



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION



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VIA EMAIL

Sam Olson  
Field Office Director  
ICE Chicago Field Office  
101 W Ida B Wells Drive  
Suite 4000  
Chicago, IL 60605

Crystal Carter  
Warden  
FCI Leavenworth  
1300 Metropolitan  
Leavenworth, KS 66048

Nathan Atkinson  
Assistant General Counsel  
United States Department of Justice  
Federal Bureau of Prisons  
FCI Leavenworth

cc: Manda Walters, Office of Partnership and Engagement, U.S. ICE

Re: ICE Detention at FCI Leavenworth

Dear Officers,

In February 2025, Immigration and Customs Enforcement (“ICE”) and the Federal Bureau of Prisons (“BOP”) entered into an agreement (“Interagency Agreement”) to detain immigrants in ICE custody at the BOP’s facility at Federal Correctional Institution Leavenworth (“FCI Leavenworth”) in Leavenworth, Kansas.<sup>1</sup> Currently, the government is detaining at least 80 immigrant detainees at FCI Leavenworth, many of whom have won their immigration cases, in conditions of confinement that raise serious concern. Immigrant detainees are held in civil

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<sup>1</sup> Inter-Agency Agreement Between U.S. Dep’t of Homeland Sec., U.S. Immigration and Customs Enforcement, and U.S. Dep’t of Justice, Federal Bureau of Prisons (“Interagency Agreement”), Feb. 6, 2025, <https://www.documentcloud.org/documents/25536309-agreement-between-ice-and-bop-re-detaining-immigrants-at-federal-prisons/>.

detention, cannot be subjected to punitive conditions of confinement, and are entitled to “more considerate treatment and conditions of confinement” than those in criminal custody. *Youngberg v. Romeo*, 457 U.S. 307, 322 (1982); *see also Porro v. Barnes*, 624 F.3d 1322, 1326 (10th Cir. 2010) (requiring federal immigrant detainees to receive at least the same standard of treatment as pre-trial detainees).

Based on reports provided by people currently or previously held in ICE custody at FCI Leavenworth in the past two months, this letter describes areas of significant concern and provides recommendations to both ICE and BOP. The detention of immigrants, as well as conditions of confinement for immigrant detainees at FCI Leavenworth, fall well below what is required by the interagency agreement, BOP and ICE policy, and the Constitution.<sup>2</sup> The conditions of confinement outlined below illustrate how detention for civil immigration violations is punitive by nature, and that such detention must cease. As you consider the recommendations below, we also recommend that your agencies discontinue the agreement to hold people in ICE custody at BOP facilities.

## **I. Continued Detention of Immigrants Who Have Won Their Cases in Immigration Court.**

According to both detainee and attorney reports, a significant number of detained immigrants at FCI Leavenworth continue to be held in custody even though they have already won their immigration cases. These individuals have prevailed in cases including withholding of removal under 8 U.S.C. § 1231(b)(3) or the Convention Against Torture, 8 C.F.R. § 1208.16(c)(2), where an Immigration Judge has concluded that they would likely be persecuted or tortured if deported to their home countries. ICE has not appealed, and detained immigrants at FCI Leavenworth continue to be held in custody for significant periods of time after they have won their cases, in some instances for more than three months. The continued detention of people who have prevailed in their immigration cases is unreasonable, *see Zadvydas v. Davis*, 533 U.S. 678 (2001), and ICE should release them immediately, instead of holding them at FCI Leavenworth or any other ICE detention facility. *See ICE, Directive 16004.1, Detention Policy Where an Immigration Judge Has Granted Asylum and ICE Has Appealed*, Feb. 9, 2004, <https://perma.cc/5HPE-MD2J>.

## **II. Immigrant Detainees at FCI Leavenworth Are Subject to Lengthy Lockdowns, Deprivation of Basic Needs, and Use of Force.**

Immigrants detained at FCI Leavenworth are subject to lengthy lockdown periods, where they are held in crowded cells for approximately 20 hours per day. When detained immigrants are held in lockdown, they are unable to exercise, access the law library computer to work on their cases, or place telephone calls to their counsel or families. On frequent occasions—at least once every two weeks—the facility is so understaffed that officers have refused to let detainees out of their cells for more than 72 consecutive hours, or three days. For example, one immigrant detainee, who has been held at FCI Leavenworth for two and a half months, reports that immigrant detainees

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<sup>2</sup> Notably, both ICE and BOP policies apply to immigrant detainees held at FCI Leavenworth. *See* Interagency Agreement at 6 (“While in BOP custody, a transferred detainee shall be subject to BOP’s rules and regulations consistent with BOP’s policies for pre-trial detainees and the laws, rules, and regulations of the sending party.”).

have been placed in lockdown for 72 consecutive hours on four separate occasions. Several immigrants held at FCI Leavenworth report that immigrant detainees have become so depressed due to extended lockdowns that they attempted suicide. Detainees who have attempted suicide, however, have been removed from the unit and placed in solitary confinement. One detainee who witnessed a suicide attempt has felt depressed and fearful during subsequent lockdowns, but has been afraid to report his mental health symptoms to staff for fear that he too will be removed from the unit and will be placed in solitary confinement.

In some instances, FCI Leavenworth has placed immigrant detainees in the pretrial units when the unit designated for ICE detainees has reached capacity. Because people in ICE and BOP custody are not permitted to intermingle in the day room, this has also caused lengthy lockdowns in the BOP unit.

Immigrants detained at FCI Leavenworth are held in crowded, unsanitary conditions. The units in which detained immigrants are held consist of two-person and four-person cells. Almost all two-person cells are already full. In order to add even more people to the units, the facility has replaced the four beds in the four-person cells—which measure just 8 by 12 feet—with three sets of triple bunks in order to accommodate nine people. One detained immigrant reported that space in these nine-bunk cells is so tight that he cannot sit up in the top bunk of his cell, and that there are no ladders or rails to prevent falls during the night.

People in ICE custody at FCI Leavenworth are subject to more restrictive conditions than those in BOP custody, who are permitted significantly more out-of-cell time, and are able to access outdoor recreation areas. Although FCI Leavenworth has an outdoor yard for recreation and exercise that is available to people held in criminal BOP custody, detained immigrants are forbidden from accessing any outdoor recreation. Importantly, BOP must provide both “indoor *and* outdoor recreation” to ICE detainees.<sup>3</sup>

Immigrant detainees at FCI Leavenworth also reported several instances of abusive use of force from facility officials. One detainee reported that “[t]here’s a guard with brown hair who is violent. There was a detainee who didn’t want to go back to his cell during dayroom time because he didn’t have a chance to shower, and asked to shower before being sent back to his cell. This guard threw him to the floor, put him in handcuffs, and took him away. That detainee never came back to the unit.”

These conditions violate the detainees’ substantive due process rights to be free from punishment under the Fifth Amendment. *See French v. Owens*, 777 F.2d 1250, 1252-53 (7th Cir. 1985); *Jones v. City & Cty. of San Francisco*, 976 F. Supp. 896, 907 (N.D. Cal. 1997) (finding lock-in time of 16 hours per day to be unconstitutional in overcrowded conditions); *Vazquez v. Carver*, 729 F. Supp. 1063, 1069 (E.D. Penn. 1989) (finding confinement to cells for 20 hours of day to be unconstitutional in overcrowded conditions); *Porro*, 624 F.3d at 1326 (requiring federal immigrant detainees to receive at least the same standard of treatment as pre-trial detainees).

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<sup>3</sup> Interagency Agreement at 9.

### **III. Delay in Provision of Prescription Medication and Charges for Medical Care, in Violation of ICE Policy.**

Immigrants detained at FCI Leavenworth report significant delays in receiving medical care, and when they are seen by staff for treatment, they are not provided with proper care and are instructed to pay for medication, which is in violation of ICE policy.

Prisons and detention facilities must timely provide prescription medication, and cannot “intentionally interfere[e] with . . . treatment once prescribed.” *Estelle v. Gamble*, 429 U.S. 97, 105 (1976). However, several ICE detainees at FCI Leavenworth report significant delays—including up to several weeks—in receiving prescribed medications, even after submitting several requests to the medical staff.

Multiple detainees also report that they are charged for medical care and treatment at FCI Leavenworth, including basic medication. One detainee reported having to pay a co-payment to the facility to receive dental care. Another detainee who requested dental care due to a severe toothache was provided with no treatment. Instead, he was told by staff to purchase ibuprofen from the commissary. Because the detainee had no money, he was unable to purchase the medication, and has endured pain for over three months, without any treatment. Another detainee reported that although he attempted to purchase medication recommended by the FCI Leavenworth medical staff from commissary, it was not made available to people in ICE custody at the facility. People held in ICE custody may not be charged for medical care. As the ICE’s *National Detention Standards for Non-Dedicated Facilities* (“NDS”) specifies, detention facilities are required to provide “[m]edically necessary and appropriate medical, dental and mental health care and pharmaceutical services at no cost to the detainee.”<sup>4</sup>

### **IV. Failure to Provide Language Access Prevents Medical Care.**

A significant portion of immigrant detainees held at FCI Leavenworth have limited English proficiency (LEP). Government agencies are obligated to provide language access,<sup>5</sup> and ICE’s National Detention Standards require that facilities “provide LEP detainees with meaningful access to their programs and activities through language interpretation and translation services. The facilities’ obligation to provide meaningful access to LEP detainees extends to all aspects of detention, including but not limited to intake, disciplinary proceedings, placement in segregation, sexual abuse and assault prevention and intervention, staff-detainee communication, mental health,

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<sup>4</sup> U.S. ICE, *National Detention Standards for Non-Dedicated Facilities* (“NDS”) 112 (2019), <https://www.ice.gov/doclib/detention-standards/2019/nds2019.pdf> [https://perma.cc/7XSM-3QMF] (“NDS 2019”); see also ICE, *Performance-Based National Detention Standards 2011* § 4.3(V)(U)(6) (“PBNDS”) (2016), <https://www.ice.gov/doclib/detention-standards/2011/4-3.pdf> [https://perma.cc/S6QN-49NZ] (“ICE detainees “shall not be charged for any medical services to include pharmaceuticals dispensed by medical personnel.”).

<sup>5</sup> See Title VI, Civil Rights Act of 1964, 42 U.S.C. § 2000d (1964); *Lau v. Nichols*, 414 U.S. 563, 566-68 (1974); *Perez-Lastor v. INS*, 208 F.3d 773, 778 (9th Cir. 2000); *Panjaitan v. Gonzales*, 172 F. App’x 870, 872 (10th Cir. 2006); *Bajrami v. Greene*, No. CIV.A.94-S-1783, 1995 WL 17013949, at \*3 (D. Colo. June 2, 1995).

and medical care.”<sup>6</sup> The Interagency Agreement requires that ICE must “provid[e] language assistance for detainees with limited English proficiency (LEP), including access to bilingual staff, professional interpretation, and translation services to ensure meaningful access to programs and activities.”<sup>7</sup>

It is abundantly clear that ICE has failed to provide adequate language access to LEP detainees held at FCI Leavenworth, impacting the provision of important services, including medical care. People held in both ICE and BOP custody alike report that few BOP staff at the facility speak Spanish, and that usually they have no access to any Spanish-speaking staff. An immigrant detainee who speaks only Spanish reported that medical staff only spoke English, and did not utilize any interpreters during his clinical visits. Another immigrant detainee who speaks only Russian reported that he has been unable to obtain medical assistance at the facility due to lack of translation and interpretation support. He has filled out paper requests for medical assistance in Russian, but has never received a response. He believes he would have a better chance of receiving a response if he were able to fill out an electronic request form on the computer in his unit, but because this computer does not support the Cyrillic alphabet, he cannot use it. He has tried to ask the officers for interpretation support, but has received none, and he has gone months without receiving a response to his medical requests.

Another immigrant detainee who speaks only Spanish reports that Spanish-language request forms are not available. He has filled out several medical request forms, using the English form and writing his request in Spanish, and he has never received any response. As a result, his medical issues have gone untreated. He has experienced warmth and pain in the area of his kidneys and worries that he has a serious, untreated problem. He has also consistently received medication in other detention centers, but he has been unable to continue this medication at Leavenworth because his requests have gone unanswered.

## **V. Restrictions on Telephone Access at FCI Leavenworth Violate the Interagency Agreement, ICE Policy, and Immigrant Detainees’ Right to Confidential Communication with Counsel.**

Immigrant detainees held at FCI Leavenworth report several significant issues with access to telephones at the facility. First, immigrant detainees held at FCI Leavenworth are allowed only 300 minutes of phone calls per month, which must be purchased from the facility. Each phone call is limited to 15 minutes, so these limits result functionally in a cap of 20 phone calls per month. Immigrant detainees are not permitted any more minutes after reaching this monthly limit. Telephone calls are only permitted to a pre-approved list of phone numbers. If a phone number appears on the list of more than one detainee, that phone number is blocked, causing particular difficulty for detainees who may have retained the same attorney. Detainees report that these telephone restrictions also pose challenges to maintaining contact with their families. These limits conflict with ICE’s National Detention Standards, which require “reasonable and equitable access

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<sup>6</sup> NDS at ii-iii.

<sup>7</sup> Interagency Agreement at 9.

to telephones during established facility waking hours, limited only by” particular restrictions set out in these detention standards, which do not include a 300-minute cap.<sup>8</sup>

The Interagency Agreement between ICE and BOP specifies that “ICE shall provide ICE detainees capabilities to make free phone calls to recipients as in a standard ICE detention facility,” including installation of phone lines to make pro bono phone calls, “a speed dial number directory for legal, advocacy, and consulates,” on unmonitored lines.<sup>9</sup> Although FCI Leavenworth has posted a flier with contacting consular officials, information regarding contacting legal counsel is not provided.

The Interagency Agreement further provides that “BOP shall also facilitate standard legal calls by allowing detainees to request to make a legal call through the detainee’s Unit Team.”<sup>10</sup> However, no detainee with whom we spoke knew of the existence of this protocol, and detainees have had to call their attorneys directly on the paid phones with limited minutes, on a recorded line. Lawyers can schedule calls with their clients in immigration custody at FCI Leavenworth, but clients are not in a confidential setting when they receive these calls. Instead, they receive scheduled calls from their attorneys in the dayroom, where their calls can be overheard by others in their unit and are not confidential. This is in contrast to scheduled attorney-client calls for pre-trial detainees in BOP custody at the facility, who are able to speak with counsel over the phone in a private room off of their unit’s dayroom. These limitations on calls with counsel and potential counsel also violate the NDS 2019, which require “measures to ensure [attorney-client] call[s] can be made confidentially” and bar FCI Leavenworth from “restrict[ing] the number of calls a detainee places to his or her legal representatives or to obtain representation.”<sup>11</sup>

## **VI. Improper Charges for Copies of Legal Materials and Legal Mail Failures.**

ICE’s National Detention Standards provide that “detainees may not be charged for copying or printing a reasonable amount of legal material.”<sup>12</sup> However, detainees report that FCI Leavenworth impermissibly charges a per-page fee to print from law library computers located in their housing unit, which significantly limits their ability to conduct legal research and prepare for their cases.

Immigrant detainees and their counsel also report significant legal mail delays at FCI Leavenworth, which have prejudiced their cases. Immigrant detainees who have filed *pro se* habeas petitions have not received legal mail in a timely manner to respond to deadlines. In other instances, the facility has also delayed outgoing legal mail. Such delays are impermissible and violate the right of detainees of access to the courts. *See Simkins v. Bruce*, 406 F.3d 1239, 1242-44 (10th Cir. 2005).

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<sup>8</sup> NDS at 158.

<sup>9</sup> Interagency Agreement at 8.

<sup>10</sup> *Id.*

<sup>11</sup> NDS at 160-61.

<sup>12</sup> NDS at 187.

Immigrant detainees have further reported that facility staff have opened legal mail from their counsel outside their presence, which is patently unconstitutional. *Wolff v. McDonnell*, 418 U.S. 539, 576-77 (1974); *Jensen v. Klecker*, 648 F.2d 1179, 1182 (8th Cir. 1981); *Hinderliter v. Hungerford*, 814 F. Supp. 66, 68 (D. Kan. 1993).

## **VII. Lack of Programming and Religious Services That Are Otherwise Available to People in BOP Custody at FCI Leavenworth.**

Detained immigrants report that they have no access to religious services or social or educational programming of any type. This is in violation of the Interagency Agreement, which requires that ICE detainees have “access to education and psychology materials, leisure and law libraries, and indoor and outdoor recreation.”<sup>13</sup>

Immigrant detainees at FCI Leavenworth report that they have been denied access to religious services and implements. One Muslim detainee reported that facility staff have barred him and other Muslims from leaving cells—all of which are cramped rooms with toilets—to pray, even though Islam discourages prayers in a room with a toilet. He reported that he has no access to an Imam or any Muslim religious services or programming. A Catholic detainee reported that he had requested a rosary from the facility, which are provided to people in BOP custody, but that he was denied one because he was in ICE custody. Several people who practice denominations of Christianity report that, because there are no religious services or access to chaplains, detained immigrants pray together in the dayroom.

This failure to provide any religious activities violates ICE’s National Detention Standards, which require that detainees have “the opportunity to engage in group religious activities” and “the opportunity to engage in practices of their religious faith, limited only by a documented threat to safety, security, and the orderly operation of the facility.”<sup>14</sup> And by denying those in ICE custody at FCI Leavenworth access to programming that is available to those in BOP custody, FCI Leavenworth has placed comparatively restrictive conditions on ICE detainees.

## **VIII. Recommendations.**

We provide the following recommendations to ICE and BOP with respect to immigrant detainees held at FCI Leavenworth. As you consider the recommendations below, we also recommend that your agencies discontinue the agreement to hold people in ICE custody at BOP facilities.

- Release all immigrant detainees who have won their cases before an Immigration Judge, including those who have prevailed on withholding and Convention Against Torture claims.
- Ensure that units holding people in ICE custody are not locked down, including due to insufficient staffing or as retaliation.

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<sup>13</sup> Interagency Agreement at 9.

<sup>14</sup> NDS at 155-56.

- Ensure that four-person cells have only four beds so as to avoid the cramped triple-bunking arrangements that are being put into place.
- Provide—at a minimum—one hour of outdoor recreation per day.
- Stop charging copays and ensure that medication recommended by medical providers is provided free of charge, in a timely fashion.
- Provide request slips in English and Spanish, and ensure that, within 24 hours of receiving a request slip, the slip is translated and—if it involves a medical issue—triaged.
- Ensure compliance with ICE detention standards that require the provision of appropriate interpretation and language services for medical and mental health care, including during appointments, sick call, treatment, and consultation.
- Remove the cap of 300 minutes of phone calls per month.
- Permit legal phone calls to take place in a private room similar to the rooms where those in pre-trial custody at FCI Leavenworth make their confidential attorney calls.
- Provide a manner for people in ICE custody at Leavenworth to request a free, private, and confidential call with their attorney or with a potential attorney.
- Ensure that legal mail is promptly sent and delivered, and is opened only in the presence in the detainee.
- Provide access to education, leisure activities (including volume on televisions), and recreation.
- Provide access to a chaplain and to pastoral care and counseling appropriate for each detained immigrant's religion, and ensure that they are able to practice their religion (for example, Muslims should be allowed out of their cells for prayers).
- Provide free printing from the law library computers in units where people are held in ICE custody.

We look forward to your review of this letter and your consideration of its recommendations. We hope to have the opportunity to discuss this matter further with you. Please contact Eunice Cho at [echo@aclu.org](mailto:echo@aclu.org); Kyle Virgien at [kvirgien@aclu.org](mailto:kvirgien@aclu.org); and Michael Sharma-Crawford at [michael@sharma-crawford.com](mailto:michael@sharma-crawford.com) to arrange a further discussion.

Sincerely,

Advocates for Immigrant Rights and Reconciliation  
 American Civil Liberties Union  
 American Civil Liberties Union of Kansas  
 American Immigration Lawyers' Association  
 Federal Public Defender, District of Kansas  
 Missouri/Kansas Chapter of the American Immigration Lawyers Association  
 National Immigrant Justice Center  
 Office of Justice, Peace, and Integrity of Creation of the Sisters of Charity of Leavenworth