



## Jewish Family Service

### Patient Advocacy Program

To: Alfredo Aguirre, Mental Health Services Deputy Director

From: Michael Phillips, Supervising Attorney, Patient Advocacy Program

Date: June 3, 2009

Re: U.S. Immigration and Customs Enforcement Detainees at Alvarado Parkway Institute

---

#### **Question Presented**

Does the treatment of U.S. Immigration and Customs Enforcement (ICE) detainees, where it differs from the treatment of other patients at Alvarado Parkway Institute (API), represent a violation of patients' rights with respect to the Lanterman Petris Short (LPS) Act?

#### **Statement of the Case**

For approximately seventeen years, API has had an arrangement with ICE whereby ICE detainees, in need of acute psychiatric care, are admitted to API for treatment. There is no dedicated unit at API for ICE detainees. Until recently, they were housed on the North Unit of API. Typically, there are between two and eight detainees on the unit. The detainees are housed separately from the other LPS patients. There are two security guards assigned to each detainee, provided by ICE. The detainees are shackled to their beds for most of the day, and the shackles are removed only when the detainees use the shower or the restroom. The shackles are administered and removed by ICE security guards. With respect to the shackles, API staff claims that its role is only to make sure that the shackles are not too tight and that no medical attention is required.

What follows is a description of rights afforded to LPS patients under sections 5325 and 5325.1 of the California Welfare and Institutions Code, followed by a description of how ICE detainees are treated in similar situations:

An LPS patient has the right to wear his or her own clothes. Welf. & Instn. Code §5325(a). ICE detainees arrive in jumpsuits from the Otay Detention Facility, which they are not allowed to wear while at API. They wear hospital gowns for the duration of their hospital stay.

An LPS patient has the right to keep and use his or her own personal possessions including his or her toilet articles. Id. ICE detainees are allowed some possessions, for example: paper, crayons (no pencils), paperback books, and various informational handouts. Shampoo and toothbrushes are denied except for at the time of their use, as there is a concern that they might be used as a weapon.

An LPS patient has the right to keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases. Id. ICE detainees arrive at API without money, but if they did have money, they would not be allowed to spend it.

An LPS patient has the right to have access to individual storage space for his or her private use. Id. at §5325(b). ICE detainees have drawers which are built into the base of their beds.

An LPS patient has the right to see visitors each day. Id. at §5325(c). This right is denied to ICE detainees.

An LPS patient has the right to have reasonable access to telephones, both to make and receive confidential calls or to have such calls made for them. Id. at §5325(d). This right is denied to ICE detainees. However, detainees are allowed access to a cordless telephone, by which they are allowed to make phone calls to the Jewish Family Service Patient Advocacy Program. We are not aware of any phone call that our office has ever received from an ICE detainee.

An LPS patient has the right to have ready access to letterwriting materials, including stamps, and to mail and receive unopened correspondence. Id. at §5325(e). This right is denied to ICE detainees.

Sections 5325(f) and 5325(g) refer to convulsive treatment and psychosurgery, respectively. Neither procedure is relevant to the treatment of ICE detainees.

An LPS patient has the right to see and receive the services of a patient advocate who has no direct or indirect clinical or administrative responsibility for the person receiving mental health services. Id. at §5325(h). This right is not denied to ICE detainees, although the ever-present security guards often make private conversations difficult.

Upon admission to a facility each patient shall immediately be given a copy of a State Department of Mental Health prepared patients' rights handbook. Id. at §5325(i). These books are not provided to ICE detainees.

With respect to LPS patients, the above rights may only be denied for good cause, and these denials shall in all cases be entered into the person's treatment record. Id. at §5326. With respect to ICE detainees, these rights, as delineated above, are denied as a condition of admission. The denials are entered into the detainee's treatment record, but no good cause is provided and documented, and no lesser restrictive method is attempted prior to denial.

API has provided me with regulations from the Centers for Medicare and Medicaid Services (CMS) which refer to the usage of handcuffs, manacles, shackles, other chain-type restraint devices, and other restrictive devices applied by non-hospital personnel. These regulations indeed seem to anticipate the existence of shackles in the hospital setting, but state that the law enforcement officers who maintain custody and supervision are responsible for the use, application, and monitoring of the devices in accordance with Federal and State law. No applicable law has yet been provided by ICE.

Section 5325.1 maintains that persons with mental disabilities have the same legal rights and responsibilities guaranteed all other persons by the Federal Constitution and laws and the Constitution and laws of the State of California, unless specifically limited by federal or state law or regulations. In my telephonic conversations with ██████████, Field Office Director for ICE in San Diego, and ██████████, Chief Counsel for ICE in San Diego, they maintain that such authority to specifically limit these rights does exist, yet none has been provided.

Section 5325.1 also speaks to rights that can never be denied, even with good cause:

An LPS patient has a right to treatment services which promote the potential of the person to function independently. Treatment should be provided in ways that are least restrictive of the personal liberty of the individual. Id. at §5325.1(a). ICE detainees are shackled to their beds for most of the day as a condition of admission, and other rights are denied as specified above.

An LPS patient has a right to dignity, privacy, and humane care. Id. at §5325.1(b). ICE detainees are treated differently, as listed above, and are in line of sight view of one or more ICE security guards at all times, which can often make privacy problematic.

An LPS patient has the right to be free from harm, including unnecessary or excessive physical restraint, isolation, medication, abuse, or neglect. Id. at §5325.1(c). ICE detainees are shackled to their beds for most of the day as a condition of their admission.

An LPS patient has a right to prompt medical care and treatment. Id. at §5325.1(d). ICE detainees are not denied this right.

An LPS patient has a right to religious freedom and practice. Id. at §5325.1(e). ICE detainees have access to a chaplain, just as other LPS patients do.

An LPS patient has a right to participate in appropriate programs of publicly supported education. Id. at §5325.1(f). ICE detainees have no such access.

An LPS patient has a right to social interaction and participation in community activities. Id. at §5325.1(g). This right is denied to ICE detainees.

An LPS patient has a right to physical exercise and recreational opportunities. Id. at §5325.1(h). ICE detainees are allowed to do push-ups and sit-ups, presumably while still shackled to their beds. Detainees also have access to adjunctive therapy, such as music, art, and occupational therapy.

An LPS patient has a right to be free from hazardous procedures. Id. at §5325.1(i). This right is not denied to ICE detainees.

According to ██████████ Chief Executive Officer for API, ICE detainees are seen by a psychiatrist and medical doctor within twenty-four hours, and then daily by a psychiatrist. Detainees also have access to a social worker five days a week. API has a bilingual staff, and language line services are used as necessary.

Certification review hearings are held for ICE detainees placed on a 5250, or 14-day hold, in the same manner as they are for LPS patients, and advocates from the Jewish Family Service Patient Advocacy Program are provided for this assistance with these hearings. ICE detainees who are found not to meet legal hold criteria by the Superior Court Hearing Officer are presumably returned to the Otay Detention Facility.

### Argument

In a conversation on May 19, 2009 with API staff ( ██████████ CEO of API, ██████████ Director of Clinical Services ██████████ COO of API, ██████████ Social Worker of API), including a telephonic appearance by

both [REDACTED] and [REDACTED] from ICE, all parties attempted to impress upon me the need for additional security and the potential dangerousness of ICE detainees. Without necessarily disagreeing with their policy arguments, I pressed them for legal authority. [REDACTED] and [REDACTED] maintained that they had the legal authority to treat ICE detainees as they did, but suggested that they would do some additional legal research on the matter and then report back in a few days with their findings. I described to all parties the successful arrangement which had apparently been reached in Orange County, in which ICE detainees were afforded the same rights as LPS patients. [REDACTED] and [REDACTED] said that they were not aware of the Orange County arrangement, but seemed eager to look into it.

In separate conversations with [REDACTED] a Patient Advocate from Orange County, she explained to me that these same detainee issues arose in Orange and Los Angeles Counties over the last several months. According to [REDACTED], College Hospital administration in Orange County had made an independent decision not to shackle ICE detainees in their hospital. A meeting was called and interested parties were invited. An agreement was reached by which ICE detainees would be treated in the same manner as other LPS patients in the facility, with the exception that the two ICE security guards per detainee would still be present, in the least intrusive manner possible. As per [REDACTED], Alhambra Hospital in Los Angeles County (which handles any detainee overflow when College Hospital is at capacity) was less eager than College Hospital to abandon the added security measures until decertification as an LPS designated facility was discussed as a possible consequence. [REDACTED] Hospital has since agreed to treat the detainees in the same manner as other LPS patients, but according to [REDACTED], the Los Angeles facility rarely has need to admit ICE detainees, as most detainees (from both Orange and Los Angeles Counties) are admitted to College Hospital. [REDACTED] provided me with contact information for [REDACTED], Assistant Field Office Director for ICE in Los Angeles County. She said he had been very helpful in working with patient advocates and hospital staff to meet the needs of all interested parties. I left a message for [REDACTED] on May 26, 2009. He left a return message stating that he would be happy to speak to me about conditions in Los Angeles County, but that he would not comment on anything currently occurring in San Diego County. [REDACTED] also provided me with post orders for the ICE Los Angeles Field Office, which seem to indicate rules for treating ICE detainees in a manner similar to, if not the same as, LPS patients. It seems incongruous that ICE officials in Los

Angeles and Orange County are willing to afford ICE detainees the same rights as LPS patients, while San Diego ICE officials maintain that similar treatment is not possible.

On May 20, 2009, in response to increased attention on these issues, API discontinued its policy of accepting ICE detainees from the Otay Detention Facility. Only one previously admitted detainee remained at API at that time, and that patient has since been discharged. Subsequently, an ICE detainee (██████████) who had been at API in the past, while en route to a different hospital by ambulance, was diverted (for reasons unknown) to Alvarado Hospital's emergency room. This patient was subsequently admitted to API, in spite of the new policy, primarily out of concerns regarding EMTALA. That patient was treated in the same manner as past ICE detainees. I met with ██████████ at API on May 29, 2009. He had no complaints, and only asked if I could buy him a trip to San Luis Obispo.

In a conversation with ██████████ on June 3, 2009, he explained to me that ██████████ was discharged on June 1, 2009. No further detainees have been accepted. ██████████ is currently in the process of attempting to find clarity on these issues, both from API legal counsel and from ICE.

I contacted ██████████ of ICE on May 27, 2009, in an attempt to discern if their legal research had turned up any specific authority. ██████████ explained that, given API's new policy of no longer admitting ICE detainees from the Otay Detention Facility, he considers the issue to be moot. When I suggested that ICE detainees in need of acute psychiatric care in the future would undoubtedly end up in a hospital setting in the near future and clarity on these issues would still be necessary, he again stated that he felt the point was moot. He did, however, offer to look into the matter if I wanted him to.

It remains unclear where future ICE detainees in need of acute psychiatric care will be sent, as well as how those patients will be treated in their respective facilities.

As for the specific legal authority which allowed ICE to detain the detainees at API in the manner in which they did, neither my office, nor ██████████ and her colleagues at Disability Rights California, nor any other patient advocate or advocacy group that I am aware of have been able to find any. To my knowledge, no specific authority has ever been provided by ICE officials or any other party.

## Conclusion

For the foregoing reasons, the differential treatment and denial of rights of ICE detainees at API represent LPS violations, absent ICE legal authority on point, which has yet to be provided. The current abatement of admission of new detainees at API would seem to mitigate this situation, but the potential disposition of new ICE detainees requiring treatment in acute psychiatric facilities and the manner in which they are ultimately treated remains to be seen.