

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE)
)
) **Case No. A-07-CA-164-SS**
)
HUTTO FAMILY DETENTION CENTER)

REPORT TO PARTIES OF FINAL PERIODIC REVIEW OF FACILITY

The undersigned submits the following report to the Parties of the above-styled case, as called for in ¶ 9 of the Parties’ Settlement Agreement, executed on August 26, 2007.

I. Background

This compliance inspection took place on June 1, 2009, and lasted from approximately 9:00 a.m. to 5:30 p.m. Advance notice of the inspection was not provided, although the Parties were aware that the inspection was required to take place by June 10, 2009 (one year from the date of the second inspection). Assisting the undersigned were Derek Quick (law clerk in the undersigned’s chambers), Noah Galton (intern from the undersigned’s chambers), Christina Helmrichs (Spanish-language interpreter), Ben Maya (Spanish-language interpreter), and Yolanda Pesina (Deputy U.S. Marshal who also acted as a Spanish-language interpreter) (collectively, the “inspection group”).

The inspection began with a meeting with the CCA and ICE-JFRMU¹ administrators, Evelyn Hernandez and George Robertson, respectively. Also present at the initial meeting were Don George (JFRMU), Tom Hochberg (Director of Health Services), Sean Allain (Assistant Director of Health Services), Art Perez (Assistant Field Office Director, ICE), Anibal Martinez (Deputy Chief Counsel to the Field Office Director), and Carl Stephens (Supervisory Detention and Deportation Officer,

¹Immigration Customs Enforcement-Juvenile and Family Residential Management Unit.

ICE). We briefly reviewed the ground rules for our inspection and discussed our intentions for the review. As with the prior reviews, we once again received full cooperation.

The inspection group visited every occupied pod in the “A” Hall, the cafeteria, the classrooms, the intake area, the commissary, the medical and dental offices, the mental health offices, the library, the computer lab, the visitation area, the office/administrative area, and the indoor and outdoor recreation facilities. The group also interviewed approximately ten adult residents (some in groups, some individually), six minor residents, three pod-staff members, the senior medical staff, dental staff, mental health staff, commissary staff, library staff, intake staff, three teachers, the school’s principal, the individuals in charge of orientation, the Field Office Director and his staff, as well as the CCA and ICE-JFRMU administrators.

We also reviewed a large number of documents, four binders of which were presented to us by Ms. Hernandez and Mr. Robertson at our initial meeting, and the rest of which were prepared in response to specific requests we made both before and during our inspection. The first large binder contained documentation regarding structural changes at the facility since our last inspection, living conditions, resident movement, residents’ clothing and toys, phone access, the building schedule, menus for 105 meals, food surveys, library inventory, orientation information, legal information available to residents, grooming services, Town Hall meeting records, visitation, after school activities for children, the mail system, medical/dental and mental health services, the commissary, the computer lab, and education. The remaining three binders contained copies of each letter issued to residents pursuant to ¶ 6 of the Settlement Agreement since June 1, 2008. The documents provided at our request included: (1) a current census of the residents; (2) identification of the current administrative staff and managers; (3) a spreadsheet setting out every resident that has been housed

at Hutto since June 15, 2008 (indicating for each resident the date he/she arrived at Hutto and the date he/she departed); (4) a copy of the planned menus for the food served in the cafeteria for August 2008, January 2009, and May 2009, along with documentation showing what was actually served during those months; (5) documentation setting forth all field trips that minors have been taken on since our last visit; (6) documentation regarding all monthly birthday parties since our last visit; (7) a list of all employees of the medical staff, dental staff, and mental health/social work staff that have been employed at Hutto since June 15, 2008, including dates of employment, title, CV or resume, and identification of whether they are Spanish speaking; (8) a list of all employees of the school at Hutto since June 15, 2008, including dates of employment, certifications, title, and identification of whether they are Spanish speaking; (9) a copy of Hutto's videotaped orientation; and (10) a copy of the current handbook.²

II. Findings

A. Scope of Review

As set out in the prior reports, the scope of review is set by ¶ 7 of the Settlement Agreement, which directs the undersigned to “verify ongoing compliance with conditions reforms listed in Exhibits B and C, and the periodic reviews conducted pursuant to Paragraphs 6(C) and 6(E) of the Agreement.” It requires that after the on-site review, I will “report to the Parties regarding compliance, identifying all conditions noted to be deficient and making recommendations for resolving the deficiencies.” Consistent with the Agreement, we limited our inspection to verifying

²With regard to the documentation listing both planned meals and that which was actually served, we did not receive the records of what was actually served during May 2009. We also did not receive a copy of the “video orientation.” During our inspection, it became apparent that ICE abandoned use of the video for orientation (with the exception of a short video produced by ICE which is used solely to explain immigration issues and relevant immigration law).

compliance with Exhibits B and C, and to reviewing the materials provided regarding ¶ 6, and this report is similarly limited. As with the prior reports, because our report is intended to address “conditions noted to be deficient,” it will not list all of the items on which there has been compliance. Rather, only non-compliant (or problematic) items will be discussed, and thus any item on Exhibit B or C not addressed below is an item on which the undersigned finds that ICE is in compliance under the Settlement Agreement. This report will also address all items that were addressed as non-compliant or problematic in the second report (and discuss the progress that has been made on those items).

B. Non-compliant, problematic, or previously-addressed issues

1. Orientation and Handbook³

In the June 2008 Report, the inspection group reported that the handbook appeared to be in compliance with the Agreement, and that continues to be the case. We found no significant problems with the handbook, and, from our inspection, it appears that the handbook is being updated within a reasonable amount of time after rules or policies are changed.

On the issue of orientation, ICE and CCA have recently taken positive steps to improve the orientation process. As evident both in the December 2007 and June 2008 Reports, the orientation

³The Settlement Agreement language at issue here is:

Residents are provided with a handbook reflecting current rules and policies. The Handbook is updated within reasonable time after rule and policy changes are made.

Orientation explaining rules, services, expectations, and the availability of legal assistance provided to new residents.

See Exhibit B, p. 4, “Orientation” and Exhibit C, p. 4, “Orientation.”

process at Hutto has been a problem-area for some time. In the past, orientations were lacking in continuity and in breadth. Though steps had been taken to improve the process prior to the June 2008 inspection, the June 2008 Report revealed that the orientations were still lacking in consistency. As stated, ICE and CCA recently altered the orientation procedures, and those alterations took place on May 26, 2009, six days prior to our inspection. The new orientation is a multiple-step process that takes place over a two-week period, and the stated goal of the change is to increase the amount of information the new residents are able to absorb during orientation. Because new residents are often tired and disoriented when they arrive at the facility, it is CCA and ICE's view that an orientation procedure that moves more slowly will allow residents to have time to rest before they are inundated with information concerning the rules and policies of Hutto.

The newly adopted orientation process is, more or less, a three-step process: First, upon arrival, residents are given a very brief, initial orientation covering only essential information that residents will need to know during their first seventy-two hours at Hutto (i.e., the location of the cafeteria, medical facilities, etc.). At this time, residents are also given a short pamphlet covering everything they were told at the initial session, as well as a copy of the full Hutto handbook. Next, within the following seventy-two hours, the residents receive a full, comprehensive orientation. This part of the orientation is conducted by residence counselors, who work from a uniform script while a telephone-operated translation service simultaneously interprets. During this process, the residence counselors also answer questions that new residents may have. Last, two weeks after the full, comprehensive orientation, there is a follow-up "re-orientation" where residents have the opportunity to clear up any issues they may be unclear on, after having had two weeks to actually live in the facility. Further, ICE and CCA report that they constantly stress to residents that their personnel are

available for questions at any time in order to answer any questions that residents may have. At each Town Hall meeting, residents are reminded that they can receive “re-orientations” at any time in order to clear up any issues they may be unclear on. Finally, Don George, the person in charge of Hutto’s orientation process, told us that he personally takes the time to visit with residents at least once a day, and thereby to be available himself to answer questions they may have.

Generally speaking, the residents seemed better informed regarding the rules of the facility during this inspection than during past inspections. While there were some minor exceptions (for example, some residents reported confusion regarding their ability to use telephone cards other than the ones issued at the commissary, and other residents reported confusion regarding their ability to bring articles such as toys and books into their individual rooms), overall things seem improved on this front. Further, the revamped orientation process is promising, and though its long-term effects are hard to predict since it was implemented only six days prior to our inspection, it seems to be a marked improvement over past processes.

2. Mental Health Services⁴

In prior reports we noted that ICE was not in compliance with the Settlement Agreement because the weekly sessions with minors were being conducted by “case workers” employed by CCA, who had no mental health training or experience. Further, our prior inspection revealed that the weekly sessions were also brief and perfunctory. ICE has cured both of these deficiencies since our last visit. First, the responsibility for fulfilling these obligations has been shifted from CCA to

⁴There are two Settlement Agreement items at issue on this topic, which state that “Minors have available to them a session with [a] social worker once per week,” and a “‘Town Hall’ meeting occurs twice each week.” *See* Settlement Agreement, Exhibit C, p. 3 “Mental Health Services.”

the Public Health Services staff (which provides the medical care to Hutto residents), ably run by Tom Hochberg. All weekly sessions with minors are handled by the health services staff, not CCA case workers. The staff conducting the sessions are all licensed social workers or psychologists. Each minor has an individual meeting weekly.⁵ These meetings appear to be thorough and comprehensive, and further seem to have been well-received.⁶ Moreover, ICE has gone further, and taken steps to make sure that the weekly session with each minor is as individualized and helpful as possible. Toward this end, the health services staff now conducts weekly “multi-disciplinary meetings” where the mental health staff meet with members of the medical staff, case workers, residence counselors, or teachers—depending on what is needed—to discuss particular individuals who may need extra attention. The multi-disciplinary team then develops a plan of action tailored to that individual and their specific needs.⁷ Finally, there are now weekly adolescent group sessions led by Lorener Brayboy, a licensed graduate social worker, on Saturdays. During our inspection, two teenagers reported that these sessions were both enjoyable and helpful.

All in all, it appears that ICE has taken significant steps to remedy the past deficiencies in this area, and our interviews with the health care staff suggest that the staff is dedicated to continuing to provide these services and to improve upon them. The only criticism we have at this time is that

⁵Depending on the age and preference of the minor, the session may include the minor’s parent(s).

⁶The only negative comment we heard regarding the weekly sessions was from a fourteen-year-old girl, who reported that the social workers “are not very helpful.” It was her opinion that the social workers do not actually listen to what she has to say, but instead just try to make her laugh and then “pretend like everything is okay.”

⁷While these meetings address the needs of minors, as warranted, they are not limited to minors and also sometimes address problems facing the adults as well.

this change did not occur sooner. Having said this, these are very positive changes, and I strongly recommend that ICE continue to charge the health services staff—not CCA—with fulfilling the mental health obligations of the Settlement Agreement.

The situation is not quite as improved with regard to Town Hall meetings. In the June 2008 Report we noted that, while Town Hall meetings do in fact occur at least twice a week, the meetings included little to no dialogue between the staff and residents. Rather, residents were basically being reminded of the rules that they must abide by, and the meetings were essentially lectures. Our most recent inspection suggested that the Town Hall meetings have not changed much, and still seem to be “lectures to residents” rather than a “dialogue between residents and staff.”⁸ During our interviews, residents reported that they did not participate in Town Hall meetings for two different reasons: (1) they do not feel comfortable expressing their opinions at the meetings for fear of being scolded; and (2) they feel as though, even if they do express their opinions, no one will listen to them or actually take them seriously. ICE needs to stress to CCA that it is at least as important (if not more important) for the staff conducting the Town Hall meetings to listen to the residents’ concerns as it is for the staff to express any concerns CCA may have about the residents complying with rules or regulations. Harkening back to the traditional Town Hall meeting (as we did in a prior report) is helpful here. While the undersigned is reluctant to look to Wikipedia for any truly authoritative information, its entry on this point expresses the issue well:

A town hall meeting is an informal public meeting derived from the traditional town meetings of New England. Similarly to those meetings, everybody in a community

⁸In the materials provided to us at the beginning of our inspection, we were supplied with notes from several different Town Hall meetings. With only a few exceptions, residents consistently asked very few questions, if any at all. In fact, the records revealed very little dialogue of any kind between residents and staff at the meetings.

is invited to attend, voice their opinions, and hear the *responses* from public figures and elected officials, although attendees rarely vote on an issue. In today's heterogeneous communities with large populations, more often, town hall meetings are held *so that people can influence elected officials in their decision making or to give them a chance to feel that their voices are being heard.*

See http://en.wikipedia.org/wiki/Town_hall_meeting (last visited July 1, 2009) (emphasis added).

The reports we have received, and the meetings we witnessed in 2008, demonstrate that the CCA supervisors view the meetings' main purpose as providing a forum for the supervisors to tell the residents what the residents need to be doing. This has it backward. As reflected in the above quotation, the main purpose of a town hall meeting should be for the residents to express to the supervisors *the residents' concerns*, and to hear the supervisors' *response*; to provide the residents a forum to influence the supervisors' decision-making, or to allow the residents to feel that their voices are being heard. CCA needs to re-train its supervisors accordingly, and redirect the information flow, so that the supervisors are listeners and responders, not lecturers.⁹

3. Medical and Dental Care

In the June 2008 Report, it was reported that the medical and dental facilities at Hutto were compliant with the Settlement Agreement, and they remain to be compliant. Additionally, with regard to the medical center, we were pleased to find that there has been significant consistency of staff. The medical center continues to be run by the same administrator and lead doctor as it was during the June 2008 inspection. While the clinic functions well and the residents generally reported satisfaction with the care they receive, one woman reported that, when her child had blisters on her

⁹If ICE will remember that this requirement was something that the Plaintiffs negotiated for, and stress this to CCA, it may help. Why would the residents have fought to be lectured to twice a week? Rather, it seems to us that the purpose of this requirement was to provide residents some input on the conditions of their living quarters, or at least to provide a forum to express their opinions on their living quarters and on improvements that could be made to them.

hands and feet, the doctor gave her no medicine or advice for her child's situation. We were unable to ascertain whether the woman's child actually had a treatable illness, and it appears that this person's experience was inconsistent with the vast majority of other residents' reported experiences with the health clinic. In sum, the health care being provided to the Hutto residents meets or exceeds the requirements of the Settlement Agreement, and Mr. Hochberg and Dr. Soto are to be commended for the manner in which they have managed the health facilities.

4. Food¹⁰

Food has consistently been a major source of complaints among residents. In the June 2008 Report we stated that, while it appeared that the facility was in *literal* compliance with the checklist items, it was questionable whether ICE had met the requirement that there be a "variety of meals" offered at the facility. We saw little movement in this area since last year, and the residents we interviewed still complained about the menu's repetitive nature; in fact, *every* resident we spoke with concerning the food stated that there was too much repetition, and we heard consistent complaints that too many hotdogs and hamburgers are served and that the side dishes are always the same (rice and beans). The lack of chicken was also a very common complaint.¹¹

¹⁰The Settlement Agreement addresses this item in two places. Exhibit B provides that "a variety of meals [will be] offered at the facility," while Exhibit C adds that the "menu undergoes regular revisions." See Exhibit B, p. 3, "Food"; Exhibit C, p. 3, "Food."

¹¹On the day of our inspection, we ate our lunch at the cafeteria. Interestingly, grilled (or perhaps baked—it was unclear) chicken leg quarters were served. Because we did not receive the menus for the month of June, we do not know if chicken was the planned lunch for June 1, 2009, or if CCA arranged to serve that once we made our appearance there that morning. (Two residents we spoke to at lunch commented to us that chicken was only being served because we were there.) To CCA's credit, from looking at the menus supplied to us prior to the inspection, it appears that an effort is being made to serve "unprocessed" chicken (i.e., not chicken "patties") more often. As for our view of the food, we found the offerings bland and heavily weighted toward carbohydrates. The chicken was dry, the mashed potatoes appeared to be from a box, and the peas and carrots were about

A new issue raised with regard to food was the amount of time allotted for minors to eat lunch. Every minor we interviewed complained that by the time they got to the cafeteria (from school), went through the line, and then sat down to eat, they had 10 minutes or less to eat lunch. This should be remedied, and we recommend that CCA do whatever is necessary to give minors a more reasonable amount of time to eat lunch (at least 20 minutes at the table). Further, inconsistency persists regarding the availability of wheat bread at meals. Upon review of the files provided to us, it is apparent that there were many instances where CCA's menu stated that wheat bread would be served but white bread was substituted instead.

We recognize that it is a big challenge to make institutional food appetizing, particularly when those consuming it have to eat it day after day. As a result, we believe that the standard that should be set for such food should reflect the realities of the situation, and we have tried to do that. The problem we find with the food is that it is—even under this standard—quite bad. Moreover, it appears that it would not be that difficult to improve upon it. Once again, the root of the problem is likely the fact that CCA is in charge of the food, and CCA is in the business of running prisons, and doing so for profit. When it comes to food, a private, for-profit prison company will have two primary goals: (1) meet the minimum requirements with regard to food set by the relevant state's jail standards commission; and (2) do so as inexpensively as possible. Neither of these goals is likely to lead to very palatable food. While we cannot say that ICE is in violation of the Settlement

as far from fresh as they could be. The beans were just plain odd. They appeared to be a mix of pinto and black beans, with the ratio being about 80:20 pinto to black. They had no seasoning of any kind. Like the potatoes, the rice was "prepared," and had a strange texture and flavor. I feel confident that neither the rice nor the beans are anything like what the Mexican and Central American residents consume when they prepare rice and beans themselves. Further, it is telling that we found the residents' favorite food—the chicken we were served at lunch—to be dry and not terribly tasty. It makes us wonder what the less-favored food tastes like.

Agreement with regard to the food at Hutto, CCA could clearly do much better, and could probably do so without spending much more than it presently does. As just one example, the adult residents plainly need things to do to keep them occupied, and the facility has plenty of arable land around it. Following the lead of the First Lady, the facility could, with the assistance of the residents, easily grow fresh vegetables and serve those to its residents. If ICE is truly committed to making the facility as “residential” as possible, this would seem well within that expressed goal.¹²

5. Activities for Children¹³

The June 2008 Report found that ICE was compliant with both of these items. However, the Report recommended that CCA or ICE keep a separate record of field trips taken, and children attending, so that the review on this point could be more easily accomplished. Such records have been kept, and it appears that ICE has complied with the Settlement Agreement by conducting at least one field trip per month since the June 2008 inspection. Furthermore, ICE has kept records of attendance for these field trips.¹⁴ With regard to offering structured activities for children outside of school, ICE continues to be compliant.

¹²Unsurprisingly, the undersigned’s suggestion last year that residents be allowed to prepare a meal once in a while has not been implemented, so I remain doubtful that there will be vegetables growing at Hutto anytime soon.

¹³The Settlement Agreement requires that “structured physical activities [must be] provided for children when not in school,” and further that the facility “organize[] regular off-site field trips for children that serve either a recreation or educational function.” See Exhibit B, p. 5-6, “Activities for Children.”

¹⁴While field trips are taking place on a regular basis, a couple minors who we interviewed reported that they were not too enthralled with the chosen activities (the one which was mentioned the most in this regard was the trip to the botanical gardens). Accordingly, it might be a good idea to survey the minors in order to get a better idea of the types of field trips they might find interesting.

The Settlement Agreement also requires that “children are permitted to have paper, pens, crayons, pencils, toys, and books in their rooms between 8 a.m. and 8 p.m..” Exhibit B, p. 6, “Activities for Children.” Many of the children we spoke with reported that they were unable to bring these items into their rooms.¹⁵ It is unclear whether these reports are the product of employees being unaware of the requirements of the Settlement Agreement in this regard, or the children’s misunderstanding of the rules. If these reports are a product of ICE and CCA’s practices, such practices must be altered to comply with the Settlement Agreement. If, instead, these reports are the product of miscommunication, ICE and CCA should make more of an effort to let children know exactly what they can and cannot do.

6. Phone Access and Phone Cards¹⁶

The June 2008 Report revealed that phone calls made by residents are no longer monitored or recorded in any capacity, but residents did not necessarily believe this to be the case. This skepticism appeared to be largely the result of the phone system still having a recording on it which played immediately before a call was connected, informing the recipient that the call was coming from the Hutto facility. Furthermore, the handbook appeared to be deficient in this regard. Upon our most recent inspection, any such suspicion had disappeared. Every resident the inspection group interviewed understood that his/her calls were not monitored or recorded. Hutto’s policies are now

¹⁵A child in Pod A reported that she could bring toys and books into her room. However, children in Pod B reported that they could not bring paper, pens, crayons, or pencils into their rooms unless they had homework for school. Those same children reported that children in Pod B could not bring toys into their rooms.

¹⁶The relevant Settlement Agreement provisions state that “Phone cards are sold at commissary at reasonable cost,” and “The facility provides access to a telephone system that allows residents to make phone calls free of charge to pro bono or free legal service providers.” Exhibit B, p. 2-3, “Phone Access.”

clearly set forth in the handbook, and there is no longer a recording played immediately before calls are connected informing the recipient that the call is coming from the Hutto facility.¹⁷

The June 2008 Report also revealed that the cost of phone cards sold at the commissary was excessively high and unreasonable. It appears that this issue has improved due to the fact that residents are now given the option of either buying phone cards from the commissary (which are still priced the same) or using commercial calling cards/accounts that they can receive from family. With one exception, the residents interviewed were all using calling card accounts that were maintained by family members. Thus, although the commissary cards are still unreasonably expensive, this deficiency has been mitigated by the modifications to the phone system allowing the use of commercially available calling cards. However, the overpriced cards in the commissary still place a heavy burden on the residents who do not have access to commercially available accounts through family members. Furthermore, there are also residents who are unclear on the phone policy at Hutto. Though the handbook specifically states that residents' family members can send residents phone cards via mail, some residents were unaware of this policy. In fact, a resident in Pod B reported that he was specifically told that the only phone cards he could use were those sold at the commissary. Both of these problems should be remedied. The cure for the latter issue is simply a matter of communication. The former is more difficult, but ICE needs to provide a reasonably priced phone system to those residents who do not have the ability to obtain phone cards outside of the facility.

Finally, with regard to calls to legal providers, the Settlement Agreement requires that the "facility provides access to a telephone system that allows residents to make phone calls free of

¹⁷A member of the inspection group tested whether the recording had been eliminated by making a call to his cell phone from one of the phones in the pod. No recorded messages were apparent on either end, and there were no indications that the call was being monitored.

charge to pro bono or free legal service providers.” Exhibit B, p. 3, “Phone Access.” Upon our inspection, two different individuals in Pod B reported that they had tried calling the free legal service using the phones within Pod B and never got an answer. It was unclear to the inspection group whether this issue is attributable to the phone system at Hutto, the phone systems at the free legal services, and/or to the residents being unclear on how to use the phones correctly. Whatever the source of the problem, it should be addressed and remedied.

7. Library¹⁸

The June 2008 Report revealed that roughly 70% of the residents at Hutto were Spanish speakers (very few of whom were proficient in English), yet the vast majority of books in the library were in English. Upon our most recent inspection, the proportion of Spanish speaking residents at Hutto had risen to above 80%, and the Spanish-language collection still comprises roughly 20% of the total library inventory. However, this is not to say that the total number of Spanish-language books in the library has not increased over the past year. Upon our inspection and after reviewing Hutto’s records, it appears that the total number of books in the library has in fact increased over the last year (including the number of Spanish-language books).¹⁹ Even so, the majority of books are still in English.

¹⁸The relevant Settlement Agreement provision states that “[t]he facility makes efforts to ensure there are a sufficient number of age- and language-appropriate books available to residents.” Exhibit B, p. 4, “Library.”

¹⁹The supply of books in languages other than Spanish appeared to have improved as well. The library now contains a shelf of Arabic books that, according to Dr. Bradford (the school principal), were purchased with input from an Iraqi resident (the Arabic books, however, are almost all geared toward adults). The inspection group also saw books in French, Chinese, Swedish, Farsi, and Korean. There were several translation dictionaries as well for a wide array of languages.

As in the June 2008 Report, it is recommended that CCA take proactive steps to locate more non-profit and charitable organizations bearing affiliations or associations with the communities regularly represented at Hutto and solicit book donations.²⁰

8. Visitation

During the June 2008 inspection, the inspection group was told several times by the CCA administrator that the facility would make special arrangements to accommodate visitors who travel long distances to come to the facility to visit residents. However, the June 2008 inspection revealed that residents and pod supervisors alike were under the impression that all visits were limited to one hour, regardless of the distance traveled by the visitor. Upon our most recent inspection, the residents and pod supervisors we interviewed understood that those traveling long distances would be allowed to visit for longer than the time normally allotted. Furthermore, the written policy now reflects the fact that visitors traveling more than three hours to Hutto may have extended visits.

²⁰For instance, throughout all three of our inspections, there has been a sizeable population of Christian Iraqis at Hutto, and Iraqi families have reported a lack of Iraqi children's books in the Hutto library. CCA should strive to provide books for Iraqis and other groups that have had a steady presence at Hutto (even if the presence is not overwhelmingly large). The CCA administrator indicated that CCA had made efforts to locate pertinent books by contacting consulates for countries from which many of the Hutto residents come. Out of a total of several dozen letters sent, apparently only three responses were received. While this effort to locate books is commendable, the results are not surprising, given that many of the residents at Hutto are seeking asylum from these very countries (the Christian Iraqis are a case in point), and the consulates at issue may not feel terribly motivated to assist individuals claiming to have been persecuted by those countries. A better source of assistance might be domestic asylum or relief organizations that regularly work with individuals from the countries that routinely populate Hutto.

9. Computers²¹

The June 2008 Report stated that there were insufficient internet-accessible computers, and that residents were not allowed access to web-based e-mail services. Interviews during the 2008 inspection also revealed that some residents were unaware that internet access was available to them at all. Upon our most recent inspection, these deficiencies had been remedied. There are now twenty computers in the lab that are internet-accessible. Additionally, each computer contains software to instruct those unfamiliar with computers how to use them. Each computer also has ESL software with seventeen different languages. Finally, the computer lab is open to anyone when it is not being used for school (computer lab schedules are posted on the computer lab doors).

As far as internet-use is concerned, we were able to surf the internet rather freely during our inspection, accessing a number of international sites that would be of interest to the groups regularly housed at Hutto. With regard to e-mail, residents now have access to Gmail. However, residents reported that this was not of a lot of use to them since most residents did not have Gmail accounts before their detention and, therefore, have no access to their “address books” contained in their other e-mail accounts.²²

10. Living Areas/Pods

ICE is in compliance with the Settlement Agreement terms pertaining to the living areas of the facility, with one exception. ICE is currently, and has consistently been, in violation of the

²¹The relevant provisions states that “Residents are permitted limited access to the internet in the facility’s computer lab; Facility may employ web-filtering software and web-monitoring software, and require residents to follow an access policy.” Exhibit B, p. 7, “Computers.”

²²Perhaps ICE should consider allowing access to the other oft-used internet e-mail services (e.g., Hotmail or Yahoo mail), which would increase the possibility that a resident would have access to an account they owned prior to their detention.

Settlement Agreement provision requiring that there not be a wake-up time for residents on the weekends. The language at issue states this point quite plainly:

On Saturday and Sunday, the facility does not have a wake-up time for residents. On these days, the facility offers a continental-style breakfast and/or brunch for extended hours to allow for flexible wake-up hours.

Exhibit B, p. 3, “Schedule.” Despite this, the handbook states that residents must “check-in” between 8:30 a.m. and 9:30 a.m. on Saturdays and Sundays. *See* T. DON HUTTO RESIDENTIAL CENTER FAMILY RESIDENT ORIENTATION HANDBOOK, at 9 (revised 4/14/09). Such a rule obviously requires a wake-up time on the weekends and is in direct violation with the Settlement Agreement. Though the handbook also contains a statement that there is no wake-up time for residents on weekends, this is clearly contradicted by both the policy regarding “check-in” times, and by the experiences of the large majority of the residents and staff we interviewed.²³ It appears that ICE has never fulfilled this requirement of the Settlement Agreement, and continues to be in violation. This should stop, and stop immediately. In short, let the teenagers sleep—that’s what they do on weekends. Check their I.D.’s when they get up.

²³During our inspection, pod staff consistently stated that there was indeed a wake-up time for residents on the weekends. Furthermore, residents consistently stated that they did have wake-up times on the weekends. In fact, some residents and children in Pod B reported being awoken as early as 6:30 a.m. on the weekends for an “I.D. check.” Another child in Pod B reported being awoken at 8:00 a.m. on the weekends for an “I.D. check.” Regardless of any inconsistencies with the actual times, it is undeniable that the current policy at Hutto is to require a wake-up time on the weekends for residents.

On a much more general level, the fact that use of this facility as a family detention center may not violate the Settlement Agreement does not mean that doing so is good public policy.²⁴ The facility was built as a jail. To make a literary allusion here,

What's in a name? That which we call a rose
By any other name would smell as sweet;
So Romeo would, were he not Romeo call'd,
Retain that dear perfection which he owes
Without that title.

WILLIAM SHAKESPEARE, ROMEO AND JULIET act 2, sc. 2. While ICE can call Hutto a “juvenile and family residential” facility, that doesn’t change the fact that it is a jail. Or, to make a much less literary analogy, “if it looks like a duck, walks like a duck, and quacks like a duck, it’s probably a duck.”²⁵ The pods at Hutto look, walk, and quack “jail” quite loudly. And while CCA has made many modifications to mitigate the feel of the place, only so much can be done. The layout of the residential pods provides little to no privacy. The common area takes up the bulk of the square footage, and is shared by everyone. The only private spaces are the “rooms,” which are in fact two-bunk prison cells. Even these cells are not private, as the staff continually walks through the pods and discourages anyone from closing the door to their rooms, except at night. Unsurprisingly, one of the biggest areas of stress in the pods revolves around various residents getting upset with other residents or with pod staff, largely due to the close proximity and non-private manner in which the residents are forced to live. Although the use of this facility to hold families is not a violation of the

²⁴Although the issue discussed here is not strictly within the terms of the undersigned’s responsibility as monitor, I believe that it directly contributes to the disputes between the parties that led to the underlying suit. Accordingly, I’ve taken the liberty to address it.

²⁵I have no idea who gets credit for this statement, but if one is interested, see the Wikipedia entry at http://en.wikipedia.org/wiki/Duck_test (last visited July 1, 2009).

Settlement Agreement, it seems fundamentally wrong to house children and their non-criminal parents this way. We can do better.²⁶

11. Commissary

In the June 2008 Report, it was reported that some of the female residents desired more of a selection with regard to grooming products. Our most recent inspection revealed that there is now a greater variety of such products. Other than phone cards, which were discussed earlier in this report, the prices at the commissary seem quite reasonable.

12. Recreation

In the June 2008 Report, it was stated that monthly birthday parties were not occurring with regularity. Exhibit C requires that “monthly birthday parties for residents occur.” Exhibit C, p. 1, “Recreation.” ICE has remedied this deficiency. Both ICE’s records and resident interviews reveal that monthly birthday parties are now a regular occurrence.

13. Clothing

The June 2008 Report revealed that many women were being denied their personal underwear. Upon our most recent inspection, we received no such complaints. Furthermore, Hutto’s current handbook does not seem to preclude women from retaining their personal underwear.

²⁶A very positive counter-balance to the housing arrangement is the nature of the Hutto school. Because it is housed in portable buildings made to be classrooms, it looks and feels like a school, not a jail. Further, the very nature of the school permits the children to escape from the confines of the jail facility and to spend the day with other children. Our interviews of Dr. Bradford and various teachers reflected that they are dedicated to making the school as effective as it can be given the huge challenges they face with a constantly rotating student base. Not to downplay the work that the mental health staff is doing at Hutto, but the school may be the single most important asset Hutto has as far as the children’s mental health is concerned.

14. Communication

In the June 2008 Report we noted that many of the deficient items at Hutto were the result of a lack of awareness or information amongst residents. Our review suggests that residents generally are more aware of the rules and policies than were the residents during the June 2008 inspection. It appears that the newly implemented orientation system is a positive step. ICE should continue its efforts to improve communication between staff and residents within the facility.

15. Staff Behavior²⁷

We have not previously discussed staff behavior in prior reports, but we received some complaints in this inspection which merit discussion. During our inspection, two adults and one child housed in Pod B reported that the staff within Pod B was verbally abusive. Additionally, several individuals (regardless of what pod they were in) reported that Deportation Officer Yanoush was extremely rude and verbally abusive.

With regard to Pod B staff, it was reported that staff members wearing “light blue” shirts were verbally abusive. For example, a woman reported that she was told by a staff member to “shut

²⁷Admittedly, no provision in Exhibit B or C explicitly states that residents at Hutto should not be verbally abused. Nevertheless, the overall treatment of Hutto residents is relevant to our review in light of the multitude of provisions within Exhibit B and C meant to ensure that residents are treated decently, and fairly. For example, Section VI of the Settlement Agreement states that:

During the term of the Agreement, Defendants will ensure that, in hiring all professional and non-professional staff who will have regular and significant direct contact with children, the contractors and subcontractors involved in management of the facility (“detention services providers”) make reasonable efforts to recruit and give preference in hiring to candidates with prior experience working with children and families, or with an education background in child welfare, child psychology, education or social work.

Settlement Agreement, p. 10, “Management of the Hutto Facility.”

up her daughter” when her daughter was crying because the staff member had a headache and did not want to be bothered. On another occasion, a different resident reported that a staff member yelled for her daughter to “shut up” when the woman’s daughter was crying because the girl had a sore in her mouth. On yet another occasion, it was reported that a man asked a staff member (with the last name “Acevedo”) a question in Spanish. Acevedo allegedly told the man that “people in this country should speak English.” Finally, a child reported that some workers are very rude if approached, especially if the approaching resident asks a question in a foreign language. That same child reported that he feels uncomfortable asking pod staff any questions unless the staff member speaks Spanish.

With regard to Deportation Officer Yanoush, numerous residents reported multiple instances of him being rude and verbally abusive. Many adults stated that Yanoush is just mean, and has told many residents that it is not worth consulting attorneys because the residents cases are likely to fail. A child reported that she was scared to go to sleep at night because Yanoush, with no explanation, led her family to believe that they might be deported in the middle of the night. That same girl reported that Yanoush often will not listen to adults or children when approached because, at least in her view, he does not believe the residents’ claims. The two particularly remarkable aspects of these comments were: (1) the sheer number of parties who complained about Yanoush, totally independently of one another; and (2) that the comments were all made more or less spontaneously, and not in response to a specific question. The overlapping, corroborative nature of these comments strongly suggests that this officer has a bad attitude, inappropriate to a facility detaining children and their parents.

C. Compliance with ¶ 6 F.O.D. Reviews²⁸

Paragraph 6 of the Settlement Agreement requires that the ICE Field Office Director (“F.O.D.”) shall make reviews of families detained at Hutto every 30 days to assess whether the families can be released or their bonds reduced. *See* ¶ 6(C) and (D) of Settlement Agreement. Paragraph 6 also requires that a letter be sent to any family that remains detained at Hutto after 60 days, explaining the reasons they have not been released. *See id.* In the June 2008 Report, it was determined that any family detained at Hutto more than 60 days must receive a letter pursuant to ¶ 6 within 14 days after their 60th day at Hutto. It was further stated that, despite a certain degree of information common to all of the review letters, the letters appeared to be in compliance with ¶ 6 of the Settlement Agreement. Our review found that since the June 2008 Report, ICE has complied with the 74-day mandate.

As noted earlier, we received copies of all letters sent to residents pursuant to ¶ 6 of the Agreement, along with a spreadsheet setting out every resident that has been housed at Hutto since June 15, 2008 (indicating for each resident the date he/she arrived at Hutto and the date he/she departed). Since the time of our last review, Mike Pitts has taken over as the new Field Office Director. The undersigned met with F.O.D. Pitts during the inspection, and discussed the content of the letters, as well as the “more than 60-day” review process his office completes on Hutto residents. Pitts stated that he recently instituted a new regimen meant to ensure a more individualized review

²⁸Prior to the most recent review, Plaintiffs counsel criticized the 60-day letters as having once again become “boilerplate,” and the attorneys for the parties exchanged correspondence with each other, and with the undersigned, regarding these issues. Ultimately, the plaintiffs’ counsel agreed to wait until this report was produced to determine if they wished to pursue that issue further. Because of this recent history, on our review we undertook a careful analysis of the letters, and how they are generated.

of each resident at Hutto. As of April 17, 2009, Pitts has supplemented the ¶ 6 letters with case review worksheets.²⁹ The case review worksheets allow residents the opportunity to see every piece of information that went into the decision as to whether they should be detained or released. Pitts also stated that a draft letter for any resident not being released is sent to him for approval on the 59th day after that resident's arrival (if needed). It is Pitts's view that this new system allows for a very thorough review of each resident. Pitts stated that his aim is to search for a reason to release a detainee, lower their bond, or otherwise reduce their time in detention if possible.

We believe that the process in place since April, as well as the type of letters sent in those cases, complies with the requirements of the Settlement Agreement. If ICE continues to follow this procedure, we believe it will be in compliance with the terms of the Settlement Agreement.

D. Overall Assessment

All in all, ICE has demonstrated a good deal of progress since our last inspection. The best change we saw related to the interaction between the social workers and mental health staff and the minors. Shifting the responsibility for the minor's mental health to the Public Health Services officers is a big improvement, and should remain in place moving forward. The change of the orientation procedure is also a positive change. Notwithstanding these improvements, the fact remains that the facility is poorly suited to its present use. Furthermore, though the instances seemed isolated, the reported incidents of verbal abuse were disconcerting. Finally, complaints about the

²⁹Case review worksheets include TDHRC custody data, entry into U.S. data, apprehension data, asylum claim data, EOIR data, travel document data, educational data (*children only*), medical data, detention disciplinary data, legal representative/attorney data, request(s) for change in custody status/redetermination, family/community ties in U.S., employment/education/data (*adult only*), case review history, 60 day reviews, background checks, case summary, reviewing officer recommendation, AFOD/SDDO review, AFOD recommendation, OCC recommendation, DFOD recommendation, and F.O.D. decision.

food and communication barriers throughout Hutto have been consistent for some time now. While ICE and CCA staff running the facility appear to very well-intentioned, there is only so much that can be done in the present setting, and present contractual arrangement.

SUBMITTED this 2nd day of July, 2009.

A handwritten signature in black ink, appearing to read "A. Austin", written over a horizontal line.

ANDREW W. AUSTIN
UNITED STATES MAGISTRATE JUDGE