. The facility's clinical documentation in detainee health records was inadequate. While deficiencies were pervasive, to highlight this issue, a health record review of a detainee on suicide watch found that documentation did not address additional risk factors such as that the detainee would rather die than be deported; feared return to his country of origin; reported no reason to live; and that he had very few protective factors. In addition to documentation shortcomings, health record reviews also identified insufficient follow-up for detainees discharged from suicide watch, a critical mental health incident that requires close follow-up with mental health for a reasonable period of time. OMDC should: 1) conduct risk assessment training, including exaggeration and minimizing of symptoms with mental health staff; 2) have a regional mental health professional conduct audits of documentation and, at a minimum, include: (a) comprehensive clinical rationale for initiation, discontinuation, or continuing the watch, which will require conceptualization of risk and protective factors in narrative form, not solely checking factors that apply; (b) review of pertinent mental health documentation; (c) individualized treatment planning and response to clinical interventions to assist detainees in managing distress; (d) safety planning following discharge from the suicide watch; (e) assessment of risk including documentation of rationale for low, medium, or high risk; (f) referrals to psychiatry; (g) initiation of suicide watch by mental health staff by telephone order if off-site; (b)(5)
- (PBNDS 2011, 4.6 Significant Self-Harm and Suicide Prevention and Intervention and NCCHC, Standards for Health Services in Jails, Suicide Prevention and Intervention, J-B-05, essential. PBNDS, 4.3 Medical Care, V. O. Mental Health Program and NCCHC, Standards for Health Services in Jails, Mental Health Services, J-A-08, essential)

Conditions of Detention

CRCL's conditions of detention expert evaluated the facility in relation to the PBNDS 2011; the PBNDS 2011 Standard 2.11, Sexual Assault and Abuse Prevention and Intervention (SAAPI); and Significant Self-Harm and Suicide Prevention Standards. The below recommendations are based upon CRCL expert's review of the conditions of detention allegations including care and treatment of male and female detainees, use of force, and suicide prevention and intervention, and sexual abuse and assault prevention and intervention, and COVID-19 practices and protocol.² This

² During the period of May 2019 to May 2020, OMDC's Daily Detainee Assault Reports identified over 15 use-of-force (UOF) incidents and one assault. Furthermore, a review of OMDC's use-of-force logs and associated incident reports identified 18 UOF

included interviewing detainees and facility staff; reviewing ICE and the facility's policies and procedures; reviewing detainee grievance logs and the facility's responses to them; reviewing disciplinary reports, incident reports, and training logs; and investigating concerns related to language access, staff-detainee communications, and segregation. CRCL's conditions of detention expert made the following priority recommendations at OMDC:

15. OMDC detainee verbal reports and grievances about staff members' disrespectful treatment and verbal abuse should be fully investigated by ICE and OMDC to ensure detainees are treated with dignity and respect. (*ICE National Detention Handbook, April 2016*)

16. (b)(5)

17. OMDC should ensure the log of all detainee grievances is maintained in chronological order to prevent gaps that can result in missing or unaccounted for grievances. (*2011 PBNDS, 6.2 Grievance System*)

18. (b)(5)

(b)(5)

CRCL expert's

language access recommendations include:

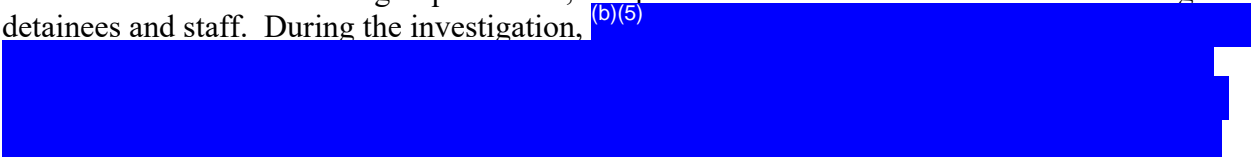
19. (b)(5)

20. (b)(5)

incidents during the period of January 2020-September 8, 2020. Sixty-one percent of these UOF incidents involved the use of oleoresin capsicum (OC) pepper spray.

21. Forms and other materials contained in the detainee files are in English and some are in Spanish. Many documents in the detainee files lack any indication that they were translated for the detainee. To ensure that OMDC complies with the arrival screening requirements in the Admission and Release standard, which includes official forms that are signed by LEP detainees and informational postings throughout the facility, OMDC should ensure detainee understanding by using qualified interpreters and/or professionally translated informational postings and forms that are commonly used in intake, medical, commissary, property, programs, disciplinary proceedings, and segregation. All forms should be translated into Spanish, at a minimum, due to the significant number of Spanish speaking detainees to ensure meaningful detainee access. *(DHS and ICE Language Access Plans)*
22. Other than in medical, there were very few records indicating that LEP detainees who are non-English and non-Spanish speakers were provided with language assistance. Facility staff should be required to consistently use the language line for orientation and document when language line services are used with LEP detainees, especially during required document signing when those documents are in English. *(DHS and ICE Language Access Plans)*

The ICE ERO COVID-19 Action Plan and the CDC COVID-19 Guidance for Correctional and Detention Facilities were issued at the start of the pandemic to provide guidance to detention facilities on the management of COVID-19 and to protect the lives of individuals detained in prisons, jails, and detention centers. OMDC has modified programs based on the guidance such as recreation, visitation, law and recreational library, religious programs, feeding, environmental health and safety practices, as well as implemented social distancing protocols, staff and detainee PPE access and mask-wearing requirements, and provided educational materials and briefings to detainees and staff. During the investigation, ^{(b)(5)}



23. ^{(b)(5)}
24. The CDC COVID-19 Guidance recommends that a verbal screening and temperature checks be performed for all persons entering detention facilities, as well as asking a series of questions. OMDC should follow the CDC COVID-19 Guidance for Correctional and Detention Facilities and implement temperature screening for all persons entering the facility daily and the recommended series of questions, including:
 - Today, or in the past 24 hours, have you had any of the following symptoms:
 - Fever, felt feverish or had chills? cough? or difficulty breathing?

- In the past 14 days have you had close contact with a person known to have been infected with the novel coronavirus (COVID-19)?

(CDC COVID-19 Guidance for Correctional and Detention Facilities)


25. The Special Management Unit (SMU) houses detainees on administrative and disciplinary segregation status. During casefile reviews, CRCL's expert identified a detainee who had been held in the SMU for 247 days. After an interview with the OMDC Chief of Security, it was revealed that this detainee had received about 20 disciplinary rule violations, including assaulting a staff member and another detainee during the first month after his arrival at OMDC; however, he had not received a disciplinary since his fifth week of arrival at OMDC. CRCL recommends that OMDC develop a plan to move the detainee back to general population housing. The plan should include case conferencing with the OMDC Chief of Security, a Mental Health Clinician, the Associate Warden, and the appropriate housing staff as well as input from the detainee. *(2011 PBNDS, SMU)*
26. Detainees reported that they did not have regular access to the ICE detention officers (DO) and that DOs were not adhering to the schedule that was posted in the units. At the time of the investigation, CRCL's expert discovered that, due to COVID-19, DOs were no longer entering the housing units and that detainees must contact their DOs by request. CRCL recommends that ICE monitor the DOs' contacts with detainees to ensure the DOs are adhering to the unit schedule (via written form or telephone contacts) due to COVID-19, which allows the detainees to ask questions of their assigned DO or obtain needed assistance. *(2011 PBNDS, 2.13 Staff Detainee Communication)*

Environmental Health and Safety

CRCL's environmental health and safety expert made the following priority recommendations:

27. A high level of sanitation is required in detainee living areas to ensure good health. Failing to use disinfectants in accordance with the manufacturer's label directions places detainees at risk of infection and disease, including COVID-19. To safeguard that chemical disinfectants are used safely and effectively, OMDC should ensure that all employees that use or oversee detainees using disinfectants are utilizing them in accordance with the manufacturer's directions, including the dwell time quantified for disinfectants, as specified by the PBNDS 2011, Environmental Health and Safety standard and the ICE ERO COVID-19 Pandemic Response Requirements. *(Applicable standard: PBNDS 2011, Environmental Health and Safety)*

28. (b)(5)



(b)(5)

29.

30. Many detainees stated during interviews that they never wash their face masks. The CDC recommends washing cloth face masks whenever they get dirty or at least daily and throwing away disposable face masks after wearing it once. Detainees should be regularly educated on the importance of wearing face masks and following the current CDC guidance for laundering cloth face masks and discarding disposable face masks. *(Applicable standard: PBNDS 2011, Environmental Health and Safety)*
31. Detainees reported that townhall meetings are held by facility staff, at which time information related to COVID-19 is disseminated; however, at the time of the investigation, it had been approximately one month since the detainees last participated in a townhall. Ongoing education is important to ensure that new detainees receive correct information and that all detainees receive up-to-date information. The CDC's Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities recommends, "Provide up-to-date information about COVID-19 to incarcerated/detained persons on a regular basis." Therefore, OMDC should ensure that critical information and updates are regularly disseminated to detainees and ensure that any changes are communicated to the detainees, weekly is recommended and on an as-needed basis if significant changes are made to the CDC guidance. *(Applicable standard: PBNDS 2011, Environmental Health and Safety)*
32. Core Civic's policy for religious diets states that they should "meet the dietary requirements established by the Dietitian. Inmates/residents may request a special religious diet by completing and submitting to the Chaplain a 2D-4D Request for Religious Diet. The written request must clearly identify why the current facility diet is insufficient in allowing the practice of the inmate/resident's faith..." During interviews with the OMDC religious services coordinator, CRCL's environmental health and safety expert learned that detainees must also correctly answer 18 out of 20 oral questions regarding the religion in order to qualify for a religious diet. And if a detainee does not

pass the oral questions, he/she would be given another opportunity to answer the questions, so therefore, failure to pass the questions would not be considered denial of a religious diet. This process, however, was not included in Core Civic's Chaplaincy and Religious Services policy. CRCL recommends that OMDC review its internal procedure for approval of a religious diet. OMDC should also ensure that re-testing does not violate the PBNDS 2011, Food Service, G. Religious/Special Diets, 1. General Policy, stating, "the determination may not impose a substantial burden on a detainee's religious exercise or necessitate lengthy questionnaires or numerous interviews." OMDC should further include all processes related to religious diets in their applicable policies including Core Civic Policy, Chaplaincy and Religious Services, Policy Number 20-4. (*Applicable standard: PBNDS 2011, Food Service*)

The complete expert recommendations are contained in the enclosed expert reports.

It is CRCL's statutory role to advise department leadership and personnel about civil rights and civil liberties issues, ensuring respect for civil rights and civil liberties in policy decisions and implementation of those decisions. CRCL looks forward to working with ICE to resolve these complaints. CRCL requests that ICE provide a response to CRCL within 60 days, indicating whether ICE concurs or non-concurs with these recommendations. For concurrences, please include an action plan. Responses may be sent by email. If you have any questions, please contact CRCL Policy Advisor, (b)(6), by telephone at (b)(6) or by email at (b)(6)

Enclosures

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