



Homeland  
Security

January 31, 2019

MEMORANDUM FOR: Nathalie Asher  
Executive Associate Director  
U.S. Immigration and Customs Enforcement

FROM: Veronica Venture (b) (6)  
Deputy Officer  
Office for Civil Rights and Civil Liberties

Dana Salvano-Dunn (b) (6)  
Director, Compliance Branch  
Office for Civil Rights and Civil Liberties

SUBJECT: Bergen County Jail (BCJ)  
Complaint Nos. (b) (6)

The U.S. Department of Homeland Security's (DHS) Office for Civil Rights and Civil Liberties (CRCL) is conducting an investigation into conditions of detention for U.S. Immigration and Customs Enforcement (ICE) detainees at the Bergen County Jail (BCJ), Hackensack, New Jersey. CRCL's onsite investigation occurred March 27-29, 2018, and was in response to complaints alleging civil rights and civil liberties violations of general conditions of detention, inadequate medical and mental health care of detainees, and inadequate environmental health and safety at BCJ.

We greatly appreciate the cooperation and assistance provided by ICE and BCJ personnel before and during the review. As part of the review, CRCL engaged the assistance of four subject-matter experts: a corrections consultant, a medical consultant, an environmental health and safety consultant, and a mental health consultant. 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 March 29, 2018, as part of the BCJ onsite closing discussion, CRCL and the subject-matter experts discussed general concerns with ICE ERO field office management, personnel from ICE ERO headquarters, and BCJ management. During the discussion, the subject-matter experts provided initial recommendations to address the concerns identified. Additionally, shortly following the onsite, CRCL sent an email to ICE on April 20, 2018, summarizing these initial recommendations, to ensure ICE had sufficient information to initiate the proposed changes.

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Enclosed with this memorandum are the reports prepared by our subject-matter experts.<sup>1</sup> 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 consider and implement these recommendations to the fullest extent possible.

### Corrections

CRCL's corrections expert made the following priority recommendations regarding general conditions at BCJ:

1. The BCJ Grievance Log does not contain the disposition date and disposition of each detainee grievance. BCJ should add to the existing grievance log the disposition (outcome) of the grievance and complete the disposition date for each grievance, to ensure detainees receive a timely response to their grievance and grievance appeals and that the outcome of each grievance is tracked. (NDS 2000, Detainee Grievance Procedures).
2. BCJ detainees alleged they were subject to retaliation, verbal harassment, and disrespectful treatment by some BCJ staff. After talking with several detainees, our expert found these allegations credible. BCJ should conduct an investigation of the employees that detainees alleged were subjecting them to retaliation, verbal harassment, and disrespectful treatment. CRCL provided these names to the administration. (NDS 2000, Detainee Grievance Procedures and 4-ALDF-6A-07)
3. BCJ does not provide consistent coverage for the law library when the law librarians are absent. BCJ should provide consistent and meaningful access to the law library by providing adequate staffing and adhere to the posted law library schedule hours of operation. (NDS 2000, Access to Legal Material)
4. Detainee telephone calls regularly are being disconnected before the call time limit due to a telephone software problem. BCJ should ensure the erroneous third party calling software disconnect problem is corrected to provide detainees with mandated telephone access consistent with NDS. (NDS 2000, Telephone Access)
5. BCJ telephone access policy limits detainee calls to 15 minutes. BCJ should revise Telephone Policy, CD-SOP-00-3.1, Section IV. E to increase its call time restriction to 20 minutes, as mandated in the NDS. (NDS 2000, Telephone Access)
6. Some of the ICE pre-programmed auto-dial free numbers do not work. BCJ should test all pre-programmed auto dial numbers and repair those that do not work. (NDS 2000, Telephone Access)

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<sup>1</sup> In general, CRCL's experts relied on the applicable 2000 National Detention Standards (PBNDS 2000) 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.

7. BCJ's "S1" isolation room in the Special Management Unit contains fixtures that can be used by detainees in a self-harm attempt. BCJ should cease using S1 as an isolation room for evaluation and treatment of detainees under observation for potential self-harm until BCJ removes all fixtures that can be used to tie off materials in a self-harm attempt. (NDS 2000, Suicide Prevention and Intervention)
8. BCJ's current lack of use of the BCJ vulnerability screening tool for potential sexual victimization and sexual predatory behavior puts detainees at risk of potential sexual victimization. BCJ should utilize their existing vulnerability screening tool on detainees to reduce the risk of sexual assault or victimization. (PBNDS 2011, SAAPI)

### Medical Care

CRCL's medical expert made the following recommendations related to medical care at BCJ:

9. While the care for detainees suffering from acute medical conditions is occurring in an expeditious manner, detainees suffering with subacute medical conditions are delayed because these detainees are lumped together with detainees who have chronic medical conditions under fair/good control. The Chronic Disease Services Policy should be modified to include the timely care of detainees with chronic medical conditions to ensure that these detainees receive an initial physician encounter earlier than 14 days post-admission to the Bergen County Jail. In addition, BCJ should provide a more granular stratification of detainees' health status at the time of the Initial Health Screening to allow for timelier physician encounters. (NDS 2000 III.A)
10. Detainees with chronic medical conditions are not being evaluated by the Medical Director at the chronic disease clinic in intervals that appear to be appropriate for the severity of illness. For diabetic patients, degree of disease control was lacking 50% of the time and pneumococcal vaccinations were not offered. For epilepsy patients, serum drug level for the anti-epileptic medications were not ordered in a timely fashion. One HIV positive detainee did not receive the QFT-Gold TB test, another HIV positive detainee did not receive LTBI treatment despite a positive QFT-Gold TB test, and pneumococcal vaccination was not offered for HIV positive patients,. BCJ should;
  - a) Ensure that the degree of disease control for all chronic diseases is clearly documented in the encounter note. (NDS III.A, NCCHC J-E-12-1, NCCHC J-E-12-4, NCCHC J-E-12-10, NCCHC J-G-01-2-b.)
  - b) Ensure that all anti-epileptic medication levels are obtained in a timely manner (within 30 days for a new drug or within 90 days for continuation of free world medications). (NDS III.A)
  - c) Ensure that all HIV positive detainees undergo a CXR examination or QFT-Gold TB test if their TST test is negative. (NDS III.A, NDS III.D, NCCHC J-B-01-C)
  - d) Ensure that all HIV positive detainees are offered LTBI treatment if their TST or QFT-TB test is positive. (NDS III.K)

- e) Provide Pneumovax vaccine to all immune-compromised detainees (diabetics, HIV positive, etc.) (NDS III.A, NCCHC J-E-04-2-f):

11. While detainees are receiving their routine initial dental screening and timely dental follow up for their dental sick call requests, (b) (5)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. BCJ should:

- a) (b) (5) [REDACTED]  
[REDACTED]
- b) (b) (5) [REDACTED]  
[REDACTED]
- c) Include the dentist in ongoing professional practice evaluation by performing chart audits for dental encounter notes. (NDS 2000 III.A, NCCHC J-C-02)

Mental Health

CRCL’s mental health expert made the following priority recommendations:

12. Not all detainees were receiving an initial mental health assessment by mental health staff within 14 days of admission. BCJ should ensure that all detainees receive an initial mental health assessment by mental health staff within 14 days of admission. Prioritizing assessments based on mental health need can help manage this increased workload. (NCCHC, Standards for Mental Health Services in Correctional Facilities MH-E-04 Mental Health Assessment and Evaluation)

13. (b) (5) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

14. BCJ housed a behaviorally distressed detainee at risk of self-harm in a segregation unit due to a presumption that he was manipulating the mental health system. Placement of a detainee who is behaviorally distressed into an at-risk environment increases the potential for self-harm. Further, the American Psychiatric Association (APA) noted that “inmates who are in severe psychiatric crisis, including but not limited to acute psychosis and suicidal depression,

should be removed from segregation until such time as they are psychologically able to tolerate that setting. (APA, Psychiatric Services in Jails and Prisons. Washington, DC (2000)).

15. BCJ should discontinue the use of Special Management Status as outlined in current BCJ policy. Any detainee who evidences psychiatric distress should be evaluated by mental health staff. Mental health staff should conduct a risk assessment with the detainee. If mental health staff believe that the detainee is suicidal or at risk of engaging in self-injurious behavior, the detainee should be placed in the Infirmary on Level I. If the assessment determines that the detainee is not at risk of self-harm or that the behavior is not due to a mental illness, mental health staff should communicate their findings to custodial staff. Any decisions to limit property or increase observation should be made by custodial staff in these cases. (APA, Psychiatric Services in Jails and Prisons. Washington, DC (2000)).
16. Training materials for custodial and healthcare staff did not cover each area required by NDS. Institutional staff should ensure all areas (see standard cited below) are covered during training for all disciplines. Additionally, content covered should include: 1) signs and symptoms of mental illness and 2) the following risk factors for suicide: incarceration, segregation and new serious medical diagnosis. (NDS, 2000, INS Detention Standard, Suicide Prevention and Intervention, IIIA, Training)
17. Rooms 8 and 12 in the Infirmary used for Level I detainees are not suicide resistant due to grates in the ceiling and a protruding sprinkler head. Detainees should be placed on 1:1, constant observation until these issues can be rectified by the institution. (NDS, 2000, INS Detention Standard, Suicide Prevention and Intervention, IIIC Housing/Hospitalization and NCCHC, Standards for Mental Health Services in Correctional Facilities MH-G-04 Suicide Prevention Program)
18. Level I detainees are placed in isolation cells, but are not under constant observation. BCJ should have them under constant observation. (NCCHC Standards for Mental Health Services in Correctional Facilities MH-G-04 Suicide Prevention Program, 1d)
19. (b) (5) [REDACTED]
20. The Suicide Prevention Program policy indicated that Level I is for detainees that pose a “potential danger.” In contrast, the Mental Health Screening and Evaluations policy indicates Level I is for those “who appear to be an immediate danger.” BCJ should resolve the conflicting language regarding the use of Level I. (NDS, 2000, INS Detention Standard, Suicide Prevention and Intervention, IIIB)
21. Mental Health records reviewed at BCJ did not include required documentation for detainees discharged from psychiatric hospitalization. BCJ should ensure documentation for detainees discharged from psychiatric hospitalization or placed and maintained on suicide precautions

(Level I or Level II) includes rationale for placement, mental status and functioning, continuation and discontinuation of the watch, consideration/acknowledgement of prior relevant mental health documentation, safety planning, discharge planning, treatment interventions and an appropriate plan for follow-up by mental health once the suicide precautions are discontinued. (NDS, 2000, INS Detention Standard, Suicide Prevention and Intervention, I-III and NCCHC, Standards for Mental Health Services in Correctional Facilities MH-G-04 Suicide Prevention Program)

22. A staffing assessment is needed to determine if BCJ has sufficient staff to complete assessments and treatment interventions outlined above. (NDS, 2000, INS Detention Standard, Medical Care, IIIA)
23. BCJ's current use of force policy does not include an assessment to determine if a detainee in the mental health housing unit is able to conform his/her behavior before a use of force determination. BCJ should revise their Use of Force policy, including use of OC spray with detainees in mental health housing or those on suicide precautions. In these situations, prior to any planned Use of Force, assessment by mental health staff is recommended to determine if the detainee is unable to conform his/her behavior due to his/her mental illness and utilize crisis intervention as clinically indicated.
24. At present, BCJ does not have a reliable process to track detainees that are in need of ongoing mental health care. Documentation in healthcare records indicated a plan to follow-up with detainees in specified timeframes but this did not occur. Further, caseload data could assist with staffing needs. BCJ needs to maintain a tracking system for detainees that receive ongoing mental health services, such as an active caseload list. There is also a need to develop a policy regarding placement on the caseload list.

#### Environmental Health and Safety

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

25. Meal trays have damage to the rim of the tray with many grooves and crevices that cannot be cleaned and sanitized properly. In addition, trays are not able to drain and dry properly with this type of damage. The Bergen County Jail should ensure that a process for removing left over food items and food particles from meal trays is put in place that precludes kitchen workers from banging trays to accomplish this task. In addition, the Bergen County Jail should replace all trays that have been damaged to avoid harboring of bacteria in the grooves and crevices of the tray where damage has occurred. (NDS 2000, Food Service)
26. Food temperatures on a lunch meal tray were not maintained in the required range of either under 41° F or above 140° F. Food maintained between 41° F and 140° F is inside of the Temperature Danger Zone where bacteria growth is the highest. Increased bacteria growth also increases the potential for foodborne illness. The Bergen County Jail should ensure that all food items are maintained at temperatures outside of the Temperature Danger Zone in order to avoid a potential foodborne illness outbreak. (NDS 2000, Food Service)

27. (b) (5) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

The room must have hot and cold running water. (b) (5) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

28. Washing machines in the laundry services area were overloaded with detainee uniforms and personal clothing items. Overloading of washing machines creates the environment where laundry is not washed with the proper amount of water, detergent, and sanitizer. It is recommended that BCJ immediately train laundry staff and inmate workers on the proper use of the commercial washing machines located in the laundry services area, including providing training on the total weight allowable in each machine and the importance of not overloading any washing machine. In addition, it was apparent that detainees wish to have clean personal clothing and uniforms as evidenced by the consistent complaints that laundry comes back appearing not to be clean, personal items are yellow from laundering, laundry smells dirty/unwashed, and mop lint is found on personal clothing items. Bergen County needs to ensure that washing machines are not shared between washing mop heads and personal clothing items. (NDS 2000; Issuance and Exchange of Clothing, Bedding, and Towels)

The complete expert reports and 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. We look forward to working with ICE to determine the best way to resolve these complaints. We request that ICE provide a response to CRCL 60 days whether it concur or non-concur with these recommendations. If you concur, please include an action plan. You can send your response by email. If you have any questions, please contact (b) (6) [REDACTED], Policy Advisor, by telephone at (b) (6) [REDACTED] or by email at (b) (6) [REDACTED].

Copy to:

Natalie Asher  
Deputy Executive Associate Director  
Enforcement and Removal Operations  
U.S. Immigration and Customs Enforcement  
(b) (6), (b) (7)(C) [REDACTED]

David A. Marin  
Acting Deputy Executive Associate Director  
Enforcement and Removal Operations  
U.S. Immigration and Customs Enforcement

(b) (6), (b) (7)(C)

Tae Johnson  
Assistant Director  
Custody Management  
Enforcement and Removal Operations  
U.S. Immigration and Customs Enforcement

(b) (6), (b) (7)(C)

Claire Trickler-McNulty  
Acting Assistant Director  
Office of Detention Policy and Planning  
U.S. Immigration and Customs Enforcement

(b) (6), (b) (7)(C)

Dr. Stewart D. Smith  
Assistant Director, ICE Health Service Corps  
Enforcement and Removal Operations  
U.S. Immigration and Customs Enforcement

(b) (6), (b) (7)(C)

Dr. Ada Rivera  
Medical Director, ICE Health Service Corps  
Enforcement and Removal Operations  
U.S. Immigration and Customs Enforcement

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Enclosures