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June 12, 2012

Re: Unconstitutional conditions of confinement for immigration detainees at Pinal County Jail

Dear Sirs:

We write in regard to numerous unconstitutional conditions of confinement at the Pinal County Jail ("PCJ") in Florence, Arizona. These unlawful conditions have persisted despite repeated demands for decent conditions of confinement in PCJ's immigration detention units, including multiple complaints by the American Civil Liberties Union ("ACLU").[1] Failure to remedy these legal violations—whether by promptly removing all immigration detainees from PCJ, or by dramatically overhauling conditions of confinement at the facility—would constitute an open invitation to bring suit. In the hope that this matter can be resolved without resort to litigation, we ask you to take immediate action to remedy the violations of law described in this letter.

The factual information in this letter is based on a March 7, 2012 tour of PCJ by representatives of the ACLU and extensive correspondence and in-person meetings between ACLU legal staff and PCJ detainees over three years.

[1] Most recently, the ACLU wrote to ICE officials on March 4, 2011 following reports that approximately 90 PCJ detainees had begun a hunger strike to protest conditions at the jail. Prior letters have addressed problems with conditions affecting women and religious minorities, and excessive use of force by jail officers.

As detailed below, our investigation into conditions at PCJ revealed multiple violations of rights guaranteed by the Due Process Clause of the Fifth Amendment. These include: (1) total deprivation of outdoor exercise; (2) denial of face-to-face visits with loved ones, with communication by video link serving as the exclusive means of visitation; and (3) inadequate sanitation and access to personal hygiene items.

In addition, these and multiple other unacceptable conditions of confinement at PCJ are indisputably punitive in nature and therefore unconstitutional as applied to immigration detainees. Additional punitive conditions include: (1) excessive use of force and pervasive verbal abuse by guards; (2) inadequate medical care including officers who ignore cries for medical help; (3) frequent lockdowns; (4) cell searches that occur almost daily; (5) limited access to reading materials; (6) regular confiscation of reading materials and commissary goods; (7) eight hour gaps between meals, with food confiscated and thrown away if not consumed promptly; (8) exorbitant phone rates for calling friends and family; (9) routine refusal to transfer long-term detainees to less restrictive detention facilities; (10) officers who refuse to accept grievance forms and who ignore grievances.

As PCJ officials have acknowledged, the harsh conditions experienced by civil detainees at PCJ are indistinguishable from those faced by county pretrial detainees housed in other units of the jail. Such conditions violate the U.S. Constitution, as well as ICE's own National Detention Standards, and continue in spite of the Obama administration's pledge—honored mainly in the breach—to establish a truly civil system of immigration detention. The confinement of immigration detainees at PCJ, at least under current conditions, has no place in any system that aspires to civility.

I. APPLICABLE LEGAL STANDARDS

Although civil detainees are entitled to greater protections than prisoners, conditions of confinement at PCJ fail to meet even the more limited standards applicable to prisoners. The Supreme Court has described the protections that convicted prisoners receive under the Cruel and Unusual Punishments Clause of the Eighth Amendment as follows: "'[W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well being'...Contemporary standards of decency require no less." *Helling v. McKinney*, 509 U.S. 25, 31-32 (1993) (quoting *DeShaney v. Winnebago County Dept. of Social Servs.*, 489 U.S. 189, 199-200 (1989) and *Estelle v. Gamble*, 429 U.S. 97, 103-04 (1976)).

Immigration detainees are entitled to even greater constitutional protections than convicted prisoners.[2] As the Ninth Circuit has recognized, the constitutional protections afforded to civil detainees awaiting adjudication, such as immigration detainees, equal or exceed the rights conferred on two other categories of incarcerated individuals—"individuals detained under criminal process" (*i.e.*, pretrial criminal detainees), and "criminal convict[s]" (*i.e.*, post-conviction prisoners). *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004).

[2] The Due Process Clause protects individuals held pursuant to civil detention authority, including immigration detainees. *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004). More specifically, the Due Process Clause of the Fifth Amendment applies to federal detainees, such as immigration detainees, and the Due Process Clause of the Fourteenth Amendment applies to non-federal detainees. *Blanas*, 393 F.3d 918, 931 (9th Cir. 2004) (Fourteenth Amendment Due Process Clause applied to state detainees); *Bell v. Wolfish*, 441 U.S. 520, 530-31 (1979) (Fifth Amendment Due Process Clause applied to federal detainees).

Indeed, "[b]ecause he is detained under civil-rather than criminal-process, a [civil] detainee is entitled to '*more considerate treatment*' than his criminally detained counterparts." *Id.* at 932 (emphasis added). Given the different functions served by civil and criminal detention, some courts have gone so far as to prohibit the use of county jails entirely for certain categories of civil detainees. *Lynch v. Baxley*, 744 F.2d 1452, 1463 (11th Cir. 1984) ("We forbid the use of jails for the purpose of detaining persons awaiting involuntary civil commitment proceedings, finding that to do so violates those persons' substantive and procedural due process rights."). While the Ninth Circuit has not followed that approach, it has recognized that "civil detainees retain greater liberty protections than individuals detained under criminal process." *Blanas*, 393 F.3d at 932. *See also Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1104 (9th Cir. 2004) (stating that detention "may be a cruel necessity of our immigration policy; but if it must be done, the greatest care must be observed in not treating the innocent like a dangerous criminal"); *Medina-Tejada v. Sacramento County*, 2006 WL 463158 (E.D. Cal. Feb. 27, 2006); *Baires v. United States*, 2011 WL 1743224, at *4 n.10 (N.D. Cal. May 6, 2011).

II. SPECIFIC UNLAWFUL CONDITIONS

As detailed below several specific conditions of confinement at PCJ violate the Eighth Amendment protections that would apply to convicted prisoners: (1) denial of outdoor exercise; (2) restrictions on family visitation; and (3) inadequate hygiene and sanitation. It follows ineluctably that these conditions also contravene the "greater liberty protections" to which immigration detainees are entitled. *Blanas*, 393 F.3d at 932.

A. DENIAL OF OUTDOOR EXERCISE

Relevant Facts

PCJ holds detainees without access to outdoor exercise. The exercise areas used by detainees are irregularly-shaped rooms with covered ceilings and concrete floors. One wall in each exercise room is part concrete and part metal grate; the remaining walls are made entirely of concrete, with no grate. According to detainee reports, the metal mesh openings do not permit sunlight to enter the lower-level exercise rooms. Sunlight enters the upper-level exercise rooms for approximately one hour per day. These concrete rooms are not "outdoors" in any meaningful sense of the word.

Many detainees have complained to the ACLU about the denial of any opportunity for outdoor exercise. Detainees have also complained about the exercise areas being too crowded or exercise often being unavailable because programming, such as Bible study classes, are held in the exercise areas, rather than separate classrooms. Detainees cannot easily walk or run extended distances in the exercise space available at PCJ; these limitations have especially adverse impacts on detainees with heart conditions or other health problems requiring cardiovascular exercise.

Moreover, long periods of detention at PCJ mean that detainees face extended deprivation of access to the outdoors. Information provided by ICE and shown in the table below demonstrates that at any given time, approximately 200 PCJ detainees—roughly half of the total population—have been detained at PCJ for 56 days (8 weeks) or more.

Date	Total PCJ Detained Count	Detainees Held at PCJ for 56 Days or More
6/1/2011	383	182
7/1/2011	396	174
8/1/2011	458	201
9/1/2011	420	193
10/1/2011	407	192
11/1/2011	450	194
12/1/2011	395	203
1/1/2012	467	217
2/1/2012	414	212
3/1/2012	412	197

Information provided by detainees in March 2012 identified at least a dozen individuals who had been detained at PCJ for more than one year. Because this figure reflects evidence gathered anecdotally and through a limited number of detainee interviews, the actual number of detainees who at any given time have held at PCJ for more than one year is certainly much greater. We have been contacted by several individuals detained at PCJ for three years or longer who have not been allowed outdoor exercise, including several whose requests for transfers were denied.

Legal Analysis

The Ninth Circuit first recognized the constitutional right to outdoor exercise in *Spain v. Procunier*, 600 F.2d 189 (9th Cir. 1979). In *Spain*, Judge Kennedy, who was later elevated to the Supreme Court, stated: "There is substantial agreement among the cases in this area that some form of regular outdoor exercise is extremely important to the psychological and physical well being of the inmates." *Id.* at 199. In holding that prolonged denial of outdoor exercise violates the Eighth Amendment, Judge Kennedy wrote: "Underlying the eighth amendment is a fundamental premise that prisoners are not to be treated as less than human beings." *Id.* at 200.

While the plaintiff in *Spain* had been denied outdoor exercise for several years, in *Allen v. Sakai*, 48 F.3d 1082, 1086 (9th Cir. 1995), the Ninth Circuit extended *Spain*'s holding to a prisoner whose access to outdoor exercise was restricted for a six-week period. The Court held that the denial of outdoor exercise for a period of six weeks not only violated the Eighth Amendment but that the plaintiff could overcome qualified immunity because *Spain* and its progeny had clearly established a right to outdoor exercise. *Id.* at 1088. The Court stated: "[D]efendants cannot legitimately claim that their duty to provide regular outdoor exercise to Smith was not clearly established." *Id.* Notably, although the plaintiff in *Allen* received some outdoor exercise—45 minutes per week—the Court held that such minimal access to outdoor exercise did not satisfy constitutional requirements. *Id.* at 1086, 1088.

In subsequent cases, the Ninth Circuit has underscored that *Allen* recognizes a constitutional right not to be deprived of outdoor exercise for periods exceeding six weeks. In *May v. Baldwin*, 109 F.3d 557 (9th Cir. 1997), which involved a prisoner deprived of outdoor exercise for 21 days, the court held that "a temporary denial of outdoor exercise is not a substantial deprivation." *Id.* at 565. But in *Lopez v. Smith*, 203 F.3d 1122 (9th Cir. 2000) (en banc), the en banc court made it clear that while a 21-day deprivation (as in *May*) does not necessarily constitute cruel and unusual punishment, a six-week violation (as in *Allen*) violates the Eighth Amendment:

> In *Allen*, a prisoner alleged that during a six-week period he had been allowed only 45 minutes of outdoor exercise per week. The trial court denied defendant's motion for summary judgment, and we affirmed, holding that the prisoner "has met the objective requirement of the Eighth Amendment analysis by alleging the deprivation of what this court has defined as a basic human need." *Lopez alleges a greater deprivation than was involved in Allen, and the defendants have presented no evidence to dispute his claim. Therefore, Lopez has met the Eighth Amendment's objective requirement.*

Id. at 1133 & n.15 (citations omitted) (emphasis added). *See also Keenan v. Hall*, 83 F.3d 1083, 1090 (9th Cir. 1996) (noting that *Spain* has been extended to segregation for a period of six weeks); *Hearns v. Terhune*, 413 F.3d 1036, 1042-43 (9th Cir. 2005) ("[A] long-term deprivation of outdoor exercise for inmates is unconstitutional.").

As noted, hundreds of PCJ detainees are denied outdoor exercise for well over six weeks; some of those are denied access to the outdoors for years on end. Command staff at PCJ argued during our March 7, 2012 tour of the facility that the exercise areas are "outdoors." This contention, however, was based entirely on the fact that the exercise rooms, which otherwise are entirely enclosed by concrete, include a single mesh grate that admits air from the outside. It is self-evidently absurd to describe an enclosed room with a single mesh opening as "outdoor" exercise, as acknowledged in ICE's own Detention Standards. The National Detention Standards (NDS) contained in the 2000 Operation Manual issued by the Immigration & Naturalization Service (later reorganized as ICE) apply to PCJ.[3] These standards provide that mere access to sunlight does not constitute outdoor exercise: "Every effort shall be made to place a detainee in a facility that provides outdoor recreation. If a facility does not have an outdoor area, a large recreation room with exercise equipment and access to sunlight will be provided. (*This does not meet the requirement for outdoor recreation*)." INS 2000 Detention Standard: Recreation § III.A.1 (emphasis added). Both the 2000 NDS to which PCJ is subject as well as the 2011 ICE Performance-Based National Detention Standards (PBNDS) provide for transfers of long-term detainees to facilities that offer outdoor exercise. Nonetheless, and despite assurances by ICE officials to the contrary, transfer

[3] Letter from Katrina S. Kane, ICE Field Office Dir., to the ACLU (May 5, 2011) (attached hereto as Exhibit A) (responding to March 4, 2011 ACLU letter and stating, "[p]lease also note that [PCJ] is currently being reviewed under the 2000 ICE [sic] National Detention Standards, not the 2008 ICE Performance Based National Detention Standards."). .

requests by long-term PCJ detainees have been delayed or arbitrarily denied, and multiple detainees we spoke to were unaware that they had the option to request transfers.

Moreover, courts have rejected the contention that an enclosed room with a minimal portal to the outside satisfies the Eighth Amendment right to outdoor exercise. In *Keenan v. Hall*, 83 F.3d 1083, 1090 (9th Cir. 1996), the court noted that a "space with a roof, three concrete walls, and a fourth wall of perforated steel admitting sunlight through only the top third" did not constitute outdoor exercise. *See also Frazier v. Ward*, 426 F. Supp. 1354, 1368-69 (N.D.N.Y. 1977) (rejecting the contention that access to a cell with air able to "blow in from the topside to a slight extent" can be characterized as outdoor exercise because "there is no grass, no dirt, no rain"); *Rutherford v. Pitchess*, 457 F. Supp. 104, 113 (C.D. Cal. 1978) ("[a] prisoner does not catch even a glimpse of the outside world throughout his entire time of confinement in the jail, other than the portion of the sky that he can see during his limited recreational periods on the roof. Thus, a man may go for many months without even seeing a bush or a tree or any human activity outside the jail.").

We recognize that PCJ's existing structure—in particular, the lack of a genuine outdoor exercise area—poses a logistical hurdle to providing exercise opportunities that meet the Constitution's requirements. But logistical limitations provide no excuse for cruel and unusual punishment. As the Ninth Circuit has recognized, "the practical difficulties that arise in administering a prison facility from time to time might justify an *occasional and brief* deprivation of an inmate's opportunity to exercise outside," but "vague reference to logistical problems" cannot justify a long-term deprivation of outdoor exercise. *Allen*, 48 F.3d at 1084 (emphasis added).

In sum, ICE violates the United States Constitution as well as its own detention standards by relying on PCJ as an immigration detention facility. ICE officials dispatch immigration detainees to PCJ, knowing full well that placement at PCJ results in the unconstitutional deprivation of outdoor exercise. Although the Ninth Circuit has clearly recognized a right to outdoor exercise after six weeks of detention, detainees routinely languish at PCJ for much longer periods of time, in violation of their constitutional rights. Because such conditions violate the Eighth Amendment protections afforded to convicted prisoners, these conditions *ipso facto* also violate the more robust Fifth Amendment protections that apply to federal immigration detainees. *See supra* at 2-3; *Sumahib v. Parker*, 2009 WL 2879903, at *16-*18 (E.D. Cal. Sept. 3, 2009) (denying summary judgment where defendants failed to adequately explain why a civil detainee "was treated the same as penal inmates" with regard to exercise and stating, "[b]ecause plaintiff was subjected to the same day room and exercise yard restrictions as the penal inmates in cellside, the court presumes that these conditions were punitive.").

B. FAMILY VISITATION

Relevant Facts

PCJ immigration detainees have virtually no opportunity to see their loved ones face-to-face. Rather, visits at PCJ occur exclusively by video link. Family members sit in front of video screens at a central visiting area within the jail, while detainees sit in separate video booths located just outside the cellblocks. Detainees complain that the images on the screens are often fuzzy or blurred. Others stated that their families have often traveled long distances and at great expense only to be turned away or limited to a 30-minute video visit making the experience emotionally unbearable for most families. Some observed that jail officers arbitrarily limit video visits to less than 30 minutes or deny them entirely. While ICE officials asserted during our March 7 tour of the facility that detainee requests for face-to-face visits are routinely granted, detainees uniformly contradicted this claim and provided examples of rejected requests. According to detainees, face-to-face visits with family members occur only on the rare occasions when detainees are transported to the neighboring Florence Detention Center for appearances in

immigration court. Those who have cases pending on appeal, however, may not go to court for many months or many years as was the case with many of the men we interviewed.

Legal Analysis

The First Amendment protects incarcerated persons against arbitrary interference with their communication, and, in First Amendment cases, "[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution." *Turner v. Safley*, 482 U.S. 78, 84 (1987). A jail or prison regulation violates the First Amendment unless the government can show "a 'valid, rational connection' between the prison regulation and the legitimate governmental interest put forward to justify it." *Turner*, 482 U.S. at 89; *Thornburgh v. Abbott*, 490 U.S. 401, 414 (1989). To justify a restriction of an incarcerated individual's First Amendment rights, jail or prison authorities must show "more than a formalistic logical connection between a regulation and a penological objective." *Beard v. Banks*, 548 U.S. 521, 535 (2006). While respectful of prison officials' expertise, the "reasonableness standard is not toothless." *Abbott*, 490 U.S. at 414 (citation omitted). "[D]eference to the administrative expertise and discretionary authority of correctional officials must be schooled, not absolute." *Campbell v. Miller*, 787 F.2d 217, 227 n.17 (7th Cir. 1986).

While the Supreme Court held in *Block v. Rutherford* that pretrial detainees do not have a constitutional right to *contact* visits with non-attorneys, every security concern relied upon in *Block* could be eliminated through non-contact visits that still allowed detainees and their visitors to see each other face-to-face. 468 U.S. 576, 586-89 (1984). Specifically, *Block* identified the exchange of contraband between detainees and visitors and the potential for escape attempts and hostage taking as rational reasons to prohibit physical contact between detainees and visitors. *Id.* None of these concerns justify the use of a video link, as opposed to face-to-face visits in which detainees are separated from their visitors by secure glass partitions.

On the contrary, a more restrictive limitation on a detainee's First Amendment rights is unconstitutional where there exists an obvious and less restrictive alternative that addresses any legitimate security or management concern. *Turner*, 482 U.S. at 90 ("[T]he existence of obvious, easy alternatives may be evidence that the regulation is not reasonable."). *See also Abbott*, 490 U.S. at 418. Even a jail's response to a legitimate security concern violates the First Amendment if the response is "exaggerated." *Turner*, 482 U.S. at 90.

Here, the use of secure, non-contact visits offers an obvious alternative to video visits. Such an alternative is less restrictive because it would allow detainees and their loved ones to see each other in the flesh—a significant interaction for anyone, but especially for very young children, who cannot interact with detained parents through a video screen at all.[4]

[4] Aside from violating the Constitution, arbitrary restrictions on contact with family are also bad policy. Empirical research has shown that inmates who maintain strong connections with their families are less prone to make criminal activity a way of life: "Inmates who maintain family ties are less likely to accept norms and behavior patterns of hardened criminals and become part of a prison subculture." Shirley R. Klein et al., *Inmate Family Functioning*, 46 INT'L J. OF OFFENDER THERAPY AND COMP. CRIM. 95, 99 (2002). As a result, preserving lines of communication between inmates and family promotes order and security in prison. The positive effects of family connections also continue after release from prison: "With remarkable consistency, studies have shown that family contact during incarceration is associated with lower recidivism rates." Nancy G. La Vigne, et al., *Examining the Effect of Incarceration and In-Prison Family Contact on Prisoners' Family Relationships*, 21 J. OF CONTEMP. CRIM. JUST. 314, 316 (2005). *See also* Rebecca L. Naser & Christy A. Visher, *Family Members Experiences with Incarceration and Reentry*, 7 W. CRIMINOLOGY REV. 20, 21 (2006) ("[A] remarkably consistent association has been found between family contact during incarceration and lower recidivism rates.") (citations omitted); MINNESOTA DEP'T OF

C. HYGIENE AND SANITATION

Relevant Facts

Several detainees described poor sanitation and a lack of access to hygiene items. Complaints regarding sanitation include receiving food on dirty trays, worms found in food given to detainees, bugs and worms found in the faucets, and failure to provide detainees with enough cleaning supplies to keep their living areas sanitary. Others complained that they often received dirty laundry or torn and tattered sheets, or that laundry was often missing during laundry exchange. Some men told us about being overcrowded with ten other men in one cell with only one toilet. Several detainees reported being forced to clean housing units under threat of lockdown.

During our inspection, PCJ staff prevented us from inspecting cells. PCJ staff even refused our requests to approach cells in a pod where all detainees were locked down. Because the detainees were locked down, there was no discernible safety or security justification for preventing us from approaching the cells, nor was any rationale offered.

While detainees receive minimal amounts of hygiene items on a weekly basis (including soap, toothpaste, and toilet paper), the small quantities provided often run out, and some officers refuse requests for additional supplies. For example, once a week, detainees receive a packet of toothpaste labeled "Maximum Security." These tiny packets, which resemble a ketchup or mustard packet, do not provide a sufficient quantity of toothpaste for adequate dental hygiene. While detainees may buy additional sanitary items from the commissary, not all detainees can afford to do so and some even stated that commissary items including hygiene and sanitation products are often confiscated during almost daily cell searches.

Legal Analysis

The right to decent sanitation, which includes both reasonably sanitary living conditions and sufficient personal hygiene items, is well-established. *Hoptowit v. Spellman*, 753 F.2d 779, 784 (9th Cir. 1985) ("Failure to provide adequate cell cleaning supplies, under circumstances such as these, deprives inmates of tools necessary to maintain minimally sanitary cells, seriously threatens their health, and amounts to a violation of the Eighth Amendment."); *Keenan v. Hall*, 83 F.3d 1083, 1091 (9th Cir. 1996) ("Indigent inmates have the right to personal hygiene supplies such as toothbrushes and soap."); *Board v. Farnham*, 394 F.3d 469, 482 (7th Cir. 2005) ("[T]he right to toothpaste as an essential hygienic product is analogous to the established right to a nutritionally adequate diet."); *Atkins v. County of Orange* 372 F.Supp.2d 377, 406 (S.D.N.Y. 2005) (denying motion for summary judgment where plaintiff asserted "that she was denied basic hygiene products such as toilet paper, toothbrush and sanitary napkins"). Selling hygiene items through a commissary does not satisfy constitutional requirements for detainees who cannot afford to purchase such supplies. *Keenan v. Hall*, 83 F.3d at 1091.

III. UNLAWFUL PUNISHMENT OF IMMIGRATION DETAINEES

The Fifth Amendment forbids holding civil detainees, who have been neither charged with nor convicted of any crime, in conditions that amount to punishment. "'At a bare minimum...an individual detained under civil process... cannot be subjected to conditions that 'amount to punishment.'" *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004) (quoting *Bell v. Wolfish*, 441 U.S. 520, 536 (1979)). In the Ninth Circuit, unlawful punishment is presumed when civil detainees are held in conditions similar to the

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CORRECTIONS, THE EFFECTS OF PRISON VISITATION ON OFFENDER RECIDIVISM 1 (2011) ("Offenders who were visited in prison were significantly less likely to recidivate.").

conditions in which pretrial detainees are held. *Blanas*, 393 F.3d at 934 ("With respect to an individual confined awaiting adjudication under civil process, a presumption of punitive conditions arises where the individual is detained under conditions identical to, similar to, or more restrictive than those under which pretrial criminal detainees are held…").

Under *Blanas*, conditions at PCJ are unlawful not only because of the specific constitutional violations described above, but also because immigration detainees face conditions indistinguishable from pretrial detention. Indeed, during our inspection of the facility, *command staff openly admitted that immigration detainees and pretrial detainees are held in identical conditions*.[5] Numerous punitive conditions of confinement reported by multiple PCJ detainees include:

- Excessive use of force and frequent verbal abuse by guards, including use of racial slurs and insults
- Slow emergency responses and inadequate medical care
- Frequent and arbitrary lockdowns, including extended lockdowns
- Frequent and disruptive cell searches
- Limited access to reading materials, including Spanish language materials
- Frequent confiscation of reading and writing material and commissary goods purchased by detainees
- Regular confiscation of food that is not eaten promptly (despite periods between meals as long as 8 hours)
- Interruptions in phone services and exorbitant phone rates which effectively deny phone calls to indigent detainees
- Delays and arbitrary denials of requests for transfer to less restrictive facilities
- Unclear and arbitrary grievance procedures, including refusal by officers to accept or respond to written grievances

Thus, in addition to the specific unconstitutional conditions described in Part II above, the culture and conditions at PCJ can only be described as punitive and harsh despite the fact that the immigration detainees held there are not serving criminal sentences but rather are undergoing administrative immigration proceedings. Nonetheless, all of the foregoing conditions contribute to the deeply punitive climate that pervades civil detention at PCJ. During our interviews we heard from several detainees about the general abusiveness, hostility, and lack of professionalism by guards at PCJ. One person explained that a guard told him, "If you don't fucking like it go back to your country." Another man told us that a guard commented, "What do you expect? You're in Pinal County."

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[5] *See also* Gregory Pratt, *Immigrants Who Fight Deportation Are Packed Into Federal Gulags for Months or Years Before Their Cases Are Heard*, Phoenix New Times, June 23, 2011, www.phoenixnewtimes.com/content/printVersion/2353677/ ("Asked whether he sees a difference between "criminal inmates" and 'detainees,' [PCJ Chief Deputy] Kimbell answers, 'Corrections, detention — it's all the same thing.'").

In all of the foregoing respects, conditions at PCJ are indistinguishable from pretrial detention—and thus presumptively unlawful.[6]

IV. VIOLATION OF ICE DETENTION STANDARDS

Conditions of confinement at PCJ not only violate the law, but contravene ICE's own detention standards as well. The results of our investigation point to both the inadequacy of those standards and ease with which they are flouted in practice.

PCJ is still subject to the outdated 2000 INS National Detention Standards ("NDS"). ICE has not required PCJ to comply with the 2008 ICE Performance-Based National Detention Standards ("PBNDS"), much less the recently revised 2011 PBNDS – nor could PCJ comply with those standards. Indeed, multiple policies and practices described herein fail to satisfy even the less demanding requirements contained in the 2000 standards.

For example, as noted above, the denial of outdoor exercise at PCJ violates the 2000 standards, which provides that "[e]very effort shall be made to place a detainee in a facility that provides outdoor recreation."[7] This is clearly not the case at PCJ where hundreds of detainees go months and years without outdoor exercise, and long-term detainees' requests for transfers are denied in violation of the standards governing exercise and transfers.[8] Additionally, the standards provide, "[a]ll new or renegotiated contracts and IGSAs will stipulate that INS detainees have access to an outdoor recreation area."[9] ICE has already stated that the 2011 standards will be applied to detention facilities nationwide, including county jail facilities.[10] It is thus unclear how ICE intends to follow through on this promise with regards to PCJ without violating the 2000 standards, or whether ICE intends to exempt PCJ from the 2011 standards entirely.

Other applicable 2000 standards that are regularly violated in practice include:

- 2000 NDS: Food Service § I ("It is INS policy to provide detainees with nutritious, attractively presented meals, prepared in a sanitary manner."). Detainees report receiving rotting and contaminated food on dirty trays.

- 2000 NDS: Issuance and Exchange of Clothing, Bedding, and Towels § III.E ("Detainees shall be provided with clean clothing, linen and towels on a regular basis to ensure proper

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[6] While PCJ has been accredited by the National Sheriffs' Association, accreditation by such organizations has little or no relevance to whether conditions satisfy constitutional requirements. *See, e.g.*, *Gates v. Cook*, 376 F.3d 323, 337 (5th Cir. 2004) ("[I]t is absurd to suggest that the federal courts should subvert their judgment as to alleged Eighth Amendment violations to the [American Correctional Association]."); *LaMarca v. Turner*, 662 F. Supp. 647, 655 (S.D. Fla. 1987) (accreditation has "virtually no significance" to lawsuit because accredited prisons have been found unconstitutional).

[7] 2000 NDS: Recreation § III.A.1.

[8] *Id;* 2000 NDS: Detainee Transfer § III.B ("When required recreation is not available, a detainee will have the option of transferring to a facility that offers the required recreation.").

[9] 2000 NDS: Recreation § III.A.3

[10] Statement of Kevin Landy, Assistant Director, Office of Detention Policy and Planning, U.S. Immigration and Customs Enforcement, Before the U.S. House of Representatives, March 28, 2012, *available at* http://judiciary.house.gov/hearings/Hearings%202012/Landy%2003282012.pdf ("ICE will also require adoption of the new standards in other facilities housing ICE detainees, such as county jails, beginning with those facilities that have the largest population of ICE detainees.").

hygiene."). Detainees experience interruptions in laundry services, receive dirty laundry and torn sheets, and have laundry go missing.

- 2000 NDS: Environmental Health and Safety § III.R.1 ("Environmental health conditions will be maintained at a level that meets recognized standards of hygiene."). Multiple detainees report overcrowding, lack of cleaning supplies, and being coerced to clean under threat of lockdown.

- 2000 NDS: Medical Care § III.H ("Detention staff will be trained to respond to health-related emergencies within a 4-minute response time . . . Whenever an officer is unsure whether a detainee requires emergency care by a health care provider, the officer should contact a health care provider or an on-duty supervisor immediately."). Detainees reported delays of up to an hour in emergency responses.

- 2000 NDS: Telephone Access § I ("Facilities holding INS detainees shall permit them to have reasonable and equitable access to telephones."). Detainees are charged exorbitant fees, effectively denying phone access to indigent persons.

- 2000 NDS: Funds and Personal Property § I ("All facilities will provide for the control and safeguarding of detainees' personal property."). Jail officers regularly confiscate detainees' reading and writing materials and purchased commissary goods.

- 2000 NDS: Detainee Grievance Procedures § III.A ("The facility shall make every effort to resolve the detainee's complaint or grievance at the lowest level possible, in an orderly and timely manner."). PCJ jail officers refuse to accept and fail to respond to grievances in a timely manner.

V. CONCLUSION

Despite ICE officials' acknowledgment of the need for immigration detention reform[11] and the Obama administration's oft-cited pledge to create a "truly civil detention system,"[12] the conditions at the Pinal County Jail have not improved and effectively punish ICE detainees. The continued pattern of inhumane treatment and deficient conditions at PCJ—conditions inconsistent even with constitutional minima for convicted prisoners—not only make a mockery of the administration's stated commitment to humane detention reform but also present an invitation to suit.

We urge you immediately to remove all immigration detainees from PCJ or correct the violations enumerated above. It is our sincere hope that this matter can be resolved without resort to legal action.

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[11] *See* 2011 Operations Manual ICE Performance-Based National Detention Standards, *available at*, http://www.ice.gov/detention-standards/2011 (describing new standards as consistent with ICE's "commitment to reform the immigration detention system."); *see also,* ICE Fact Sheet: *Detention Management,* November 10, 2011, *available at http://www.ice.gov/news/library/factsheets/detention-mgmt.htm;* DHS Fact Sheet, *ICE Detention Reform: Principles and Next Steps,* October 6, 2009, *available at http://www.dhs.gov/xlibrary/assets/press_ice_detention_reform_fact_sheet.pdf*

[12] *See e.g.,* Nina Bernstein, *U.S. to Reform Policy on Detention for Immigrants,* N.Y. TIMES, August 5, 2009, *available at* http://www.nytimes.com/2009/08/06/us/politics/06detain.html?pagewanted=all

Sincerely,

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