

# WHY DOESN'T ANYONE INVESTIGATE THIS PLACE?

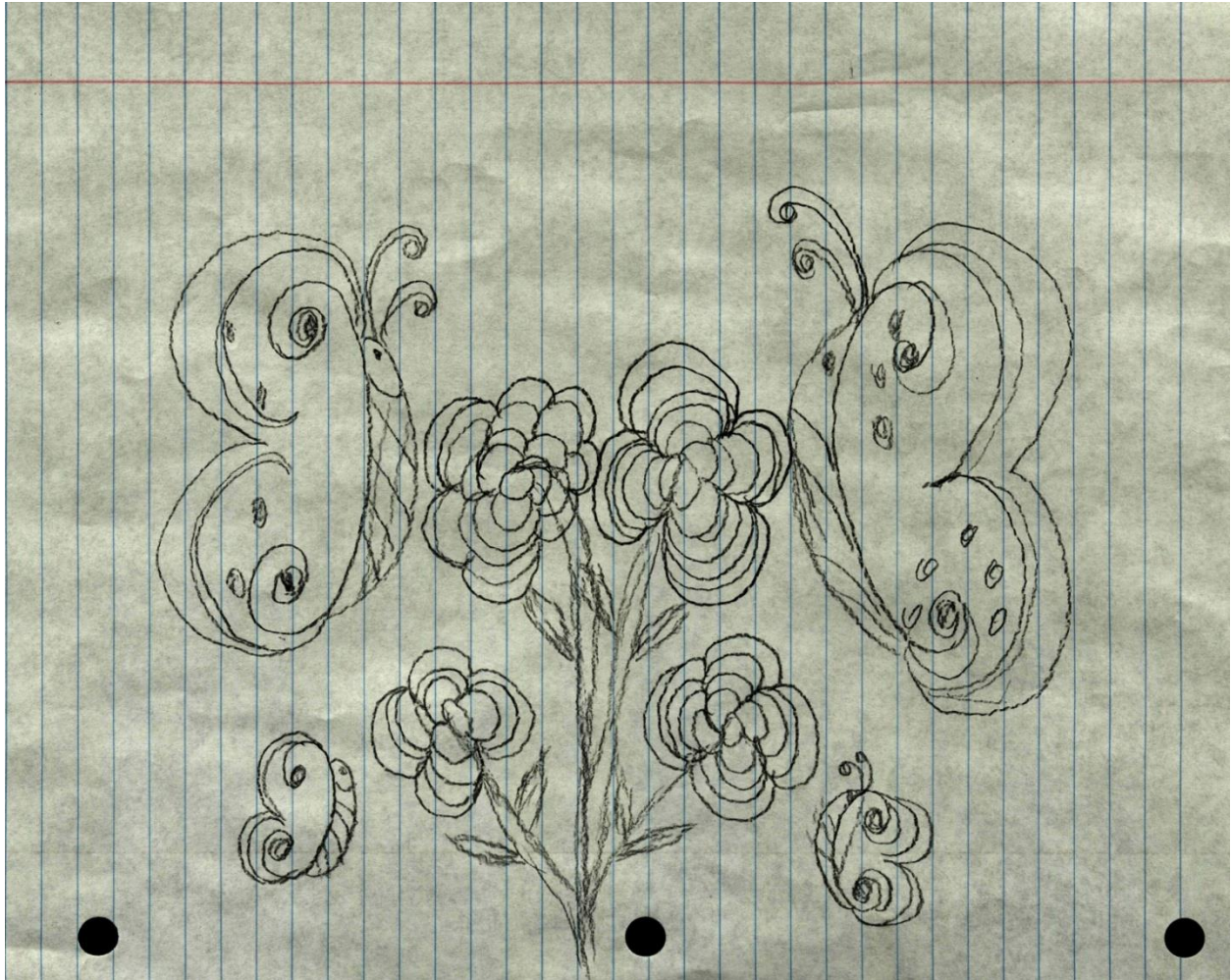


An investigation into complaints and inspections at the Otero County Processing Center in New Mexico

The report was authored by Nathan Craig and Margaret Brown Vega and supported by Detained Migrant Solidarity Committee and Freedom for Immigrants



**"Why Doesn't Anyone Investigate this Place?":  
Complaints Made by Migrants Detained at the Otero County Processing Center,  
Chaparral, NM Compared to Department of Homeland Security Inspections and  
Reports**



**July 2018**



**Title:** “Why Doesn’t Anyone Investigate this Place?”: Complaints Made by Migrants Detained at the Otero County Processing Center, Chaparral, NM Compared to Department of Homeland Security Inspections and Reports

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The illustration on the Title Page was drawn by a young gay man while in administrative solitary confinement at Otero County Processing Center. He was placed there because of severe depression during confinement. He was harassed by staff for being gay and for filing grievances about his treatment. He asked “Why doesn’t anyone investigate this place?” This report seeks to honor that question.

**Cover Photo by:** Nathan Craig **Cover Design by:** Liz Martinez

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**Detained Migrant Solidarity Committee (DMSC)** is a coalition of liberation activists building community to practice solidarity with detained migrants. We challenge the inhumanity of the US migrant detention system, its practices, and policies, by holding a visible presence and raising awareness of abuses in our community. We organize, educate, and act for more humane policies, practices, and public opinion on migrant detention. Our collective effort is dedicated to nurturing a safe and welcoming community for all, regardless of borders.



**Freedom for Immigrants (FFI)** is devoted to abolishing immigration detention, while ending the isolation of people currently suffering in this profit-driven system. We visit and monitor 43 immigrant prisons and jails, and we run the largest national hotline for detained immigrants. Through these windows into the system, we gather data and stories to combat injustice at the individual level and push systemic change. Learn more at [www.freedomforimmigrants.org](http://www.freedomforimmigrants.org).

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**A note on the use of "detained migrant" and "detainee":** Throughout this document the word "migrant" is used instead of "immigrant". The exceptions are when the term "immigration detention" is used, or in the case of names and titles. The authors reject the use of the word "detainee" used in official government and facilities documents. However, the word is maintained when it appears as part of a direct quote or citation.

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## **Executive Summary**

This document reveals concerns raised by migrants detained at the Otero County Processing Center (OCPC) in Chaparral, New Mexico, an Immigration and Customs Enforcement (ICE) immigration detention facility run by the for-profit Management and Training Corporation (MTC). OCPC opened in 2008, and has the capacity to detain up to 1,089 individuals on any given day. Due to both inconsistencies and secrecy in government reporting, it is unclear how much the facility costs. ICE internal documentation indicates that the facility receives anywhere from \$91.03-\$117.71 per day for any person detained by ICE.

ICE established Performance-Based National Detention Standards (PBNDS) for ICE and ICE-contracted facilities. There are three sets of standards with the most recent standards being from 2011; OCPC supposedly operates under these most recent standards. However, as these standards are neither statutory nor incorporated into regulation, they are not legally enforceable and lack disciplinary and financial consequences for facilities that fail to comply. Both ICE and MTC maintain that the facility not only meets ICE's PBNDS, but that it exceeds those standards to provide "a comfortable safe atmosphere to help time pass quickly" for those in their care.

People held at OCPC are displaced individuals seeking humanitarian aid, victims of human trafficking, and even legal permanent residents with longstanding community ties. The majority of people detained at OCPC have no criminal record and have not been charged with or convicted of any crimes. No one detained at OCPC is serving time for a crime, as they are being detained as an administrative measure. Some of them are asylum seekers, and they are seeking relief from deportation through the immigration courts. Though immigration detention is legally considered non-punitive, as it is a form of civil confinement, details of this report contribute to a growing body of literature indicating otherwise.

Conversations with 24 individuals detained at OCPC in 2015 identified 19 (79%) individuals who expressed a total of 75 complaints. Unstructured conversations that took place with 25 individuals over the course of a year (March 2017-March 2018) resulted in the documentation of a total of 176 complaints from 19 (76%) individuals. The latter group expressed unsolicited complaints, suggesting that if asked specific questions related to conditions at OCPC they would have provided further comments on the poor conditions at this facility. The inhumane conditions and abuses as represented by this report are probably an underrepresentation, and are likely more widespread than what is documented here. Complaints are tallied into 28 categories grouped into four areas of major concern: Unhealthy Conditions, Abuse and Exploitation, Social Isolation and Mental Anguish, and Barriers to Justice and Legal Access.

Details of these complaints are compared to reports and inspections written about OCPC by the Department of Homeland Security, specifically ICE and their contractors. Nine ICE documents

made publicly available through Freedom of Information Act (FOIA) litigation by other immigrant rights advocacy groups were obtained, analyzed, and synthesized. These documents, dating from 2008 to 2016, are either 1) Enforcement and Removal Operations Facility Reviews or 2) Office of Detention Oversight Compliance Inspections. Details about OCPC from other documents such as the 2017 Office of the Inspector General (OIG) report are also covered. Over the last 10 years, OCPC has been found deficient in 98 components based on evaluations compared to established ICE standards for immigration detention facilities.

The comparison reveals that 1) MTC's public statements about the facility do not align with the accounts or experiences of those confined and living within OCPC; 2) there are troubling violations of rights and dehumanizing treatment occurring at OCPC, from the mundane, like filthy drinking water fountains to the egregious, such as retaliatory use of solitary confinement; and 3) ICE inspections are largely ineffective at maintaining and enforcing the standards of detention that ICE establishes for its facilities. As a result, migrants detained at OCPC are not safe or being cared for adequately. Rather they are subjected to inadequate and poor quality food, inadequate medical attention, harassment, cruel isolation, exploitation, retaliation, abuse, and unsanitary conditions, to name a few of the major complaints made by individuals detained at OCPC. They are detained with no clear end in sight to their imprisonment, and with highly constrained means of having their complaints addressed. ICE and MTC have created the conditions in which these individual languish.

This report highlights the need for more targeted collection of data on the conditions of immigration detention in all ICE and privately-run facilities to reveal how migrants are treated in United States (U.S.) immigration detention. However, given the history of deficient conditions since its opening a decade ago, and recent evidence showing that abusive conditions continue, **it is time to close OCPC**. Given the longer and more troubled history of ICE immigration detention facilities nationally, and ICE's repeated inability to abide by their own standards, **it is time to end immigration detention in the U.S.** ICE standards serve only to maintain a facade of compliance, while ICE and the for-profit companies with which they contract subject migrants to inhumane conditions with impunity.

## Introduction

This document reveals concerns raised by migrants detained at the Otero County Processing Center (OCPC), Chaparral, NM. The facility, owned by Otero County and under contract with Immigration and Customs Enforcement (ICE), was set up exclusively for holding migrants. The facility is managed and operated by the private for-profit business Management and Training Corporation (MTC). Consistent with the “pains of imprisonment” framework,<sup>1</sup> the following report tabulates complaints made by individuals detained at OCPC and synthesizes ICE inspections that were previously conducted at the facility. The report argues that 1) MTC’s public statements about the facility do not align with the accounts or experiences of those confined in OCPC, 2) troubling violations of rights and dehumanizing treatment are occurring at OCPC, and 3) ICE inspections are largely ineffective at maintaining and enforcing the standards of detention that ICE established for its facilities.

Immigration detention is a non-punitive civil matter. Individuals held in immigration detention are not serving a sentence, and they have not even been charged with crimes. They are being held administratively while their deportation cases unfold.<sup>2</sup> A large portion of the detained population consists of asylum seekers and migrants seeking relief through immigration courts. Since immigration detention is legally considered civil and administrative, migrants are not afforded many of the constitutional safeguards of the criminal justice system.

For example, detained migrants are not protected by the Sixth Amendment right to appointed counsel. Of the more than 1.2 million deportation cases decided between 2007-2012, only 14% of detained noncitizens had a lawyer. In this same sample, if migrants had a lawyer, the odds were 15 times greater that migrants sought deportation relief, and five times greater that they secured deportation relief.<sup>3</sup> Since immigration detention is considered non-punitive, there are also no constitutional limits on the length of detention. Individuals are not “serving time”. They are being held while their deportation cases are decided. Therefore, there is no time limit for how long someone may be held in pre-removal detention while they fight their case. If appealed, deportation cases can take years to complete. In fact, Freedom for Immigrants (FFI) (formerly CIVIC) worked with a man, Sylvester Owino, who was held in immigration detention

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<sup>1</sup> Jamie Longazel, Jake Berman, and Benjamin Fleury-Steiner, ‘The Pains of Immigrant Imprisonment’, *Sociology Compass*, 10.11 (2016), 989–98 <<https://doi.org/10.1111/soc4.12434>>; Gresham M. Sykes, *The Society of Captives: A Study of a Maximum Security Prison*, 11. paperback print (Princeton, N.J.: Princeton Univ. Press, 1999), chap. 4, Archive.org <<https://archive.org/details/societyofcaptive00syke>>.

<sup>2</sup> Caitlin Patler and Tanya Maria Golash-Boza, ‘The Fiscal and Human Costs of Immigrant Detention and Deportation in the United States’, *Sociology Compass*, 11.11 (2017), 1–9 (p. 3) <<https://doi.org/10.1111/soc4.12536>>.

<sup>3</sup> Ingrid V. Eagly and Steven Shafer, ‘A National Study of Access to Counsel in Immigration Court’, *University of Pennsylvania Law Review*, 164.1 (2015), 91.



for nine years and four months. Forty-eight percent (48%) of the detained migrants that FFI works with are incarcerated for 2-4 years.<sup>4</sup>

While all forms of human confinement are troubling and there is a growing body of literature calling for the abolition of all forms of imprisonment, people in immigration detention often report harsher living conditions in immigration detention than in the criminal context. In fact, individuals who experienced both prison and immigration detention frequently report that immigration detention is worse than prison because of: lack of programming, poor commissary services, and uncertainty surrounding release date.<sup>5</sup>

Immigration detention is presently a booming industry. Its history is sordid and relatively poorly known outside of small circles of advocates and academics. The history both of immigration detention in the United States (U.S.) in general and of MTC specifically warrants examination. This history is relevant to the report because it contextualizes the concerns that those detained at OCPC express. However, a key goal of this report is to foreground and broadcast the voices of human beings who are being locked away in remote facilities, even though they are not being held for the commission of a crime. These human beings are confined behind razor wire fences, kept behind heavy locked doors, and permitted communication with the outside only through a small speaking hole in safety glass, or by means of expensive telephone calls, or overpriced videoconferencing. Crucial though it may be for understanding how the present circumstances of immigration detention came into being, this report relegates a brief synthesis of that history to Appendix A. This history is necessarily incomplete but seeks to touch upon the relevant events and processes leading up to the establishment and management of a facility like OCPC.

“All ICE detainees are held in civil, not criminal, custody, which is not supposed to be punitive.”

-from DHS OIG, *Concerns about ICE Detainee Treatment and Care at Detention Facilities* (Washington, D.C.: Office of Inspector General, Report OIG-18-32, 11 December 2017, p.1)

The report begins with a very brief synopsis of OCPC and how MTC publicly describes its management of this facility. From these necessary contexts, the report segues directly into an account of the concerns raised by individuals who are confined within OCPC. Where appropriate, these concerns are discussed in light of findings contained within ICE inspections, facility reviews, and detention standards. The secretive ICE reviews and inspections, kept from public scrutiny, were made public through prior Freedom of Information Act (FOIA) litigation by other migrant rights advocates like the National Immigrant Justice Center (NIJC). Thanks to their

<sup>4</sup> FFI, ‘Detention Map & Statistics’, *Freedom for Immigrants* <<https://www.freedomforimmigrants.org/detention-statistics/>> [accessed 7 May 2018].

<sup>5</sup> Tanya Maria Golash-Boza, *Deported: Immigrant Policing, Disposable Labor, and Global Capitalism*, *Latina/o Sociology Series* (New York: New York University Press, 2015), pp. 212–17.

efforts these now public ICE documents form a very important corpus of the site-specific official history of any given facility. A more full synthesis of deficiencies known through publicly available ICE inspections of OCPC is provided in Appendix B. More work is needed to bring these documents to light through FOIA.

### The Otero County Processing Center (OCPC)

OCPC is located in the unincorporated *colonia* of Chaparral, New Mexico (Figure 1). According to the American Civil Liberties Union (ACLU) of New Mexico, “Otero County issued more than \$62 million in bonds to pay for the construction of the Otero County Processing Center.”<sup>6</sup> The facility is about a half an hour drive northeast from El Paso, Texas and an hour’s drive southeast from Las Cruces, New Mexico. OCPC is located next to the Otero County Federal Prison and across state highway 54 from the McGregor Range which is withdrawn public land managed by the [Bureau of Land Management](#) and the Army (Figure 2). The adjacent Otero County Federal Prison is also managed by MTC.

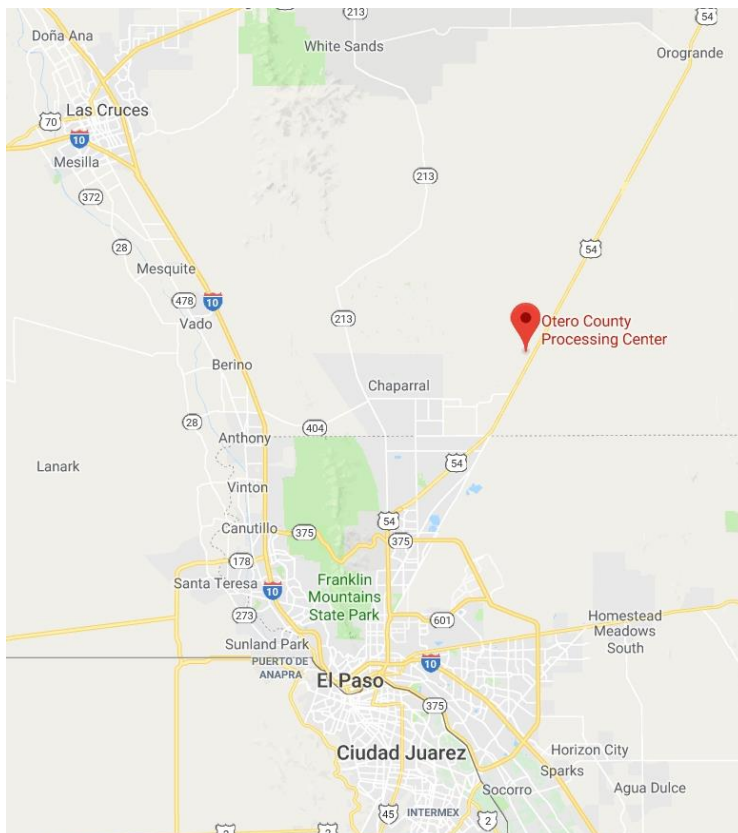


Figure 1 Screen capture of Google Maps illustrating the location of OCPC in relation to neighboring cities.

In 2008, OCPC began operating as a dedicated immigration detention facility. OCPC is owned by Otero County and is operated for ICE through an Intergovernmental Service Agreement (IGSA) between the U.S. Department of Homeland Security (DHS) ICE Detention and Removal Operations (DRO), El Paso, Texas and Otero County.<sup>7</sup> Otero County

<sup>6</sup> Emily P. Carey, *Outsourcing Responsibility: The Human Cost of Privatized Immigration Detention in Otero County* (Las Cruces, NM: The American Civil Liberties Union of New Mexico, 2011), p. 79 (p. 9) <<https://www.aclu-nm.org/sites/default/files/wp-content/uploads/2011/01/OCPC-Report.pdf>>.

<sup>7</sup> DHS, ‘DROIGSA-08-0019 Intergovernmental Service Agreement between the United States Department of Homeland Security U.S. Immigration and Customs Enforcement DRO/ICE-El Paso, TX and Otero County’ (ICE FOIA Library, 2008) <<https://www.ice.gov/doclib/foia/isa/otero-county-nm.pdf>>.

subcontracts the management of the facility to the private for-profit firm MTC. At least in 2011, for medical services, MTC subcontracted further with Physicians Network Association.<sup>8</sup>

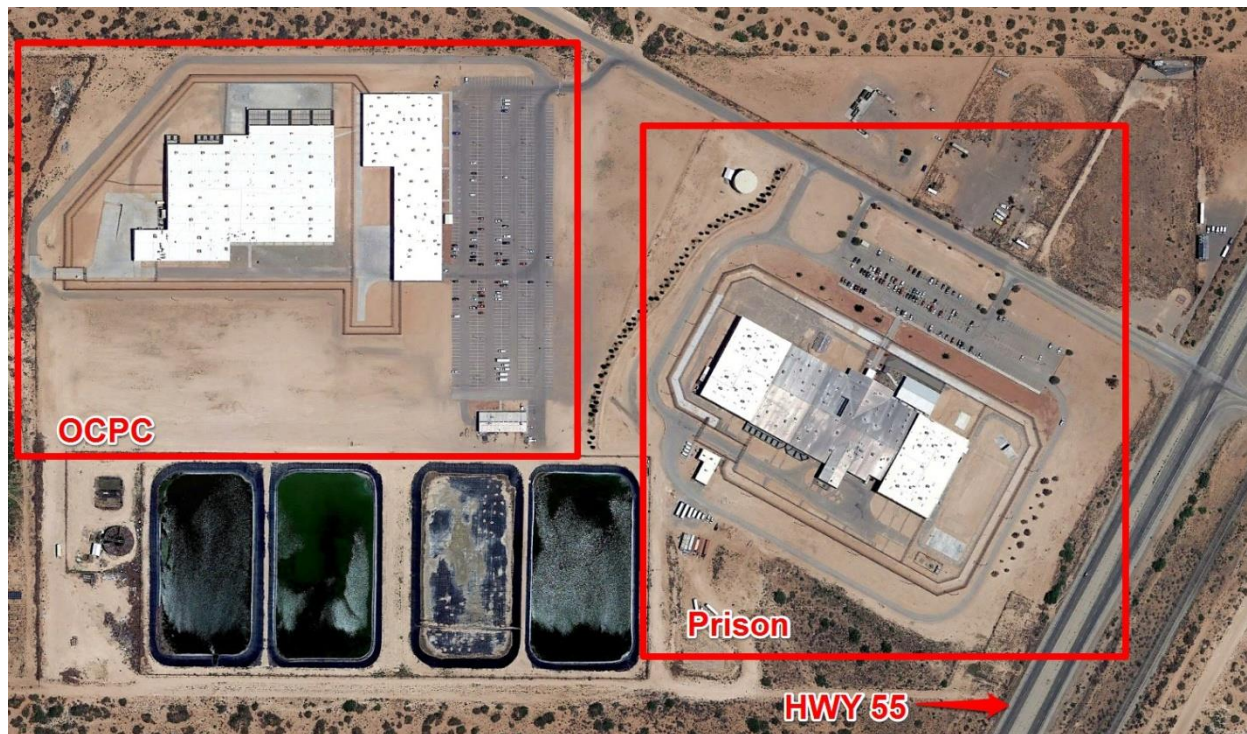


Figure 2 Image captured from Google Earth showing an overview of OCPC. The Otero County Federal Prison is located on the right and OCPC where migrants are detained is located on the left.

The IGSA states that the purpose of the agreement is “for the detention and care of persons detained under the authority of the Immigration and Nationality Act, as amended.”<sup>9</sup> The IGSA continues, “All persons in the custody of the ICE are ‘Administrative Detainees’. This term recognizes that ICE detainees are not charged with criminal violations”.<sup>10</sup> **This means that persons detained at OCPC are not charged with criminal violations.** Readers are asked to keep this important fact in mind as they learn about the conditions at the facility.

According to the MTC OCPC Fact Sheet, OCPC has a maximum capacity of 1089 detained migrants.<sup>11</sup> This figure is consistent with other documentation reviewed for this report. The

<sup>8</sup> Carey, p. 9.

<sup>9</sup> DHS, p. 2.

<sup>10</sup> DHS, p. 2.

<sup>11</sup> MTC, ‘Otero County Processing Center: Preparing Detainees for Successful Re-Entry’ (MTC, 2017) <[http://www.mtc trains.com/wp-content/uploads/2017/06/Corrections\\_Facts\\_Sheet\\_OTR2.pdf](http://www.mtc trains.com/wp-content/uploads/2017/06/Corrections_Facts_Sheet_OTR2.pdf)> [accessed 19 March 2018].

number of individuals detained at the facility fluctuates over time. As of 2016, ICE lists the official average daily population of OCPC as 846 detained migrants.<sup>12</sup>

OCPC opened on May 23, 2008 and in June of 2008, under MTC management, ICE began housing detained migrants who ICE classified at different “risk” levels.<sup>13</sup> OCPC contains 132,958 sq ft of housing for detained migrants, with a total housing capacity rating of 1000 individuals (Figure 3).<sup>14</sup> The average detained migrant population runs between 620-840.<sup>15</sup>

Though OCPC is operated on a for-profit basis, details regarding the facility’s pay rate are perplexing. Five different ICE documents indicate three different prices ranging from as low as \$91.03 to as high as \$117.71 (see Table 1). The original IGSA between Otero County and ICE shows the “detainee daily rate is \$96.99”.<sup>16</sup> Two subsequent ICE facility inspection documents from 2008 and 2009 indicate the same rate.<sup>17</sup> Then in 2012, an ICE facility inspection contracted by Nakamoto Group listed the “Man-Day” rate as \$117.71, representing an increase of \$20.72 per detained individual.<sup>18</sup> Throughout this period, the “Estimated Man-days Per Year” remained at 336,932.<sup>19</sup> A 2015 document posted in the ICE FOIA library lists the OCPC per diem rate as \$91.03 for 1-850 detained individuals, and \$18.71 for 851-1000 detained individuals.<sup>20</sup> The \$91.03 base per diem would represent a reduction of \$5.96 per detained person from the

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<sup>12</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, August 9-11, 2016* (Washington D. C.: Department of Homeland Security, Office of Professional Responsibility, Inspection of Detention and Oversight Division, Office of Detention Oversight, 9 August 2016), p. 10 <<https://www.ice.gov/doclib/foia/odo-compliance-inspections/2016-OteroCountyProcessingCenter.pdf>>.

<sup>13</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, March 5-7, 2013* (El Paso Field Office: Department of Homeland Security, Immigration and Customs Enforcement, Office of Professional Responsibility, Office of Detention Oversight, 5 March 2013), p. 16 (p. 3) <[https://www.ice.gov/doclib/foia/odo-compliance-inspections/otero-county-chaparral-nm-mar5-7\\_2013.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/otero-county-chaparral-nm-mar5-7_2013.pdf)>.

<sup>14</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012* (Washington D. C.: Enforcement and Removal Operations, Department of Homeland Security, 22 February 2012), p. 167 (p. 163) <<https://www.documentcloud.org/documents/2053944-otero-county-processing-center-2012-ero-inspection.html>>.

<sup>15</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 163; ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 3-5, 2009* (Washington D. C.: Enforcement and Removal Operations, Department of Homeland Security, 12 March 2009), p. 84 (p. 4) <<https://www.ice.gov/doclib/foia/dfra-ice-dro/otero-county-prison-chaparral-nm-0303052009.pdf>>.

<sup>16</sup> DHS, p. 2.

<sup>17</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 3-5, 2009*, p. 4; ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, Sept 16-18, 2008* (Washington D. C.: Enforcement and Removal Operations, Department of Homeland Security, 16 September 2008), p. 84 (p. 1) <<http://www.ice.gov/doclib/foia/dfra-ice-dro/otero-county-processing-center-chaparral-nm-september16182008.pdf>>.

<sup>18</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 163.

<sup>19</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 163; ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 3-5, 2009*, p. 4.

<sup>20</sup> ICE, ‘2015 ICE Detention Facility Listing’, 2015 <<https://www.ice.gov/doclib/foia/dfs/2015IceDetentionFacilityListing.xlsx>> [accessed 7 May 2018], worksheet Facility List - Main, cell Y67.

original rate established in the IGSA, and a reduction of \$26.68 from the rate reported in the 2012 ICE inspection. In documents recently obtained by NIJC through a FOIA request, ICE elected to exempt reporting the OCPC per diem rate claiming FOIA exemption “(b)(4)”.<sup>21</sup> FOIA exemption (b)(4) refers to “trade secrets and commercial or financial information obtained from a person and privileged or confidential”.<sup>22</sup>

On at least five prior occasions in response to FOIA requests (Table 1), ICE released information on the per diem rate at OCPC. For some reason, in 2017, with no apparent precedent since OCPC’s establishment in 2008, ICE decided the rate paid per detained migrant is now a “trade secret” so important that it is exempt from public disclosure. This disturbing turn of events represents a stark departure from the public statements issued by the ICE FOIA Office claiming a commitment to “providing accurate information about agency functions and operations without compromising privacy, national security or the ICE mission.”<sup>23</sup> The ICE FOIA office should explain why it now evokes exemption (b)(4) to conceal the OCPC per diem when this same ICE office has repeatedly not done so in the past and as recently as 2015.

What do these various “Man-Day” and per diem rates mean in terms of the financial burden on the taxpayer regarding the operation of OCPC? Using the OCPC “Estimated Man-days Per Year” of 336,932, one can calculate the annual cost based on the three reported per diem rates. Depending on the rate applied the facility charges anywhere from \$30.67 million to \$39.66 million per year. These varying rates result in disparities anywhere from \$2 million to \$8.9 million per year. At minimum OCPC costs taxpayers over \$30.5 million, and based on more frequently reported data, closer to \$32.5 million per year. Over the span of the facility’s ten years of operation, that amounts to well over \$305 million in tax payer money at minimum. None of these sums appear to include other charges for Transportation and Stationary Guard Service.

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<sup>21</sup> NIJC, ‘ICE Detention Facilities as of November 2017’, *National Immigrant Justice Center (NIJC)*, 2018 <<https://www.immigrantjustice.org/ice-detention-facilities-november-2017>> [accessed 7 May 2018], worksheet Facility List- Main, cell CL989.

<sup>22</sup> *FOIA Update: The Freedom of Information Act, 5 U.S.C. Sect. 552, As Amended By Public Law No. 104-231, 110 Stat. 3048, U.S. Code, 1996*, v <<https://www.justice.gov/oip/blog/foia-update-freedom-information-act-5-usc-sect-552-amended-public-law-no-104-231-110-stat>> [accessed 7 May 2018].

<sup>23</sup> ICE, ‘Freedom of Information Act (FOIA) Office’, *Freedom of Information Act (FOIA) Office*, 2017 <<https://www.ice.gov/management-administration/foia>> [accessed 7 May 2018].



**Table 1 OCPC “Man-Day” or per diem rates listed in ICE documents and facility cost per year calculated from the “Estimated Man-days Per Year” value of 336,932.**

<b>Source</b>	<b>Per Diem Rate</b>	<b>Estimated Cost Per Year</b>
2008 Otero-ICE IGSA <sup>24</sup>	\$96.99	\$32,679,034.68
2008 ICE Inspection <sup>25</sup>	\$96.99	\$32,679,034.68
2009 ICE Inspection <sup>26</sup>	\$96.99	\$32,679,034.68
2012 ICE Inspection <sup>27</sup>	\$117.71	\$39,660,265.72
2015 ICE spreadsheet <sup>28</sup>	\$91.03 (1-850) \$18.72 (851-1000)	\$30,670,919.96
2017 ICE spreadsheet <sup>29</sup>	(b)(4)	?

On the subject of money, readers should keep in mind that while ICE documentation of the “Man-Day” or per diem rate at OCPC fluctuated significantly, it has remained constant that detained migrants who work in the facility are paid \$1 for a full eight hour day’s work.<sup>30</sup> Thus, while ICE documents indicate that the facility makes anywhere from \$91.03 to \$117.71 per person, ICE standards allow MTC to pay a detained migrant worker roughly one hundredth of what is made off the person’s presence in the facility. Bear in mind that ICE documents indicate that detained migrant labor is necessary to keep the facility running. This issue of detained migrant labor pay rates is covered further below.

Because ICE tasks companies such as MTC with carrying out its legal mandate, and does so at great expense to the people of the U.S. who ultimately fund these facilities through their tax dollars, a closer look at the conditions of facilities such as OCPC is reasonable and warranted.<sup>31</sup> The next section begins with a critical look at how MTC describes its company goals as they relate to the management of detention facilities, specifically OCPC.

<sup>24</sup> DHS, p. 2.

<sup>25</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, Sept 16-18, 2008*, p. 1.

<sup>26</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 3-5, 2009*, p. 4.

<sup>27</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 163.

<sup>28</sup> ICE, ‘2015 ICE Detention Facility Listing’, worksheet Facility List - Main, cell Y67.

<sup>29</sup> NIJC, ‘ICE Detention Facilities as of November 2017’, worksheet Facility List- Main, cell CL989.

<sup>30</sup> ICE, ‘Performance Based National Detention Standards 2011’ (Department of Homeland Security, Immigration and Customs Enforcement, Enforcement and Removal Office, 2018), p. 407 <<https://www.ice.gov/detention-standards/2011>> [accessed 25 January 2018].

<sup>31</sup> CIVIC (now called FFI), ‘Re: Widespread Denials and Restrictions of Public Access to U.S. Immigration Detention Facilities’ (Community Initiatives for Visiting Immigrants in Confinement (CIVIC), 2017) <[https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/5a9daa64e2c483713646b28f/1520282214395/DetentionAccess\\_Complaint.pdf](https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/5a9daa64e2c483713646b28f/1520282214395/DetentionAccess_Complaint.pdf)> [accessed 8 May 2018].

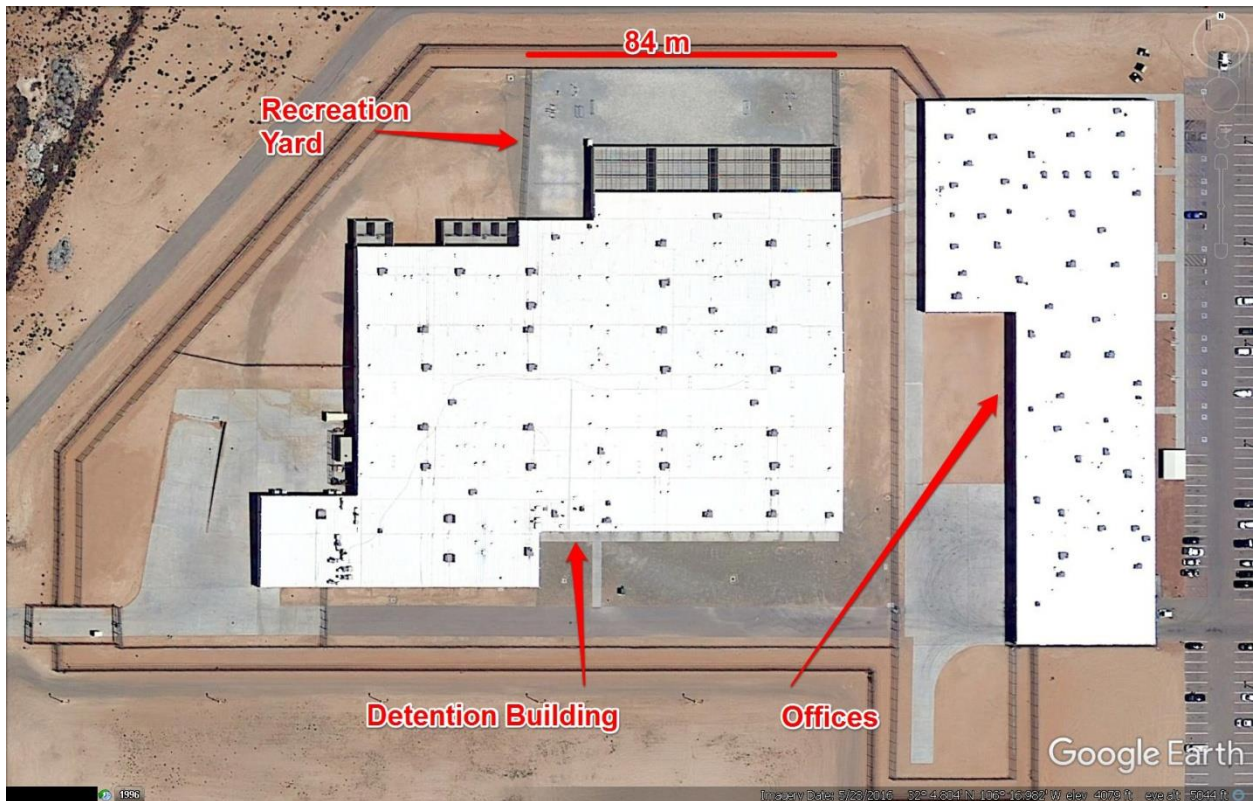


Figure 3 Detail image captured from Google Earth showing the OCPC detention facility and fenced recreation yard.

### **MTC's characterization of the facility**

MTC operates three immigration detention facilities in the U.S.: the IAH Detention Center in Livingston, Texas; the Imperial Regional Detention Facility in Calexico, California; and the OCPC in Chaparral, New Mexico. Generally, MTC contends that it "partners with Immigration and Customs Enforcement (ICE) to provide individuals in their care with a comfortable, helpful, and attentive environment. ICE detainees are housed at MTC facilities for very short periods of time, and during that time, MTC provides these men and women with opportunities to further their education, to participate in meaningful activities, and to prepare in all ways to return to their homes and families."<sup>32</sup>

According to MTC's Corrections Fact Sheet that is specific for OCPC, "The Otero County Processing Center strives to be a leader in social impact by helping detainees prepare to successfully re-enter society. Detainees are provided with various programs and activities" (Figure 4).<sup>33</sup>

<sup>32</sup> MTC, 'Caring for Individuals in ICE Custody' (MTC), p. 1 <[http://www.mtctrains.com/wp-content/uploads/2017/09/1pager\\_Detainee.pdf](http://www.mtctrains.com/wp-content/uploads/2017/09/1pager_Detainee.pdf)> [accessed 23 March 2018].

<sup>33</sup> MTC, 'Otero County Processing Center: Preparing Detainees for Successful Re-Entry', p. 1.

# Otero County Processing Center

Preparing Detainees for Successful Re-Entry

26 McGregor Range Road | Chaparral, New Mexico 88081

Phone: (575) 824-0440

September 2017



Figure 4 Screen capture from OCPC fact sheet “Otero County Processing Center: Preparing Detainees for Successful Re-Entry”.

Figure 4, the heading from the MTC created factsheet for OCPC, contains five photographs that appear to illustrate experiences at the facility. This image provides a useful point of departure for analysis. Four of the five images depict detained individuals and the fifth image depicts facility guards. While the graphic attempts to depict individuals happily confined at an MTC facility, closer evaluation of the photographs suggest little articulation with OCPC. The leftmost image on the top row shows smiling females who are detained working at computers. Multiple ICE documents show that females are not detained at OCPC. The image to the right depicts an older male dressed in a white uniform reading a newspaper.



Migrants detained at OCPC do not wear white uniforms. They wear blue, orange, or red uniforms

Figure 5 Screen capture from MTC website showing OCPC detained migrants wearing Blue, Orange, and Red representing the ICE Classification levels of Low Custody, Medium Custody, and High Custody detained individuals respectively. Image URL <http://www.mtctrains.com/staff-member-bionic-strength-recognized-otero-ii-facility/>. Accessed 24 March 2018.

depending on their ICE mandated classification level (Figure 5). In Figure 4, the leftmost image on the bottom row depicts individuals studying in a classroom wearing white uniforms. Though three of the individuals are wearing blue coats, all individuals are again wearing white uniforms that are not used at OCPC. The image to the right shows a smiling woman wearing a green and blue uniform using a watering can to irrigate plants in a garden. Women have not been and are not presently detained at OCPC, people detained there do not wear green uniforms, and the facility does not have a garden for detained individuals to cultivate. The final image to the right depicts two guards. None of the four images of people in detention emblazoned on the header of the MTC factsheet for OCPC accurately depicts either individuals incarcerated at the facility or their experiences. Paying attention to details reveals that there is a discrepancy between

MTC's advertising characterization and the realities of migrants housed at the facility. As this report shows, the discrepancies are not limited to the header of MTC's factsheet for OCPC.

In Figure 6, former warden Ray Terry, who oversaw OCPC during the period this report was written, addresses the public and especially family and friends of detained migrants via the [MTC webpage](#).<sup>34</sup> Several claims are made by Warden Terry that should be highlighted in light of their inspections records and in contrast with the following description of conditions at OCPC based on the accounts of detained migrants. Warden Terry claims that:

- the length of stay for detained migrants is relatively short
- staff try to provide a comfortable safe atmosphere to help time pass quickly for those in their care
- OCPC has a record of accreditation and compliance with many government and accrediting entity standards
- OCPC exceeds those standards "to the benefit [of] those in our care [sic]"
- staff are BIONIC (Believe It Or Not I Care)
- they care about the public's loved ones, trying to prove this in their daily interactions and work

Having reviewed some of MTC's public claims regarding OCPC, this report now turns to accounts of the facility from the perspective of several individuals who were detained there, as well as details extracted from ICE's own reviews and inspections of OCPC. To further highlight the comparison of detained individual's accounts of conditions at OCPC with official documentation from ICE, excerpts from MTC's corporate media materials are interspersed throughout the next section.

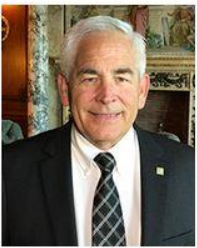
	<p><b>Warden Ray Terry</b></p> <p>Welcome to the Otero County Processing Center site. Our facility is operated exclusively for U.S. Department of Immigration and Customs Enforcement. The length of stay for those assigned to this facility is relatively short. Our staff endeavor to provide an atmosphere that is comfortable, safe, and conducive to making time pass quickly for those who find themselves in our care. I am especially proud of this facility's record of accreditation and compliance with the many standards that are established by the government and the accrediting entities. There are many ways that we exceed those standards to the benefit those in our care. The staff at this facility are BIONIC (Believe It Or Not I Care). We care about your loved one, and we try to prove this daily in our work and interaction with others.</p> <p>Thank you for visiting.</p>	<p><b>Capacity</b> 1,089</p> <p><b>Security Level</b> Multi-Level</p> <p><b>Accreditation</b> ACA   NCCHC</p>
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Figure 6 Screenshot of Warden Terry's welcome message. <http://www.mtctrains.com/family-friends-otero-county-processing-center/>. Accessed 20 March 2018.

<sup>34</sup> MTC, 'Family & Friends - Otero County Processing Center', *Management and Training Corporation* <<http://www.mtctrains.com/family-friends-otero-county-processing-center/>> [accessed 18 December 2017].

## **Conditions at OCPC According to Detained Migrants and ICE**

This report reviews two groups of accounts: one group derives from 2015 and another from 2017-2018. In 2015, 43 detained individuals were visited on a single day and asked about their experiences while confined at OCPC. Reports from 24 of these conversations with detained individuals were reviewed, and revealed that 19 (79%) of the individuals expressed a total of 75 complaints.

The second group of accounts consists of conversations with 25 individuals detained in OCPC that took place during the period of March 2017-March 2018, a span of one year. Conversations took place on multiple occasions for fifteen individuals, while 10 of the individuals are represented by single conversations. During these conversations, a total of 176 complaints were expressed. Complaints were unsolicited and expressed during the course of organic unstructured conversations. That is, these conversations were not interviews specifically aimed at eliciting information on the conditions at OCPC. Because individuals were not prompted to answer specific questions related to the conditions, complaints are likely underrepresented. In an effort to cope with both stressful deportation proceedings and the strains of confinement, some individuals clearly did not want to focus on the negatives of their situation. Still, unsolicited, 19 of 25 (76%) individuals expressed complaints about their treatment in OCPC.

Separated into the 2017-2018 and 2015 groups, Table 2 enumerates the type of complaint and how many times it was reported. These complaints were categorized into four overarching themes that highlight the majority of concerns revealed by detained migrants regarding their treatment in OCPC, and the conditions of confinement in which they live: Unhealthy Conditions, Abuse and Exploitation, Social Isolation and Mental Anguish, Barriers to Justice and Legal Access. There is some overlap in and intersection between these categories. Social isolation and mental anguish contribute to unhealthy conditions, as do abuse and exploitation. Abuse and exploitation contribute to mental anguish. Several instances of documented abuse created barriers to justice and legal access. Where appropriate, connections are drawn between complaints in one category that relate to other categories. The bulk of details are drawn from the larger 2017-2018 group of individuals. However, details of the 2015 group of complaints are included in the relevant categories, noting the year they were made. No names are used in order to protect the individuals from potential retaliation.

Before relating the complaints, it is important to note that several detained individuals reported that not all ICE officials or MTC staff at OCPC mistreat imprisoned migrants. However, as the following complaints and official government documents (Appendix B) will show, there is a culture of abuse and mistreatment that is tolerated at OCPC despite the efforts of a few kind individuals. The efforts of those individuals are not enough, apparently, to ensure that detained migrants are treated in accordance with standards and ethics.



Table 2 Complaints by OCPC detained individuals.

<b>Major Concern</b>	<b>Specific Complaint</b>	<b>2017-2018 (25 people)</b>	<b>2015 (43 people)</b>
Unhealthy Conditions	Inadequate and poor quality food	26	4
	Inadequate medical attention	19	18
	Unsanitary conditions	8	15
	Cold temperatures	8	13
	Limited access to hygiene supplies	7	-
	Inadequate clothing	1	2
Abuse and Exploitation	Harassment by staff and guards	17	2
	Commissary too expensive	10	3
	Abuse of solitary to punish and intimidate	9	-
	Retaliation by staff and guards	7	-
	Labor exploitation	6	-
	Threats of physical abuse	1	-
	Extortion by guards	1	-
	Money taken and not provided for commissary	-	1
Social Isolation and Mental Anguish	Delays in visits	11	-
	Problems receiving mail	10	-
	Limited outdoor access	6	-
	No activities provided or permitted	5	-
	Limitations to religious practice	5	-
Barriers to Justice and Legal Access	Prolonged detention	5	-
	Problems filing grievances	5	-
	Problems with court conducted remotely	2	-
	Detained migrant not given facility handbook	2	-
	Inadequate access to legal resources	2	1
	Coercion by ICE and MTC staff	2	-
	Problems with phone access	1	1
	Requests ignored	-	4
	Kept uninformed	-	11
		176	75

## **Unhealthy Conditions**

### ***Inadequate and Poor Quality Food***

According to MTC, "[d]etainees are provided nutritious and culturally diverse meals. Detainees at MTC facilities are provided meals that are approved by a certified nutritionist. On average, detainees receive 3,000 calories per day and 20 servings of fruits and vegetables per week. MTC also honors requests for religious and health-related diets."<sup>35</sup>

In 2015 four complaints were expressed regarding food. Two individuals complained that the last meal of the day was at 4:00 pm, and that they had to feed themselves after that through items purchased from the commissary. Two other individuals indicated that there was no hot water available to prepare instant coffee or soups bought in the commissary, nor did they have access to a microwave to prepare such items. Detained individual's access to drinking water and hot water is from a shared toilet-sink combination discussed below (Figure 7).

The most common complaint in 2017-2018, expressed 26 times, was related to food, including insufficient food and poor quality food. Small portions of food, estimated to be the size of a tablespoon for each food item, were independently reported by five different individuals,

***Weight loss was reported by three individuals. Being hungry all the time was reported by seven individuals, and they further asserted that everyone inside was hungry all the time.***

several of whom spoke mutually unintelligible languages. Several individuals reported that they could work in the kitchen, laundry, or cleaning pods to supplement their diet through access to leftovers.

However, individuals also reported

that as of October 29, 2017 this practice was ended and leftover food was thrown away. This food waste was a source of concern for some individuals. Weight loss was reported by three individuals. Being hungry all the time was reported by seven individuals, and they further asserted that everyone inside was hungry all the time. Visitors reported that several individuals appear to have lost weight during their time incarcerated at OCPC.

A few individuals with dietary restrictions, for either religious or health reasons, complained that their dietary needs were not met. For some, the spicy seasoning was difficult on their digestive systems, especially for those with acid-reflux. For others, the food was too greasy and too seasoned. Meals commonly consisted of rice and beans, with a salad of either cabbage or lettuce, often times damaged and of poor quality. Textured vegetable protein, or "soy meat", is

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<sup>35</sup> MTC, 'The MTC Difference in Immigration Detention' (Management and Training Corporation (MTC), 2017), p. 2 <<http://www.mtctrains.com/wp-content/uploads/2017/10/The-MTC-Difference-In-Immigration-Detention.pdf>> [accessed 8 May 2018].

commonly served, and sometimes it is not completely rehydrated. Potatoes, another common food item, were also reported as being frequently undercooked. According to two individuals, food often has an "off" taste or smell, and is reminiscent of pesticide. The menu posted in the mess area would lead one to believe the meals are appetizing and nutritious. Yet, based on numerous accounts, what detained migrants are given to eat does not match the menu.

ICE inspections reveal that OCPC has a history of deficiencies and complaints regarding food service. In 2008, ICE rated OCPC as a deficient facility. One of the key areas of shortcoming was food service. Months after the facility opened there was still no complete nutritional analysis of the menus, no common fare menu, food service was not meeting religious dietary needs as required, and despite both ICE and MTC policy the facility was not providing medical diets.<sup>36</sup> The inspection noted numerous sanitation issues and documented that neither the food service director nor his assistant was conducting weekly sanitation inspections. No one working on the food service staff was in possession of a New Mexico Food Handlers Card that was required by MTC policy.<sup>37</sup>

During 2009, Creative Corrections inspectors who were contracted by ICE to perform a follow-up observed the presence of house-flies in the kitchen area.<sup>38</sup> By this time, MTC implemented Armed Forces Recipes and the cook was not allowed to deviate from these menu items.<sup>39</sup> Inspectors found that medical diets were served. Creative Corrections inspectors determined that OCPC considered the ethnic diversity of the facility's detained migrant population when developing menus. As example dishes, inspectors listed Lasagna, Yakisoba, Hot Dogs, Hamburgers, and "Pork Adobe" (rather than adobo).<sup>40</sup> Though the vast proportion of people detained were Latin American, other than "Pork Adobe", burritos were the only example item of Latin American cuisine listed.

Later in 2009, ICE again inspected OCPC and interviewed 50 detained individuals. Food service was among the three most common complaints. "Detainees stated that food portions were frequently cold, small, and lacked diversity."<sup>41</sup> ICE found detained migrant's complaints about food service "without merit due to the fact that OCPC utilizes a registered licensed dietitian to

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<sup>36</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, Sept 16-18, 2008*, pp. 18–19.

<sup>37</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, Sept 16-18, 2008*, p. 21.

<sup>38</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 3-5, 2009*, p. 82.

<sup>39</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 3-5, 2009*, p. 20.

<sup>40</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 3-5, 2009*, p. 20.

<sup>41</sup> DFIG, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 16-18, 2009* (El Paso Field Office: Department of Homeland Security, Immigration and Customs Enforcement, Office of Professional Responsibility, Management Inspections Unit, Detention Facilities Inspection Group, 16 June 2009), p. 39 (p. 9) <<https://www.documentcloud.org/documents/1813834-otero-county-processing-center-2009-odo-inspection.html>>.

prepare and certify the menu”.<sup>42</sup> ICE’s response to complaints from people in immigration detention regarding food portions is consistent with NIJC’s claim that “the checklist-driven inspections process obscures the conditions immigrants actually face in detention centers and whether standards are being implemented to their full intent.”<sup>43</sup> Readers of this report will find this checklist-driven-obscuring of immigration detention conditions a recurrent theme. Though ICE found complaints from people in immigration detention meritless, reviewers noted a large presence of flies in the food service area.

In 2012, Nakamoto Group, under contract with ICE, inspected OCPC. One inspector noted that “[f]ood items appeared nutritionally adequate, presented in a manner to be visually appealing.”<sup>44</sup> In 2013, ICE inspectors noted that during the year covered by the inspection ICE received seven formal complaints regarding food service.<sup>45</sup> As the 2015 and 2017-2018 samples demonstrate, food service remains one of the most frequent complaints among individuals detained at OCPC and dates back to when the facility opened a decade ago.

### ***Inadequate Medical Attention***

MTC claims that "MTC medical provides quality, comprehensive, and responsive medical care to all detainees, meeting or exceeding current ICE standards."<sup>46</sup>

In 2015, there were 18 complaints about medical care. Five individuals complained about being denied medication. One individual noted their entire pod was sick and they were not being given medicine. Two individuals had their medicine (for gastroenteritis and high cholesterol and depression) taken away upon arrival, and had not been subsequently provided with it. Another individual reported that he was a diabetic, and had medicine, but was told he was not on the list to get a refill. He was eventually given a refill, but it was delayed. One person indicated that no matter what the health issue was, detained individuals were only ever given Tylenol.

Seven individuals complained of denials or delays in receiving medical attention. One individual had a severe toothache for months and needed a molar removed. He went untreated, and it is not clear if this individual ever received treatment. Three individuals reported that once a request was made it routinely took 3-4 days to receive medical attention. Another individual reported being sick for a week and still had not received medical attention. Another individual lost his glasses, and experienced headaches as a result. He was eventually attended to. This

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<sup>42</sup> DFIG, p. 19.

<sup>43</sup> NIJC, *Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse*, The Immigration Detention Transparency and Human Rights Project (Washington D. C.: National Immigrant Justice Center, October 2015), p. 36 (p. 13) <<http://immigrantjustice.org/lives-peril-how-ineffective-inspections-make-ice-complicit-detention-center-abuse-0>>.

<sup>44</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 85.

<sup>45</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, March 5-7, 2013*, p. 4.

<sup>46</sup> MTC, ‘The MTC Difference in Immigration Detention’, p. 1.

same individual reported having been bit by a dog when they were caught (presumably by Border Patrol), and being told that despite the pain there was nothing that could be done about it. Another individual with serious back pain and a hand injury was not given adequate pain medication.

In 2017-2018, 19 complaints were made about medical care. Even though the number of people in the 2017-2018 group was nearly half the size of the number of people in the 2015 group, the number of medical complaints still increased. This fact is concerning. Individuals reported that documented health problems were not tracked. Even when prescriptions were made for allergies, or for issues such as gastrointestinal problems, medical staff at OCPC would not administer treatments prescribed by a doctor. Special dietary needs for medical issues were not honored.

Chronic medical conditions or urgent medical needs were left to linger. One individual suffered from stomach pains for months, being given an unknown medication that did not help. Another individual suffering from likely panic attacks was also given an unknown medication, which did not seem to help. Being given unidentified medicine and injections was not unusual. Five individuals reported they did not understand what medicine they were being given. In some cases individuals were understandably nervous about the side-effects of unknown medications, and refused to take the pills or receive the injections.

Delays in receiving medical attention were reported by four individuals. The submission of required written requests to be seen by medical personnel were delayed for 2-3 days or denied, making it difficult to receive attention when sick. In one case, swelling of an individual's arm and evident necrosis of the skin was deemed unnecessary for medical attention. To alleviate the symptoms, the individual, with help from some fellow migrants in detention, squeezed out the puss from the swollen wound while in the yard. Despite some relief brought about by self-treatment, he continued to complain of soreness on that side of his body. These prolonged medical concerns went unaddressed.

***In one case, swelling of an individual's arm and evident necrosis of the skin was deemed unnecessary for medical attention. To alleviate the symptoms, the individual, with help from some fellow migrants in detention, squeezed out the puss from the swollen wound while in the yard.***

On one occasion, an entire pod was quarantined for unknown reasons, though it was rumored to be due to outbreaks of both chicken pox and hepatitis. During the same time, reports of a chicken pox outbreak in the adjacent Otero County Federal Prison (also run by MTC) were reported in the media. News reports indicated that the adjacent Otero County Federal Prison



(Figure 2) was seeking help from the New Mexico Department of Health to contain the outbreak.<sup>47</sup> No corresponding news reports were found covering the adjacent OCPC facility.

Overlapping with the chicken pox outbreak, another pod was evacuated due to a severe outbreak of the flu. At this same time, numerous individuals from another pod were sick with flu-like symptoms, but were not given medicine. They were allowed to sleep it off. Another individual was so sick that he could hardly move, and several other detained migrants had to plead with the guards for him to see medical staff. The guards said he must make a written request, and when the man rose to do so, he collapsed. After additional pleading by his fellow podmates, the ill individual was finally taken to see the medical staff. Another individual, after pleading with guards to get an appointment with the medical staff, was awoken at 3 AM to see the doctor.

One individual who experienced a sore-throat for several weeks asked to see the doctor, but was told he did not need to. He was given unidentified pills that did not alleviate the symptoms. Basic remedies, such as cough syrup or tea, are not provided. Simple measures to alleviate pain or inhibit worsening of symptoms, such as scarves to keep a throat warm during cold months, are also not available.

ICE inspections reveal problems with medical services and corroborate concerns detailed above. During a 2009 inspection, ICE interviewed 50 detained individuals at OCPC. Among this group, medical services was one of the three most common complaints. Detained migrants complained that “the amount of time between submitting a sick call slip and seeing a member of the medical staff was excessive.”<sup>48</sup> In 2010, ICE inspectors determined that OCPC was not properly forwarding detained migrants' medical records.<sup>49</sup>

During a 2013 inspection, ICE found that OCPC recorded incomplete medical information in classification forms used for those detained.<sup>50</sup> Inspectors also noted that there was no documented process for detained migrants to submit or appeal a written grievance regarding medical services.<sup>51</sup> During the 2013 OCPC inspection, ICE interviewed 30 randomly selected

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<sup>47</sup> Angela Kocherga, ‘Otero County Prison Fighting Chickenpox’, *Albuquerque Journal* (Albuquerque, NM, 2 January 2018) <<https://www.abqjournal.com/1113860/otero-county-prison-fighting-chickenpox.html>> [accessed 24 March 2018].

<sup>48</sup> DFIG, p. 9.

<sup>49</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 9-11, 2010* (Washington D. C.: Enforcement and Removal Operations, Department of Homeland Security, March 2010), p. 73 (p. 39) <<https://www.ice.gov/doclib/foia/dfra-ice-dro/otero-county-prison-chaparral-nm-0309112010.pdf>>.

<sup>50</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, March 5-7, 2013*, p. 9.

<sup>51</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, March 5-7, 2013*, p. 14.

detained migrants and found that medical services was among the most common complaints.<sup>52</sup> Food (see above) and medical services constituted 64% of all complaints that ICE classified.

In 2016, ICE inspectors found that MTC did not consistently train three contract medical staff in Sexual Abuse and Assault Prevention Intervention.<sup>53</sup> During a 2016 inspection, ICE conducted voluntary interviews with 23 detained migrants. These individuals complained about the quality of medical care at OCPC.<sup>54</sup> In 2017, the Office of the Inspector General (OIG) made an unannounced inspection of OCPC. Among the findings, daily medical records were missing for individuals in segregated detention.<sup>55</sup> Thus, problems with medical services at OCPC date back nearly a decade, and the issues are chronic and ongoing.

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<sup>52</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, March 5-7, 2013*, p. 4.

<sup>53</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, August 9-11, 2016*, p. 9.

<sup>54</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, August 9-11, 2016*, pp. 6–7.

<sup>55</sup> DHS OIG, *Concerns about ICE Detainee Treatment and Care at Detention Facilities* (Washington, D.C.: Department of Homeland Security (DHS) Office of Inspector General (OIG), 11 December 2017), p. 19 (p. 6) <<https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>>.

### ***Unsanitary Conditions and Inadequate Clothing***

MTC claims that "MTC Takes Pride in Keeping its Facilities Clean, Welcoming, and Well-Maintained".<sup>56</sup>

In 2015, there were 15 complaints about unsanitary conditions, and two complaints about inadequate clothing. Four individuals complained that the air conditioning vents were so dirty that it was making them, and a

***Two individuals reported that drinking fountains were located right above the toilets which were often dirty. Sometimes there was fecal material on the drinking fountains.***



**Figure 7 Image of combination toilet-sink facility used for going to the bathroom, brushing teeth, grooming, and obtaining hot water for preparing ramen noodles from the commissary. Image captured and cropped from Kripa and Mueller's article in *The Architects Newspaper*. Images were reportedly supplied by the agency.**

lot of other people, sick. Two individuals reported their entire pods were sick, and that the flu was going around.

Two individuals reported that drinking fountains were located right above the toilets (Figure 7),<sup>57</sup> which were often dirty. Sometimes there was fecal material on the drinking fountains. Three other individuals reported dirty areas within the facility, including areas with dead bugs.

One individual remarked that despite everyone being sick, clothes or sheets were not changed and laundered, facilitating the spread of germs. Another individual reported being given used and visibly soiled underwear and dirty socks. When he asked for clean ones he was ignored. In addition to not having enough clean clothing, one individual was issued a pair of shower shoes that were for the same foot, and not given a correct pair.

In 2017-2018, 8 complaints were made about unsanitary conditions, and one complaint about inadequate clothing. Seven individuals complained generally about overall unsanitary conditions that sometimes resulted in infections or other health issues. One individual reported an arm infection that just appeared. Two individuals reported that they have constant allergies from unclean indoor conditions, and that nearly everyone suffered from some

<sup>56</sup> MTC, 'The MTC Difference in Immigration Detention', p. 2.

<sup>57</sup> Kripa, 'Border Dispatches: Growing Private Detention Industry Threatens Immigrants' Rights on the U.S.-Mexico Border', *Archpaper.Com*, 2017 <<https://archpaper.com/2017/08/private-detention-industry-us-mexico-border/>> [accessed 24 March 2018].

kind of allergy. One individual reported that some areas inside the facility smelled like mold. One individual also reported that issued slippers were unclean, resulting in widespread fungal infections that had to be treated.

Two individuals reported that water for drinking and washing was grey water or reclaimed sewage water that was recycled on-site. This claim remains unverified, but clearly there is a sense that the water from the tap is not clean. This tap water is detained migrant's only option for drinking or preparing ramen noodles (which was done only with hot water from the tap, see Figure 7). According to one of these individuals, MTC guards did not drink water from the tap, and instead always had their own water bottles.

Two individuals indicated that in the pods, sinks and toilets are very close to each other, making the sinks not very clean (Figure 7). One of these individuals indicated that it was common to have urine splash onto the adjacent sinks. For those with religious prescriptions of cleanliness, this presented a challenge. Readers of this report are invited to ask themselves how they might feel using the facilities depicted in Figure 7 as their sole toilet, grooming station, and food preparation area. Though such a device may technically meet government established standards, one wonders how this infrastructure is consistent with the spirit of non-penal civil detention, let alone how it "[e]xceed[s] those standards to the benefit [of] those in our care [sic]" as MTC would have the public believe.<sup>58</sup> MTC is not alone in the use of these facilities.<sup>59</sup>

In the 2017-2018 sample, three individuals remarked on problems with clothing and sheets. One individual pointed out that everyone's clothes are washed together, while another indicated getting back laundered underwear that weren't his. He refused them. One individual pointed out that generally clothes aren't washed frequently, and that both clothes and sheets are stained even after being laundered, and are used in that condition. Three individuals reported that sheets are only changed every three months.

Overall, clothes and sheets are in poor condition, with jackets and jumpsuits often being worn and frayed. Those who visit men incarcerated at OCPC confirm the worn and frayed state of uniforms issued to detained migrants. One detained individual indicated that their shoes were wearing out. Though individuals are supposed to be issued new clothing, including outerwear and underwear, every three months, only those who "volunteer" to work are provided with this allotment. This individual complained they had not received their allotment. The staff disagreed and he was not given his change of clothes.

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<sup>58</sup> MTC, 'Family & Friends - Otero County Processing Center'.

<sup>59</sup> Spencer Woodman, 'ICE Contractor Says It Doesn't Use Solitary Confinement. Photos of Its Isolation Cells Reveal Otherwise.', *The Intercept*, 2018, n. photographs <<https://theintercept.com/2018/03/22/corecivic-solitary-confinement-ice-detention/>> [accessed 25 March 2018].

In 2008, ICE conducted an inspection noting that, “detainees were observed sleeping on the floor with blankets.”<sup>60</sup> This same inspection found that “latrines on buses were not clean and operational” and found “no drinking water containers on the buses.”<sup>61</sup> ICE noted that eight of the MTC transportation vehicles were not clean and sanitary. Between 2008 and 2011, ICE inspections say little about sanitation and it is important to keep in mind that annual ICE compliance inspections are announced beforehand. This gives facilities time to prepare for inspections. In 2011, the ICE Office of Detention Oversight (ODO) performed a Quality Assurance Review and found that MTC had no policy for the Field Office Director (FOD), Assistant Field Office Director (AFOD), or designated department heads to “conduct regular unscheduled visits to the facility’s living and activity areas.”<sup>62</sup> ICE ODO further verified that ICE staff was not conducting visits to all housing units, noting this is an ICE requirement.<sup>63</sup> ODO stated that “it is important for ICE officers to visit all housing units at OCPC in order to verify that basic living conditions meet the ICE NDS [National Detention Standards]”.<sup>64</sup>

A 2012 ICE inspection states that “[d]ormitories house fifty detainees, and there are five toilets per dormitory providing a ratio of one for every ten detainees”<sup>65</sup> ICE standards mandate one toilet per 12 individuals, so OCPC can claim to exceed this standard. Yet given the proximity of toilets to wash basins (Figure 7), and the large number of individuals expected to use these combined facilities, the reality of the conditions illustrate that the claimed high standards of hygiene are nothing more than misrepresentations.

An early announced ICE inspection found substantial deficiencies in hygiene. Though ICE inspections cite relatively few sanitation deficiencies, these inspections are consistently announced beforehand. Based on publicly available documents, no unannounced inspections took place at OCPC until 2017 when an unannounced inspection was made by the OIG. In that inspection OIG “observed detainee bathrooms that were in poor condition, including mold and peeling paint on the walls, floors, and showers.”<sup>66</sup> Thus, when not prepared for a pre-announced inspection, sanitation remains a problem at OCPC. This corroborates concerns expressed by those detained at OCPC, and indicates a significant problem with the facility.

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<sup>60</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, Sept 16-18, 2008*, p. 61.

<sup>61</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, Sept 16-18, 2008*, p. 77.

<sup>62</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011* (El Paso Field Office: Department of Homeland Security, Immigration and Customs Enforcement, Office of Professional Responsibility, Office of Detention Oversight, 21 June 2011), p. 14 (pp. 3, 8)  
<<https://www.documentcloud.org/documents/2053975-otero-county-processing-center-2011-odo-inspection.html>>.

<sup>63</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, p. 4.

<sup>64</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, p. 9.

<sup>65</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 105.

<sup>66</sup> DHS OIG, p. 7.



## ***Cold Temperatures***

In 2015, there were 13 complaints about temperatures inside the facility. All 13 individuals reported conditions that were too cold. Ten individuals reported the air conditioning was overly cold. One of these individuals indicated that if a detained person requested that staff raise the temperature, the staff would become annoyed and rude, and ultimately ignore their requests. Another individual indicated that they were not allowed to use their blankets during the day, or to put on two layers of clothing, when they were cold. Another individual was afraid of getting pneumonia by showering in the cold, so they stopped showering.

In 2017-2018, eight complaints about temperatures were made. Five individuals indicated that they are cold all the time, and that everyone else in OCPC is as well. Detained individuals have a blanket on their bed, but they are only allowed to use it on the bed. Additionally, they were not issued jackets until November. Prior to this, mornings in particular were cold. Weather data from Chaparral shows that during October of 2017, 45% of the days had low temperatures in the 40's.<sup>67</sup> Anyone waking up early, at 4 AM, to work in the kitchen, was especially cold without jackets. Even when issued jackets, morning recreation time in December was too cold for the light short-sleeve jumpsuit and thin, unlined (or at best thinly lined) denim jacket they were provided. Visitors observed that some of the denim jackets issued to detained individuals at OCPC are not lined, similar to those depicted in Figure 8. Even the thinly lined jackets are not sufficient for the low winter temperatures in the high desert of southern New Mexico. During December of 2017, 71% of the days had low temperatures in the 30's and the monthly low was 19° F. That is very cold to be outside in nothing but a shirt and denim jacket. Some individuals opted not to go outside because they were too cold, and were, for lack of adequate clothing, deprived of their outdoor time (see section below on Social Isolation and Mental



**Figure 8 Detail from Figure 2 showing an unlined denim jacket similar in weight to the ones issued to detainees at OCPC. Screen capture from the OCPC fact sheet “Otero County Processing Center: Preparing Detainees for Successful re-Entry”.**

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<sup>67</sup> ‘Weather History for Biggs Army Air Field / Ft. Bl, TX’, *Weather Underground* <[https://www.wunderground.com/history/airport/KBIF/2017/10/24/MonthlyHistory.html?req\\_city=&req\\_state=&req\\_staname=&reqdb.zip=&reqdb.magic=&reqdb.wmo=>](https://www.wunderground.com/history/airport/KBIF/2017/10/24/MonthlyHistory.html?req_city=&req_state=&req_staname=&reqdb.zip=&reqdb.magic=&reqdb.wmo=>) [accessed 24 March 2018].

Anguish - Limited Outdoor Access). When individuals would button up their denim jackets to be warmer, guards would tell them to unbutton the jacket. Anyone who has worn a light jacket on a cold winter day knows that it is relatively ineffective when unbuttoned. In December, one individual reported that despite it already being cold in the building, the air conditioning was turned on.

ICE inspections do not address the issue of cold temperatures in housing units. The most recent ICE Operations Manual, the PBNDS of 2011, revised 2016, mentions the word "temperature" 48 times. Thirty-eight of those instances are in reference to food temperature, and four instances are regarding water temperatures (which are to be between 100-120°F). In only five instances is temperature mentioned in terms of a detained individual's comfort, when: 1) placed in hold rooms,<sup>68</sup> 2) isolated in "dry cells",<sup>69</sup> 3) using four- and five-point restraints,<sup>70</sup> 4) issuing suicide smock,<sup>71</sup> or 5) in the context of local weather conditions.<sup>72</sup> In four of five instances (1-4), the concern for temperature is only raised when punishment or further isolation is being leveraged. ICE standards state that: "staff shall issue clothing and bedding items that are appropriate for the facility environment and local weather conditions",<sup>73</sup> detained individuals should receive "indoor/outdoor temperature-appropriate" clothing, and "[a]dditional clothing shall be issued as necessary for changing weather conditions or as seasonally appropriate."<sup>74</sup> In terms of outdoor recreation, "[d]etainees shall have access to clothing appropriate for weather conditions".<sup>75</sup> Standards clearly state that "*personal items of clothing, including undergarments, are not permitted.*"<sup>76</sup>

ICE detention standards provide no clear guidelines on: 1) acceptable indoor temperatures of housing facilities (though water temperatures are covered), 2) well-defined parameters when a detained individual has a right to a jacket, 3) details on the temperature rating of that jacket, or 4) when detained individuals have a right to request and obtain additional clothing based on their own personal comfort level. This lack of specificity means that inspectors largely ignore indoor temperatures in the housing areas, and yet complaints among those detained at OCPC show that numerous individuals are consistently cold.

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<sup>68</sup> ICE, 'Performance Based National Detention Standards 2011', p. 102.

<sup>69</sup> ICE, 'Performance Based National Detention Standards 2011', p. 123.

<sup>70</sup> ICE, 'Performance Based National Detention Standards 2011', p. 210.

<sup>71</sup> ICE, 'Performance Based National Detention Standards 2011', p. 335.

<sup>72</sup> ICE, 'Performance Based National Detention Standards 2011', p. 53.

<sup>73</sup> ICE, 'Performance Based National Detention Standards 2011', p. 53.

<sup>74</sup> ICE, 'Performance Based National Detention Standards 2011', p. 328.

<sup>75</sup> ICE, 'Performance Based National Detention Standards 2011', p. 371.

<sup>76</sup> ICE, 'Performance Based National Detention Standards 2011', p. 328 italics in original.

### ***Limited Access to Hygiene Supplies***

In 2017-2018, a total of 7 complaints were made regarding access to hygiene supplies. Five individuals complained that they are not provided with sufficient hygiene supplies. One individual indicated they were given one bar of soap and one tube of toothpaste during a 5-month period. Two other individuals reported that slivers of soap or small bars of soap were given to them, and that they were meant to last 7-8 days, but that the soap never lasted that long. One of those individuals often washed with only water.

One individual indicated they were given a small disposable toothbrush, a small tube of toothpaste, a cup of shampoo that was insufficient to wash their hair, and an equally small cup of lotion. Furthermore, this individual indicated that the shampoo and soap were very irritating on the skin and scalp. Two individuals reported that deodorant was never handed out. It can only be purchased through the commissary as part of a larger bundle of items (see section below on Abuse and Exploitation - Commissary too Expensive).

One individual reported that often guards, to be mean, would purposely withhold hygiene items such as toothpaste, soap, shampoo, and lotion (see section below on Abuse and Exploitation - Retaliation by Staff and Guards). This individual also indicated that they were given one disposable razor that never lasted long enough to stay shaven.

While ICE standards mandate the issuance of personal hygiene items, details regarding the size, frequency, or character of these products is unspecified. Items are to be replenished “as needed”,<sup>77</sup> or “as appropriate.”<sup>78</sup> Moreover, individuals are not allowed to keep personal hygiene items.<sup>79</sup> Clearly the personal hygiene products for some individuals detained at OCPC are not being replenished either as needed or appropriately. Of further concern is that both ICE detention standards<sup>80</sup> and OCPC facility policy expressly prohibits staff members from “denial of personal hygiene items”,<sup>81</sup> and “[d]istribution of hygiene items shall not be used as a reward or punishment.”<sup>82</sup> Yet, a detained individual reports that OCPC staff is doing just this.

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<sup>77</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 104; ICE, ‘Performance Based National Detention Standards 2011’, pp. 328, 329.

<sup>78</sup> ICE, ‘Performance Based National Detention Standards 2011’, pp. 101, 327.

<sup>79</sup> ICE, ‘Performance Based National Detention Standards 2011’, p. 92.

<sup>80</sup> ICE, ‘Performance Based National Detention Standards 2011’, p. 216.

<sup>81</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 76.

<sup>82</sup> ICE, ‘Performance Based National Detention Standards 2011’, p. 328.

## **Abuse and Exploitation**

### ***Harassment by Staff and Guards***

According to MTC, "All MTC detention centers respect diversity and promote inclusion to create a safe and comfortable living environment."<sup>83</sup>

In 2015, there were two complaints of harassment. Two individuals reported being treated in an aggressive manner by guards. One person said officers were not just rude or did not just ignore them, but many times yelled aggressively at them for making requests, treating them as if they were animals. The other individual indicated that everything seemed to bother the guards. Asking for anything would result in the guards or staff screaming at or speaking aggressively to the individuals making the request.

In 2017-2018, there were a total of 17 complaints of harassment. Individuals reported various reasons for harassment. Mistreatment and harassment for sexual orientation was reported by four individuals. This included two instances of guards falsely accusing two gay individuals of sexual misconduct. These allegations by the guards were made shortly after the detained individuals arrived at OCPC, and were perceived by the accused individuals as attempts to intimidate and bully them for their sexual orientation. One of these allegations resulted in a brief investigation by ICE. Both detained individuals denied the allegations. But after these incidents, the harassed individuals were terrified. Guards frequently referred to one of these individuals as *mariposa*, a derogatory slang term used to refer to gay men. Another of these individuals reported working in the laundry with another gay individual who was harassed by staff for being effeminate and walking a certain way. The harassed individual quit working in the laundry after this incident. Another individual reported being told by staff to walk like a man, and that God didn't love him.

***Guards frequently referred to one of these individuals as mariposa, a derogatory slang term used to refer to gay men.***

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<sup>83</sup> MTC, 'The MTC Difference in Immigration Detention', p. 2.

Racist treatment by OCPC personnel was explicitly reported by one individual, while another reported being harassed for not speaking Spanish by Spanish-speaking MTC guards. Two individuals reported being treated in subhuman and dehumanizing ways by MTC guards. And three individuals reported being the recipient of aggressive or destructive acts for no reason, including nearly being hit. One individual reported his bed and personal belongings being upturned by guards. Another person related an instance where legal documents were taken from a few individuals, torn up, mixed with shampoo, thrown on the ground, and then stomped on by MTC guards. The MTC guards left the pod laughing. One individual reported that some, though not all, MTC guards seemed to enjoy mistreating those who are detained. He characterized those guards as ill-tempered.

***Another person related an instance where legal documents were taken from a few individuals, torn up, mixed with shampoo, thrown on the ground, and then stomped on by MTC guards. The MTC guards left the pod laughing.***

In a rather small section on detained migrant's rights, ICE PBNDS clearly state that detained individuals have the right to be free of personal abuse, harassment, and discrimination based on sexual orientation or gender.<sup>84</sup> In 2010, an ICE inspection found "two substantial cases of staff using inappropriate language when addressing detainees."<sup>85</sup> In 2012, Nakamoto Group inspectors under contract with ICE noted that OCPC policy was noncompliant in that it did not state that staff was required to leave any searched area in its original order as required by ICE standards.<sup>86</sup>

In 2016, an ICE ODO Compliance Inspection found nineteen allegations of staff misconduct that were detailed in five incidents that occurred at OCPC. ODO determined that "copies of the five specific incidents alleging staff misconduct were not forwarded to ICE's OPR [Office of Professional Responsibility] Joint Intake Center and or local OPR office for appropriate action".<sup>87</sup> In 2017, OIG made an unannounced inspection and found OCPC was a facility where alleged improper treatment by facility staff contributed to a negative climate. OIG stated, "detainees alleged in interviews that staff mistreated them, citing guards yelling at detainees, as well as using disrespectful and inappropriate language."<sup>88</sup>

**MTC claims that: "MTC's BIONIC philosophy drives every interaction between staff and detainees. BIONIC stands for 'Believe it or not, I care.' It means staff show respect and genuine**

<sup>84</sup> ICE, 'Performance Based National Detention Standards 2011', p. 217.

<sup>85</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 9-11, 2010*, p. 19.

<sup>86</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 48.

<sup>87</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, August 9-11, 2016*, p. 10.

<sup>88</sup> DHS OIG, p. 6.

concern for all individuals in our care and for each other. It's the driving force behind all we do as a company."<sup>89</sup> When ICE-documented cases of harassment of those detained are considered together with complaints from detained individuals, it is clear that there is a problem at OCPC specifically with some MTC staff harassing migrants in detention. This would be unacceptable under any circumstances. However, given that detained migrants are not charged with a crime and that by ICE standards their incarceration is to be non-punitive, these incidents of harassment are even more troubling.

### ***Commissary Too Expensive***

In 2015, there were three complaints that the commissary was too expensive. Two individuals reported that it was too expensive for them to be able to purchase anything, such as food. As an example, they said a snickers bar cost \$8. One individual reported that getting access to paper and stamps to write and send letters was complicated. The items had to be ordered from a list, but if the person who ordered them wasn't around when they were delivered then the items were taken back until the next delivery. For detained individuals, this resulted in delays in getting commissary items. Given that in 2017-2018, people are reporting that items can only be purchased in bundles, a change in the commissary appears to have taken place since 2015.

In 2017-2018, there were 10 complaints about the commissary. Five individuals complained about the high cost of items sold at the commissary. Items cannot be purchased at the commissary singly, but rather are sold in packages that range in price from \$10 to \$15. For about \$10, one can purchase a package that includes 4 stamps, one pen, nail trimmers, hand lotion, and deodorant. If one wants deodorant, which is not handed out as part of hygiene allotments (see section above on Unhealthy Conditions - Limited Access to Hygiene Supplies), one must buy this package. For about \$12, one can receive a bag of chips, packet of instant coffee, three packets of sugar, powdered creamer, and a Styrofoam cup. The \$15 packages might contain Maruchin cup-of-noodles, a bag of chips, crackers, and chocolate such as a Snickers bar. Because the commissary is the only way that underfed individuals may supplement their diet, it is disturbing that detained migrants must pay exorbitant prices for food, and that what is available to them is snack food.

No publicly available ICE inspections address the prices of items for sale in the commissary. ICE detention standards mention the word commissary fourteen times, mostly in the context of disciplinary withholding of commissary privileges, but no mention is made regarding price control. Any kind of price control appears completely ignored by ICE. Exorbitantly expensive commissaries are chronic problems with immigration detention facilities and private prisons across the country, and merits further scrutiny of the companies who benefit from this arrangement by exploiting a literally captive clientele.

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<sup>89</sup> MTC, 'The MTC Difference in Immigration Detention', p. 3.

### ***Abuse of Solitary to Punish and Intimidate***

In 2017-2018, there were nine complaints regarding the use of solitary confinement. Six individuals complained about either themselves or others being put in solitary confinement, or being threatened with solitary confinement. Three individuals were told that if they complained, or if they were in fact complaining about something, that they would be put in the Special Management Unit (SMU), known by detained individuals as the “SHU” which refers to the Secure Housing Units of criminal jails and prisons. Two of those individuals were threatened with extended periods of solitary, from 20 days to the duration of their stay at OCPC.

Two individuals indicated that others they knew had been put in the SHU unjustly. In one instance, an individual complained to a guard that another person had spit on him. The guards put both individuals in the SHU for a week. In another instance, an individual refused to sign paperwork indicating he had been given a handbook for those who are detained because he in fact was not given one (see section below on Barriers to Justice and Legal Access - Detained Migrant not given Handbook). For that, MTC staff threw the individual in the SHU.

Two individuals reported being put in the SHU. One individual was put in because he had been having anxiety attacks when he first arrived, and was placed on suicide watch in the SHU. This individual reported that solitary confinement did not ease their anxiety, but instead exacerbated it. Another time, this same individual was put in the SHU with no reason given, though it was done after he had made a series of formal complaints to ICE regarding his treatment (see below on Retaliation by Staff and Guards). The other individual was caught talking during one of the counts, which he acknowledged. But the guards also accused him of inciting unrest amongst the other detained individuals, an allegation he denies. MTC staff put this individual in the SHU for seven days.

Most ICE inspections say little about the SMU, or SHU as it is known by those in detention. Several of the inspections focus on physical aspects of the SMU, paying no attention to how detained individuals might experience SMU. However, ICE has noted that OCPC staff committed several significant deficiencies and direct violations of ICE detention standards. In a 2009 ICE inspection, it was noted that in violation of detention standards “detainees in disciplinary segregation sometimes participate in general visitation while in restraints”.<sup>90</sup> This should never be. During a 2010 inspection, ICE cited OCPC as deficient because the SMU entrance lacked a secure sally port.<sup>91</sup> During a 2012 inspection, ICE noted this deficiency again a second time.<sup>92</sup> Note that the 2011 inspection is not yet publicly available. In a 2013 inspection, ICE observed that when placing more than one detained individual in a SMU cell, OCPC policy did not require

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<sup>90</sup> DFIG, p. 27.

<sup>91</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 9-11, 2010*, p. 57.

<sup>92</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 29.



facility administrators to make mandatory consultations with ICE Enforcement and Removal Operations (ERO) Headquarters or ICE legal counsel.<sup>93</sup> A 2016 ICE inspection found OCPC deficient because copies of administrative segregation orders for detained migrants placed in SMU were not forwarded to the Field Office Director (FOD) or the detained individual as required.<sup>94</sup> ICE also determined that detained migrants housed in SMU for administrative segregation were only receiving one hour of recreation per day, and the facility is required to provide those detained in administrative segregation two hours of recreation per day.

Some of the most striking examples of the federal government documenting OCPC abuse of SMU or segregation surfaced recently. In 2017, OIG found that OCPC staff violated standards in terms of the “administration, justification, and documentation of segregation and lock-down of detainees.”<sup>95</sup> MTC staff did not consistently explain to individuals detained at OCPC why they were being segregated and staff did not “communicate detainees’ rights in writing or provide appeal forms for those put in punitive lock-down or placed in segregation.”<sup>96</sup> OIG found that in some instances detained migrants were disciplined via segregation or lock-down without sufficient documentation in their file justifying the cause for disciplinary action. Placing a detained migrant in either administrative or disciplinary segregation without “detailed reasons” is a direct and significant violation of ICE detention standards.<sup>97</sup> OIG observed that some detained individuals were held in administrative segregation for extended periods without required documentation or periodic reviews to justify prolonged segregation. OIG determined that OCPC staff locked down some detained migrants for minor rule violations without mandatory written notification of the reasons for lock down, and they did not supply appeal options. OIG observed that for detained individuals held in segregation, daily medical visits and meal records were missing.

ICE’s own documentation reveals that OCPC has problems with the administration of SMU, SHU, or segregation or whatever euphemism one wants to use for solitary confinement. These official accounts corroborate and substantiate the complaints detailed above from detained individuals. These violations represent serious and grave flaws in the management of OCPC by some MTC employees. Again, in ICE’s own words, immigration detention is not supposed to be punitive.

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<sup>93</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, March 5-7, 2013*, p. 14.

<sup>94</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, August 9-11, 2016*, p. 9.

<sup>95</sup> DHS OIG, p. 6.

<sup>96</sup> DHS OIG, p. 6.

<sup>97</sup> ICE, ‘Performance Based National Detention Standards 2011’, pp. 173, 177.

### ***Retaliation by Staff and Guards and Threats of Physical Abuse***

In 2017-2018, there were seven complaints about retaliation. Five individuals reported instances of retaliation by guards. In one case, an individual, after having filed formal complaints with ICE about poor conditions and mistreatment, had a book, a telephone number, and photographs confiscated without any reason given. This individual was unable to get these items back. They were also put in the SHU, generally harassed by staff, and threatened with physical violence, as part of the retaliation for filing formal complaints (see section below on Barriers to Justice and Legal Access - Problems Filing Grievances). He also explained that he was nearly hit by a guard and feared physical violence. Another individual also reported being retaliated against after filing complaints with ICE, including being harassed by guards and being put in the SHU.

Two individuals reported that they had witnessed others being retaliated against by guards after being put in the SHU. Upon release from solitary, after informing a guard that another detained migrant had spit on him, an individual was punished by being switched out of a blue jumpsuit (low custody detained migrant) to an orange jumpsuit (medium custody detained migrant; Figure 5 illustrates the color coded uniforms MTC employs at OCPC). In the other instance, after being released for not signing paperwork that they had received a handbook for those detained, one individual was also punished by being reclassified and switched to an orange jumpsuit.

One individual noted that there was an uneven application of regulations by guards to certain individuals as retaliation for being difficult or for complaining, especially with regard to vague regulations such as what items a detained individual can receive in the mail.

ICE detention standards are clear that “[s]taff shall not harass, discipline, punish or otherwise retaliate against a detainee who files a complaint or grievance or who contacts the DHS Office of the Inspector General.”<sup>98</sup> Standards continue, “[a]ctions are considered retaliatory if they are in response to an informal or formal grievance that has been filed and the action has an adverse effect on the resident’s life in the facility.” Annual ICE inspections of OCPC say little about “retaliation” per se, but see the section above on Harassment by Staff and Guards for ICE documentation of staff mistreatment of detained individuals.

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<sup>98</sup> ICE, ‘Performance Based National Detention Standards 2011’, p. 420.

### ***Access to Personal Money, Labor Exploitation and Extortion***

In 2015, one individual complained that upon arriving at OCPC their money was taken away, and it had not been put onto their commissary account for them to use. It is unclear whether this individual was ever able to gain access to their money.

In 2017-2018, there were six complaints about labor conditions, and one report of extortion. Six individuals complained about the "voluntary" work they did at OCPC, mostly in the kitchen. Detained individuals, for \$1 a day, can work 8-hour shifts cleaning pods, doing the laundry, or working in the kitchen. Five of the individuals asserted that the low pay was demeaning. Prior to October 29, 2017 (see section above on Unhealthy Conditions - Inadequate and Poor Quality Food), individuals working in any of these three areas were able to have access to leftover food from meals. Because hunger is widespread, this was one strategy to keep fed. However, once MTC staff no longer allowed access to leftover food, one individual quit working in the kitchen because the \$1 per day compensation was no longer worth it.

Two individuals reported working overtime with no additional compensation. One of these individuals was asked to "volunteer" for extra afternoon shifts because the staff in the kitchen needed help. The other individual reported that with no additional compensation he was often held nine to nine and a half hours for his shift in the kitchen.

One individual reported that detained individuals were coerced into "volunteering" to work by guards, who also attempted to get people to volunteer by telling them they would have access to meal leftovers. This same individual reported that once detained migrants were working, they were extorted by guards for part of their wages.

From a labor perspective, ICE standards for compensation of detained migrant work constitutes an egregious form of exploitation all its own. ICE detention standards state bluntly that a detained migrant is to be compensated at least \$1.00 (USD) per eight hour work day.<sup>99</sup> That is, the federal government rates a person's full day's labor as worth \$1. Adding insult to injury, MTC asserts that it "strives to be a leader in social impact",<sup>100</sup> and that it not only meets established standards but claims to "exceed those standards to the benefit [*sic*] those in our care"<sup>101</sup>. And yet ICE documents show that MTC pays detained migrants only the minimum \$1.00 per day. Based on ICE standards, for year-round full-time work, a detained person at OCPC can expect to make \$2,080 per year. At federal minimum wage (\$7.25) a full-time worker makes that in less than two months.

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<sup>99</sup> ICE, 'Performance Based National Detention Standards 2011', p. 407.

<sup>100</sup> MTC, 'Otero County Processing Center: Preparing Detainees for Successful Re-Entry'.

<sup>101</sup> MTC, 'Family & Friends - Otero County Processing Center'.

In another layer of exploitation, products and services in immigration detention are more expensive than in the open market. For example, access to a tablet computer costs \$5 per hour. A detained migrant would need to work a full week to pay for one hour of access to a tablet. Readers wanting to know more about the exploitative nature of immigration detention worker compensation are encouraged to consult Professor Jacqueline Stevens “One Dollar Per Day: The Slaving Wages of Immigration Jail, From 1943 to Present.” She concludes that the immigration detention work program violates multiple labor laws, as well as the Fifth, Sixth, Thirteenth, and Fourteenth Amendments to the Constitution.

Bearing the prior in mind, recall that above it was pointed out that in 2008 OCPC was found deficient for unsanitary food service conditions (see section on Inadequate and Poor Quality Food).<sup>102</sup> That same year ICE inspectors stated “[f]ood service has approximately 12-15 detainees assigned to work food service and they receive \$1.00 per day. The food service quota of detainee workers needs to be increased to enhance overall sanitation.”<sup>103</sup> To be clear, this document reveals that an ICE inspector found OCPC deficient due to unsanitary conditions, and specifically recommended increasing the

detained migrant labor force to improve the sanitation conditions as a means to bring the facility up to ICE standards. One of the supposed benefits of building an immigration detention center in a remote place like Chaparral is that it brings jobs into the local economy. Moreover, part of ICE’s directive to enforce immigration law is to protect low-paid U.S. workers from being allegedly undercut by

***ICE’s own inspectors encourage MTC to fill their labor needs not with local workers who would be compensated at minimum wage or more, but rather to call upon detained migrant laborers who are paid \$1 per day.***

low-paid migrant labor. Yet, ICE’s own inspectors encourage MTC to fill their labor needs not with local workers who would be compensated at minimum wage or more, but rather to call upon detained migrant laborers who are paid \$1 per day. This is egregious hypocrisy on the part of ICE. The fact that detained migrants complain that they are kept longer than eight hours, that they are sometimes harassed at work, and that some staff extort them makes this exploitative labor situation even more troubling.

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<sup>102</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, Sept 16-18, 2008*, p. 21; see also ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 3-5, 2009*, p. 82.

<sup>103</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, Sept 16-18, 2008*, p. 18.

## **Social Isolation and Mental Anguish**

### ***Delays in Visits***

On its website for OCPC, MTC states: “We want to make your visits and involvement in your loved one's life as simple and clear as possible.”<sup>104</sup>

Guidelines for OCPC visits indicate that visitors must arrive 45 minutes in advance of the time they wish to visit. In 11 instances in 2017-2018, it was not unusual for both visitor and person to be visited to wait before being connected in the visitation room. In three instances, waits were longer than two hours. In six instances, waits were longer than an hour. In two instances, detained migrants were called into the visitation area, and waited about 30 minutes before the visitor was brought in. In one instance, a visit was canceled by the guards but no explanation was given to the detained individual. The visitor had waited two hours and was told by the guard that they didn't know why the detained individual wasn't arriving to visitation.

### ***Problems Receiving Mail***

In 2017-2018, there were 10 complaints related to mail. Five individuals indicated that items sent to them by mail were confiscated. Two of those individuals were denied receipt of postcards. At some point OCPC decided that postcards would automatically be returned, though previously they had been accepted. One individual was sent a coloring book, but was not allowed to have it. When he asked why, he was told that OCPC provides such materials (see below on No Activities Provided or Permitted). Another individual was sent a stamp so that they might mail a sizable letter, but was denied the stamp and forced to pay for postage by staff. Another individual was denied a photo collage that had been printed on normal letter size paper.

In two instances, detained individuals were not present when mail was opened and items were confiscated. Two individuals were denied books that were sent to them. One of those individuals was told the book had to be sent directly from the publisher. This is false, as books only need to be sent from an online vendor or bookstore. After a complaint was submitted to ICE by the sender, the book was delivered a week later.

Two individuals expressed concerns that they were not receiving letters being sent to them, but were not absolutely sure. One individual in fact did not receive a letter that was sent to him.

In 2009, ICE inspectors noted that the local facility handbook provided no notice informing detained individuals that mail addressed to them “will be opened and inspected in the detainee’s presence”.<sup>105</sup> In 2010, during a follow-up inspection, ICE again found that the local

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<sup>104</sup> MTC, ‘Family & Friends - Otero County Processing Center’.

<sup>105</sup> DFIG, p. 17.

facility handbook still “does not note all general correspondence and other mail addressed to detainees will be opened and inspected in the detainee’s presence”.<sup>106</sup> In 2012, Nakamoto inspectors under contract with ICE found that at OCPC “[a]ll incoming general correspondence is opened and checked for contraband prior to being delivered to the detainee per facility policy.”<sup>107</sup> Both NDS and PBNDS state that general correspondence mail is to be opened in the presence of the detained individual.<sup>108</sup> In 2018, detained migrants continue to report that general correspondence is opened not in their presence. This issue is among the ongoing, long lasting violations of ICE detention standards occurring at OCPC.

### ***Limited Outdoor Access***

In 2017-2018, there were six complaints about outdoor access. Five individuals complained about inadequate access to outdoors. OCPC currently indicates that individuals are allotted two hours of outdoor time in the recreation area, which detained migrants call the yard (Figure 3). Two individuals reported that during winter months, because their outdoor time was in the morning, it was too cold to go outside. Their issued clothing was not enough to keep them warm (see section above on Unhealthy Conditions - Cold Temperatures). Due to inadequate clothing, these individuals could not take advantage of their outdoor time, and one specifically noted suffering from not being able to see the sun.

One individual reported that detained migrants were sometimes only allowed outside for 15 minutes instead of two hours. He indicated this occurred when something supposedly happened, but the guards did not offer clear explanations for why their time outside was cut short.

Another individual who was experiencing harassment by guards and staff (see section above on Abuse and Exploitation - Harassment by Staff and Guards) became too afraid to go outside during their allotted time.

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<sup>106</sup> ODO, *Follow-up Inspection, Otero County Processing Center, Chaparral, NM, April 13-15, 2010* (El Paso Field Office: Department of Homeland Security, Immigration and Customs Enforcement, Office of Professional Responsibility, Office of Detention Oversight, 13 April 2010), p. 11 (p. 8) <<http://www.ice.gov/doclib/foia/dfra-ice-dro/oterocountyprisonchaparralnm0413152010.pdf>>.

<sup>107</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 115.

<sup>108</sup> ICE, ‘National Detention Standards 2000’ (Department of Homeland Security, Immigration and Customs Enforcement, Enforcement and Removal Office, 2017), p. Section III Correspondence and Other Mail, B. Standards and Procedures, Item 3 <<https://www.ice.gov/detention-standards/2000>> [accessed 25 January 2018]; ICE, ‘Performance Based National Detention Standards 2008’ (Department of Homeland Security, Immigration and Customs Enforcement, Enforcement and Removal Office, 2017), p. Part 5. Activities, 26 Correspondence and Other Mail, II Expected Outcomes, Item 8 <<https://www.ice.gov/detention-standards/2008>> [accessed 25 January 2018]; ICE, ‘Performance Based National Detention Standards 2011’, pp. 5. Activities, 1. Correspondence and Other Mail, II Expected Outcomes, Item 8, 357.

ICE inspections reveal the complaints are not isolated. A 2009 ICE inspection of OCPC states that handball, basketball, and soccer are the only outside activities.<sup>109</sup> In 2010, ICE inspectors claimed that OCPC “offers a wide variety of indoor and outdoor recreational opportunities for detainees”, noted that contact sports are prohibited, and stated that “detainees were observed playing soccer and basketball.”<sup>110</sup> Yet in 2011, ICE inspectors interviewed 39 detained migrants from OCPC and several of them complained that outdoor recreation was held before daylight hours and they requested it be held during the afternoon. In response, ICE stated “ODO noted that ICE Recreation NDS does not specify when recreation is to be conducted, and OCPC management must start recreation early enough to accommodate the entire population.”<sup>111</sup> ICE’s responses to detained migrants’ concerns regarding recreation hours corroborate NIJC’s assertions that ICE inspections are dismissive of the conditions that migrants experience.<sup>112</sup>

In 2013, ICE inspectors found that of the 43 formal grievances filed by detained migrants between September 2012-March 2013 two grievances related to outdoor recreation.<sup>113</sup> In 2016, ICE inspectors found that detained migrants held in administrative SMU were receiving half their mandated number of recreation hours per day.<sup>114</sup> A recent article in the Las Cruces Sun News indicates that OCPC’s IGSA exempts them from ICE’s standards for providing access to natural light and dedicated outdoor recreation.<sup>115</sup> While MTC claims that they exceed ICE standards to the benefit of those in their care, they routinely do not meet the minimum standards for outdoor access, and indeed have sought exemptions from such standards. Those detained at OCPC suffer as a result.

### ***No Activities Provided or Permitted***

MTC claims that: "MTC provides these men and women with opportunities to further their education, to participate in meaningful activities, and to prepare in all ways to return to their homes and families."<sup>116</sup>

In 2017-2018, there were five complaints by three individuals about the lack of activities in OCPC. One of these individuals complained that no materials for learning English were provided. The other two indicated that there was very little to do to pass the time. Despite the poor pay of "volunteering" to work in the kitchen, laundry, or cleaning pods, detained

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<sup>109</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 3-5, 2009*, p. 31.

<sup>110</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 9-11, 2010*, p. 25.

<sup>111</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, p. 6.

<sup>112</sup> NIJC, *Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse*.

<sup>113</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, March 5-7, 2013*, p. 4.

<sup>114</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, August 9-11, 2016*, p. 9.

<sup>115</sup> Sarah Macaraeg, ‘Problems at Otero County ICE Detention Center Found in Audit’, *Las Cruces Sun-News*, 2017 <<http://www.lcsun-news.com/story/news/local/new-mexico/2017/12/23/problems-otero-county-ice-prison-found-audit/978394001/>> [accessed 24 December 2017].

<sup>116</sup> MTC, ‘Caring for Individuals in ICE Custody’, p. 1.

individuals sought these opportunities to help pass the time. Otherwise, they could watch TV, or play with some board games that are available in the pods. If they were willing to pay, they could pay \$5 per hour to access tablets, where they had access to music, movies, games and limited internet. Paying for phone calls was also an option. But any activities that require funds are beyond the reach of those who have no funds being put into their accounts by family or friends.

The two individuals also noted that any creative activity was strictly prohibited. For example, those detained in OCPC are not allowed to make things such as art or crafts. Any items made of folded up paper or trash are confiscated. One of these individuals had been denied a coloring book that someone sent to him because he was told that OCPC provided such materials (see above on Problems Receiving Mail). But this is not the case. A video accessible on the MTC website shows a single detained migrant being given the opportunity to paint some murals on the interior walls of OCPC. On their "The MTC Difference in Immigration Detention" informational sheet, MTC claims that "detainees are encouraged to create murals and other forms of artwork for display at all MTC detention centers."<sup>117</sup> However, other than to select a single individual who may be called upon to help advertise the facility, conversations with detained migrants indicate there is no access to paints or colors, or coloring books, of any kind.

Prohibition of creative activity is not only limited to material outlets. The other individual noted that detained migrants are not allowed to sing or whistle. If they do, they are told to stop. Detained migrants are not allowed to do anything musically expressive. This same individual had already read everything available in the library, so reading, a permissible activity, was also restricted.

MTC states: "Our staff endeavor to provide an atmosphere that is comfortable, safe, and conducive to making time pass quickly for those who find themselves in our care."<sup>118</sup>

Besides working on one's case, either doing paperwork or researching in the library, to which detained individuals are allowed access for an hour a day, there is not much to do in OCPC. As another detained migrant expressed, time passes very slowly. It is this agony that exacerbates an already difficult situation, prompting many people seeking asylum or deportation relief to express a desire to be deported, despite well-founded fears of conditions in their home countries, rather than continue to suffer detention at OCPC.

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<sup>117</sup> MTC, 'Using Art to Boost Morale at Otero II', *MTC*, 2017 <<http://www.mtctrains.com/using-art-to-encourage-rehabilitation-at-otero-ii/>> [accessed 23 March 2018].

<sup>118</sup> MTC, 'Family & Friends - Otero County Processing Center' quote from Warden Ray Terry.



### ***Limitations of Religious Practice***

In 2017-2018, complaints by five individuals involved issues that affected their religious practice. Three individuals expressed concerns about being able to practice their religion. Another individual was being so heavily harassed by guards (see section above on Abuse and Exploitation - Harassment by Staff and Guards) that he was afraid to attend church services. And yet another individual, a devout Catholic, did not attend Christian services because those services were only conducted in Spanish. He is an English speaker.

ICE inspections show these deficiencies are not new. In 2009, ICE inspectors found that detained migrant religious preferences were not designated during in-processing.<sup>119</sup> Obviously this would make it difficult to ensure respect for people's religious practices. In 2013, ICE inspectors determined that a formal grievance had been filed regarding religious services.<sup>120</sup> In 2016, ICE inspectors found that during religious services high-custody detained migrants (red uniforms) co-mingled with low-custody detained migrants (blue uniforms)<sup>121</sup> (see Figure 5 for example of religious services co-attended by detained individuals from all three custody levels). Combined, the 2017-2018 sample and ICE inspections over the years illustrate that limitations on religious practice have been noted during half of the years OCPC has been open, and especially in recent years.

### **Barriers to Justice and Legal Access**

#### ***Prolonged Detention***

In 2017-2018, five complaints were made by four individuals regarding being in detention too long, and they noted the difficulties of bearing the conditions of detention. All four individuals expressed difficulty dealing with being confined and just wanted to get out because they couldn't take it anymore (see sections above on Unhealthy Conditions, Abuse and Exploitation, and Social Isolation and Mental Anguish). Two of these individuals were asylum seekers fleeing persecution who expressed disbelief at being locked up upon arriving to the U.S. when they were only seeking humanitarian relief. One of these individuals considered suicide because they felt they could no longer put up with what they characterized as mental torture. The other individual described having to constantly fight mental anguish. Detained migrants indicated that there were multiple individuals in OCPC who had been there for more than 18 months.

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<sup>119</sup> DFIG, p. 22.

<sup>120</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, March 5-7, 2013*, p. 4.

<sup>121</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, August 9-11, 2016*, p. 8.

### ***Problems Filing Grievances***

In 2017-2018, there were a total of five complaints regarding the filing of grievances. Two individuals reported problems filing grievances, indicating their complaints were never addressed and that no action was taken to ameliorate the situations they reported. Both individuals were retaliated against after making complaints to ICE regarding harassment and mistreatment by OCPC staff and guards (see section above on Abuse and Exploitation - Retaliation by Staff and Guards). In an effort to be helpful, medical staff warned one of these individuals not to report harassment to ICE because the guards would retaliate against them.

Problems correctly dealing with grievances are not new at OCPC. In 2011, ICE inspectors found OCPC deficient regarding grievance procedures for those detained,<sup>122</sup> and that "ICE does not respond to all detainee requests within 72 hours."<sup>123</sup> In 2013, ICE inspectors stated "OCPC has no protocol requiring elevation of emergency grievances to the immediate attention of the facility administrator".<sup>124</sup> ICE also found that there was no process for submitting written grievances regarding medical care directly to medical personnel. During this inspection, ICE indicated that there were 43 formal grievances filed in the year covered by the inspection.<sup>125</sup> In 2016, ICE reported that there were 79 grievances filed by the year covered under that inspection.<sup>126</sup> Though the number of grievances for the time of our samples is not known, some detained individuals indicate that grievances are not being addressed appropriately, or at all.

### ***Problems with Court Conducted Remotely***

In 2017-2018, there were two instances wherein individuals recounted problems that occurred at court hearings that took place remotely. At OCPC, detained individuals videoconference in from the facility while the immigration judge, prosecutor and the detained individual's lawyer (if they have one) are in the immigration courts within the El Paso Processing Center. One individual indicated that he did not understand anything that happened at his court hearing, and that his lawyer spoke to the judge in English, which he does not understand. Apparently, there was no translator. Another individual noted that when he videoconferenced in to his hearing, his lawyer was not in El Paso. He was forced to proceed without council, and the nature of the mix-up was unclear. If detained migrants were able to be in the same location as their lawyers, and have contact with their lawyers at court hearings, some of these issues would be mitigated.

Though ICE reviews and inspections have nothing to say about this aspect of conditions in immigration detention facilities, legal advocacy groups do. In its 2011 report on OCPC, the ACLU

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<sup>122</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, p. 3.

<sup>123</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, p. 4.

<sup>124</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, March 5-7, 2013*, p. 12.

<sup>125</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, March 5-7, 2013*, p. 4.

<sup>126</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, August 9-11, 2016*, p. 10.

outlines several of the problems and disadvantages with conducting court remotely.<sup>127</sup> Among these are the fact that interruptions in transmission during hearings occur; video transmission obscures the emotions and reactions of the migrant which is particularly detrimental to final decisions in asylum cases; attorneys must choose whether they want to be with their client or in the courtroom; if the attorney chooses to be in the court, they no longer have private attorney-client communications during hearings; and individuals representing themselves cannot remotely submit new paperwork to the court. As the Fourth Circuit U.S. Court of Appeals stated in *Rusu v. INS*, “Virtual reality is rarely a substitute for actual presence”, continuing “even in an age of advanced technology, watching an event on the screen remains less than the complete equivalent of actually attending it.”<sup>128</sup> From a legal perspective, remote court hearings are inherently problematic. That they are taking place in a place like OCPC with a history of deficiencies and abuses is of extreme concern.

### ***Detained Migrant not Given Facility Handbook***

In 2017-2018, two individuals reported that they were not given the MTC handbook for those detained. One of these individuals reported being forced to sign that he had received a handbook (see section below on Coercion), but was only given one several months later after a grievance was filed. The other individual also indicated that he, along with others, were forced to sign a document saying they had received a handbook, and told they would receive them later. He never received one.

ICE inspections reveal that MTC management has a long history of problems and deficiencies with local facility handbooks and their systematic distribution to incoming detained migrants. In 2008, ICE inspectors found deficiencies in the local facility handbook that included incomplete descriptions of the classification process for those detained.<sup>129</sup> In 2009, ICE inspectors revealed that the disciplinary appeals procedure was not outlined in the facility handbook.<sup>130</sup> In a separate 2009 inspection, ICE determined that the local facility handbook did not provide information on rules and procedures for access to legal materials. The handbook still lacked information on appeals procedures, did not provide information on special correspondence, and lacked a notice informing detained individuals that mail addressed to them will be inspected in their presence.<sup>131</sup>

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<sup>127</sup> Carey, p. 23.

<sup>128</sup> Dennis Craythorn, Daniel Glad, and Seth Goldstein, *Assembly Line Injustice: Blueprint to Reform America's Immigration Courts* (Texas: Texas Appleseed, 2009), p. 22 <<http://appleseednetwork.org/wp-content/uploads/2012/05/Assembly-Line-Injustice-Blueprint-to-Reform-Americas-Immigration-Courts1.pdf>> [accessed 1 March 2018].

<sup>129</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, Sept 16-18, 2008*, pp. 11, 14.

<sup>130</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 3-5, 2009*, p. 82.

<sup>131</sup> DFIG, pp. 13, 17.

In a 2010 follow up inspection, ICE reported that the local facility handbook for those detained did not contain information on 1) hours of access to the law library, 2) procedures for requesting access to the law library, 3) procedures for requesting legal reference materials that are not in the law library, and 4) procedures for notifying employees that library materials are missing or damaged.<sup>132</sup> This same ICE follow up inspection also wrote that the local facility handbook did not note that “general correspondence and other mail addressed to detainees must be opened and inspected in the detainee’s presence, unless the Officer in Charge authorizes inspection without the detainee’s presence for security reasons”.<sup>133</sup> In another repeat noncompliance, the “detainee handbook does not specify: the rules for storing or mailing property not allowed in their possession; the procedure for claiming property upon release, transfer, or removal or how to file a claim for lost or damaged property.”<sup>134</sup>

Importantly, in 2016 ICE inspectors determined that the “facility does not require detainees to sign acknowledgement of receipt for both ICE National Detainee Handbook and the local detainee handbook”.<sup>135</sup> During that same inspection, ICE conducted voluntary interviews with 23 detained migrants and determined that more than one reported that they had not received a local facility handbook.<sup>136</sup> These findings on the part of ICE corroborate the fact that detained migrants sometimes do not receive local facility handbooks. These inspections also reveal that the local facility handbook has a history of noncompliant deficiencies specifically in categories of information that relate directly to detained migrant justice.

### ***Inadequate Access to Legal Resources***

MTC claims: "MTC and community partners provide access to legal materials and services. ...Each detainee has access to the law library at least 15 hours per week. They are assisted by a dedicated full-time librarian and have access to computers."<sup>137</sup>

In 2015, one individual was given incorrect information regarding their case. He wanted to speak with his consulate, but was told that he would need to file his case from his home country once he was deported. He was also told to buy his own plane ticket, but did not understand why. He was also to be flown to a location far from his city of origin, though other land routes would have put him closer to where he was from.

In 2017-2018, detained individuals are provided with one hour of access to the law library on five days of the week. Two individuals reported having inadequate access to legal resources at

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<sup>132</sup> ODO, *Follow-up Inspection, Otero County Processing Center, Chaparral, NM, April 13-15, 2010*, p. 6.

<sup>133</sup> DFIG, p. 17; ODO, *Follow-up Inspection, Otero County Processing Center, Chaparral, NM, April 13-15, 2010*, pp. 7–8.

<sup>134</sup> ODO, *Follow-up Inspection, Otero County Processing Center, Chaparral, NM, April 13-15, 2010*, p. 8.

<sup>135</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, August 9-11, 2016*, p. 8.

<sup>136</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, August 9-11, 2016*, pp. 6–7.

<sup>137</sup> MTC, ‘The MTC Difference in Immigration Detention’, p. 2.

OCPC. One of these individuals indicated that they have no email access, no access to newspapers from their home countries, nor resources to help them prepare their cases. As part of their legal claim, asylum seekers need to demonstrate country conditions, so local news media is crucial for the preparation of their legal cases. Some detained individuals expressed the belief that staff at OCPC want people to despair, give up, and then ask to be deported. The other individual reported that the library is out of date, with no current magazines, periodicals, and no print newspapers. They have little access to news, and what they can access is via television or via tablets for \$5 per hour. Even then, only some internet sites are accessible. This makes it challenging to assemble information for one's case or appeals, especially with regard to changing country conditions for asylum cases.

ICE reviews and inspections reveal more issues with access to legal resources in OCPC. In 2009, Creative Corrections inspectors under contract with ICE found that though the OCPC law library contained four computers and no typewriters for 893 individuals, it was “adequately equipped” and “has sufficient supplies for daily use by the detainees.”<sup>138</sup> Later in 2009, another ICE inspector determined that with four computers for a detained population of nearly 900 “there are not enough computers or printers to serve the needs” of the detained population.<sup>139</sup> Two different inspections in the same year drew opposite conclusions while noting the same conditions. ICE also found that there was no procedure in place to assist detained migrants who require legal materials not in the law library, and that the local facility handbook lacked information on rules and procedures for access to legal materials by those who are detained.<sup>140</sup>

In 2010, despite no evident change in the number of computers, ICE inspectors determined that four computers in the law library was sufficient to rate the facility adequately equipped with typewriters and/or computers.<sup>141</sup> In 2010, during a follow up inspection ICE found numerous problems with the law library section of the local handbook (see section above on Detained Migrant Not Given Facility Handbook).<sup>142</sup> In 2012, Nakamoto Group inspectors under contract with ICE, documented the presence of four computers in the law library and concluded that the law library was adequately equipped for the detained population.<sup>143</sup>

According to the most recent publicly available ICE inspection of OCPC, the average daily population of the facility is 846.<sup>144</sup> With four computers available, one computer serves 212 individuals. If the law library computers were open 24-hours a day, seven days a week, with

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<sup>138</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 3-5, 2009*, pp. 4, 11.

<sup>139</sup> DFIG, p. 13.

<sup>140</sup> DFIG, p. 13.

<sup>141</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 9-11, 2010*, p. 4.

<sup>142</sup> ODO, *Follow-up Inspection, Otero County Processing Center, Chaparral, NM, April 13-15, 2010*, p. 6.

<sup>143</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 142.

<sup>144</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, August 9-11, 2016*, p. 3.

uninterrupted constant use, that would permit each individual just over six and a half minutes per day of computer access. That comes out to just over 42 minutes per week. Even with constant access and use, that is hardly meaningful access to legal materials, most of which are in digital format. Of course, ICE detention standards do not require the law library to remain open 24 hours a day, seven days a week.<sup>145</sup> Thus, access to legal resources is even more restricted. The fact that some inspectors found four computers

***It is also important to note that in 2018, a detained individual reported that there were only three working computers in the law library, and that it was common to wait in line for access to the computers.***

adequate and others did not illustrates that inspections of the same conditions do not produce consistent results. This illustrates a failure of the ICE inspection process. It is also important to note that in 2018, a detained individual reported that there were only three working computers in the law library, and that it was common to wait in line for access to the computers.

It does merit mention that law library materials are available on tablet computers. However, preparing for court proceedings by tablet is hardly ideal, not to mention that tablets cost \$5 per hour to use and detained individuals can only earn \$1 per day if they can work. At least one individual indicated they were denied a request to work. Tablets are hardly a viable option for access to legal resources. Regardless, access to tablets cannot serve as a replacement for ICE's own standards requiring meaningful access to a well-equipped law library. Unfortunately, ICE's standards are vague in terms of what constitutes an "adequate number of computers".<sup>146</sup> Clearly four, and now more recently three, computers for a population of nearly 900 is inadequate.

### ***Coercion by ICE and MTC Staff***

In 2017-2018, two individuals reported being coerced to sign paperwork (see above section on Detained Migrant not Given Facility Handbook). Under duress, one individual signed that they had received the MTC handbook when in fact they had not received it. The other individual reported being pressured and intimidated by ICE to sign deportation papers, despite being within their window of time to submit an appeal or other form of legal action. This harassment violates the principles of due process.

In a rather thin portion detailing detained migrants' rights, ICE detention standards clearly state that those detained have the right to "protection from personal abuse, corporal punishment, unnecessary or excessive use of force, personal injury, disease, property damage and

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<sup>145</sup> ICE, 'Performance Based National Detention Standards 2008', p. 422 C. Hours of Access.

<sup>146</sup> ICE, 'Performance Based National Detention Standards 2011', p. 423 D. Equipment.

harassment”.<sup>147</sup> Punishing an individual for not signing a document claiming they received a handbook is both abuse and harassment. It is more importantly a form of coercion. A search of ICE detention standards using the term “coerce” reveals that coercion is only mentioned twice: once in the context of religious preferences and once in terms of interviews with the press.<sup>148</sup> Other than the above language on harassment, a clear statement prohibiting facility staff or ICE officers from “coercing” detained migrants into signing paperwork does not appear present in ICE detention standards. Apparently coercion of those at OCPC or any ICE facility is not a concern to ICE, but as the complaints provided by detained individuals indicate, it should be.

### ***Problems with Phone Access***

In 2015, one individual complained that the phone service was not good. It was hard to use, and not readily available.

In 2017-2018, upon arriving to OCPC from another detention facility, one individual reported that he tried to call his consulate, but that the call would not go through. He had been able to call the same number at the prior detention facility, but for reasons unknown to him the call would not go through from OCPC.

ICE documents reveal issues with telephone service at OCPC. In 2011, ICE inspectors found OCPC deficient in that rules and procedures for obtaining unmonitored telephone calls to a court, legal representative, or for the purposes of obtaining legal representation were not posted inside housing units or on the telephones.<sup>149</sup> In 2016, ICE inspectors interviewed a detained migrant who complained about telephone access.<sup>150</sup> In 2017, OIG’s unannounced inspection found “non-working telephones in detainee housing areas”.<sup>151</sup> For individuals confined in secure facilities, behind locked doors and razor wire—access to affordable and reliable telephone service is a high priority. It is critical in finding legal representation and for remaining in contact with lawyers, not to mention family members.

### ***Requests Ignored and Lack of Information***

In 2015, four individuals complained that requests that they had made were ignored. Requests made regarding temperature changes (see section above on Unhealthy Conditions - Cold Temperatures) were ignored. One individual reported asking to be moved to a lower bunk bed because of back pain, and his request was not respected.

Eleven individuals reported that they were kept uninformed. Eight of them experienced general frustration that they did not know any information about their deportation dates. Two

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<sup>147</sup> ICE, ‘Performance Based National Detention Standards 2011’, p. 217.

<sup>148</sup> ICE, ‘Performance Based National Detention Standards 2011’, pp. 377, 447.

<sup>149</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, pp. 4, 11.

<sup>150</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, August 9-11, 2016*, pp. 6–7.

<sup>151</sup> DHS OIG, p. 5.



individuals had not been given any information about their case, or told when they might be able to leave. One individual reported asking ICE twice about how long they would be detained and ICE would not answer him.

ICE documents reveal that the lack of information for detained migrants is not new at OCPC, nor is the ignoring of their requests. In 2009, ICE inspectors interviewed 50 detained migrants from OCPC and found that "[i]n many instances, detainees did not know the deportation officer handling their case or how to contact them."<sup>152</sup> In 2011, ICE inspectors interviewed 39 detained migrants from OCPC and found that half of the interviewees said they did not know their deportation officer, and several individuals reported that they had not yet seen their deportation officer since arrival at OCPC.<sup>153</sup> During this same inspection ICE inspectors wrote that "ICE does not respond to all detainee requests within 72 hours" as is required.<sup>154</sup> Reflecting on MTC's motto of BIONIC (Believe it or not, I care), and the assertion that MTC staff strive to show how they care for the public's loved ones through their daily work and interactions, it is revealing to hear what detained individuals have to say about those interactions. Perhaps even more concerning is the lack of respect and care for detained migrants by the government officials tasked with their care: ICE.

## **Conclusions and Recommendations**

This report assembled and presented concerns that were expressed by detained individuals about the conditions of their confinement in OCPC. These concerns were expressed in 2015, and between 2017 and 2018. A total of 251 unsolicited complaints were noted and organized into 28 categories (Table 2). These 251 concerns centered around four key themes: unhealthy conditions (121), abuse and exploitation (66), social isolation and mental anguish (37), barriers to justice and legal access (36). The most common complaints involved: inadequate medical attention (37), inadequate and poor quality food (30), unsanitary conditions (23), cold temperatures (21), harassment by staff and guards (19), and expensive commissary (13).

Comparing the above complaints with ICE documentation, this report finds that: 1) MTC's public statements about the facility do not align with the accounts or experiences of those confined and living within OCPC, 2) there are troubling violations of rights and dehumanizing treatment occurring at OCPC, and 3) ICE inspections are largely ineffective at maintaining and enforcing the standards of detention that ICE establishes for its facilities.

This report finds glaring discrepancies between the experience that detained migrants express and the public assertions of MTC or ICE. MTC in particular claims to be "a leader in social

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<sup>152</sup> DFIG, p. 9.

<sup>153</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, p. 6.

<sup>154</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, p. 4.

impact” that adopts a “BIONIC” (Believe it or not I Care) philosophy.<sup>155</sup> For example, on its OCPC fact sheet MTC provides an inaccurate depiction of cheerful detained individuals showing people who aren’t housed at the facility engaging in activities, like gardening, that aren’t offered (Figure 4). Migrants at OCPC aren’t happily detained; instead more than 75% of the detained individuals spoken to made unsolicited complaints that revolve around themes of unhealthy conditions, abuse and exploitation, social isolation and mental anguish, as well as barriers to justice. In two separate samples, harassment was reported by multiple individuals who spoke different languages. A recent government report confirmed not only that the facility was dirty and dilapidated, but that staff reportedly yelled at detained migrants, used disrespectful and inappropriate language, and employed solitary confinement in inappropriate ways.<sup>156</sup> These findings make MTC’s image of leadership in social impact hard to accept. Rather, these claims appear to be little more than hollow entrepreneurial marketing slogans. Though not expressed specifically as a complaint regarding the conditions of confinement, many individuals detained at OCPC: recognize that the facility operates on a for-profit basis, feel that they are being exploited for financial gain, and view the poor quality of facility conditions as a manifestation of cost-cutting on the part of management. Migrants detained at OCPC are smart and insightful individuals who are not persuaded by MTC marketing propaganda. Readers are directed to Appendix B for more information on immigration detention as a for-profit industry.

Interestingly, ICE facility inspection documents, normally withheld from the public, but revealed through FOIA litigation, contain information that corroborates concerns expressed by detained migrants about themes like poor sanitation, food service, and barriers to justice. These documents and the detention standards themselves also reveal that ICE’s own policy entails: 1) exploitative conditions, like \$1 a day worker compensation and no cost control on commissary; 2) little attention paid to the experiences of those detained, like a lack of clear guidelines on temperature controls or clothing issuance; and 3) ineffective safeguards on justice, like the vague guidelines on computer equipment for the law library. Moreover, pre-announced ICE inspections exhibit a lack of consistency, reveal a check-list culture that largely obscures detained migrants’ experience, and ultimately demonstrates an inability to enforce ICE’s own detention standards, as cruel and vague as they may be.<sup>157</sup> A recent unannounced OIG inspection revealed that MTC staff at OCPC use hostile language with detained migrants and are improperly applying solitary confinement. Thus, official government documentation of OCPC reveals the occurrence of troubling violations of rights and dehumanizing treatment occurring at the facility. Readers wishing to learn more about ICE inspections of OCPC are referred to Appendix A.

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<sup>155</sup> MTC, ‘Family & Friends - Otero County Processing Center’; MTC, ‘Otero County Processing Center: Preparing Detainees for Successful Re-Entry’.

<sup>156</sup> DHS OIG, p. 6.

<sup>157</sup> NIJC, *Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse*.

As a result of the aforementioned issues, migrants detained at OCPC are not safe or being cared for adequately. Rather they are subjected to inadequate and poor quality food, inadequate medical attention, harassment, cruel isolation, exploitation, retaliation, abuse, and unsanitary conditions, to name a few of the major complaints made by individuals detained at OCPC that are detailed in this report. This report joins a growing body of literature that serves as an indictment of not only ICE and for-profit companies such as MTC, but of all immigration detention in the U.S. Sadly, the complaints raised by detained migrants at OCPC are not isolated or unusual. In fact, the aspects of the “pains of imprisonment” they express are very consistent with complaints commonly emerging from other immigration detention facilities across the nation (Appendix C).

Migrants are held in non-punitive, administrative detention and detained with no clear end in sight to their imprisonment. Due to the structure of their confinement in prison conditions, and the neglect and retaliation they face, detained migrants are highly constrained when it comes to having their complaints addressed. To be clear, both ICE and MTC have created the conditions in which these individuals languish at OCPC. While not listed among the specific recommendations of this report, it is clear that unannounced independent public oversight of immigration detention facilities is absolutely necessary for the protection of individuals detained within them. “A month and a half after Trump’s inauguration in 2017, organizations across the country documented multiple denials of requests to conduct stakeholder tours and visitations.”<sup>158</sup> FFI filed a federal complaint regarding this issue.<sup>159</sup> Citizen efforts to collect more targeted information on these facilities, which exist purportedly for our protection, are needed.

This report makes two specific recommendations:

**1) Given the history of deficient conditions since its opening a decade ago, and recent evidence showing that abusive conditions continue, it is time to close OCPC.**

**2) Considering the longer and more troubled history of ICE immigration detention facilities nationally, and ICE's repeated inability to abide by their own standards, it is time to end immigration detention in the U.S.** ICE standards serve only to maintain a facade of compliance, while ICE and the for-profit companies with which they contract subject migrants to inhumane conditions with impunity. Therefore calls for further inspections will have limited to no impact on changing the climate or conditions of these facilities. The more just and humane option is to end immigration detention entirely.

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<sup>158</sup> FFI, ‘Visitation Denials and Restrictions’, *Freedom for Immigrants (FFI)*, 2018  
<<https://www.freedomforimmigrants.org/visitation-denials/>> [accessed 8 May 2018].

<sup>159</sup> CIVIC (now called FFI)  
<[https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/5a9daa64e2c483713646b28f/1520282214395/DetentionAccess\\_Complaint.pdf](https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/5a9daa64e2c483713646b28f/1520282214395/DetentionAccess_Complaint.pdf)> [accessed 8 May 2018].

## Appendix A: Recent History of Immigration Detention in the U.S.

### Recent Growth of Immigration Detention in the U.S.

The incarceration of people for private sector profit is not new. Since the 17<sup>th</sup> century, entrepreneurs seeking to turn a profit from the confinement of human beings have generated new or significantly expanded forms of social control.<sup>160</sup> The present moment of immigration detention is a continuation of a capitalist project to develop and expand markets that have been unfolding for well over three hundred years. The following summary highlights recent trends in this process as they relate specifically to immigration detention and the private prison industry in the United States (U.S.).

Immigration detention is a facet of mass incarceration, and a racialized tool of social control.<sup>161</sup> ProjectSOUTH and Pennsylvania State University (PSU) Law provide an accessible primer on immigration detention in the U.S. and propose a history composed of five broadly defined eras.<sup>162</sup> Era 1 (Pre-1980) entailed the detention of approximately 30 migrants per day. However, this is somewhat of an oversimplification. Era 2 (1980-2001) saw a massive influx of migrants and major policy changes. Era 3 (2001-2008) under George W. Bush involved the formation of the Department of Homeland Security (DHS) and granted this body authority over immigration enforcement. While 2001 marks an important milestone, some important processes span Eras 2 and 3. Era 4 (2009-2016) under Barack Obama witnessed the establishment of a national immigration detention bed quota. Era 5 (2016-present) under Donald Trump is experiencing a further expansion of immigration enforcement through Executive Orders.

Useful as this scheme may be, it unfortunately underemphasizes earlier periods of migrant imprisonment. To learn more about the history of immigration detention, see Freedom for Immigrants' [detention timeline](#).<sup>163</sup> The first federal naturalization act of 1790 afforded citizenship to any "free white person", who could prove their "good character", lived in the U.S. for at least one year and took an oath to "support the constitution of the United States."<sup>164</sup> This law excluded Native Americans, free blacks, and Asians. The Naturalization Act of 1798, part of the Alien and Sedition Acts, was a Federalist effort that sought to deal with the "alien menace" and constrain the strength of Jeffersonian Republicanism.<sup>165</sup> This 1798 act required the "registration of all alien immigrants and punishment of all persons who failed to comply with

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<sup>160</sup> M. M. Feeley, 'Entrepreneurs of Punishment: The Legacy of Privatization', *Punishment & Society*, 4.3 (2002), 321-44 <<https://doi.org/10.1177/146247402400426770>>.

<sup>161</sup> Patler and Golash-Boza, pp. 1-2.

<sup>162</sup> ProjectSOUTH and PSU Law, *Imprisoned Justice: Inside Two Georgia Immigrant Detention Centers* (Atlanta, GA: ProjectSOUTH, 2017), p. 65 (pp. 14-18) <Center for Immigrants' Rights Clinic> [accessed 27 March 2018].

<sup>163</sup> <https://www.freedomforimmigrants.org/detention-timeline/>

<sup>164</sup> James H. Kettner, *The Development of American Citizenship, 1608-1870* (Chapel Hill: University of North Carolina Press, 1978), p. 236.

<sup>165</sup> Kettner, p. 244.

the registry provisions.” This act is the earliest federal law requiring migrant registration and explicitly outlining detention for failure to register with the government.

In 1882, Congress passed the federal Immigration Act that began the formal process of excluding migrants that were deemed undesirable by government agents.<sup>166</sup> Later in 1882, Congress passed the Chinese Exclusion Act “barring an entire nationality from entry as racially undesirable for a period of ten years.”<sup>167</sup> This act, aimed specifically at [excluding “the coming of Chinese laborers to this country”](#), was the first to categorically ban the entry of individuals on the basis of their ethnic or racial classification.

The first act to explicitly mention migrant detention was the Immigration Act of 1891.<sup>168</sup> As part of the enforcement of this act, Ellis Island opened on January 1, 1892 in New York as the first U.S. federal immigration station. Ellis Island represents the world’s first dedicated immigration detention facility; its opening symbolized the end of free immigration to the New World and the beginnings of immigration detention.<sup>169</sup> In 1893, Congress passed the first law requiring the detention of any person not entitled to admission, but in their discretion, immigration officers would release some, mostly white, migrants on bond. In 1910, Angel Island in the San Francisco Bay, was established to detain and inspect migrants entering the U.S. via the West Coast.<sup>170</sup> These, largely Chinese, individuals were typically detained longer than those entering at Ellis Island. In the 1950’s during the Eisenhower administration’s immigration enforcement campaign called “Operation Wetback”, the U.S. government incarcerated nearly 500,000 migrants.<sup>171</sup> Moreover, this was not an isolated incident of mass immigration detention. Still it is clear that systematic and quotidian mass immigration detention developed during recent decades. That expansion occurred with congressional intervention and was coupled with the use of private profit-driven companies that met those newly created needs.<sup>172</sup>

Elsewhere it has been argued that in the years after September 11, 2001 immigration detention in the U.S. climbed substantially.<sup>173</sup> Fears constructed and exacerbated following the September

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<sup>166</sup> Daniel Wilsher, *Immigration Detention: Law, History, Politics* (Cambridge, UK: Cambridge University Press, 2011), p. 11.

<sup>167</sup> Richard H. Collin, ‘European Immigrants, 1892-1943’, in *Immigration in U.S. History*, ed. by Carl L. Bankston, Danielle Antoinette Hidalgo, and Kent R. Rasmussen, Magill’s Choice (Pasadena, Calif: Salem Press, 2006), I-II, 240–45 (p. 240).

<sup>168</sup> Wilsher, p. 13.

<sup>169</sup> Collin, I-II, p. 240.

<sup>170</sup> Robert Barde and Gustavo J. Bobonis, ‘Detention at Angel Island: First Empirical Evidence’, *Social Science History*, 30.1 (2006), 103–36.

<sup>171</sup> David Manuel Hernández and , ‘Pursuant to Deportation: Latinos and Immigrant Detention’, *Latino Studies*, 6.1–2 (2008), 35–63 (pp. 50–51).

<sup>172</sup> Patler and Golash-Boza, p. 2; NIJC, *Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse*.

<sup>173</sup> NIJC, *Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse*, p. 2; Carey, p. 7.

11, 2001 terror attacks galvanized support for “tough on immigration” measures under the pretext of national security.<sup>174</sup> However, Figure 9 shows that increases in immigration detention increased steadily since 1994, growing in the years after the signing of the North American Free Trade Agreement (NAFTA), markedly during the second term of George W. Bush, and again during the first year of the Trump administration.<sup>175</sup> In 1996, Congress substantially broadened the categories for which a migrant was subject to mandatory detention while undergoing immigration proceedings; this included non-violent misdemeanor convictions.<sup>176</sup> Mandated increases in detaining migrants were also built into subsequent congressional appropriations bills. For example, the Intelligence Reform and Terrorism Prevention Act of 2004, Sec 5204 “Increase in Detention Bed Space” (a)(b) called for an annual 8,000 bed increase for each fiscal year between 2006-2010.<sup>177</sup> Priority was to be given to individuals charged with removability or inadmissibility.

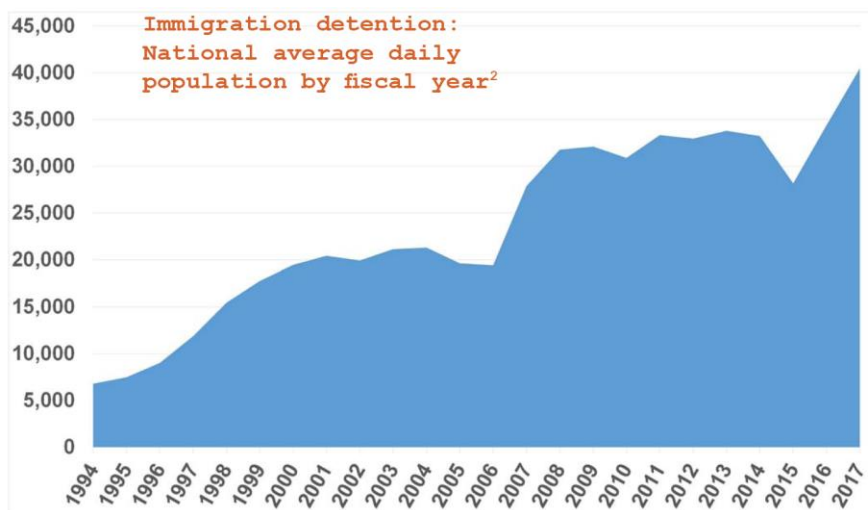


Figure 9 Immigration detention national average daily population by fiscal year.  
Image copied from NIJC (2017,3)

<sup>174</sup> Longazel, Berman, and Fleury-Steiner, p. 991; Michael Welch, *Scapegoats of September 11th: Hate Crimes & State Crimes in the War on Terror*, Critical Issues in Crime and Society (New Brunswick, N.J.: Rutgers University Press, 2006), chap. 6.

<sup>175</sup> NIJC, *What Kind of Miracle...The Systematic Violation of Immigrants’ Right to Counsel at the Cibola County Correctional Center* (Washington D. C.: National Immigrant Justice Center, 2017), p. 13 (p. 3) <<http://immigrantjustice.org/research-items/report-what-kind-miracle-systematic-violation-immigrants-right-counsel-cibola-county>>.

<sup>176</sup> Carey, p. 20.

<sup>177</sup> 108th Congress, ‘Intelligence Reform and Terrorism Prevention Act of 2004’, 2004, p. 98 <<https://www.intelligence.senate.gov/sites/default/files/laws/pl108-458.pdf>>.

In 2009, during a multi-year decline in the overall undocumented migrant population, Senator Robert Byrd (D-WY), former “Exalted Cyclops” of the Ku Klux Klan,<sup>178</sup> who was then Chairman of the Appropriations Subcommittee on Homeland Security, included language to the DHS Appropriations Act of 2010 that mandated an immigration detention quota or bed mandate of 33,400.<sup>179</sup> In 2012, the bed quota for detaining migrants was raised to 34,000. Since the quota was included in the DHS Appropriations Act of 2010, rather than being introduced as a piece of legislation, no public debate was held on the issue.<sup>180</sup> This “immigration detention quota is unprecedented; no other law enforcement agency operates under a detention quota mandated by Congress.”<sup>181</sup> Although in 2017 the specific language that created the bed quota was eliminated from appropriations, the budget for immigration detention has increased. Today, the U.S. government imprisons approximately 40,000 individuals in immigration detention each day.

The specific acts and incidents described above fall far short of a comprehensive review of immigration detention and its legislation in the U.S., and historians continue to uncover more information about our country’s disturbing past. The hope is to draw the reader’s attention to some of the significant and marked events in a process that has unfolded over many decades but is clearly intensifying during the present moment. These events and policies occurred and play out in an economic context, and that is an important part of the equation.

### **Immigration Detention as a Private Industry**

As argued at the outset of this summary, entrepreneurship, corporate greed, incarceration, and the development of new social controls as a source of profit are interconnected.<sup>182</sup> Immigration detention simply constitutes one facet of expanded social control in which private entrepreneurs seek to accumulate profit through incarceration. “The remarkable level of involvement from private prison firms eager to participate in the detention sphere is documented in the literature exploring the ‘immigration industrial complex’.”<sup>183</sup>

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<sup>178</sup> Eric Pianin, ‘A Senator’s Shame’, 19 June 2005 <<http://www.washingtonpost.com/wp-dyn/content/article/2005/06/18/AR2005061801105.html>> [accessed 16 March 2018].

<sup>179</sup> Bethany Carson and Elena Diaz, *Payoff: How Congress Ensures Private Prison Profit with an Immigrant Detention Quota* (Austin, TX: Grassroots Leadership: Helping People Gain Power, April 2015), p. 28 (p. 3) <<https://grassrootsleadership.org/reports/payoff-how-congress-ensures-private-prison-profit-immigrant-detention-quota>>.

<sup>180</sup> Carson and Diaz, p. 5.

<sup>181</sup> Carson and Diaz, p. 3.

<sup>182</sup> Feeley.

<sup>183</sup> Nicole Trujillo-Pagán, ‘Emphasizing the “Complex” in the “Immigration Industrial Complex”’, *Critical Sociology*, 40.1 (2014), 29–46 <<https://doi.org/10.1177/0896920512469888>>; *The Migration Industry and the Commercialization of International Migration*, ed. by Thomas Gammeltoft-Hansen and Ninna Nyberg Sørensen, Routledge Global Institutions Series (London ; New York: Routledge, 2013); Jesse Díaz, ‘Immigration Policy, Criminalization and the Growth of the Immigration Industrial Complex: Restriction, Expulsion, and Eradication of



Immigration detention is a specific aspect of mass incarceration. Management and Training Corporation (MTC), the third largest private prison contractor, and the company that manages Otero County Processing Center (OCPC), recognizes that the U.S. has a problem with mass criminal incarceration. MTC acknowledges that “some have tried to lay the blame for mass incarceration and high recidivism rates on contract prison operators”.<sup>184</sup> MTC argues that “[t]his simplistic view fails to account for the tough-on-crime mentality and decades of public policy decisions at all levels of government”.<sup>185</sup>

MTC further contends that “prison contractors did not cause high rates of incarceration”, asserting that the problem is caused largely by policies like mandatory minimum and truth in sentencing laws.<sup>186</sup> MTC further claims that private contractors can be part of the solution of mass criminal incarceration. MTC’s causal argument for mass criminal incarceration places blame on policy in a manner that both fails to recognize, and obscures, the fact that private prison companies and associated business networks, like the American Legislative Exchange Council (ALEC), crafted and pushed for both the mandatory minimum and truth in sentencing legislation that MTC recognizes was key to fueling mass criminal incarceration.<sup>187</sup> A similar situation holds in civil immigration detention.

The criminalization of immigration is not random. Rather it is shaped by actors who construct the migrant as the cause of social ills in the U.S. In this endeavor, the private prison industry uses a three-pronged approach to help craft immigration law that ensures the stable flow of migrants to incarcerate.<sup>188</sup> Strategy 1): the private detention industry makes campaign contributions to state and federal politicians who advocate for expanded immigration incarceration. Geo Group, one of the three largest private prison contractors, was Texas Congressman Henry Cuellar’s largest donor during his 2014 election, and as of September 12, 2016 GEO Group was also Cuellar’s largest donor in the 2016 election.<sup>189</sup> Cuellar sits on the Appropriations Subcommittee of Homeland Security, the body that establishes the

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the Undocumented in the U.S. 1’, *Western Criminology Review; Pullman*, 12.2 (2011), 35–54; Tanya Golash-Boza, ‘The Immigration Industrial Complex: Why We Enforce Immigration Policies Destined to Fail’, *Sociology Compass*, 3.2 (2009), 295–309 <<https://doi.org/10.1111/j.1751-9020.2008.00193.x>>.

<sup>184</sup> MTC Institute, *America’s Mass Incarceration Problem: Can Prison Contractors Actually Be Part of the Solution* (Centerville, UT: Management & Training Corporation, 2017), p. 29 (p. 5) <[http://www.mtctrains.com/wp-content/uploads/2017/11/Mass\\_Incarceration\\_Solutions.pdf](http://www.mtctrains.com/wp-content/uploads/2017/11/Mass_Incarceration_Solutions.pdf)> [accessed 31 March 2018].

<sup>185</sup> MTC Institute, sec. Executive Summary p. 3.

<sup>186</sup> MTC Institute, p. 5.

<sup>187</sup> Mike Elk and Bob Sloan, ‘The Hidden History of ALEC and Prison Labor’, *The Nation*, 1 August 2011 <<https://www.thenation.com/article/hidden-history-alec-and-prison-labor/>> [accessed 30 March 2018].

<sup>188</sup> Alissa R. Ackerman and Rich Furman, ‘The Criminalization of Immigration and the Privatization of the Immigration Detention: Implications for Justice’, *Contemporary Justice Review*, 16.2 (2013), 251–63 (p. 252) <<https://doi.org/10.1080/10282580.2013.798506>>.

<sup>189</sup> ITPI, *Buying Influence: How Private Prison Companies Expand Their Control of America’s Criminal Justice System* (Oakland, CA: In the Public Interest (ITPI), 2016), p. 18 (p. 6) <[https://www.inthepublicinterest.org/wp-content/uploads/ITPI\\_BuyingInfluence\\_Oct2016.pdf](https://www.inthepublicinterest.org/wp-content/uploads/ITPI_BuyingInfluence_Oct2016.pdf)> [accessed 31 March 2018].

aforementioned congressionally mandated bed quota that was initially established by former KKK Exalted Cyclops and Democrat Senator from Wyoming Robert Byrd. Recently, private detention industry leaders in the for-profit immigration detention sector funded Donald Trump's presidential campaign.<sup>190</sup>

Strategy 2): the private detention industry lobbies both state legislatures and U.S. Congress on bills related to corrections and law enforcement. A 2011 report from Detention Watch Network (DWN) found that the five corporations with ICE contracts, for which lobbying records were available, spent more than two million dollars on lobbying between 1999 and 2009.<sup>191</sup> Entities lobbied include Immigration and Customs Enforcement (ICE), DHS, and the Department of Justice (DOJ). Between 2008 and 2014, Corrections Corporation of America (CCA), which in 2016 changed its name to CoreCivic,<sup>192</sup> spent more than \$10.5 million lobbying on immigration detention and reform.<sup>193</sup> Most of that money was spent directly lobbying the DHS Appropriations Subcommittee that maintains the immigration detention bed quota. In 2013, industry lobbyists helped add \$40 billion in border security amendments to the Senate comprehensive immigration reform bill that eventually died in the House of Representatives.<sup>194</sup>

Strategy 3): the industry fosters networks with specific organizations like ALEC.<sup>195</sup> ALEC set up secret meetings between Arizona state legislators and CCA to draft SB 1070, Arizona's now notorious immigration law.<sup>196</sup> Thirty-six Arizona state legislators co-sponsored SB 1070. Thirty of those individuals received donations or contributions from a private prison company or were members of ALEC. As of January 12, 2017 almost half of the Trump administration's cabinet picks had ties to ALEC.<sup>197</sup> Both Vice-President Mike Pence and United Nations (UN) Ambassador Nikki Haley are former members of ALEC. Haley pushed ALEC-sponsored legislation for allowing law enforcement to check the immigration status of any person arrested or stopped. This bill

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<sup>190</sup> Lee Fang, 'Private Prison Involved in Immigrant Detention Funds Donald Trump and His Super PAC', *The Intercept*, 2016 <<https://theintercept.com/2016/08/26/private-prison-donald-trump/>> [accessed 30 March 2018].

<sup>191</sup> DWN, *The Influence of the Private Prison Industry in the Immigration Detention Business* (Washington D.C.: Detention Watch Network (DWN), 2011), p. 3 (p. 3) <[https://www.detentionwatchnetwork.org/sites/default/files/reports/DWN Private Prison Influence Report.pdf](https://www.detentionwatchnetwork.org/sites/default/files/reports/DWN%20Private%20Prison%20Influence%20Report.pdf)>.

<sup>192</sup> Community Initiatives for Visiting Immigrants in Confinement (CIVIC), that recently changed its name to Freedom for Immigrants, has never been and is not connected to CCA/CoreCivic.

<sup>193</sup> Carson and Diaz, p. 3.

<sup>194</sup> Gavin Aronsen, 'Immigration Reform: Good News for Contractors', *Mother Jones*, 2013 <<https://www.motherjones.com/politics/2013/06/immigration-reform-border-security-contractors/>> [accessed 30 March 2018]; Lee Fang, 'Surveillance and Border Security Contractors See Big Money in Donald Trump's Immigration Agenda', *The Intercept*, 2016 <<https://theintercept.com/2016/12/06/defense-companies-trump/>> [accessed 1 February 2017].

<sup>195</sup> Ackerman and Furman, p. 256.

<sup>196</sup> Elk and Sloan; Beau Hodai, 'Corporate Con Game', *In These Times*, 21 June 2010 <[http://inthesetimes.com/article/6084/corporate\\_con\\_game/](http://inthesetimes.com/article/6084/corporate_con_game/)> [accessed 30 March 2018].

<sup>197</sup> Rob Dennis, 'Trump Sets up ALEC Administration', *Lobby99*, 2017 <<https://medium.com/lobby99/trump-sets-up-alec-administration-e6d00be457d2>> [accessed 31 March 2018].

was modeled on the ALEC-driven Arizona SB 1070. Backing politicians, lobbying legislators, and fostering private-public networks together leads to the establishment of laws that “secure” a need for detaining greater numbers of bodies, and thus supplying a market for the private incarceration industry. Contrary to MTC’s marketing materials, private prison contractors have a role to play in creating the mass incarceration situation both in criminal and immigration contexts.

As the number of migrants detained in the U.S. swells, the proportion of those individuals who are held in facilities that are run by private for-profit businesses increases.<sup>198</sup> Between 2004 and 2014, the period covered by the aforementioned mandated growth and bed quotas, the average daily population of incarcerated migrants increased by 47%. In 2009, 49% of those beds were in privately-run facilities. By 2015, 62% of those beds were in privately-run facilities. This represents a 13% increase in five years alone.

Figure 10 shows that as the number of detention beds increased, so too has the amount of money that for-profit prison companies spent on lobbying efforts.<sup>199</sup> As one of the major private prison companies brazenly noted in a 2005 Security and Exchange Commission filing, “[o]ur industry benefits from significant economies of scale. ... Our management team is pursuing a number of initiatives intended to increase occupancy through obtaining new contracts.”<sup>200</sup> The growth of immigration detention is not by accident. It is by design, with some of the key architects being for-profit private prison companies who benefit directly by governmentally mandated increases in immigration detention. The establishment of bed quotas stabilizes and ensures a state mandated “market” for their product which is the confinement of human beings.

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<sup>198</sup> Carson and Diaz, p. 6.

<sup>199</sup> Sharita Gruberg, *How For-Profit Companies Are Driving Immigration Detention Policies* (Center For American Progress, 2015), p. 15 (p. 4)  
<<https://www.americanprogress.org/issues/immigration/reports/2015/12/18/127769/how-for-profit-companies-are-driving-immigration-detention-policies/>> [accessed 16 March 2018].

<sup>200</sup> Gruberg, p. 3.

Lobbying on U.S. Department of Homeland Security appropriations by for-profit prison companies grew alongside the number of detention beds

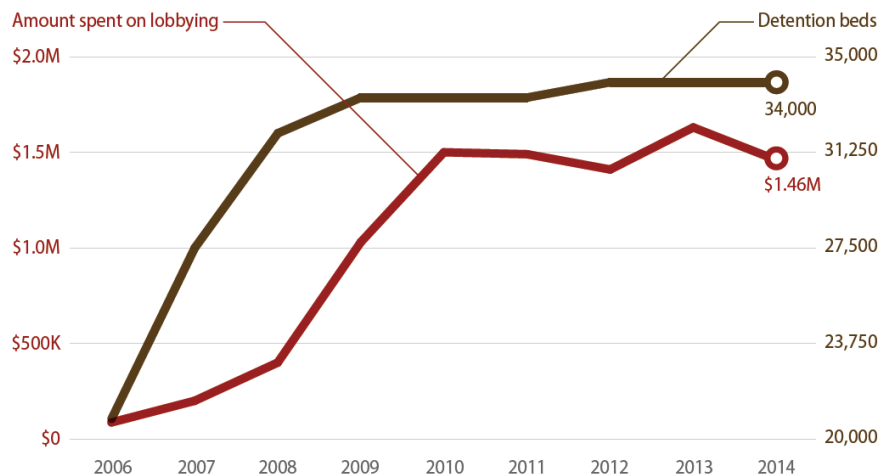


Figure 10 Increase of for-profit prison lobbying and increase in immigration detention beds from 2006-2014. Figure from Gruberg (2015, 4 Figure 3).

## Immigration Detention Inspection

The National Immigration Law Center (NILC)<sup>201</sup>, DWN and the National Immigrant Justice Center (NIJC)<sup>202</sup> provide useful overviews of the history of immigration detention facility standards. In March of 1998, under pressure of criticism regarding conditions of immigration detention, the now defunct Immigration and Naturalization Service (INS) established 12 detention standards that applied to Service Processing Centers, and Contract Detention Facilities. The standards were not established as enforceable regulations, and did not apply to all Intergovernmental Service Agreement (IGSA) facilities where the majority of detained migrants were confined. Continuing complaints regarding the conditions of confinement placed pressure on the INS to expand the standards. The American Bar Association (ABA) and other advocacy groups negotiated with the INS and DOJ until the latter part of 2000, and in November of 2000 the DOJ announced 36 detention standards applicable to all immigration detention facilities. These were the [National Detention Standards](#) (NDS). The standards were implemented in stages and did not apply to IGSA's until the end of 2002. Even then, IGSA's were permitted to adopt alternative procedures. In 2003, the INS was replaced by DHS. At that time, ICE added two additional standards to the NDS. Despite the establishment of detention standards, complaints regarding the conditions of immigration confinement persisted.

<sup>201</sup> Karen Tumlin, Linton Joaquin, and Ranjana Natarajan, *A Broken System: Confidential Reports Reveal Failures in U.S. Immigrant Detention Centers* (National Immigration Law Center, 2009), p. 170 (pp. 4–5) <<https://www.nilc.org/news/special-reports/a-broken-system-failures-in-detention-centers/>>.

<sup>202</sup> DWN and NIJC, 'Using ICE Contracts and Inspections to End Abusive Detention: An Advocacy & Organizing Toolkit' (Detention Watch Network and National Immigrant Justice Center, 2015) <<https://www.immigrantjustice.org/sites/default/files/NIJC-DWN-Contracts-Inspections-Toolkit-November2015.pdf>> [accessed 15 March 2018]; NIJC, *Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse*.

The period from 2006 to 2008 represented one of the most marked increases in immigration detention in the last two decades (Figure 9 and Figure 10). During this time, as the average daily population of detained migrants increased, the number of well-documented reports of unacceptably inhumane detention conditions swelled.<sup>203</sup> In 2008, articles in the Washington Post and The New York Times covered the deaths of at least 83 individuals that had occurred in ICE custody between 2003 and 2008.

Among the more notable 2008 articles on immigration detention in The New York Times was its coverage of the grizzly and inhumane death of Boubacar Bah who was detained at the privately-run Elizabeth Detention Center in New Jersey.<sup>204</sup> In an unobserved “questionable” incident, Mr. Bah purportedly fell and hit his head on the floor. Incoherent and agitated, most likely as the result of intracranial bleeding, he was handcuffed and placed in leg restraints by facility staff. When Mr. Bah was ordered to calm down, he “began to regurgitate on the floor of medical.” Then he was written up for disobeying orders, and shackled in solitary confinement. Fourteen hours later someone finally realized that he was unresponsive and called the hospital. After several months in a coma, Mr. Bah died in the hospital.

The Washington Post published a four-part exposé that covered the questionable deaths of 83 migrants detained by ICE between 2003 and 2008.<sup>205</sup> This included Yong Sun Harvill’s struggle to get proper treatment for sarcoma while detained at the Florence Correctional Center and the Pinal County Jail in Arizona,<sup>206</sup> the lack of proper mental health diagnoses that contributed to a rash of suicides among migrants detained by ICE,<sup>207</sup> and more than 250 documented cases involving the use of dangerous psychotropic anti-psychotic drugs to sedate migrants with no history of mental illness.<sup>208</sup>

In 2008, in the context of growing scrutiny regarding immigration detention, the [Performance Based National Detention Standards](#) (PBNDS) were established with the aim of improving upon the NDS. PBNDS was applied in stages. By 2010 all facilities where migrants were confined for

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<sup>203</sup> NIJC, *Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse*, p. 4.

<sup>204</sup> Nina Bernstein, ‘Few Details on Immigrants Who Died in Custody’, *The New York Times*, 5 May 2008, section N.Y. / Region <<https://www.nytimes.com/2008/05/05/nyregion/05detain.html>> [accessed 17 March 2018].

<sup>205</sup> Dana Priest and Amy Goldstein, ‘Careless Detention Part 1: As Tighter Immigration Policies Strain Federal Agencies, The Detainees in Their Care Often Pay a Heavy Cost’, *The Washington Post* (Washington D. C., 11 May 2008), p. A1.

<sup>206</sup> Amy Goldstein and Dana Priest, ‘Careless Detention Part 2: In Custody, In Pain; Beset by Medical Problems as She Fights Deportation, A U.S. Resident Struggles to Get the Treatment She Needs’, *The Washington Post* (Washington D. C., 12 May 2008), p. A1.

<sup>207</sup> Dana Priest and Amy Goldstein, ‘Careless Detention Part 3: Suicides Point to Gaps in Treatment; Errors in Psychiatric Diagnoses and Drugs Plague Strained Immigration System’, *The Washington Post* (Washington, D.C., 13 May 2008), p. A1.

<sup>208</sup> Amy Goldstein and Dana Priest, ‘Careless Detention Part 4: Some Detainees Are Drugged for Deportation; Immigrants Sedated Without Medical Reason’, *The Washington Post* (Washington D. C., 14 May 2008), p. A1.

more than 72 hours were to be reviewed under PBNDS. The 2008 version of PBNDS consists of 41 standards.

Obama's first presidential campaign emphasized the promise of comprehensive immigration reform.<sup>209</sup> Within months of inauguration, the government announced some sweeping changes with regard to immigration detention.<sup>210</sup> In October of 2009, ICE released a report comprising a "comprehensive review and evaluation" of ICE immigration detention.<sup>211</sup> The report highlighted that as a matter of law, immigration detention is distinct from criminal incarceration; "[i]mmigration proceedings are civil proceedings and immigration detention is not punishment."<sup>212</sup> Yet the report notes that the design and management of immigration detention facilities as well as ICE standards "are based upon corrections law and promulgated by correctional organizations to guide the operation of jails and prisons."<sup>213</sup>

In 2009, the NILC published "the first-ever system-wide look at the federal government's compliance with its own standards regulating immigrant detention facilities".<sup>214</sup> Upon review of thousands of pages of confidential reports, NILC found "pervasive and extreme violations of the government's own detention standards as well as fundamental violations of basic human rights and notions of dignity."<sup>215</sup> The report was based on documents that "the government released only as a result of court-ordered discovery in *Orantes-Hernandez v. Holder*." Surprisingly, despite public claims of transparency, "the government withheld a substantial amount of the information that the court ordered it produce".<sup>216</sup> Specifically, ICE withheld reviews for at least 113 facilities reviewed between 2004 and 2005.<sup>217</sup> Thus the detention standards infractions detailed in the NILC report constitute a fraction of the violations that were documented by ICE

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<sup>209</sup> Luz González Fernández, 'Immigration Detention in America: Civil Offense, Criminal Detention – Journal of Hispanic Policy', *The Harvard Kennedy School Journal of Hispanic Policy*, 2013

<<http://www.harvardhispanic.org/immigration-detention-in-america/>> [accessed 19 March 2018].

<sup>210</sup> Nina Bernstein, 'Napolitano Outlines Ideas for Revamping Immigration Detention', *The New York Times* (New York, 5 October 2009) <<http://www.nytimes.com/2009/10/06/us/politics/06detain.html>> [accessed 19 March 2018]; Nina Bernstein, 'U.S. to Reform Policy on Detention for Immigrants', *The New York Times* (New York, 5 August 2009), section Politics <<https://www.nytimes.com/2009/08/06/us/politics/06detain.html>> [accessed 19 March 2018].

<sup>211</sup> Dora Schriro, *Immigration Detention Overview and Recommendations* (Washington D.C.: Department of Homeland Security, Immigration and Customs Enforcement, 6 October 2009), p. 35 (p. 2) <<https://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>>.

<sup>212</sup> Schriro, p. 4.

<sup>213</sup> Schriro, p. 4.

<sup>214</sup> Tumlin, Joaquin, and Natarajan, p. vi.

<sup>215</sup> Tumlin, Joaquin, and Natarajan, p. xii.

<sup>216</sup> Tumlin, Joaquin, and Natarajan, p. vi.

<sup>217</sup> Tumlin, Joaquin, and Natarajan, p. 2.

during the time period covered by the report. NILC concluded that “the nation’s immigrant detention system is broken to its core.”<sup>218</sup>

In 2011, ICE PBNDS standards were revised and a new set of standards was created, called PBNDS 2011. PBNDS was again revised in 2016. However, the most current version of the standards is still termed PBNDS 2011. On its website, ICE hosts [PBNDS 2011 with the 2016 revisions](#) as a PDF. In 2016, the Homeland Security Advisory Council (HSAC) released a report of the Subcommittee on Privatized Immigration Detention Facilities.<sup>219</sup> In August of 2016, in part due to growing concerns regarding the condition of private prisons, the DOJ directed the Bureau of Prisons (BOP) to reduce and end its reliance on private prisons. The HSAC report evaluated the use of private for-profit facilities for immigration detention and decided to continue with the practice, but that “continuation should come with improved and expanded ICE oversight” including improved “responsiveness, and sense of accountability for daily operations at all detention facilities.”<sup>220</sup>

### **Brief History of MTC and Private Detention**

MTC has a complex history that dates back to well before the company’s formation in 1980.<sup>221</sup> According to the Salt Lake Tribune, “MTC traces its roots to 1958” when Robert ‘Bob’ Marquardt “moved to Ogden to work for defense contractor Morton Thiokol”, a firm known for manufacturing rubber along with rocket and missile propulsion systems.<sup>222</sup> Thiokol has the infamous distinction of being the company that manufactured the booster rocket and O-ring that in 1986 caused the Space Shuttle Challenger to explode killing all the astronauts on board.<sup>223</sup> While Thiokol was primarily a military contractor, it also maintained a contract to operate Job Corps centers for the U.S. Department of Labor. In 1980, Thiokol divested in its less profitable divisions, and education was among those. During this downsizing, Marquardt and partners purchased Thiokol’s educational contracts and started MTC. The Tribune quotes Marquardt as saying “[a]fter 25 years of marketing bigger bombs to kill more people, it got to

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<sup>218</sup> Tumlin, Joaquin, and Natarajan, p. xii.

<sup>219</sup> HSAC, *Report of the Subcommittee on Privatized Immigration Detention Facilities* (Homeland Security Advisory Council (HSAC), 1 December 2016), p. 98 <<https://www.dhs.gov/publication/homeland-security-advisory-council-report-subcommittee-privatized-immigration-detention>>.

<sup>220</sup> HSAC, p. 2.

<sup>221</sup> ‘Robert Marquardt Obituary’, *The Salt Lake Tribune*, 2012

<<http://www.legacy.com/obituaries/saltlaketribune/obituary.aspx?pid=155459426>> [accessed 16 May 2018].

<sup>222</sup> Nate Carlisle, ‘Utah Family Business Taking Heat for Arizona Prison Escape’, *The Salt Lake Tribune*, 2010 <<http://archive.sltrib.com/article.php?id=10524820&itype=storyID>> [accessed 11 May 2018].

<sup>223</sup> Sarah Kaplan, ‘Finally Free from Guilt over Challenger Disaster, an Engineer Dies in Peace’, *Washington Post*, 22 March 2016, section Morning Mix <<https://www.washingtonpost.com/news/morning-mix/wp/2016/03/22/finally-free-from-guilt-over-challenger-disaster-an-engineer-dies-in-peace/>> [accessed 16 May 2018]; Gregory Bell, ‘Morton - Thiokol: Getting Off Easy’, 1986 <<https://www.thecrimson.com/article/1986/12/10/morton-thiokol-getting-off-easy/>> [accessed 16 May 2018].



me.”<sup>224</sup> In 1987, MTC, after divesting from education, started providing for-profit detention services when it began operating a prison in Eagle Mountain, California. Since its beginnings in confining humans for profit, MTC has grown into the third largest private prison operator. The company manages three immigration detention facilities and is seeking to expand operations.<sup>225</sup> The following section details four noteworthy incidents that occurred at MTC-managed facilities. This accounting is a small illustrative sample rather than a comprehensive inventory.

**October 2003, Riot at Eagle Mountain Correctional Facility in Eagle Mountain, CA.** On October 23, 2003, at the MTC-managed Eagle Mountain Correctional Facility in Riverside County, a major riot took place and resulted in multiple fatalities.<sup>226</sup> The incident consisted of a physical altercation lasting for 90 minutes that involved more than 130 inmates and resulted in two inmate fatalities. Consistent with protocol, staff who were completely unarmed (without even pepper spray) retreated from the fighting and waited for officers to arrive. Meanwhile, prison inmates attacked each other with knives and meat cleavers from the kitchen as well as table and chair legs. The conflict finally waned when an off-duty officer fired a warning shot into the ground. This riot, that took place where MTC first ventured into the private prison industry, constituted the very first violence-related fatality at any privately-run prison facility in California. The facility closed later in 2003.

**November 2007, Human Smuggling at Willacy County Correctional Center in Raymondville, TX.** In 2007, four MTC employees who worked at the Willacy County Correctional Center were charged with using MTC vehicles to smuggle migrants through Border Patrol’s Sarita checkpoint north of Brownsville.<sup>227</sup> Two of the four were reportedly sergeants at the MTC-run detention facility. This facility, discussed further below, houses migrants in Kevlar tents. In federal court, the four charged individuals plead guilty.<sup>228</sup> It is ironic that MTC immigration detention staff tried to use an MTC vehicle to attempt to smuggle migrants. Notwithstanding the irony of this

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<sup>224</sup> Carlisle.

<sup>225</sup> Elise Schmelzer, ‘Private Prison Company Pursuing Wyoming Immigration Detention Center Has Troubled Past’, *Casper Star Tribune*, 2018 <[http://trib.com/news/state-and-regional/private-prison-company-pursuing-wyoming-immigration-detention-center-has-troubled/article\\_2cabcb90-00ae-5e9b-9860-718751fbca01.html](http://trib.com/news/state-and-regional/private-prison-company-pursuing-wyoming-immigration-detention-center-has-troubled/article_2cabcb90-00ae-5e9b-9860-718751fbca01.html)> [accessed 16 May 2018].

<sup>226</sup> Jenifer Warren, ‘Inmates Are Moved After Riot Kills 2’, *Los Angeles Times*, 29 October 2003 <<http://articles.latimes.com/2003/oct/29/local/me-riot29>> [accessed 11 May 2018]; Louis Sahagun and Lance Pugmire, ‘8 Charged in ‘03 Prison Riot Killings’, *Los Angeles Times*, 4 March 2004 <<http://articles.latimes.com/2004/mar/04/local/me-riot4/2>> [accessed 11 May 2018].

<sup>227</sup> MRT, ‘Detention Center Workers Charged in Scheme to Smuggle Immigrants’, *Midland Reporter-Telegram (MRT)*, 2007 <<https://www.mrt.com/news/article/Detention-center-workers-charged-in-scheme-to-7620672.php>> [accessed 11 May 2018].

<sup>228</sup> Fernando del Valle, ‘Detention Officers Plead Guilty’, *Valley Morning Star*, 2008 <[http://www.valleymorningstar.com/news/local\\_news/detention-officers-plead-guilty/article\\_5c7e8828-d9d0-5d4b-9af4-bb89e9ea73e1.html](http://www.valleymorningstar.com/news/local_news/detention-officers-plead-guilty/article_5c7e8828-d9d0-5d4b-9af4-bb89e9ea73e1.html)> [accessed 11 May 2018].

incident, this case highlights a negligent lack of due diligence on MTC's part to screen their employees. This egregious lapse is most likely a manifestation of the company's overarching emphasis on cutting operating costs and maximizing profits.

**July 2010, Escape at Arizona State Prison, Kingman, AZ.** On July 30, 2010, three inmates escaped from the MTC-run Arizona State Prison in Kingman, AZ.<sup>229</sup> The Arizona Department of Corrections suggested "lax" security on the part of MTC could be to blame. On a phone interview with the Salt Lake Tribune, Robert Marquardt, the 84-year-old patriarch of MTC stated that "[t]his is the first major glitch we've had." Given incidents discussed in the following section that focus on MTC failures in New Mexico that date back to 2002, include a scathing 2003 DOJ report, and a 2006 class action lawsuit in which MTC paid out millions of dollars for wrongdoing, Marquardt's statement that the Kingman incident represents "the first major glitch" constitutes either a severe and profound case of selective amnesia or outright deceptive language.

The Tribune notes that MTC paid staff less and offered worse retirement benefits than are offered to government prison workers.<sup>230</sup> At the time MTC was offering \$8.25 an hour while a local federal prison was offering \$18.18 per hour. This indicates that labor receives a better deal at public facilities. MTC spokesperson Carl Stuart said that MTC seeks to save costs "by using technology in place of personnel" noting that "having cameras instead of guards can be more efficient." Thus, not only does MTC pay its employees less than public employees, it seeks to minimize the number of guards by replacing them with cameras. MTC executives could not be more clear that their aim is keeping operating costs at a minimum. In terms of the Kingman incident, a failure to detect the fact that inmates left their cells was a key factor in the escape. In reviewing MTC's history in New Mexico, it is apparent that understaffing as a method of cost-cutting led to serious and ongoing problems.

**2015, Riot at Willacy County Correctional Center in Raymondville, TX** In 2015, at the MTC-run Willacy County Correctional Center, roughly 2,000 inmates rioted because they were upset by the lack of medical care, chronic sewage problems and frequently contaminated food.<sup>231</sup> In 2011 Willacy became one of the highly secretive "Criminal Alien Requirement" (CAR) facilities that are used to detain migrants who are serving sentences for federal crimes. MTC initially constructed Willacy in 2006 to serve as an ICE immigration detention facility, similar in nature to OCPC. After widespread condemnation of the MTC-run facility that included a 2011 *Frontline*

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<sup>229</sup> Carlisle.

<sup>230</sup> Carlisle.

<sup>231</sup> Associated Press, 'Texas Prison Uprising Highlights Concerns Over Inmate Medical Care', *The DePaulia* (Chicago, IL, 15 December 2015), NewsBank; Editorial, 'Few Cost Savings in Texas Prison Deals', *Wichita Falls Times Record News* (Wichita Falls, TX, 2 July 2015), p. 6B, NewsBank; Carl Takei, 'A Most Unsurprising Riot', *The Marshall Project*, 2015 <<https://www.themarshallproject.org/2015/02/24/a-most-unsurprising-riot>> [accessed 18 May 2018].

[report about sexual abuse at Willacy](#) involving guards raping detained women, ICE terminated its contract with MTC. Roughly a month after the last detained individuals left the facility, MTC had established a \$532 million contract with the Bureau of Prisons (BOP) to reopen Willacy as a CAR prison.<sup>232</sup> The conditions at five Texas CAR facilities including Willacy are detailed in a 2014 report by the ACLU.<sup>233</sup>

At Willacy, only individuals in solitary are placed in cells. As mentioned above, all other detained individuals are housed in Kevlar tents. When the ACLU conducted interviews for its CAR report, individuals detained at Willacy described overcrowded conditions, spoke of insects in the bunks, expressed concern about sub-standard medical care, and complained about the routinely malfunctioning toilets that backed sewage into the living areas.<sup>234</sup> When individuals protested about the need to fix the toilets, they were placed in solitary confinement. Finally, in 2015, due to prolonged frustration over squalid and inhumane conditions, thousands of individuals detained at Willacy rioted and burned several of the housing tents. The BOP deemed the facility “uninhabitable”, MTC laid off hundreds of workers, and the company ultimately left the county in the lurch financially. MTC sought to blame the large uprising on a small group of detained individuals who were attempting to influence their location of deportation, and that the others involved in the disturbance had been instructed to blame their actions on poor medical treatment.<sup>235</sup> MTC’s story seems implausible at best, given that under MTC management of Willacy as a CAR there were numerous documented complaints about poor medical care at the facility dating back years, in addition to concerns regarding staff use of solitary confinement to punish those who complained about medical care, chronically poor sanitation, overcrowding, lack of programming, and a slew of other inhumane conditions.<sup>236</sup> Instead, the incident is better described as “a most unsurprising riot” resulting from inhumane conditions created by MTC management. Through its attempts to squeeze profit out of incarceration, MTC created the unbearable conditions that erupted in 2015. Though MTC lauds itself as a “leader in social impact” and extols its educational programming, the ACLU found that Willacy had the least amount of programming of the five Texas CAR’s investigated.<sup>237</sup> It bears mentioning that many of the concerns expressed by individuals detained at Willacy, like poor medical treatment, poor sanitation, and lack of programming that stem from MTC’s cost

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<sup>232</sup> Takei.

<sup>233</sup> ACLU, *Warehoused and Forgotten: Immigrants Trapped in Our Shadow Private Prison System* (New York: American Civil Liberties Union (ACLU), June 2014), p. 104 <<https://www.aclu.org/sites/default/files/assets/060614-aclu-car-reportonline.pdf>> [accessed 18 May 2018].

<sup>234</sup> Takei.

<sup>235</sup> Aaron Nelsen, ‘Prison Company: Inmates in Willacy County May Have Planned Riot’, *San Antonio Express-News*, 2015 <<https://www.mysanantonio.com/news/local/article/Prison-in-Willacy-County-to-lay-off-all-employees-6110137.php>> [accessed 18 May 2018].

<sup>236</sup> ACLU, pp. 83–90.

<sup>237</sup> ACLU, p. 85.

cutting efforts, mirror the common complaints made by detained migrants at OCPC. Discussion now turns to focus on MTC's history in New Mexico.

### **MTC's Past in New Mexico**

While MTC began managing OCPC in 2008, this was not MTC's first venture into the for-profit business of detaining people in the state of New Mexico. Particularly focused around its management of the Santa Fe County Adult Detention Center (SFCADC), also known as the Santa Fe County Jail, MTC has a deeply troubling past in New Mexico. Prior to the termination of MTC's contract with SFCADC, MTC was sued for wrongful death, rape, suicide, and illegal strip searches at the jail.<sup>238</sup> The following section details some of the concerning events that transpired at MTC-managed detention facilities in New Mexico.

**January 2002, Suicide of Tyson Johnson.** On Sunday, January 13, 2002, at the MTC-managed SFCADC, inmate Tyson Johnson hung himself with a "suicide-proof" blanket.<sup>239</sup> Mr. Johnson was a former Army serviceman with no criminal history; on January 11, 2002, while incarcerated at SFCADC, Mr. Johnson used a razor to cut his throat and wrists.<sup>240</sup> As a result, Mr. Johnson was considered a suicide risk and placed in a padded cell in the booking area with nothing but a blanket, not even clothing. It was in this cell using this blanket that Mr. Johnson killed himself. The MTC-managed facility did not have either a psychiatrist or psychologist on staff.<sup>241</sup> According to guard Crystal Quintana, when Johnson told the facility nurse, Sheila Turner, that he wanted to kill himself, nurse Turner replied "Let him".<sup>242</sup> Mr. Johnson's family filed a federal lawsuit naming MTC and Physicians Network Associated (PNA) medical services sub-contractor among the defendants held responsible for Mr. Johnson's suicide.<sup>243</sup>

The family attorney contended that Mr. Johnson should have received mental health treatment but instead MTC facility staff "stuck him in this cell that was a death trap".<sup>244</sup> While MTC's guidelines indicate that individuals on suicide watch were to be monitored every 10 minutes, the log sheet provided to guards for recording suicide watches had space for observations every 15 minutes. The log sheets at the facility show that Mr. Johnson was only observed three times over a 15-hour period.

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<sup>238</sup> Gary Hunter, 'Management & Training Corp. Struggles to Maintain Market Share', *Prison Legal News*, 15 September 2007, 1–8 (p. 1).

<sup>239</sup> Staff Report, 'Man Hangs Himself at Jail', *Albuquerque Journal* (Albuquerque, NM, 15 January 2002), p. 3, NewsBank.

<sup>240</sup> Julie Ann Grimm, 'Family Files Lawsuit After Jail Suicide', *Santa Fe New Mexican* (Santa Fe, NM, 12 August 2003), p. B-1, NewsBank.

<sup>241</sup> Fox Butterfield, 'Justice Dept. Report Shows Trouble in Private U.S. Jails Preceded Job Fixing Iraq's', *New York Times* (New York, 6 June 2004), p. N22.

<sup>242</sup> Butterfield, p. N22.

<sup>243</sup> Grimm, 'Family Files Lawsuit After Jail Suicide'.

<sup>244</sup> Grimm, 'Family Files Lawsuit After Jail Suicide'.

**2003 DOJ Report on SFCADC.** In 2003 the DOJ released a report regarding the MTC-run SFCADC. The report states, “we conclude that certain conditions at the Detention Center violate the constitutional rights of inmates” and continues that “persons confined suffer harm or the risk of serious harm from deficiencies in the facility’s provision of medical and mental health care, suicide prevention, protection of inmates from harm, fire safety, and sanitation.”<sup>245</sup> The report also concluded that “the facility fails to provide inmates sufficient access to the courts and opportunity to seek redress of grievances.”<sup>246</sup> Deficiencies in the medical services were attributed to an MTC sub-contract with PNA. Yet, the DOJ also found severe deficiencies in MTC’s booking area,<sup>247</sup> a failure to meet food service sanitation requirements,<sup>248</sup> and insufficient maintenance of clothing and bedding hygiene.<sup>249</sup> The report also noted that booking cells contained blind spots that created unsafe conditions “in which inmates would be victimized without staff being able to see anything through the doors.”<sup>250</sup> Subsequent events that occurred at SFCADC demonstrate that these concerns about both suicide services and the risks associated with a lack of visibility were prescient.

**2003-2004 Lane McCotter, MTC, and Abu Ghraib.** Before serving as a senior executive for MTC, Lane McCotter worked for the Utah Department of Corrections. McCotter was forced to resign his post as director of Utah’s Department of Corrections after a schizophrenic inmate named Michael Valent died of a blood clot in his leg from being strapped naked to a restraint chair for 16 hours.<sup>251</sup> McCotter initially defended the use of the chair and prison officials attempted to place the blame on Mr. Valent for banging his head against a wall. A video of the incident surfaced showing that Mr. Valent refused to take a pillowcase off his head, and the video prompted public outcry. It also became apparent that in Utah prisons, prolonged use of restraint chairs was being widely deployed under McCotter’s watch. Mr. Valent’s family successfully sued the State of Utah forcing it to ban the use of the restraining chair.<sup>252</sup> Lane

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<sup>245</sup> Ralph F. Boyd, *Santa Fe County Adult Detention Center* (Washington D.C.: Department of Justice, 6 March 2003), p. 36 (pp. 1–2) <[https://www.justice.gov/sites/default/files/crt/legacy/2011/04/14/santa\\_fe\\_findings.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2011/04/14/santa_fe_findings.pdf)> [accessed 15 May 2018].

<sup>246</sup> Boyd, p. 2.

<sup>247</sup> Boyd, p. 22.

<sup>248</sup> Boyd, p. 26.

<sup>249</sup> Boyd, p. 26.

<sup>250</sup> Boyd, p. 23.

<sup>251</sup> ‘Schumer: Prison Official With Checkered Past Put in Power Position at Abu Ghraib’, *Internet Archive Wayback Machine*, 2004

<[https://web.archive.org/web/20081111093640/http://schumer.senate.gov/SchumerWebsite/pressroom/press\\_releases/2004/PR02634.McCotter051304.html](https://web.archive.org/web/20081111093640/http://schumer.senate.gov/SchumerWebsite/pressroom/press_releases/2004/PR02634.McCotter051304.html)> [accessed 16 May 2018]; Charles Schumer, ‘Dear Attorney General Ashcroft’, 2004, *Internet Archive Wayback Machine*

<<https://web.archive.org/web/20081111223642/http://schumer.senate.gov/SchumerWebsite/pressroom/Letters/051304Ashcroft.pdf>> [accessed 16 May 2018].

<sup>252</sup> Dan Frosch, ‘Exporting America’s Prison Problems’, *The Nation*, 12 May 2004

<<https://www.thenation.com/article/exporting-americas-prison-problems/>> [accessed 15 March 2018].

McCotter was named in the suit. Shortly after resigning in the wake of the Michael Valent incident, McCotter was hired by MTC to serve as the company's Director of Corrections Business Management. Apparently, MTC was not troubled by McCotter's problematic involvement in abusive conditions in the company's home state of Utah.

It was during McCotter's tenure as an MTC executive serving as Director of Corrections Business Management that the aforementioned 2003 DOJ report regarding civil and constitutional rights infractions on the part of MTC and PNA at SFCADC was issued.<sup>253</sup> After the release of the 2003 DOJ report on the SFCADC, McCotter was selected by Attorney General John Ashcroft to play a key role in rebuilding the Iraq prison system. McCotter personally selected the site of Abu Ghraib prison, a facility used for torture under Saddam Hussein's rule, the notorious site of severe human rights abuses on the part of U.S. soldiers and contract interrogators, and a facility that served as a breeding ground for ISIS leadership.<sup>254</sup> While McCotter left before reports of prisoner abuse made international news, he was responsible for reopening Abu Ghraib and for training guards.<sup>255</sup> Following the initial public outcry over reports of torture by U.S. soldiers and private interrogators subcontracted by the U.S. government, Senator Chuck Schumer penned a letter and issued a scathing press release.<sup>256</sup> Schumer raised serious concerns about McCotter's past in Utah and his work with MTC in New Mexico, asking why someone with such a checkered past was tasked by the Attorney General with rebuilding the prison infrastructure of Iraq. These are good questions indeed. Though merely summarized here, McCotter's links between MTC operations in New Mexico and the infamous prison in Iraq illustrate the international connections entailed in prison for profit. Interested readers are encouraged to examine this history more closely. Discussion now returns to a historical accounting of incidents in MTC facilities in New Mexico.

**March 2004, Suicide of Juan Ignacio-Sanchez.** On March 17, 2004, Juan Ignacio-Sanchez committed suicide inside the MTC-run SFCADF.<sup>257</sup> His mother warned jail officials that her son was extremely depressed and had informed the police that he would commit suicide if not helped. Her warnings were ignored. Mr. Ignacio-Sanchez's shoes were confiscated by jail guards but they left him with his shoe laces. Mr. Ignacio-Sanchez used these laces to kill himself. The

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<sup>253</sup> Carey, p. 9.

<sup>254</sup> Seymour M. Hersh, 'Torture at Abu Ghraib', *The New Yorker*, 30 April 2004 <<https://www.newyorker.com/magazine/2004/05/10/torture-at-abu-ghraib>> [accessed 17 May 2018]; Noah Bierman, 'Few Have Faced Consequences for Abuses at Abu Ghraib Prison in Iraq', *Latimes.Com*, 2015 <<http://www.latimes.com/nation/la-na-abu-ghraib-lawsuit-20150317-story.html>> [accessed 17 May 2018].

<sup>255</sup> Frosch.

<sup>256</sup> 'SCHUMER'; Schumer.

<sup>257</sup> AP, 'Family Files Suit Over Inmate's Suicide at Santa Fe Jail', *Albuquerque Journal*, 2005, p. 3 <<https://www.abqjournal.com/news/state/apjail06-23-05.htm>> [accessed 15 May 2018].

previous year, DOJ found that the facility lacked adequate suicide prevention.<sup>258</sup> Mr. Ignacio-Sanchez's death the following year demonstrated that the DOJ's concerns were warranted.

**June 2004, Death of Dickie Ortega.** On June 5, 2004, while detained at the MTC-run SSFCADF, Dickie Ortega died of a beating to his head and face.<sup>259</sup> In gang-related retaliation, Mr. Ortega had been beaten while previously detained at the facility and relayed this fact to his jailers when re-booked into the SFCADF. He asked not to be placed into a pod with his enemies. *Prison Legal News* (PLN) reported that "when an MTC guard saw Ortega's prone body on the floor of his cell, gang members told him that Ortega was simply going through heroin withdrawal."<sup>260</sup> The guard walked away and later admitted to being intimidated by the situation. Mr. Ortega's family filed a wrongful death suit that alleged staff shortages, a lack of security precautions, and gang members running the jail. MTC settled the case under confidential terms.<sup>261</sup> The *Santa Fe New Mexican* reports that MTC paid the Ortega family \$600,000.<sup>262</sup>

**August 2004, Suicide of Michael Martinez.** In August 2005, Michael Martinez was "discovered hanging from the light fixture in his cell in the medical ward" at SFCADF.<sup>263</sup> Mr. Martinez had been taken to the medical ward because of a prior suicide attempt.<sup>264</sup> As with the suicide of Mr. Ignacio-Sanchez, Mr. Martinez's suicide was a further manifestation of the fatal deficiencies in suicide prevention cited in the DOJ's 2003 report on SFCADF.<sup>265</sup>

**December 2004 Rape of Veronica Sanchez.** Arrested on a DWI charge, Veronica Sanchez was raped by at least two men after accidentally entering an open cell containing more than eight detained males.<sup>266</sup> The cell had been left open by a detention officer who informed her that he would open the door. Once inside the cell, she was trapped by the detained men and repeatedly raped. After the incident, she reported that she was placed in an isolated cell for hours, and that she was only taken to the hospital for an examination after becoming extremely agitated. Following the incident, the guard denied opening the cell. A medical officer at the jail

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<sup>258</sup> Boyd, pp. 2, 13, 15–22.

<sup>259</sup> Jason Auslander, 'Ex-Inmate Tells of Fatal Jail Beating: Witness Recounts Attack During Trial for 2004 Murder of Dickie Ortega', *The Santa Fe New Mexican*, 7 November 2007 <[http://www.santafenewmexican.com/news/local\\_news/ex-inmate-tells-of-fatal-jail-beating/article\\_6f6c2884-79fc-5d18-937d-dcc629fbb259.html](http://www.santafenewmexican.com/news/local_news/ex-inmate-tells-of-fatal-jail-beating/article_6f6c2884-79fc-5d18-937d-dcc629fbb259.html)> [accessed 15 May 2018].

<sup>260</sup> Hunter, p. 3.

<sup>261</sup> Hunter, p. 3.

<sup>262</sup> Auslander, 'Ex-Inmate Tells of Fatal Jail Beating: Witness Recounts Attack During Trial for 2004 Murder of Dickie Ortega'.

<sup>263</sup> Julie Ann Grimm, 'Dying Behind Bars: Suicide, Drug-Related Deaths at Santa Fe County Jail Defy National Trends', *Santa Fe New Mexican* (Santa Fe, NM, 4 December 2005), section Main, p. A-1, NewsBank.

<sup>264</sup> Jeremy Pawloski, 'County Inmate Found Dead - Man Apparently Hanged Himself from Light Fixture with Blanket, Sheriff's Officials Say', *Albuquerque Journal* (Albuquerque, NM, 25 August 2005), p. 1, NewsBank.

<sup>265</sup> Boyd, pp. 2, 13, 15–22.

<sup>266</sup> Jeremy Pawloski, 'Accuser May Sue County', *Albuquerque Journal* (Albuquerque, NM, 14 December 2004), p. 1, NewsBank.

is quoted as saying that the detention officer “lost” Ms. Sanchez in the jail and “he knew he should not have had male and female detainees out of booking cells at the same time, but that his supervisor told him just to handle it on his own.”<sup>267</sup> At the hospital, following the rape exam, Ms. Sanchez was strip-searched; a procedure she claimed was humiliating and unnecessary.<sup>268</sup> Ms. Sanchez sued both the county and MTC who managed the facility when the incident took place. County Attorney Stephen Ross said he expected MTC “to carry the burden of defending this and all other lawsuits that derive from their tenure at the jail.”<sup>269</sup> The suit asserted that the jail was not adequately staffed in the booking area when the incident took place. The suit also pointed out that the 2003 DOJ report indicated that there were blind spots in the booking cells that created the potential for victimizing vulnerable individuals.<sup>270</sup> Federal court records indicate the suit was dismissed by agreement of all parties, and due to a confidentiality agreement, attorneys were not at liberty to disclose the amount that was paid out to Ms. Sanchez by MTC.<sup>271</sup>

**April 2005 MTC Leaves SFCADC.** In April 2005 MTC determined that it could not make a profit operating the SFCADC. Al Murphy, MTC Vice President, stated that “[l]ow inmate occupancy numbers and the costs of additional operating requirements have made it impossible for MTC to continue to manage the facility.”<sup>272</sup> MTC argued that the daily reimbursement for inmates, which ranged from \$42-\$65, was too low to meet detention standards set by the DOJ. County Sheriff Greg Solano said it was time for the county to take over the operation of the jail.

**January 13 2006 Systematic Strip Searches.** In January 2013 a class action lawsuit alleging violations of civil and constitutional rights was filed on behalf of individuals booked into the SFCADC who were systematically strip searched.<sup>273</sup> According to the article, the plaintiffs in the suit were Kristi Seibold, Natasha Apodaca, Elizabeth Leyba, Nancy Ellin, Monica Garcia, Lucy M. Marquez, Mark Miller, Copper Perry, David Sandoval, Russella Serna and Kimberly Wright. MTC, which managed the facility, was among the defendants named. Until December 15, 2004 every individual booked into the SFCADC was systematically strip searched. Written policy called for guards to strip search incoming inmates, but an MTC spokesperson denied that is what

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<sup>267</sup> Pawloski, ‘Accuser May Sue County’.

<sup>268</sup> Staff Report, ‘Woman: Strip Search Followed Rape Exam - Lawsuit Names SF County Jail’, *Albuquerque Journal* (Albuquerque, NM, 28 September 2006), p. 3, NewsBank.

<sup>269</sup> Staff Report, ‘Woman: Strip Search Followed Rape Exam - Lawsuit Names SF County Jail’.

<sup>270</sup> Boyd, p. 23.

<sup>271</sup> Erica Cordova, ‘Inmates’ Lawsuits Against Jail Settled - Former Managers Faulted in Suits’, *Albuquerque Journal* (Albuquerque, NM, 5 May 2007), p. 1, NewsBank.

<sup>272</sup> Laura Banish and Mark Oswald, ‘Jail Firm Wants Out’, *Albuquerque Journal* (Albuquerque, NM, 15 April 2005), p. 1, ProQuest.

<sup>273</sup> Jason Auslander, ‘Lawsuit: Jail’s Strip-Searches Violate Constitutional Rights’, *Santa Fe New Mexican* (Santa Fe, NM, 13 January 2005), p. A-1, NewsBank.



happened.<sup>274</sup> After December 2013 the policy was changed so that only individuals on felony drug, weapons, or other violent charges were strip-searched. According to Sheriff Greg Solano, the county's contract with MTC absolved the county of involvement in lawsuits filed against the jail.<sup>275</sup> In 2006, while MTC denied that the strip-search policy violated the law, MTC agreed to pay \$8 million to thousands of individuals who were strip-searched while being booked into the jail over the three years MTC managed the facility.<sup>276</sup>

**August 2006, Sexual Harassment of Victoria Griego.** In August, 2006, Victoria Griego filed a lawsuit alleging repeated sexual harassment by an MTC employee named Wendell Montano, who was a guard at the SFCADC.<sup>277</sup> The suit alleged that Montano ogled Ms. Griego, asked to see her breasts, and watched her as she used her cell's bathroom. The suit also alleged that MTC jail employees "also on numerous occasions ordered Ms. Griego to stand in a circle with other inmates and bend over and spread open their buttocks for viewing by Defendants for no other purpose than training new employees."<sup>278</sup>

**January 2006 Sexual Assault Civil Suit.** Brian Orr, an MTC employee, guard, and one-time Captain at McKinley County Adult Detention Center, was criminally charged with sexually assaulting three women during 2003.<sup>279</sup> The women claimed that Orr criminally penetrated and photographed them nude.<sup>280</sup> The ACLU filed a civil suit on behalf of the women and MTC was named as one of the defendants.<sup>281</sup> The civil suit claimed both negligence along with failure to properly train and supervise Orr. A settlement was reached in the civil suit, no county money was involved, and the amount that MTC paid out to the defendants was kept confidential.<sup>282</sup> One of the accusers at the trial said she received \$55,000 as her part of the settlement.

**Summary up to 2010.** At this point, a quick summary is in order. Within New Mexico alone, MTC-run facilities were implicated in a number of troubling incidents including: 1) the 2002 suicide of Tyson Johnson and subsequent suit by the family, 2) a scathing 2003 DOJ report, 3) the suicide of Juan Ignacio-Sanchez, 4) the death of Dickie Ortega in which MTC paid an

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<sup>274</sup> Anne Constable, 'Strip-Searches Exposed', *The Santa Fe New Mexican* (Santa Fe, NM, 21 November 2004), p. a-1, ProQuest.

<sup>275</sup> Auslander, 'Lawsuit: Jail's Strip-Searches Violate Constitutional Rights'.

<sup>276</sup> Jason Auslander, 'Strip-Search Payout: \$8.5 Million', *Santa Fe New Mexican* (Santa Fe, NM, 7 July 2006), p. A-1, NewsBank.

<sup>277</sup> Jeremy Pawloski, 'Ex-Inmate Suing SF Jail - Woman Claims She Was Sexually Harassed by Male Guard', *Albuquerque Journal* (Albuquerque, NM, 2 August 2006), p. 7, NewsBank.

<sup>278</sup> Pawloski, 'Ex-Inmate Suing SF Jail - Woman Claims She Was Sexually Harassed by Male Guard'.

<sup>279</sup> Bill Donovan, 'Orr's Jail Sex Trial Begins - 2 of 3 Alleged Victims Take Stand', *The Gallup Independent* (Gallup, NM, 3 January 2006), NewsBank.

<sup>280</sup> Staff Report, 'Officer Assaulted Inmates, Suite Says', *The Billings Gazette* (Billings, MT, 24 January 2006), NewsBank.

<sup>281</sup> 'ACLU of New Mexico Files Lawsuit Over Jail Guard's Sexual Abuse of Female Prisoners' (American Civil Liberties Union, 2006) <[http://www.aclu.org/prison/women/23942prs20060125.html?s\\_src=RS](http://www.aclu.org/prison/women/23942prs20060125.html?s_src=RS)>.

<sup>282</sup> Donovan.

undisclosed amount, 5) the 2004 suicide of Michael Martinez, 6) the 2004 rape of Veronica Sanchez in which MTC paid an undisclosed amount, 7) the class action suit regarding strip searches in which MTC paid out over \$8 million, 8) the 2006 sexual harassment of Victoria Griego in which MTC again paid an undisclosed amount, and 9) the 2006 sexual assault civil suit against former MTC employee and McKinley County Adult Detention Center Captain Brian Orr. After all these troubling incidents and successful suits against MTC, Robert Marquardt asserted that the 2010 breakout at the Arizona State Prison – Kingman represented “the first major glitch”.<sup>283</sup> In 2010, either Mr. Marquardt seemingly forgot the nine aforementioned incidents in New Mexico or he was attempting to be consciously deceptive in describing the 2010 Kingman breakout as “the first major glitch” his firm experienced. This is certainly not an isolated case of deceptive language from MTC.

Sadly, MTC, like other companies engaged in the cruel business of incarcerating people for financial gain, is beleaguered by a long string of “glitches” that largely stem from attempts to cut operating costs to maximize corporate profits. In fact, after the string of disasters at the SFCADC, MTC spokespersons were explicit about the fact that they wanted out of the contract because there were too few individuals incarcerated to make the venture lucrative for the company. This decision makes starkly clear that more bodies in confinement is good business for the private prison industry; this fact explains the rise of immigration detention described earlier in this appendix. Putting more bodies behind bars, using as little labor as possible to do so, and providing the least number of services legally permissible is the operating business model—despite the false humanism portrayed in the company’s slick advertising materials.

There is one more important piece of MTC’s history in New Mexico that warrants review as this particular instance is at the Otero County Prison Facility adjacent to OCPC. The problems identified articulate with one of the complaints made by detained migrants at OCPC—namely, difficulty with getting mail.

**2017 Censoring of Prison Legal News.** In 2017, the Human Rights Defense Center (HRDC), the parent organization and publisher of Prison Legal News (PLN), sued MTC for blocking the distribution of PLN books and publications sent to individuals incarcerated at the Otero County Prison Facility (next to OCPC) and to the North Central Correctional Complex in Ohio.<sup>284</sup> HRDC claimed that by blocking the distribution of PLN publications, MTC was engaging in censorship and violating the First and Fourteenth Amendments of the Constitution. HRDC executive director Paul Write stated “MTC has a policy and practice of censoring the free speech of publishers and book distributors around the country. As a for-profit, private prison company, it

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<sup>283</sup> Carlisle.

<sup>284</sup> Derek Gilna, ‘HRDC/PLN Obtain Landmark Nationwide Censorship Settlement with Private Prison Company’, *Prison Legal News*, September 2017, p. 44.

is shameful that they are being paid by the taxpayers to violate the First Amendment rights of publishers and prisoners alike.”<sup>285</sup> HDRC alleged that MTC’s “mail policy and practice bans books sent by PLN and other senders to prisoners at the Otero Prison because the books: (1) have not been pre-approved by the Defendants [MTC]; (2) the sender is not on an approved vendor list; and/or (3) were not purchased through the Otero Prison business office.”<sup>286</sup> The suit alleged that MTC’s “mail policy and practices violate PLN’s First Amendment right to free speech, and its Fourteenth Amendment rights to due process of law and equal protection.”<sup>287</sup> PLN reported that MTC agreed to modify its mail policy to permit delivery of unsolicited publications regardless of vendor, publisher, or distributor. The new mail policies now include an appeals process that allows incarcerated individuals to challenge the rejection of publications and assures that prisoners will be notified of mail censored for institutional safety. MTC also agreed to pay \$150,000 to HRDC for damages, attorney fees, and litigation. Further, MTC agreed to comply with the settlement terms at all of its privately managed correctional and detention facilities in the US. These policies do not appear to have been implemented at OCPC.

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<sup>285</sup> Gilna.

<sup>286</sup> Gilna.

<sup>287</sup> Gilna.

## Appendix B: Government Inspections and Facility Reviews

Because all ICE facilities that house detained migrants for more than 72 hours are subject to annual reviews, OCPC must be inspected and reviewed annually. These inspections are performed by the Enforcement and Removal Operations (ERO) and are termed “Detention Facility Reviews”. ERO Detention Facility Reviews are either performed by ICE officers or are sub-contracted to a private inspection firm. A second type of review is performed by the Office of Detention Oversight (ODO) and is called a “Quality Assurance Review”. ODO reviews focus on areas where a given facility is deficient or non-compliant.<sup>288</sup> ODO reviews examined in this report were done by ICE and not contracted out to private third-party consultants.

According to the IGSA between Otero County and ICE, when OCPC fails to meet performance standards, the Government has latitude to take action; “[r]ather than withholding funds until a deficiency is corrected, there may be times when an event or deficiency is so egregious that the Government **deducts** (vs. “withholds”) amounts from the service provider’s monthly invoice. This may happen when an event occurs, such as sexual abuse, when a particular deficiency is noted 3 or more times without correction, or when the service provider has failed to take timely action on a deficiency about which he was properly and timely notified.”<sup>289</sup> Private facilities, such as OCPC, stand to lose money if they are not in compliance with ICE standards. In 2009, Congress passed a DHS appropriations bill wherein ICE cannot direct money to a detention facility that fails two consecutive inspections.<sup>290</sup>

On the [contact page](#) of its website, ICE ERO states twice that it “is committed to a transparent process and to resolving your concerns” ending the two sentences alternatively “at the earliest opportunity available” and “as promptly as possible”.<sup>291</sup> The website further states “ERO is dedicated to ensuring the public is fully informed of the agency’s immigration enforcement efforts. In support of the agency’s mission, ERO is committed to transparency, collaboration and resolving concerns with community stakeholders. These stakeholders include the public, non-governmental organizations, faith-based organizations, academic institutions, attorneys, and advocacy groups.” It is clear that, in using this language, ICE is publicly presenting a face of transparency and accountability.

In sharp contrast with the ICE website, DWN and NIJC assert that “ICE provides minimal transparency to the public on how it operates its immigration detention system.”<sup>292</sup> Both DWN and NIJC filed a Freedom of Information Act (FOIA) request to obtain contracts and inspections

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<sup>288</sup> NIJC, *Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse*, p. 7.

<sup>289</sup> , p. 47 italics and bold in original.

<sup>290</sup> NIJC, *Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse*, pp. 4–5.

<sup>291</sup> ERO, ‘Enforcement and Removal Operations Field Offices | ICE’, *Contact ICE*, 2018

<<https://www.ice.gov/contact/ero>> [accessed 15 March 2018].

<sup>292</sup> DWN and NIJC, p. 2.

for the 100 largest immigration detention facilities in the US. “NIJC entered into a three-year litigation battle and obtained the documents it requested in 2015, resulting in the most comprehensive public release to date of ICE immigration detention center contracts and inspections. The thousands of pages of documents provide an unprecedented look into a failed detention system that lacks accountability, shields ICE from public scrutiny, and allows local governments and private prison companies to brazenly maximize their bottom line at the expense of basic human rights.”<sup>293</sup>

Despite ICE claims of transparency, only those Detention Facility Reviews obtained through FOIA requests are posted on the ICE website. The present report reviews ERO Detention Facility Reviews and ODO Quality Assurance Reviews available for OCPC that are posted on the internet. Ten documents were reviewed: four ERO inspections, five ODO reviews, and one Office of Inspector General (OIG) report. With the exception of the public OIG report, ICE reviews and inspections were made public by FOIA suits like the NIJC suit described above. While NIJC [hosts the documents on their website](#), reviews were accessed from the [ICE FOIA library](#) with the exception of a few official reviews that were not hosted there but found elsewhere. It merits mention that, on the Tim Berners-Lee [five stars of openness for open data scale](#), Data.gov [assigns](#) the ICE FOIA library one star which is the lowest ranking possible.

NIJC observes that both ERO and ODO inspection reports “are not designed to capture actual conditions of detention for the population at a given facility.”<sup>294</sup> NIJC continues, “reviews of inspections at six detention facilities revealed (see Section IV) inspectors track whether or not policies exist rather than inquire into their implementation or effectiveness.”<sup>295</sup>

The following is a summary of the findings of the official reviews and inspections in chronological order. They reveal not only a pattern of deficiencies, but a track record of not dealing with deficiencies, and significant discrepancies in the interpretation of identical conditions. These patterns suggest that 1) there is more going on inside OCPC than what is presented in MTC’s public relations and advertising media and 2) consistent with the NIJC’s conclusions, ICE inspections are largely ineffective at holding detention facilities to ICE’s own detention standards.<sup>296</sup>

### **2008 Sept 16-18 [ERO Detention Facility Review](#) (under NDS 2000)**

Between September 16-18, 2008 ERO performed a Detention Facility Review the first inspection conducted at OCPC, and found three standards deficient and 28 components deficient. The deficient standards were: 1) Food Service, 2) Environmental Health and Safety, 3)

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<sup>293</sup> DWN and NIJC, p. 2.

<sup>294</sup> *Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse*, p. 4.

<sup>295</sup> NIJC, *Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse*, p. 13.

<sup>296</sup> NIJC, *Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse*, p. 10.

Transportation (Land Management).<sup>297</sup> For the OCPC facility in general, the Reviewer-In-Charge recommended a deficient rating.<sup>298</sup> This inspection appears to have been performed by ICE ERO and not a private contractor.

In reviewing food service, the ICE inspection states “Food service has approximately 12-15 detainees assigned to work food service and they receive \$1.00 per day. The food service quota of detainee workers needs to be increased to enhance the overall sanitation.”<sup>299</sup> After citing the 1\$ a day pay rate, and noting that more detained migrants are required to maintain sanitation, the ICE inspection notes that detained migrants are paid in accordance with the “Voluntary Work Program” standard.<sup>300</sup> The review notes that there is no complete nutritional analysis of the menus, that there is no common fare menu and that the current program does not meet detained migrants’ religious dietary requirements as required.<sup>301</sup> The report also states that “food service is not providing any medical diets to anyone within the facility” even though it is “required to provide all medical diets as ordered by the medical department according to MTC Policy Number 4.1.6, Special Diets. Food service does not have a proper medical diet menu to address any special medical diets.”<sup>302</sup> In Food Service, many sanitation issues were noted and that neither the food service director nor his assistant is conducting a weekly sanitation inspection.<sup>303</sup> The report found that no one on the food service staff had a New Mexico Food Handlers Card as required by MTC Policy Number 4.1.1 Food Service Management.

The inspection found that the local facility detained migrant handbook does not explain the detained migrant classification process and noted that the handbook is under revision.<sup>304</sup> The inspection found that “MTC Policy Number 2.1.11 Detainee Funds and Personal Property, does not address proper procedures in returning forgotten property to detainees.”<sup>305</sup> The facility did not currently have a comprehensive approved fire plan in place.<sup>306</sup> “During the review detainees were observed sleeping on the floor with blankets.”<sup>307</sup> “The latrines on the buses were not clean and operational. There were no drinking-water containers on the buses.”<sup>308</sup> Eight of the MTC transportation vehicles were not clean and sanitary.

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<sup>297</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, Sept 16-18, 2008*, p. 3.

<sup>298</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, Sept 16-18, 2008*, p. 4.

<sup>299</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, Sept 16-18, 2008*, p. 18.

<sup>300</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, Sept 16-18, 2008*, p. 18.

<sup>301</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, Sept 16-18, 2008*, pp. 18–19.

<sup>302</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, Sept 16-18, 2008*, p. 20.

<sup>303</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, Sept 16-18, 2008*, p. 21.

<sup>304</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, Sept 16-18, 2008*, pp. 11, 14.

<sup>305</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, Sept 16-18, 2008*, p. 23.

<sup>306</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, Sept 16-18, 2008*, p. 57.

<sup>307</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, Sept 16-18, 2008*, p. 61.

<sup>308</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, Sept 16-18, 2008*, p. 77.

### **2009 March 3-5 ERO [Detention Facility Review](#) (under NDS 2000)**

Between March 3-5, 2009 ERO performed a Detention Facility Review, and found that no standards were deficient and 10 components were deficient.<sup>309</sup> The inspection, performed by Creative Corrections, was scheduled as a follow-up to measure compliance with ICE National Detention Standards to evaluate progress of corrective action since the review conducted six months prior.<sup>310</sup> The Reviewer-In-Charge recommended rating the facility as “Good” and indicated that a plan of action should not be necessary.<sup>311</sup> The inspection noted that between October and December one detained migrant died due to an illness.

The inspection observed the presence of house-flies in the kitchen area.<sup>312</sup> The inspection noted that Armed Forces Recipes are used and that the cook is not allowed to deviate from the menu items.<sup>313</sup> Medical diets are supplied as required.<sup>314</sup> The inspection found that the facility considers the ethnic diversity of the facility’s detained migrant population when developing menus and lists Lasagna, Yakisoba, Hot Dogs, Hamburgers, and “Pork Adobe” (rather than adobo) as among the example dishes that fulfill this requirement.<sup>315</sup> Though the vast proportion of detained migrants were Latin American, other than “Pork Adobe”, burritos were the only example item of Latin American cuisine listed.

While the inspection noted a detained migrant population of 893 individuals, Creative Corrections inspectors found that a law library with four computers and no typewriters is “adequately equipped” and “has sufficient supplies for daily use by the detainees.”<sup>316</sup> That comes out to one computer for every 223 individuals. Twenty-four-hour access and uninterrupted constant use would permit each person about six minutes per day, or 42 minutes per week, access to a computer for law library research. The same standards note that detained migrants are offered a minimum of five hours per week access to the law library. If computers were used uninterrupted, 24 hours a day, seven days a week, the law library would need at least 37 computers to provide the equipment necessary to offer the mandated minimum of five hours per week access.

The inspection notes that handball, basketball, or soccer are the only outside activities.<sup>317</sup> Visitation “is done by alphabet and limited to 30 minutes.”<sup>318</sup> The inspection found that goggles

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<sup>309</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 3-5, 2009.*

<sup>310</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 3-5, 2009.*

<sup>311</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 3-5, 2009*, p. 3.

<sup>312</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 3-5, 2009*, p. 82.

<sup>313</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 3-5, 2009*, p. 20.

<sup>314</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 3-5, 2009*, p. 21.

<sup>315</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 3-5, 2009*, p. 20.

<sup>316</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 3-5, 2009*, pp. 4, 11.

<sup>317</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 3-5, 2009*, p. 31.

<sup>318</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 3-5, 2009*, p. 36.

are not available for use when handling corrosives and that there was no eyewash station in Food Service, Medical, or Laundry.<sup>319</sup> Inspectors found that the disciplinary appeals procedure was not contained in the facility detained migrant handbook.<sup>320</sup>

**2009 June 16-18 DFIG (ODO's predecessor) [Quality Assurance Review](#) (under NDS 2000)**

Between June 16-18, 2009, the Detention Facilities Inspection Group (DFIG), later subsumed under the ODO, conducted a Quality Assurance Review of OCPC to focus on areas of noncompliance with ICE NDS.<sup>321</sup> DFIG interviewed 50 detained migrants and identified three common complaints: food service, medical, and “staff-detainee” communication. “Detainees stated that food portions were frequently cold, small, and lacked diversity. In many instances, detainees did not know the deportation officer handling their case or how to contact them.”<sup>322</sup> Detained migrants also complained that “the amount of time between submitting a sick call slip and seeing a member of the medical staff was excessive.”<sup>323</sup>

In response to detained migrants' complaints about food service, DFIG found those complaints “without merit due to the fact that OCPC utilizes a registered licensed dietitian to prepare and certify the menu”.<sup>324</sup> DFIG's subterfuge of detained migrant complaints regarding food portions is consistent with NIJC's claim that “the checklist-driven inspections process obscures the conditions immigrants actually face in detention centers and whether standards are being implemented to their full intent.”<sup>325</sup> Though DFIG found detained migrant complaints meritless, the review did note a large presence of flies in the food service area.

The Quality Assurance Review notes that there are four computers in the Law Library that are to serve the needs of 900 detained migrants and concluded that “there are not enough computers or printers to serve the needs.”<sup>326</sup> This is in contrast to the previous Creative Corrections inspection.<sup>327</sup> The Quality Assurance Review found that there is no procedure in place for detained migrants to report missing or damaged law library material; there was no procedure in place to assist detained migrants who needed legal materials not in the law library; and the local facility detained migrant handbook did not provide information on rules and procedures for access to legal materials.<sup>328</sup>

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<sup>319</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 3-5, 2009*, p. 55.

<sup>320</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 3-5, 2009*, p. 82.

<sup>321</sup> DFIG.

<sup>322</sup> DFIG, p. 9.

<sup>323</sup> DFIG, p. 9.

<sup>324</sup> DFIG, p. 19.

<sup>325</sup> NIJC, *Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse*, p. 13.

<sup>326</sup> DFIG, p. 13.

<sup>327</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 3-5, 2009*, p. 11.

<sup>328</sup> DFIG, p. 13.



DFIG found that “OCPC personnel performing the classification function have not been formally trained and no training records are available”, and that level two and three detained migrants were mixed in housing units.<sup>329</sup> The Quality Assurance Review noted that the local facility detained migrant handbook did not contain information on appeals procedures, did not provide information on special correspondence, and provided no notice informing detained migrants that mail addressed to the detained migrant “will be opened and inspected in the detainee’s presence”.<sup>330</sup> DFIG found deficiencies in the storage of detained migrant property,<sup>331</sup> detained migrant religious preferences were not designated during in-processing,<sup>332</sup> and that not all written detained migrant requests were maintained in a dedicated log book.<sup>333</sup> DFIG reviewed several use-of-force packages “when calculated use of force was utilized,” finding that “[s]ome of the packages reviewed did not contain any video record of the incident,” and that paperwork was incomplete for several after-action use-of-force reviews.<sup>334</sup> DFIG noted that some OCPC staff used unauthorized use-of-force devices and that the Field Office Director “must ensure only authorized non-deadly devices are used in the detention facility.”<sup>335</sup>

Five deficiencies were found in Visitation: OCPC policy did not address confidential group meetings, policy did not address legal visitation times on weekends and holidays, “detainees in disciplinary segregation sometimes participate in general visitation while in restraints”, and Form G-28 related to entry of an attorney or representative was not available in the reception area.<sup>336</sup> DFIG notes that FOD must ensure that “under no circumstances” are detained migrants to participate in general visitations while in restraints.<sup>337</sup>

### **2010 March 9-11 ERO [Detention Facility Review](#) (under NDS 2000)**

Between March 9-11, 2010 ERO conducted a Detention Facility Review and found no deficient standards and four deficient components.<sup>338</sup> The inspection was performed by ICE ERO and not a private contractor.

Though DFIG found the law library deficient for lack of computers to serve a detained migrant population of 900,<sup>339</sup> the following year ICE ERO found the library adequately equipped with

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<sup>329</sup> DFIG, p. 16.

<sup>330</sup> DFIG, p. 17.

<sup>331</sup> DFIG, p. 20.

<sup>332</sup> DFIG, p. 22.

<sup>333</sup> DFIG, p. 23.

<sup>334</sup> DFIG, p. 25.

<sup>335</sup> DFIG, p. 26.

<sup>336</sup> DFIG, p. 27.

<sup>337</sup> DFIG, p. 27.

<sup>338</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 9-11, 2010.*

<sup>339</sup> DFIG, p. 13.

typewriters and/or computers.<sup>340</sup> The 2010 inspection gives no indication of the number of computers present in the law library.

The inspection noted “two substantial cases of staff using inappropriate language when addressing detainees,” “staff admitted to the inappropriate behavior,” and they “were referred for disciplinary action.”<sup>341</sup> The inspection claims that OCPC “offers a wide variety of indoor and outdoor recreational opportunities for detainees”, contact sports are prohibited, and “detainees were observed playing soccer and basketball.”<sup>342</sup> Three additional deficient components involved transferred detained migrants not having their medical records sent with them,<sup>343</sup> the security officer lacked locksmith training,<sup>344</sup> and the SMU entrance does not have a sally port.<sup>345</sup> This ERO had the least number of deficient components of any of the inspections or quality assurance reports reviewed. At least one area of concern identified by DFIG was deemed acceptable by this review and no indication of corrective action was indicated. This underscores the NIJC finding of “significant inconsistencies within and between inspection reports for individual facilities, as well as between ODO and ERO inspections, raising questions about the reliability of either inspections process” .<sup>346</sup>

#### **2010 April 13-15 ODO [Follow-up Inspection](#) (under NDS 2000)**

Between April 13-15, ODO, formerly DFIG, performed a Follow-up Inspection of OCPC.<sup>347</sup> ODO inspection was performed by ICE and primarily focused on areas of noncompliance with NDS.<sup>348</sup> During the DFIG Quality Assurance Review from June 2009, 29 deficiencies were identified. During the 2010 Follow-up Inspection “ODO staff found 10 (34%) repeated deficiencies” .<sup>349</sup> Uncorrected deficiencies that were noncompliant with ICE NDS were: Access to Legal Material, “Detainee” Handbook, Detention Files, Funds and Personal Property, Key and Lock Control, “Staff-Detainee” Communication, and Use of Force.<sup>350</sup>

With respect to the law library the ODO Follow-up found that the local facility detained migrant handbook did not detail 1) hours of access to the law library, 2) procedures for requesting access to the law library, 3) procedures for requesting legal reference materials that are not in the law library, and 4) procedures for notifying employees that library materials are missing or

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<sup>340</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 9-11, 2010*, p. 4.

<sup>341</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 9-11, 2010*, p. 19.

<sup>342</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 9-11, 2010*, p. 25.

<sup>343</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 9-11, 2010*, p. 39.

<sup>344</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 9-11, 2010*, p. 53.

<sup>345</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, March 9-11, 2010*, p. 57.

<sup>346</sup> NIJC, *Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse*, p. 4.

<sup>347</sup> ODO, *Follow-up Inspection, Otero County Processing Center, Chaparral, NM, April 13-15, 2010*.

<sup>348</sup> ODO, *Follow-up Inspection, Otero County Processing Center, Chaparral, NM, April 13-15, 2010*, p. 4.

<sup>349</sup> ODO, *Follow-up Inspection, Otero County Processing Center, Chaparral, NM, April 13-15, 2010*, p. 5.

<sup>350</sup> ODO, *Follow-up Inspection, Otero County Processing Center, Chaparral, NM, April 13-15, 2010*, p. 5.

damaged.<sup>351</sup> No mention was made of the earlier finding that the four computers in the law library were insufficient for a detained migrant population of nearly 900 individuals.<sup>352</sup> In fact, the Follow-up document does not even contain the word “computer”.<sup>353</sup> This further corroborates NIJC claims that ICE ERO and ODO inspections are inconsistent and of dubious reliability.<sup>354</sup>

The initial DFIG Quality Assurance Review found a deficiency in that the local facility handbook did not note that “general correspondence and other mail addressed to detained migrants must be opened and inspected in the detainee’s presence, unless the Officer in Charge authorizes inspection without the detainee’s presence for security reasons”.<sup>355</sup> The ODO Follow-up found that the OCPC local facility detained migrant handbook still “does not note all general correspondence and other mail addressed to detainees will be opened and inspected in the detainee’s presence”.<sup>356</sup>

The initial DFIG Quality Assurance Review initially found that the facility did not maintain a secure locker for holding large valuables.<sup>357</sup> On the Follow-up, ODO found continued noncompliance in that the property room lacked secured filing cabinets designed to hold large valuables; “two officers were found within the property room, each having access to the cabinets”; and the “cabinets are not restricted to designated supervisory staff”.<sup>358</sup> Since nearly all detained migrant property is confiscated and stored at intake, the lack of secure storage places detained migrants in an extremely vulnerable position with regards to having their belongings stolen.

In another repeat noncompliance, ODO found that the “detainee handbook does not specify: the rules for storing or mailing property not allowed in their possession; the procedure for claiming property upon release, transfer, or removal’ or how to file a claim for lost or damaged property”.<sup>359</sup>

DFIG initially observed that detained migrant requests were not recorded in a log book designed for that purpose.<sup>360</sup> On the Follow-up, ODO found that request logs were not

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<sup>351</sup> ODO, *Follow-up Inspection, Otero County Processing Center, Chaparral, NM, April 13-15, 2010*, p. 6.

<sup>352</sup> DFIG, p. 13.

<sup>353</sup> ODO, *Follow-up Inspection, Otero County Processing Center, Chaparral, NM, April 13-15, 2010*.

<sup>354</sup> NIJC, *Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse*, p. 4.

<sup>355</sup> DFIG, p. 17; ODO, *Follow-up Inspection, Otero County Processing Center, Chaparral, NM, April 13-15, 2010*, pp. 7–8.

<sup>356</sup> ODO, *Follow-up Inspection, Otero County Processing Center, Chaparral, NM, April 13-15, 2010*, p. 8.

<sup>357</sup> DFIG.

<sup>358</sup> ODO, *Follow-up Inspection, Otero County Processing Center, Chaparral, NM, April 13-15, 2010*, p. 8.

<sup>359</sup> ODO, *Follow-up Inspection, Otero County Processing Center, Chaparral, NM, April 13-15, 2010*, p. 8.

<sup>360</sup> DFIG.

maintained from Nov. 1, 2009 to Mar. 31, 2010, and detained migrant requests submitted directly to ICE were not maintained.<sup>361</sup>

DFIG initially found three deficiencies in Use of Force.<sup>362</sup> During the Follow-up, ODO observed that in violation of the NDS some OCPC staff continued to employ unauthorized use-of-force devices.<sup>363</sup> The ODO Follow-up also stated that the ICE Office of Professional Responsibility scheduled an inspection regarding the death of a detained migrant housed at OCPC and that this inspection would commence on the 4<sup>th</sup> of December and continue to the 5<sup>th</sup> of December.<sup>364</sup>

### **2011 June 21-23 ODO [Quality Assurance Review](#) (under NDS 2000)**

On May 9, 2011, OCPC changed its contract to conform to PBNDS, but a June 2011 ODO Compliance Inspection was conducted under NDS because the facility was transitioning to PBNDS.<sup>365</sup> Between June 21-23, 2011, ODO conducted a Quality Assurance Review of OCPC to focus on areas of noncompliance with ICE NDS. ODO reviewed 23 NDS standards and found 10 deficiencies in 4 areas: “Detainee” Grievance Procedures (1), “Staff-Detainee” Communication (2), Telephone Access (3), and Use of Force (4).<sup>366</sup> The “Detainee” Grievance Procedures deficiency “involved not properly documenting oral grievances resolved in the detainee’s favor.”<sup>367</sup> The “Staff-Detainee” Communication deficiency stems from the fact that “no policy or procedure exists to document and ensure that the FOD [Field Office Director], AFOD [Assistant Field Office Director], and designated department heads conduct regular unscheduled visits to the facility’s living and activity areas.”<sup>368</sup> ODO verified that ICE staff did not conduct visits to all housing units as required by ICE NDS.<sup>369</sup> ODO noted that “it is important for ICE officers to visit all housing units at OCPC in order to verify that basic living conditions meet the ICE NDS”.<sup>370</sup>

Cited as a deficiency, ODO found that “ICE does not respond to all detainee requests within 72 hours.”<sup>371</sup> ODO reviewed spreadsheets and found that officers failed to note the date of receipt for 11 detained migrant requests, and therefore “ODO could not verify whether ICE provided an answer to each of the 11 detainees within 72 hours.”<sup>372</sup> Furthermore, “[t]he missing date of receipt information demonstrated that ICE had not adequately tracked detainee requests”,

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<sup>361</sup> ODO, *Follow-up Inspection, Otero County Processing Center, Chaparral, NM, April 13-15, 2010*, p. 9.

<sup>362</sup> DFIG.

<sup>363</sup> ODO, *Follow-up Inspection, Otero County Processing Center, Chaparral, NM, April 13-15, 2010*, p. 9.

<sup>364</sup> ODO, *Follow-up Inspection, Otero County Processing Center, Chaparral, NM, April 13-15, 2010*, p. 11.

<sup>365</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, March 5-7, 2013*, p. 3.

<sup>366</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, p. 3.

<sup>367</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, pp. 3, 8.

<sup>368</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, pp. 3, 8.

<sup>369</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, p. 4.

<sup>370</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, p. 9.

<sup>371</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, p. 4.

<sup>372</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, p. 8.

which was cited as an additional deficiency. Rules and procedures for obtaining unmonitored telephone calls to a court, legal representative, or for the purposes of obtaining legal representation are not posted inside housing units or on the telephones.<sup>373</sup>

"All OCPC staff interviewed stated ICE employee morale is low, and attributed this to understaffing."<sup>374</sup> A recent investigation at a privately run criminal incarceration facility revealed that to maximize profit, for-profit companies systematically under-staff facilities, leading to the overworking of labor, that in turn causes low morale among employees.<sup>375</sup> For example, the report found that "there are often fewer people on the shift than contractually required to keep the prison open, let alone running smoothly."<sup>376</sup> ODO's report of low morale due to understaffing at OCPC strongly suggests that similar profit-driven labor issues may also plague immigration detention facilities like OCPC.<sup>377</sup>

ODO interviewed 39 detained migrants from OCPC.<sup>378</sup> Half of the interviewed detained migrants reported that they did not know their Deportation Officer and four detained migrants could not remember the name of their Deportation Officer. Seven interviewed detained migrants reported that they had not seen their Deportation Officer since arrival. Three detained migrants complained that outdoor recreation was held before daylight and requested it be held in the afternoon. "ODO noted that ICE Recreation NDS does not specify when recreation is to be conducted, and OCPC management must start recreation early enough to accommodate the entire population."<sup>379</sup> Two detained migrants expressed concern that visitation hours were short and should be longer than 30 minutes. "Both detainees were advised of NDS requirements, and OCPC is in compliance with the Visitation standard."<sup>380</sup> ICE ODO responses to detained migrants concerns regarding recreation hours and length of visitation strongly corroborate NIJC's assertions that ICE inspections are dismissive of the conditions migrants' experience.<sup>381</sup>

ODO found multiple deficiencies regarding Use of Force. The first deficiency is nearly completely redacted except for the words "Use of force teams" and "Team members do not".<sup>382</sup> In reading the cited standard policy requirements for this deficiency one can glean that it is a

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<sup>373</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, pp. 4, 11.

<sup>374</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, p. 6.

<sup>375</sup> Shane Bauer, 'My Four Months as a Private Prison Guard: A Mother Jones Investigation', *Mother Jones*, 2016 <<http://www.motherjones.com/politics/2016/06/cca-private-prisons-corrections-corporation-inmates-investigation-bauer/>> [accessed 29 November 2017].

<sup>376</sup> Bauer.

<sup>377</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, p. 6.

<sup>378</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, p. 6.

<sup>379</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, p. 6.

<sup>380</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, p. 6.

<sup>381</sup> NIJC, *Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse*.

<sup>382</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, pp. 12, 13.

deficiency regarding ICE NDS, Use of Force, section (III)(A)(4)(a) that outlines the use-of-force team technique involving forcible removal and restraint. ODO found OCPC deficient in that video tapes of use-of-force incidents were not preserved and cataloged.<sup>383</sup> ODO notes that OCPC has been cited for this by DFIG.<sup>384</sup> ODO stated “[t]he Chief of Security has been the custodian of all use of force documentation at OCPC since the facility opened in 2008. There have been a total of 53 use-of-force incidents, 51 immediate and 2 calculated. Video recordings of the two calculated incidents were not available for inspection. The first incident occurred September 2, 2008, which is outside the required 30-month retention period covered by this inspection. It is important to note review of this event by the DFIG (ODO’s predecessor) resulted in a deficiency during the Quality Assurance Review conducted in June 2009 for failure to videotape the calculated use-of-force. The second incident occurred September 14, 2009, after the June 2009 DFIG inspection, and within the required retention period for this Quality Assurance Review. The 30-month retention period in the standard required preservation of the videotape until March 2012; also of note is that neither incident was cataloged”.<sup>385</sup> ODO cited a third Use of Force deficiency that involves the employment of two different unauthorized non-deadly force devices by OCPC staff.<sup>386</sup> The ODO observed that this deficiency was cited previously by the DFIG Quality Assurance Review<sup>387</sup> and was found uncorrected during the ODO Follow-up.<sup>388</sup> Therefore, this was at least the third time OCPC was found in violation of NDS standards regarding the employment of unauthorized use of force devices by MTC staff.

### **2012 February 22-24 ERO [Detention Facility Review](#) (under PBNDS 2008)**

Between February 22-24 ERO made a Detention Facility Review, conducted under PBNDS 2008, that found no deficient standards and eight deficient components. ERO subcontracted this review out to Nakamoto Group who performed the review.<sup>389</sup>

The review cited as a deficiency a failure to conduct mock exercises with the county.<sup>390</sup> The review observed that a lack of a sally port on the SMU was a deficiency.<sup>391</sup> Several deficiencies in the handling of detained migrant belongings were observed: OCPC used a local form for property receipts; this form was not in numerical order, and the local form was not numbered.<sup>392</sup> Also deficient, the review noted that OCPC was not using a G-589 log book for

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<sup>383</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, p. 12.

<sup>384</sup> DFIG, p. 25.

<sup>385</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, p. 12.

<sup>386</sup> ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, p. 12.

<sup>387</sup> DFIG, p. 26.

<sup>388</sup> ODO, *Follow-up Inspection, Otero County Processing Center, Chaparral, NM, April 13-15, 2010*, p. 11.

<sup>389</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 163.

<sup>390</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 7.

<sup>391</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 29.

<sup>392</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 33.

detained migrant property.<sup>393</sup> The review cited as a deficiency that post orders were not kept secure from detained migrants at all times.<sup>394</sup> The fact that written policy did not state that staff must leave any searched area in its original order was found noncompliant with PBNDS.<sup>395</sup>

In detailing deficiencies, the Nakamoto Group ERO inspection stated that “[a]ll incoming general correspondence is opened and checked for contraband prior to being delivered to the detainee per facility policy.”<sup>396</sup> This is noncompliant with either NDS or PBNDS both of which state that general correspondence mail is to be opened in the presence of the detained migrant.<sup>397</sup> In the review, one deficiency regarding Security and Control was completely redacted.<sup>398</sup>

Though not identified as deficiencies several other features of this ERO are noteworthy. Two hunger strikes occurred during the prior year.<sup>399</sup> Nakamoto Group inspectors also found that with a total of four computers to serve the entire detained migrant population of OCPC, the law library was adequately equipped.<sup>400</sup> The facility conducted at least seven formal detained migrant counts each day, and at least one of these is a face-to-photo comparison.<sup>401</sup> Since OCPC is an IGSA, Sexual Assault awareness materials do not have to be made generally available but were “made available to detainees upon their request.”<sup>402</sup> A Nakamoto Group inspector stated that “[n]on-lethal weapons have not been used in this facility for several years.”<sup>403</sup> The three prior year's inspections and reviews cite OCPC for employing unauthorized non-compliant use of force devices.<sup>404</sup> In light of these prior reports, it is unclear how a three-day inspection provided the basis for a Nakamoto Group inspector to accurately conclude that non-lethal weapons had not been used at the facility “for several years”. The report confirms that “[t]he facility pays detainees \$1.00 per day for working in the food service department.”<sup>405</sup> A

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<sup>393</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 33.

<sup>394</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 46.

<sup>395</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 48.

<sup>396</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 115.

<sup>397</sup> ICE, ‘National Detention Standards 2000’, p. Section III Correspondence and Other Mail, B. Standards and Procedures, Item 3; ICE, ‘Performance Based National Detention Standards 2008’, p. Part 5. Activities, 26 Correspondence and Other Mail, II Expected Outcomes, Item 8; ICE, ‘Performance Based National Detention Standards 2011’, pp. 5. Activities, 1. Correspondence and Other Mail, II Expected Outcomes, Item 8, 357.

<sup>398</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 27.

<sup>399</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 88.

<sup>400</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 142.

<sup>401</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 44.

<sup>402</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 50.

<sup>403</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 72.

<sup>404</sup> DFIG, p. 26; ODO, *Follow-up Inspection, Otero County Processing Center, Chaparral, NM, April 13-15, 2010*, p. 11; ODO, *Quality Assurance Review, Otero County Processing Center, Chaparral, NM, June 21-23, 2011*, p. 12.

<sup>405</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 81.

Nakamoto Group inspector stated that “[f]ood items appeared nutritionally adequate, presented in a manner to be visually appealing.”<sup>406</sup>

### **2013 March 5-7 ODO [Compliance Inspection](#) (under PBNDS 2008)**

Between March 5-6, at OCPC, ODO made a Compliance Inspection that reviewed 16 PBNDS and identified eight deficiencies in five standards.<sup>407</sup> Most of the deficiencies were “administrative in nature, such as paperwork, logs, and postings, rather than shortcomings with respect to practices and procedures”.<sup>408</sup> The inspection team consisted of a mix of three ICE agents and three contract inspectors from Creative Corrections.<sup>409</sup>

Regarding the Classification System, seven of 20 classification forms did not list information relevant to “current offenses, past offenses, escapes, institutional disciplinary history, documented violent episodes and incidents, medical information, or a history of victimization while in detention”.<sup>410</sup> New forms were recommended. Regarding Detention Files, the files were created, but in several cases it was not noted that the file was activated.<sup>411</sup> A sample of inactive files showed that a required form was missing. With respect to the Grievance System, “OCPC has no protocol requiring elevation of emergency grievances to the immediate attention of the facility administrator”.<sup>412</sup> Second, there was no process for submitting written grievances regarding medical care directly to medical personnel. Third, “there is no provision for a detainee to appeal a medical grievance to a medical professional”. In regards to the Special Management Unit (SMU), when placing more than one detained migrant in a SMU cell, OCPC policy did not require facility administrators to consult with ERO HQ to consult with DHS or ICE legal counsel, as is required.<sup>413</sup> Regarding “Staff-Detainee” Communication, “there is no written policy at OCPC directing that detainee requests be promptly routed and delivered to appropriate ERO official by authorized personnel (not detainee) without reading, altering or delaying the individual requests”.<sup>414</sup>

ODO stated that they interviewed 30 randomly-selected detained migrants from all classification levels and asked them questions regarding the overall living and detention conditions at OCPC. “ODO received no complaints concerning access to the law library and legal

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<sup>406</sup> ERO, *Detention Facility Review, Otero County Processing Center, Chaparral, NM, February 22-24, 2012*, p. 85.

<sup>407</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, March 5-7, 2013*, p. 4.

<sup>408</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, March 5-7, 2013*, p. 4.

<sup>409</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, March 5-7, 2013*, p. 6.

<sup>410</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, March 5-7, 2013*, p. 9.

<sup>411</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, March 5-7, 2013*, p. 11.

<sup>412</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, March 5-7, 2013*, p. 12.

<sup>413</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, March 5-7, 2013*, p. 14.

<sup>414</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, March 5-7, 2013*, p. 15.



materials, issuance and replenishment of basic hygiene items, food service, medical care, recreation, religious services, visitation, the grievance system, or access to ICE personnel.”<sup>415</sup>

While the 30 randomly selected ICE ODO interviews of detained migrants resulted in zero detained migrant complaints in the aforementioned categories, the OCPC grievance log indicated that from Sept. 2012-Mar. 2013 OCPC received and processed 43 formal grievances: food service (7), medical (7), facility programs (4), recreation (2), mail (1), and religious services (1). 21 grievances were categorized as miscellaneous. Though food service and medical constituted 64% of the categorized grievances (22), amazingly “ODO did not identify any trends or patterns related to grievances.”<sup>416</sup>

The ODO indicated that it conducted a death review for a detained migrant who died at the facility in 2008.<sup>417</sup> In that review, ODO found the cause of death to be cirrhosis of the liver. An ODO Follow-up inspection from 2010 indicated that the death review was not scheduled until the 4<sup>th</sup> of December of that same year—two years following the detained migrant’s death at OCPC.<sup>418</sup> Finally, the 2013 ODO Compliance Inspection stated that there have been no suicide attempts at the facility, but since Mar. 2012 there had been seven suicide watches all of which resulted from verbal ideation.<sup>419</sup>

### **2016 August 9-11 ODO Compliance Inspection (under PBNDS 2008)**

Between August 9-11, at OCPC, ODO performed a Compliance Inspection and reviewed 16 standards, finding 12 deficient components across seven standards. Of the 12 deficient components, one was a repeat deficiency and six were priority components.<sup>420</sup>

With respect to Admission and Release, the “facility does not require detainees to sign acknowledgement of receipt for both ICE National Detainee Handbook and the local detainee handbook”.<sup>421</sup> Regarding Custody and Classification System, “ODO observed high custody detainees being co-mingled with low custody detainees during ODO’s detainee interview session, religious services, sick call hours, and while being escorted through the facility hallways”.<sup>422</sup> In terms of Funds and Personal Property, “ODO found facility staff did not consistently search all arriving detainees’ personal property.”<sup>423</sup> This included property previously inventoried and sealed by another facility; ODO cited facility staff for not searching

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<sup>415</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, March 5-7, 2013*, p. 7.

<sup>416</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, March 5-7, 2013*, p. 4.

<sup>417</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, March 5-7, 2013*, p. 4.

<sup>418</sup> ODO, *Follow-up Inspection, Otero County Processing Center, Chaparral, NM, April 13-15, 2010*, p. 11.

<sup>419</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, March 5-7, 2013*, p. 4.

<sup>420</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, August 9-11, 2016*, p. 3.

<sup>421</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, August 9-11, 2016*, p. 8.

<sup>422</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, August 9-11, 2016*, p. 8.

<sup>423</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, August 9-11, 2016*, p. 8.

this property again. Regarding Sexual Abuse and Assault Prevention Intervention (SAAPI) the “facility does not consistently document SAAPI training for three contract medical staff or any volunteer staff”.<sup>424</sup> Facility SAAPI policy for the facility does not include “written procedures for the transport of a detainee who may need closer observation for the detainee’s own safety.”<sup>425</sup> In terms of SMU, ODO found that for detained migrants in SMU “copies of administrative segregation orders are not forwarded to the FOD or detainee”.<sup>426</sup> ODO found that detained migrants housed in SMU for administrative segregation were only getting one hour of recreation per day; the facility is required to provide two hours of recreation per day.

With respect to Use of Force and Restraints there was one use-of-force incident during the prior year involving immediate use of force when one detained migrant struck another detained migrant. The “facility administrator failed to send a copy of the audiovisual recording of this Use of Force to the FOD”.<sup>427</sup> ERO did not review or approve of the after-action review and the procedure did not meet ERO’s model. The facility’s Use of Force committee did not review this use-of-force incident in the workday following the incident. “ODO found the referral was not made until nearly one week after the incident and the Warden’s documented review and concurrence did not occur until over a one year later.”<sup>428</sup> Regarding the Grievance System, there were 79 grievances filed in the year covered by the inspection. There were 19 allegations of staff misconduct detailed in five specific incidents at OCPC. ODO found that “copies of the five specific incidents alleging staff misconduct were not forwarded to ICE’s OPR Joint Intake Center and or local OPR office for appropriate action”.<sup>429</sup>

During the 2016 inspection, ODO conducted voluntary interviews with 23 detained migrants.<sup>430</sup> None made allegations of mistreatment, abuse, or discrimination. However, ODO did note four individuals complained about aspects of medical care, one detained migrant complained about telephone access, and two detained migrants complained that they had not received a local facility handbook.

### **2017 December 1 Office of Inspector General (OIG) [Concerns about ICE Detainee Treatment and Care at Detention Facilities](#) (under PBNDS 2008)**

In 2017, OIG made unannounced inspections at five detention facilities including the OCPC. The report differs from ERO and ODO inspections reviewed above in two significant ways: 1) OIG inspections were unannounced whereas ERO and ODO inspections are announced beforehand and 2) the OIG report was released to the public whereas ERO and ODO inspections had to be

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<sup>424</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, August 9-11, 2016*, p. 9.

<sup>425</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, August 9-11, 2016*, p. 9.

<sup>426</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, August 9-11, 2016*, p. 9.

<sup>427</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, August 9-11, 2016*, p. 10.

<sup>428</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, August 9-11, 2016*, p. 10.

<sup>429</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, August 9-11, 2016*, p. 10.

<sup>430</sup> ODO, *Compliance Inspection, Otero County Processing Center, Chaparral, NM, August 9-11, 2016*, pp. 6–7.

obtained via FOIA requests. The selection of centers for OIG inspection was based on OIG Hotline complaints, reports from immigrants' rights NGOs, and open source reporting.<sup>431</sup> Unfortunately, while the OIG report revealed serious problems at four of the five centers visited, many of the observed issues were not attributed to specific detention centers. Typically, OIG reports are more detailed and specific. Nonetheless, instances where the OIG report specifically mentions the OCPC are summarized below.<sup>432</sup>

“Detainees are supposed to have access to telephones and be able to make free calls to the Department of Homeland Security OIG. Yet, at the Otero County Processing Center we observed non-working telephones in detainee housing areas”.<sup>433</sup> In terms of Improper Treatment of “Detainees” by Detention Facility Staff, detained individuals at “four facilities alleged poor treatment, which contributed to an overall negative climate.”<sup>434</sup> OCPC was among the four facilities where detained migrants alleged improper treatment by detention facility staff. Specifically, “detainees alleged in interviews that staff mistreated them, citing guards yelling at detainees, as well as using disrespectful and inappropriate language.”<sup>435</sup>

Facility Staff are permitted to segregate detained migrants from the general population placing them either in disciplinary or administrative segregation for reasons that include: violations of facility rules, risk of violence, or to protect individuals from other detained migrants.<sup>436</sup> OCPC was found in violation of standards in terms of the “administration, justification, and documentation of segregation and lock-down of detainees.”<sup>437</sup> Staff did not consistently tell detained migrants why they were being segregated nor did they consistently “communicate detainees’ rights in writing or provide appeal forms for those put in punitive lock-down or placed in segregation.”<sup>438</sup> In some cases detained migrants were disciplined by segregation or lock-down without adequate documentation in the detained migrant’s file justifying the disciplinary action. Some detained migrants were held in administrative segregation for extended periods without documentation or the periodic reviews that are required to justify prolonged segregation. Some detained migrants were locked-down for minor rule violations without required written notification for the reasons for lock down or appeal options. For detained migrants held in segregation, daily medical visits and meal records were missing.

The 2011 PBDNS requires maintaining “high facility standards of cleanliness and sanitation”. At OCPC, OIG “observed detainee bathrooms that were in poor condition, including mold and

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<sup>431</sup> DHS OIG, p. 2.

<sup>432</sup> DHS OIG.

<sup>433</sup> DHS OIG, p. 5.

<sup>434</sup> DHS OIG, p. 6.

<sup>435</sup> DHS OIG, p. 6.

<sup>436</sup> DHS OIG, p. 6.

<sup>437</sup> DHS OIG, p. 6.

<sup>438</sup> DHS OIG, p. 6.

peeling paint on the walls, floors, and showers.”<sup>439</sup> PBNDS specifies that personal hygiene items must be replenished as needed; this includes toilet paper, shampoo, soap, lotion, and toothpaste.

The OIG report was picked up by news outlets. As reported in the Las Cruces Sun News (LCSN),<sup>440</sup> MTC disputes the OIG findings at OCPC and reportedly issued a written statement saying the company “welcomes oversight” and is “monitored daily by ICE.” Also reported in the Las Cruces Sun News, documents indicate that the Otero facility was exempted from ICE’s standards for providing access to natural light and dedicated outdoor recreation. This document is an “intergovernmental agreement” between Otero County and ICE. It was also reported that a review of 15 other similar facilities, including Eloy in Arizona and Adelanto in California, had no similar waivers. LCSN reports that Melissa Lopez of the Diocesan Migrant and Refugee Services (DMRS) stated, “Someone could go days or weeks even without having access to the outdoors.”<sup>441</sup> She continued “It doesn’t make sense to me. We’re in a part of the country where, for the majority of the year, we have really nice weather.” The OIG report did not specifically name OCPC among the facilities not complying with PBNDS medical standards. However, Lopez is concerned about the quality of medical care at OCPC. She reports that healthcare related complaints are common among detained migrants at facilities across the region. LCSN notes that according to ICE records, in April of 2016, while being detained at OCPC, 50 year old Rafael Barcenas-Padilla died of bronchopneumonia. LCSN further notes that review of court records shows that MTC is the defendant in at least 30 lawsuits including one by the ACLU. The article continues, “A three-month set of invoices paid to MTC, obtained by public records request, show that from January to March 2017, MTC was paid between \$1.8 million to \$2.6 million per month, as the Otero detainee population fluctuated between 914 and 741. Per the invoices, the company charges Otero County, which is paid by ICE, \$77 per detainee per day, for the first 850 detainees.” Note, the per diem rate of \$77 quoted in the article is substantially lower than rates quoted in ICE documentation obtained through FOIA requests (Table 1).

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<sup>439</sup> DHS OIG, p. 7.

<sup>440</sup> Macaraeg.

<sup>441</sup> Macaraeg.

## Appendix C: Detention Facility Reports

Facility	Location	Management	Citation
Adelanto Detention Facility East	Adelanto, CA	GEO Group	(CIVIC [now FFI]) and DWN 2015)
Artesia Family Residential Center	Artesia, NM	ICE	(DWN 2012a)
Baker County Detention Center	MacClenny, FL	Baker County Sheriff's Office	(Lerner and Winston 2012; SPLC 2016, 45; NIJC 2015, 19)
Cibola County Correctional Center	Milan, NM	CCA/CoreCivic	(NIJC 2017)
El Paso Processing Center	El Paso, TX	ICE	(DMSC 2016)
Eloy Federal Contract Facility	Eloy, AZ	CCA/CoreCivic	(NIJC 2017, 17)
Etowah County Detention Center	Gadsden, AL	Etowah County Sheriff's Office	(DWN 2012b; SPLC 2016, 51; NIJC 2015, 21)
Hudson County Jail	Kearny, NJ	Hudson County	(DWN 2012d)
Houston Processing Center	Houston TX	CCA/CoreCivic	(DWN 2012c; NIJC 2015, 23)
Irwin County Detention Center	Ocilla GA	CCA/CoreCivic	(ProjectSOUTH and PSU Law 2017; DWN 2012e; SPLC 2016, 21)
LaSalle Detention Facility	Jena, LA	GEO Group	(SPLC 2016, 27)
Otero County Processing Center	Chaparral, NM	MTC	(Carey 2011)
Pinal County Jail	Florence, AZ	Pinal County	(DWN 2012f)
Polk County Detention Facility	Livingston, TX	Community Education Centers	(DWN 2012g)
Stewart Detention Center	Lumpkin GA	CCA/CoreCivic	(ProjectSOUTH and PSU Law 2017; DWN 2012h; SPLC 2016, 36; NIJC 2015, 25)
Theo Lacey Detention Center	Orange, California	Orange County Sheriff's Office	(DWN 2012i)
Pulaski County Jail (formerly Tri-County Detention Center)	Ullin, IL	Paladin Eastside Psychological Services, Inc.	(DWN 2012j; NIJC 2015, 27)
Wakulla County Detention Center	Crawfordville, FL	Wakulla County Sheriff's Office	(SPLC 2016, 63)
West Texas Detention Facility	Sierra Blanca, TX	LaSalle Corrections	(RAICES 2018)

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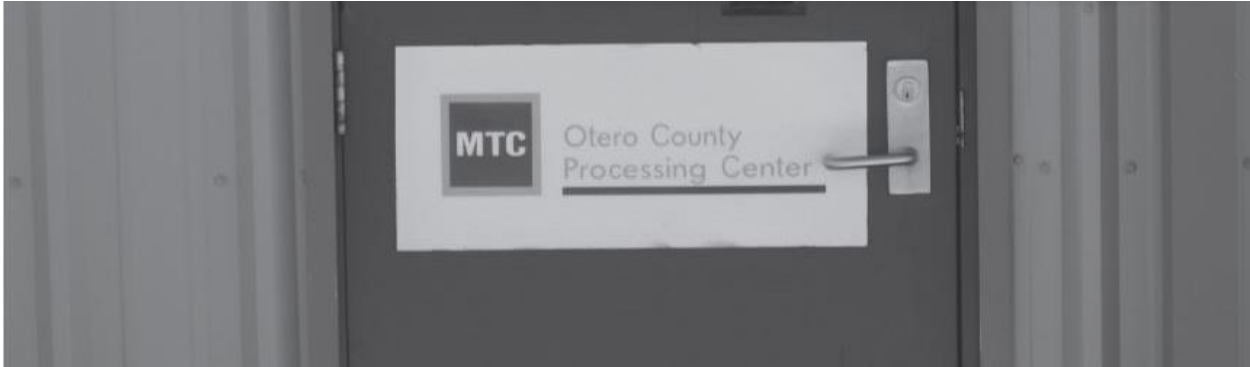
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Door to visitation area at OCPC in 2011. Image from Carey (2011) *Outsourcing Responsibility: The Human Cost of Privatized Immigration Detention in Otero County*.



Door to visitation area at OCPC in May of 2018 showing dilapidating MTC sign. Photo by Nathan Craig.