



May 10, 2016

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Director, U.S. Immigration and Customs Enforcement
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Washington, D.C. 20536

John Roth
Inspector General, Department of Homeland Security
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Washington, D.C. 20528-0305

Megan H. Mack
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Tilo Rivas
Chairman, Board of Chosen Freeholders
Hudson County Board of Chosen Freeholders
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Tish Nalls Castillo
Director, Hudson County Correctional Facility
5 Hackensack Avenue
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Dear Director Saldaña, Inspector General Roth, Officer Mack, Chairman Rivas, and Director Castillo:

Community Initiatives for Visiting Immigrants in Confinement (CIVIC) and First Friends of New Jersey & New York submit this multi-individual complaint on behalf of 61 individuals detailing the poor quality of health care provided to people in the custody of U.S. Immigration and Customs Enforcement (ICE) at the Hudson County Correctional Facility (Hudson). Short of terminating the contract, we urge the Office for Civil Rights and Civil Liberties (CRCL) at the Department of Homeland Security (DHS), pursuant to its authority under 6 U.S.C § 345, to immediately investigate these complaints, to promptly develop policies to address the violations, and to provide ongoing oversight on the implementation of the changes. We also urge ICE, Hudson, and the Hudson County Board of Chosen Freeholders to implement the four recommendations outlined at the end of this complaint.

Hudson County contracts with the federal government to detain approximately 476 immigrants per day, being paid a total of \$110 per person per day.¹ In 2015, Hudson detained a total of 3,111 immigrants for ICE.² The facility has been operating as an immigration detention facility since April 1996. The facility operates under the 2008 Performance Based National Detention Standards,³ despite the fact that there is a more recent set of Standards created in 2011. While ICE conducts routine compliance inspections at the facility, it is clear that more robust oversight is urgently needed. In the last five years, the facility's compliance ratings have decreased. In 2010, the facility received a "superior" compliance rating, but has in recent years only received an "acceptable" or "meets standard" rating.⁴ Moreover, it is clear from these ratings that the federal reviews have failed to adequately investigate Hudson's medical care practices and overlooked the serious systemic problems at the facility.

CIVIC provides direct support to and advocates for people in immigration detention across the country. Our mission is to end the isolation and abuse of people in U.S. immigration detention through visitation, independent monitoring, storytelling, and advocacy. We support a network of immigration detention visitation programs, including First Friends of New Jersey & New York that has been operating at Hudson County Correctional Facility since 2008. This letter summarizes complaints lodged directly with CIVIC and First Friends since January 2016 by 61 women and men under the custody of ICE at Hudson, including 52 representative class complainants. Most of the complainants have agreed to be referred to by pseudonym because they fear retaliation by ICE and/or Hudson, but we can put CRCL in touch with these individuals:

1. AM
2. BN
3. GW
4. FT
5. CP
6. DR
7. ES
8. HJ
9. Nelson De Jesus Fernandez (A 041-428-056)
10. 52 Bacterial Infection Class Complainants

An additional 18 people under the custody of ICE at Hudson have submitted grievances to Hudson in the last two years regarding unlawful co-pay or other medical charges.

A. Hudson has established a pattern and practice of substandard medical care, resulting in delays in cancer diagnoses, rapid weight loss in diabetic patients, an outbreak of a fungal or bacterial infection, and more.

Of the 53 immigration detention facilities CIVIC visits and monitors, Hudson is one of the top three detention facilities with the most human and civil rights complaints. "Medical issues" is the number one complaint we receive from Hudson, resulting in 50 percent of the complaints. The following complaints, which CIVIC and First Friends received between January 2016 and the present, demonstrate a pattern and practice of substandard care including:

¹ See "Detention Facility Statistics" available at <https://www.ice.gov/foia/library> (accessed on April 11, 2016).

² Open Public Record Act request filed by CIVIC on May 3, 2016 (results on file with CIVIC).

³ See "Detention Facility Statistics" available at <https://www.ice.gov/foia/library> (accessed on April 11, 2016).

⁴ *Id.*

- Extended delays in responding to detainee requests for medical treatment;
- Repeated failures by medical staff to use language services to communicate with non-English speakers;
- Unlawful co-pay charges assessed by Hudson against people in ICE's custody;
- Over-medication of detainees with mental health issues, resulting in everything from fatigue to memory lapse to coma-like states;⁵
- Use of shackles when transported to outside hospitals, even for emergency situations;
- Lack of continuity of care for arriving detainees with chronic conditions;
- Failure to provide medication upon release;
- Unwarranted limits on access to necessary medical and mental health treatment, supplies and services;
- Delayed or denied care for serious conditions and diseases;
- Denial of necessary and timely care, or misdiagnoses, for detainees with serious conditions and diseases;
- Denial of medical records;
- Lack of sanitary conditions, resulting in bacterial infections.

These systemic breakdowns have led to numerous cases in which the health of immigrants detained by ICE at Hudson was placed at unnecessary risk:

- AM, a cancer survivor, was denied ongoing care. Although AM was provided with an outside hospital appointment, he never received the results of the visit or further check-ups after the hospital visit.
- BN, an HIV+ man who also has cancer, was not diagnosed with cancer for over two months. BN had abdominal pain and other symptoms, but the Hudson medical personnel claimed BN had hemorrhoids with no proper examination. After two months of excruciating pain and multiple requests for medical attention, he was taken to an outside hospital where he was diagnosed with colon cancer.
- GW broke his leg and had surgery on his leg prior to being put into ICE custody. GW was able to have a consultation with an outside doctor while at Hudson who said GW is in need of another surgery to “repair a broken internal fixation through the distal tibia and hypertrophic degenerative changes of the medial malleolus,” among other issues in his leg. ICE has denied him physical therapy and this additional surgery because the “injury occurred prior to ICE custody.”
- FT, an HIV+ man, filed multiple requests for off-site specialty care, but was denied. FT ultimately was unable to participate in his court hearing due to shortness of breath, weakness, and inability to stand up to speak to the judge, forcing his immigration judge in court to call 911 so FT could be taken to the hospital. The hospital determined that he had a pacemaker, and the battery or pulse generator needed immediate replacement. It was replaced at the hospital, but FT has not received follow-up care.
- CP, who suffers from migraines, has been denied appropriate medical care and only receives Tylenol for the migraines, despite the fact there is preventative medication available for migraine sufferers.

⁵ According to the results of an Open Public Record Act request CIVIC filed on May 3, 2016, Hudson does not track the percentage of inmates or detainees that are prescribed medication, including psychotropic medications.

- DR, a cancer survivor and diabetic patient, receives insufficient insulin, which has resulted in her rapid weight loss.
- ES suffers from extreme chronic headaches, dizziness and temporary losses of vision. Although he believes he is epileptic, he has not received any diagnostic tests at Hudson.
- HJ, an elderly woman, has lost much of her eyesight since she was detained; yet, she has received no eye and vision examinations, despite requests.
- In addition to these individual cases, approximately 90 percent of the people we work with are suffering from a toenail fungus and/or bacterial infection that is turning the skin on their feet dark and brown with white spots. We believe this is due to the mold in the bathrooms and lack of appropriate disinfection/cleaning routines in the bathroom areas.
- In addition to these individual cases, multiple people in ICE's custody at Hudson have told CIVIC that they have received bills for medical services, although Hudson assured First Friends during a recent tour of the facility in April that people in ICE's custody are not charged for medical care. According to the results of an Open Public Record Act request CIVIC received on March 21, 2016, at least 18 people in ICE's custody have submitted grievances to Hudson in 2014 and 2015 for unlawful co-pay or other medical charges.

ICE and Hudson are under notice of the pattern and practice of medical abuse at this facility. First Friends, American Friends Service Committee, New Jersey Advocates for Immigrant Detainees, and other local advocates have raised these issues to Hudson, ICE's New York Field Office, and ICE's Newark Field Office. However, the ongoing number and severity of cases involving inadequate care make clear that there are underlying systemic deficiencies that remain unresolved.

B. ICE has failed to conduct sufficient oversight of the medical care at Hudson.

ICE's oversight at Hudson is unique because ICE's New York Field Office and the ICE's Newark Field Office have jurisdiction over separate housing units at Hudson. The communication between the two Field Offices seems to be minimal, exemplified by the fact we were prevented from touring the housing units under Newark's jurisdiction during our ICE Stakeholder Tour with New York ICE at Hudson in April.

This bifurcated system of responsibility may be contributing to ICE's failure to conduct sufficient oversight of the medical care at Hudson and to fulfill its obligation to ensure the health and safety of the people in immigration detention housed there. Since January 2014, 121 individuals under the custody of ICE have submitted medical grievances to Hudson.⁶ These medical grievances have ranged from poor medical staff conduct to dissatisfaction with dental and medical care to problems with medication and delay in surgery dates, among other issues (See Attachment A for breakdown of the filed grievances). However, Hudson only took corrective action in 2.48% of these complaints, begging the question what role did ICE play to ensure that these complaints were fully addressed.

⁶ Open Public Record Act request filed by CIVIC on March 11, 2016 (results on file with CIVIC).

Also since January 2014, 560 individuals in ICE custody at Hudson were transported to an outside hospital.⁷ Of those, 33 percent of them were hospitalized due to medical emergencies. As mentioned above, Hudson and ICE have failed to respond to requests for specialty medical care, and many people who are taken to an outside hospital do not receive continued care after that first visit.

Take Nelson De Jesus Fernandez (A 041-428-056) for example. Mr. Fernandez has Behcet's Disease, an autoimmune disease in which the immune system attacks and harms the body's own tissues, resulting in damage to blood vessels, particularly veins. Swelling, redness, heat and pain are all experienced. As a result of this disease, Mr. Fernandez cannot stand for a long period of time. On a daily basis, Mr. Fernandez's legs are both purple, almost blackish, and they are always swollen. Due to the swelling, the skin on his legs is over stretched causing him a lot of pain. Ulcers also are very common, and he gets them periodically on his legs due to the swelling. Over a period of 15 to 17 years, he has undergone seven surgeries and has two filters (umbrellas) one in his artery and another on his leg.

Due to his disease, Mr. Fernandez has to take blood thinners to avoid clotting. During the first few days of his detention at Hudson around May 20, 2014, it is our understanding that Mr. Fernandez was provided with a type of unknown medication that caused him to bleed internally for approximately three (3) days before ICE hospitalized him at East Orange General Hospital. It is our understanding that the medication the Hudson County Correctional Facility provided to Mr. Fernandez considerably raised his blood level. Mr. Fernandez was told by the East Orange General Hospital that he had a blood clot near his heart. Once he was returned to Hudson, he continued to experience severe, nearly constant chest pains along with diarrhea and swollen legs.

During his first few days in detention, his U.S. citizen daughters were denied the ability to visit him on three separate occasions. When he was at the hospital, his U.S. citizen daughters also were denied the ability to speak to him a fourth time. The hospital receptionist informed one of his daughters that she was not allowed to be at the hospital, that it was "against the law," and that the receptionist was not allowed to inform Ms. Fernandez about her father's whereabouts. Ms. Fernandez told the receptionist that she had brought her birth certificate as proof that she was Mr. Fernandez's daughter and that all she wanted to do was speak to her father's doctor or receive information about her father's condition. The receptionist said, "No you can't have any information even if you brought proof you are his daughter; you should not have even been informed he was here."

CIVIC filed a complaint with CRCL and with ICE on June 4, 2014, about these visit denials and Mr. Fernandez's medical condition, with an accompanying letter from Mr. Fernandez's family doctor requesting that Mr. Fernandez be provided with the specific medication his family doctor had prescribed for him prior to his detention. On June 6, 2014, ICE responded by email, "we have ensured that the individual is receiving appropriate medical care and follow-up." Unfortunately, ICE's actual response to Mr. Fernandez's medical needs included swift deportation; he was first transferred to a detention facility in Louisiana—far from this family, lawyer, and community support—and deported July 15, 2014.

Sadly, Mr. Fernandez may be one of the fortunate ones to survive Hudson. On July 24, 2009, Vera Stojka, a 55-year-old man originally from the Czech Republic died after being transported from Hudson to the Columbia Care Regional Center (CCRC) in Columbia, South Carolina. The preliminary

⁷ *Id.*

cause of death was cardiac arrest,⁸ but later, his final cause of death was categorized as liver cancer.⁹ Mr. Stojka's death raised significant questions regarding whether the facility failed to diagnose and treat his cancer.

C. Hudson's pattern and practice of substandard medical care violates the U.S. Constitution, the New Jersey Torts Claims Act, and ICE's federal standards.

To ensure that no further lives are placed at unnecessary risk, we urge ICE to immediately address the systemic health care deficiencies at Hudson. Immigrants experiencing neglectful medical care while incarcerated at Hudson are protected by the Eighth Amendment to the United States Constitution. Under the Eighth Amendment to the United States Constitution's prohibition on "cruel and unusual punishments," the government has an obligation to provide medical care for prisoners. U.S. Const. amend. VIII; *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). In order to establish that Hudson has deprived a person in immigration detention of his or her constitutional rights based on insufficient medical care, the person need only demonstrate that Hudson showed a "deliberate indifference to [his or her] serious medical needs." *Id.* at 104. The Third Circuit Court of Appeals has defined a serious medical need as "one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention." *Monmouth County Corr. Institutional Inmates v. Lanzaro*, 834 F.2d 326, 347 (3rd Cir. 1987) (quoting *Pace v. Fauver*, 479 F.Supp. 456, 458 (D.N.J.1979), *aff'd*, 649 F.2d 860 (3d Cir.1981)); *cert. denied*, 486 U.S. 1006, 108 S.Ct. 1731, 100 L. Ed.2d 195 (1988). If the person in immigration detention can demonstrate that Hudson knew of his or her need for medical care and intentionally refused to provide that care or delayed in giving that care for nonmedical reasons, the person in immigration detention has established deliberate indifference. *Id.* To enforce their Constitutional rights, people in immigration detention can bring a suit under 42 U.S.C. § 1983. *See Will v. Michigan Dep't of State Police*, 491 U.S. 58, 70 (1989); *Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658 (1978).

Immigrants experiencing neglectful medical care while incarcerated at Hudson also are protected by the New Jersey Torts Claims Act, which authorizes suits against public entities where a public employee, acting within the scope of their employment, has acted in a way that would create liability for a private individual under like circumstances. N.J. Stat. Ann. § 59:2-2 (West). Under the New Jersey Torts Claims Act, a public entity "is liable for injury proximately caused by an act or omission of a public employee within the scope of his employment in the same manner and to the same extent as a private individual under like circumstances." N.J.S.A. 59:2-2a.

Furthermore, Hudson is obligated to provide comprehensive, necessary and appropriate medical, dental, and mental health care services to people detained at Hudson in ICE's custody. The person in detention "has no responsibility for payment, deductible or co-payment."¹⁰ Under ICE's 2008 Performance Based National Detention Standards ("PBDNS")—to which Hudson has contracted to adhere—Hudson must ensure that "[d]etainees will have access to a continuum of health care services, including prevention, health education, diagnosis, and treatment" and "timely follow-up to their health care requests."¹¹ In addition, a "detainee who needs health care beyond facility resources will be transferred in a timely manner to an appropriate facility where care is available." The 2008 PBDNS

⁸ <http://news.journal.us/article-4623.Three-More-ICE-detainee-die--This-time-at-a-Los-Angeles-area-hospital.html>

⁹ <https://www.ice.gov/doclib/foia/reports/detaineedeaths2003-present.pdf>

¹⁰ <https://www.ice.gov/doclib/about/offices/ihs/pdf/detainee-covered-service-package.pdf>

¹¹ PBDNS § 4.22, available at https://www.ice.gov/doclib/dro/detention-standards/pdf/medical_care.pdf.

includes detailed rules governing the provision of health care services to ensure that these and other goals are met.

However, all too often, Hudson has failed to live up to these standards and the law. We, therefore, urge ICE to immediately intervene to ensure the health and safety of the current and future immigrants detained at Hudson. First, ICE should take immediate steps to improve Hudson's health care practices, including by appointing an independent investigator to inspect Hudson's health care policies and practices, developing recommendations to improve the quality of care at the facility, and overseeing the implementation of those recommendations. If these steps and recommendations cannot be immediately implemented, then ICE should terminate its contract with Hudson. Second, ICE, Hudson, and the Hudson County Board of Chosen Freeholders should meet quarterly with advocates, who will form a board of independent medical observers, to discuss and address medical concerns. Third, ICE should sign an amendment to its contract with Hudson County to ensure that the facility is required to operate under the most recent 2011 Performance Based National Detention Standards. Fourth, the Hudson County Board of Chosen Freeholders should meet with advocates to discuss the above concerns before renewing a contract with CFG Health Systems or before bringing in a new medical provider to Hudson.

We look forward to your prompt attention to these serious issues. We request a meeting with ICE and DHS CRCL to discuss our concerns and what steps ICE plans to take to address them. We also are happy to meet with the Hudson County Board of Chosen Freeholders to discuss our concerns and help advise on a path forward. Please notify us by May 20, 2016, with proposed dates for the meeting. Should you have any questions, please contact CIVIC's Co-Executive Director and General Counsel, Christina Fialho, at CFialho@endisolation.org or 385-212-4842.

Sincerely,



Christina Fialho
Co-Founder/Executive Director
Community Initiatives for Visiting Immigrants in Confinement (CIVIC)



Sally Pillay, MSW
Program Director
First Friends of New Jersey & New York

CC:
Nicole Boehner
United Nations High Commissioner for Refugees

Mary Giovagnoli
Deputy Assistant Secretary for Immigration Policy

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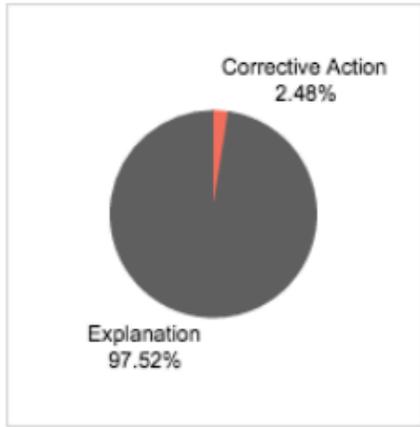
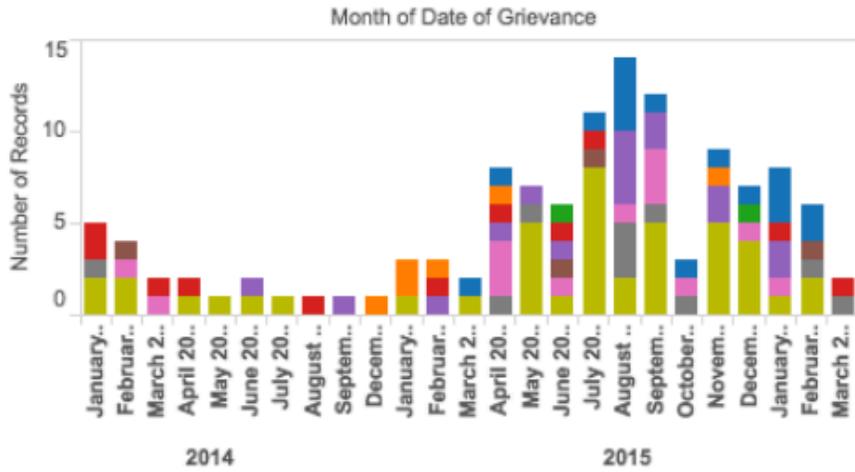
Richard Rocha
ICE/ERO Custody Programs

Mark Vogler
Newark Field Office

Scott Mechkowski
New York Field Office

ATTACHMENT A

Jan 2014 to Mar 2016 Grievances



GS Description

- I - Dissatisfied with Quality of Medical Care
- II - Dissatisfied with Quality of Dental Care
- III - Dissatisfied with Quality of Mental Health Care
- IX - Request for Off-site Specialty Care
- V - Conduct of Healthcare Staff
- VI - Delay in Healthcare Provided
- VII - Problems with Medication
- VIII - Request to be Seen
- X - Other

GS Description	Date of Grievance			Grand Total
	2014	2015	2016	
I - Dissatisfied with Quality of Medical Care		11	5	16
II - Dissatisfied with Quality of Dental Care	1	5		6
III - Dissatisfied with Quality of Mental Health Care		2		2
IX - Request for Off-site Specialty Care	5	4	2	11
V - Conduct of Healthcare Staff	2	12	2	16
VI - Delay in Healthcare Provided	1	2	1	4
VII - Problems with Medication	2	10	1	13
VIII - Request to be Seen	1	7	2	10
X - Other	8	32	3	43
Total	20	85	16	121

