



June 15, 2018

Director Thomas Homan  
U.S Immigration and Customs Enforcement  
500 12th St., SW  
Washington, D.C. 20536

RE: Application of National Detention Standards to Detainees Held at Sheridan FCI

One hundred and twenty-three men from different countries across the globe applied for asylum in the United States. Instead of deciding their asylum requests, immigration authorities separated the fathers from their children, ordered their deportation, and moved them to the Federal Correctional Institution, Sheridan ("FCI Sheridan"), a federal prison in Sheridan, Oregon. Their detention in a federal prison is unjust, the forcible separation from their children is immoral, and their isolation from counsel and community is unfair. The actions taken by U.S. Immigration and Customs Enforcement ("ICE") against these men are as outrageous as they are unconstitutional.

Detention should never be used to punish or deter a person from applying for asylum to save his life. Yet, recent comments by Attorney General Jefferson Sessions demonstrate a callous disregard to this basic principal.<sup>1</sup> And this action by ICE—shipping men fleeing violence and persecution to a federal prison hours away from immigration attorneys after tearing them from their families—shows that this administration has abandoned the very promise inscribed on the Statue of Liberty. Instead of welcoming the tired, poor, huddled masses, ICE is using the lives of refugees and asylum seekers to send a chilling message to the world: You are not welcome and, if you dare come, you will be punished.

In order to avoid further violations of the U.S. Constitution and the requirements provided in ICE's own standards, ICE must ensure that FCI Sheridan complies with the current standards for civil immigration detention provided in the Performance-Based National Detention Standards ("Detention Standards").<sup>2</sup> The Detention Standards were "crafted to improve medical and mental health services, increase access to legal services and religious opportunities, improve

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<sup>1</sup> *You Can't Deter People Who Are Fleeing For Their Lives': Attorneys Scramble After Sessions' Asylum Decision*, WBUR, June 13, 2018, avail. at <http://www.wbur.org/news/2018/06/13/boston-immigration-sessions-asylum>.

<sup>2</sup> U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2011, Rev. 2016, <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

communication with detainees with no or limited English proficiency, improve the process for reporting and responding to complaints, and increase recreation and visitation."<sup>3</sup>

ICE must provide the following at FCI Sheridan:

1. Access to legal counsel, including free, confidential calls to attorneys.
2. Access to a comprehensive immigration law library.
3. Cease deportations or official interviews until legal visitations occur.
4. Commit to hear all cases of individuals detained at FCI Sheridan at the Portland Immigration Court.
5. Make reasonable accommodations for Mass Collaborative Representation by the pro bono legal community.
6. Provide regular access to video conferencing.
7. Cease the inhumane practice of separating families seeking asylum.

#### *1. Access to Counsel*

Everyone in the United States, regardless of citizenship status, is constitutionally entitled to due process, including access to counsel in immigration proceedings. The right to counsel is guaranteed by the Fifth Amendment of the U.S. Constitution and the Immigration and Naturalization Act. Pursuant to this right, ICE's Detention Standards forbid denying detainees access to counsel. PBNDS 5.7.V.J. The Detention Standards further recognize the constitutional requirements of due process by requiring detention facilities to provide liberal access to counsel. Some of these requirements include free confidential telephone calls to attorneys for consultations, PBNDS 5.6.V.E. & V.F., and prohibiting most restrictions on visitation hours in confidential meeting spaces by attorneys and legal workers. PBNDS 5.7.V.J.

On Friday, June 8, the Innovation Law Lab created a hotline that individuals at FCI Sheridan could call to request free legal visitation. However, FCI Sheridan facilities do not permit free outgoing telephone calls, which are required under the Detention Standards and case law. Simply moving people from a federal detention center to a federal prison does not change legal rights.

While the Detention Standards allow certain security precautions to be taken, simply using the physical infrastructure of a facility as an excuse for denying access to counsel does not pass constitutional or statutory muster. This is especially true when, as here, ICE itself picked FCI Sheridan to address the overcrowding of facilities regularly used to house immigrants who are taken into custody, a problem of its own making. Because ICE chose this facility, ICE must also accommodate access to counsel and, if necessary to ensure the just adjudication of rights, slow down the deportation process. Indeed, given the current physical limitations of FCI Sheridan, it would take over two weeks to meet with each individual for a two hour intake and one hour consultation, even assuming eight hour working days, seven days a week, and using all available attorney rooms without interruption.

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<sup>3</sup> *Id.* at i.

## 2. *Law Library*

Consistent with the fundamental right to access the courts, the Detention Standards require that ICE provide detainees access to a relevant and comprehensive law library. PBNDS 6.3. The law library should provide detainees with up-to-date legal materials and the ability to make free photocopies of legal materials, including their own documents. PBNDS 6.3.V.E.2 & V.H. The materials must be made meaningfully available to limited English proficient individuals. PBNDS 6.3.II.2 & 6.3.IV.11.

The Detention Standards include a detailed list of materials that the library should contain. PBNDS 6.3.V. To our knowledge, FCI Sheridan has not provided the cohort access to these materials. Access to legal materials, including a comprehensive law library, is always important, but it becomes increasingly so when individuals in custody are not allowed meaningful access to counsel. Faced with imminent removal proceedings or deportation, these people must be able to prepare their cases for presentation to immigration judges and ahead of interviews with officials making determinations about pending asylum claims.

## 3. *Stop Deportations*

Until ICE implements the Detention Standards at FCI Sheridan, all deportations must be stayed. It is highly improper for ICE to proceed with removals when individuals have been denied meaningful access to counsel and legal materials, in violation of ICE's own Detention Standards. As discussed in more detail above, FCI Sheridan simply cannot accommodate even the most rudimentary legal visitations for the entire cohort in under two weeks. Until these issues have been fully resolved and all detainees are allowed to seek legal representation, ICE must halt the deportation of any of detainees now housed at FCI Sheridan.

## 4. *Portland Immigration Court*

Normally, the geographical jurisdiction where the immigrant is located is also the immigration court jurisdiction. To date, there has been no public statement regarding where these cases will be heard. Because nearly all of the expert witnesses and pro bono attorneys organized by the Innovation Law Lab are from Portland, and because the immigrants are detained in Oregon, it is important that during their period of detention their immigration cases are heard at the Portland Immigration Court.

Even assuming all other restrictions to counsel are immediately resolved, by moving over one hundred asylum seekers to FCI Sheridan, ICE has created a practical barrier to legal representation. FCI Sheridan is located well over an hour away from Portland, Oregon, where the majority of immigration attorneys and expert witnesses are located. While a number of attorneys have expressed an interest in providing pro bono representation to individuals detained at FCI Sheridan, despite the several hour commute, it would be wholly impractical for pro bono attorneys to have to also travel to Tacoma, Washington, or California, at their own expense to represent these asylum seekers. In order to effectuate a fair adjudication of these asylum cases, ICE must hear the cases in Portland Immigration Court. This would greatly facilitate the

processing and reduce the expense of these cases for the government and the pro bono attorneys stepping in to provide counsel to these individuals.

#### *5. Mass Collaborative Representation*

ICE moved over one hundred asylum seekers from locations along the southern border of the United States to a federal prison in Oregon with no warning. The legal community has had just days to organize pro bono representation, seek access to potential clients, and coordinate with experts and other legal service organizations. As described above, providing even a baseline consultation to every detainee will take well over two weeks of around-the-clock work.

In order to provide even this limited access to counsel to people who may be faced with imminent deportation, dozens of pro bono lawyers must volunteer for daily shifts over the next several weeks. Therefore, many attorneys will need to be accommodated coming in and out of the facility. And multiple attorneys may need to meet with the same detainee at different times. Additionally, the limited number of attorneys available may require that group legal meetings be conducted as provided by the Detention Standards. PBNDS 5.7.J.12 (request from legal representatives or assistants for group legal meetings must be granted “to the greatest extent practicable”); PBNDS 6.4. This “Mass Collaborative Representation” model is a well-known mechanism through which the pro bono community can provide adequate representation to large numbers of individuals in a short period of time.

Similar projects operating at other detention facilities have been instrumental in making certain that the rule of law is respected in immigration adjudications. Mass Collaborative Representation is currently being used in Dilley, Texas, Artesia, New Mexico, and throughout facilities in the southeast in conjunction with a project at the Southern Poverty Law Center. Mass Collaborative Representation models have resulted in a 98% success rate for asylum applicants.

This is a proven model of providing free legal services with tremendous efficacy to asylum seekers. The mass transfer of detainees to FCI Sheridan necessitates that multiple pro bono attorneys can visit with each detainee. When immigrants are represented by counsel, cases are more efficient, judges can make better decisions, and the government expends fewer resources. ICE must facilitate these visits.

#### *6. Video Conferencing*

At remote facilities like FCI Sheridan, sometimes the only way a family or a lawyer can visit someone in custody is remotely. While telephonic access is required, it has inherent limitations. Video conferencing (“VTC”), while never an acceptable substitute for in person visitation, is critical to ensuring that people in custody at FCI Sheridan can be in regular, meaningful contact with their community. ICE should immediately provide VTC technology to FCI Sheridan and should continue this service for as long as the facility is used for civil immigration detention.

## 7. Family Separation

When ICE decided to move over one hundred asylum seekers to FCI Sheridan, it did so following the horrifying new practice of separating parents from their children and each other. ICE must reunify men at FCI Sheridan with family members. There is simply no justification for separating families who came to the United States seeking asylum, especially when doing so could put hundreds or thousands of miles between family members. This cruel practice is made even worse when people have no idea where their loved ones are located or how to find them. ICE must end the barbaric practice of separating families seeking asylum.

In conclusion, ICE must abide by the constitutional requirements of due process and its own Detention Standards at FCI Sheridan. Just weeks ago, over one hundred people came to our country fleeing violence and persecution and were met with the unimaginable: imprisonment, the loss of their families, and the denial of some of the most basic protections afforded by our legal system. ICE's decision to transfer asylum seekers from the southern border of the United States to Oregon came as a shock. As additional details about the way ICE handled this move come to light, our concerns grow. In order to stop the continued violation of U.S. laws, it is critically important that ICE meet the requirements detailed in its own Detention Standards, including providing unfettered access to counsel, legal materials, and perhaps most importantly, time to address the chaos that has been created by moving all of these asylum seekers to a federal prison not equipped to house them. People come to the United States at great personal risk seeking freedom from despots and cruelty at the hands of their government. We cannot meet them at our borders with more of what they have fought so desperately to escape.



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