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California's protection and advocacy system

May 5, 2009

By Fax and U.S. Mail

Martin Soblick
Chief Counsel
Immigration & Customs Enforcement
880 Front Street, Room 2246
San Diego, CA 92102

**Re: Detainees' right to counsel and Disability Right
California's federal access authority**

Dear Mr. Soblick:

Disability Rights California (DRC) wishes to meet with two ICE detainees currently receiving mental health treatment at Alvarado Parkway Institute (API) regarding their complaints that they have been subjected to abuse and neglect and denial of patients' rights at API. These detainees have submitted a written request to meet with DRC attorneys to discuss these complaints but they have not yet retained our services as their attorneys.

DRC had planned to visit these detainees this morning but we received a message from API late yesterday that John Garzon of ICE requested that we provide a signed G-28 form prior to DRC lawyers seeing the detainees. Mr. Garzon also asserted that we must provide 72 hours advanced notice before being permitted seeing the detainees. We were informed to present our concerns to you directly.

Mr. Garzon's assertions are inconsistent with ICE's own Detention standards. Our visit would be what ICE's Performance Based Detention Standard on Visitation ("Visitation Standard") refers to as a pre-

Access to ICE Detainees
May 5, 2009

representation meeting.” At the pre-representation meeting stage “legal service providers’ representatives need not complete a G-28.” Visitation Standard at 10. A G-28 may only be required after “an attorney-client relationship has been established.” Visitation Standard at 11. And in any case, DRC’s interest in speaking with the detainees is wholly unrelated to immigration. *Id.* (“Attorneys representing detainees on legal matters unrelated to immigration are not required to complete a Form G-28.)”

The Visitation Standard provides that legal visitation is to be permitted seven days a week, for a minimum of eight hours per day on regular business days and four hours per day on weekends and holidays. Visitation Standard at 8. The Standard does not contain any requirement for 72 hour advance notice. Moreover, ICE detainees in medical care units are to be provided with access to legal visits, Medical Care Standard at 9, and ICE detainees in special management units “may not be denied legal visits.” Special Management Unit Standard at 7.

Furthermore, the ICE detainees at API have basic First Amendment and/or due process rights of access to counsel and access to the courts. See generally *Bounds v. Smith*, 430 U.S. 817 (1977); *Lewis v. Casey* 518 U.S. 343 (1996). These access rights are particularly crucial for mentally ill detainees, whose condition makes them especially vulnerable to abuse and to negative effects from such abuse. Thus, denial of detainees’ access to DRC attorneys stands directly and concretely in the way of these constitutional rights.

Finally, federal law provides DRC with the right of access to facilities and records in order to investigate incidents of abuse and neglect of individuals with mental illness or if there is probable cause to believe the incidents occurred. See Protection and Advocacy for Mentally Ill Individuals Act of 1986 (PAMII), 42 U.S.C. §10805 (a)(1)(A). The term “abuse” is defined to include the use of restraints which is not in compliance with Federal and state laws and regulations. 42 U.S.C. §10802(1)(D). The term “neglect” includes the failure to establish or carry out an appropriate treatment plan for an individual with mental illness. 42 U.S.C. §10802(5). In light of ICE’s admitted practices with regard to these detainees (24 hour shackling, denial of all opportunities for phone calls, correspondence, socialization and exercise, etc.), DRC has probable cause to assert our federal access authority. Please note that protection and advocacy agencies like DRC

Access to ICE Detainees

May 5, 2009

are the *final arbiter* of the existence of probable cause for the purpose of triggering its access authority regardless of whether the service provider agrees with this determination. *Protection & Advocacy for Persons with Disabilities v. Armstrong* (2003) 266 F. Supp. 2d 303; *Arizona Center for Disability Law v. Allen* (2000) 197 F.R.D. 689.

I will contact your office tomorrow with regard to DRC's attorneys' ability to visit with the detainees at API.

Yours very truly,

ANN E. MENASCHE
Attorney