



**Gittis Legal Clinics**  
UNIVERSITY of PENNSYLVANIA CAREY LAW SCHOOL  
 Transnational Legal Clinic



July 10, 2024

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 U.S. Department of Homeland Security  
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VIA EMAIL TO: [CRCLCompliance@hq.dhs.gov](mailto:CRCLCompliance@hq.dhs.gov)

**Re: Egregious and Unconstitutional Conditions of Confinement at the Moshannon Valley Processing Center**

*\*\*\*This complaint includes violations of the Rehabilitation Act of 1973. Please submit to the Section 504 division pursuant to 6 C.F.R. § 15.70.\*\*\**

Dear Officer Sivaprasad Wadhia:

ICE and GEO staff repeatedly and systematically deny language access and access to medical and mental health care services to persons held in ICE custody at the Moshannon Valley Processing Center (“Moshannon”), a private detention facility owned and operated by The GEO Group, Inc. (“GEO”). In addition, staff subject individuals detained at Moshannon to pervasive race discrimination. Since the rushed re-opening of Moshannon, previously a troubled Bureau of Prisons (“BOP”) facility, as an ICE detention center, ICE and GEO have consistently fallen short of their obligations to provide a safe environment for the people in their custody, as mandated by the Constitution and the Agency’s own administrative regulations. Instead of addressing historical and acute shortcomings in the provision of language access and medical care, and in addressing discrimination, the facility has instead engaged in acts of apparent retaliation, including the overuse of solitary confinement.

Participants in this complaint include Jhordy, Jose, Alvan, Catherine, Jason, and Damar as individual complainants. Two (2) additional individuals, Jane and Juan, are submitting declarations in support of this complaint. Because of fears of and actual retaliation by ICE and Moshannon staff, some of the Participants are proceeding pseudonymously. Participants detail their personal experiences of how ICE and Moshannon staff routinely fail to provide interpretation or translation services, or any information on the right to obtain those services and how to do so, leaving persons with Limited English Proficiency (“LEP”) unable to communicate with those around them and unable to understand the rules and procedures or commands of Moshannon staff, unless another person in detention intervenes with the needed interpretation and translation assistance. As a result,

persons with LEP often suffer disproportionate or unwarranted disciplinary procedures, with no meaningful access to grievance or appeal procedures. Participants also detail how ICE and Geo staff fail to provide timely and adequate medical services for both acute and long-term medical needs, and routinely seek to evade their obligations to provide care by shifting responsibility between ICE and Geo. As is the case in all aspects of life at Moshannon, denial of language access further compounds individuals' difficulties in access to timely and adequate medical care. In addition, Participants detail both implicit and explicit forms of race discrimination at the hands of Moshannon staff, which are compounded by the disproportionate length of detention people ICE identifies as other than Caucasian, and particularly those ICE identifies as Black, and the harms that ensue.

Participants also describe how mistreatment by the ICE and Geo staff at Moshannon within the prison-like environment in which the facility is run, creates an oppressive environment. Recent events at Moshannon, including the attempted escape of a person detained at Moshannon in late Fall 2023, the December 2023 death of an individual while he was being held in solitary confinement, and a large, violent fight leading to serious injuries of at least three individuals led to increased reports of excessive and arbitrary security tactics by guards, and a heightened climate of hostility and fear. Alvan, Jose, Catherine, and Jason all experienced disciplinary actions – including placement in isolated segregation – in response to raising and filing grievances or seeking care following assaults. This backdrop of retaliation, the use of solitary confinement or isolation, and oppressive treatment discourages individuals from seeking services to which they are entitled, filing grievances, and pursuing their immigration claims.

Participants have shown immense courage, bravery, and selflessness in choosing to be a part of this complaint. We are grateful to them and all other people who have chosen to speak out about their experiences at Moshannon in ICE detention.

Participants are represented in this complaint by the American Civil Liberties Union of Pennsylvania (“ACLU-PA”), Detention and Deportation Defense Initiative, Legal Services of New Jersey (“DDDI LSNJ”), and the Transnational Legal Clinic of the University of Pennsylvania Carey Law School (“TLC Penn Carey Law”).

**The American Civil Liberties Union of Pennsylvania (ACLU-PA)** is a nonprofit, nonpartisan organization dedicated to the principles of liberty and equality embodied in the Constitution and this nation's civil rights laws. Since its founding, the ACLU-PA has been deeply committed to ensuring that citizens and noncitizens alike receive the due-process protections afforded to them by the United States Constitution and to seeking redress for civil liberties violations committed by government officials.

**Legal Services of New Jersey (LSNJ)** is a nonprofit organization that coordinates the statewide Legal Services system, which provides free legal assistance to low-income New Jerseyans for their civil legal problems. Through its work, LSNJ strives to secure substantive and procedural justice for those living in poverty. For over 50 years, LSNJ has worked tirelessly to protect the rights of low-income New Jersey residents in all areas of civil law—including immigration. LSNJ's Immigration Representation Project has been

providing direct representation to detained and non-detained individuals in immigration proceedings since 1998.

**The Transnational Legal Clinic** is an immigration and international human rights legal clinic operating within the Gittis Legal Clinics at the University of Pennsylvania Carey Law School. Law student representatives, working under the supervision of law school faculty who are licensed attorneys, provide direct representation of individuals in affirmative and defensive immigration proceedings in seeking humanitarian forms of immigration relief. In addition, law students in the clinic engage in systemic advocacy at the local, regional, and international level to address recognized international human rights violations within systems of immigration enforcement and migration management.

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## I. BACKGROUND

### a. The Moshannon Valley Processing Center

The Moshannon Valley Processing Center (“Moshannon”), located in in Philipsburg (Clearfield County) is one of three ICE detention facilities in Pennsylvania and the only dedicated immigration facility in the state. It is also the only privately owned and operated ICE detention facility in Pennsylvania.<sup>1</sup> Since 2010, a private corporation, GEO Group, has operated the facility. Moshannon’s average daily population is 1,225,<sup>2</sup> with a capacity of 1,878 individuals,<sup>3</sup> making it the largest ICE detention center in the northeastern United States and one of the largest in the nation.

Moshannon was initially opened in 2006 for use as a federal prison pursuant to a contract with the BOP. From its inception, conditions of confinement, including substandard medical care and negligence by facility staff, were repeatedly the subject of litigation.<sup>4</sup> In 2016, the Department of Justice (“DOJ”) announced that the federal government would begin reducing its use of private prisons, citing declining prison populations and comparatively poor services and safety at private facilities.<sup>5</sup> Shortly before the President issued an Executive Order explicitly directing the termination of private prison contracts,<sup>6</sup> the contractual relationship between the BOP and GEO<sup>7</sup> ended, and the facility closed on March 31, 2021.<sup>8</sup>

Just five months later, in September 2021, ICE entered into an agreement with GEO to reopen Moshannon as an immigration detention facility.<sup>9</sup> The reopening was met with widespread

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<sup>1</sup> DEP’T OF HOMELAND SEC. OFF. OF IMMIGR. DET. OMBUDSMAN (“OIDO”), OIDO INSPECTION: MOSHANNON VALLEY PROCESSING CENTER 3 (2022), [https://www.dhs.gov/sites/default/files/2022-10/OIDO%20Final%20Inspection%20Report%20-%20Moshannon%20Valley%20Processing%20Center\\_2.pdf](https://www.dhs.gov/sites/default/files/2022-10/OIDO%20Final%20Inspection%20Report%20-%20Moshannon%20Valley%20Processing%20Center_2.pdf) [hereinafter OIDO REPORT].

<sup>2</sup> *Detention Facilities Average Daily Population*, SYRACUSE TRAC IMMIGRATION (as of April 1, 2024), <https://trac.syr.edu/immigration/detentionstats/facilities.html>. According to TRAC data, only 8 facilities (located in Georgia, Mississippi, Louisiana, Texas, Arizona, and California) have larger average daily populations. *Id.*

<sup>3</sup> OIDO REPORT, *supra* note 2, at 3. Since its opening in December 2021, with a population of 68, the number of individuals has been on a consistent and steady rise, reaching a population of just over 900 in December 2022, and an average daily population of 1,189 in December 2023. TRAC IMMIGRATION, *supra* note 2.

<sup>4</sup> *See, e.g., Perez-Barron v. United States*, 480 F. App’x 688, 689-690 (3d Cir. 2012) (summary order) (alleging that Moshannon staff failed to provide adequate medical care for severe chronic head pain caused by a traumatic injury, prescribing only Motrin, failing to examine plaintiff’s skull, and ignoring the advice of the plaintiff’s general doctor that he may need reconstructive surgery); *Cerome v. Moshannon Valley Corr. Ctr.*, No. 09-2070, 2010 WL 4948940, at \*1 (3d Cir. Dec. 7, 2010) (outlining that staff allowed prisoners to attack and brutalize the plaintiff and other Black people because of their race).

<sup>5</sup> U.S. DEP’T OF JUST., PHASING OUT OUR USE OF PRIVATE PRISONS (Aug. 18, 2016), <https://www.justice.gov/archives/opa/blog/phasing-out-our-use-private-prisons>.

<sup>6</sup> Exec. Order No. 14006, 86 Fed. Reg. 7483 (Jan. 29, 2021).

<sup>7</sup> On August 12, 2010, Cornell Companies was acquired by GEO, the private for-profit prison corporation that presently owns and operates Moshannon under contract with ICE. THE GEO GROUP, *The Geo Group Closes \$730 Million Merger with Cornell Companies* (Aug. 12, 2010), <https://investors.geogroup.com/static-files/b0fd7e43-9224-46ae-ac4c-bf21ffcaf7cb>.

<sup>8</sup> OIDO Report, *supra* note 2, at 3.

<sup>9</sup> Jessica Shirey, *Moshannon Valley Correctional Facility to Reopen as ICE Center*, GANTNEWS (Sept. 29, 2021), <https://gantnews.com/2021/09/29/moshannon-valley-correctional-facility-to-reopen-as-ice-center/>.

criticism<sup>10</sup> and reports of substandard conditions at the facility have continued. For instance, in 2022, the DHS Office of the Immigration Detention Ombudsman (“OIDO”) issued a report following an announced inspection of Moshannon. The OIDO Report found that the facility fell short of many standards mandated for ICE facilities under the Agency’s Performance-Based National Detention Standards 2011, Rev. 2016 (“PBNDS”),<sup>11</sup> including medical care and staffing, medical emergency preparedness, language access, and staff communications.<sup>12</sup>

More recently, in June 2023, the Department of Homeland Security (“DHS”)’s Office of Civil Rights and Civil Liberties (“CRCL”) submitted a summary of recommendations to ICE following a separate onsite investigation at Moshannon.<sup>13</sup> Of the 23 recommendations, ICE only accepted nine in their entirety. Because ICE did not concur with 13 out of the 23 recommendations and only those to which it concurred are made public, there is a limited picture available to the public regarding CRCL’s recommendations. But the recommendations that are public are deeply troubling. CRCL noted, “[f]or a facility that had only recently begun housing ICE detainees as of November 2021, it had a number of reported use of force incidents and sexual assault allegations,”<sup>14</sup> and found that incident reports failed to address “unsafe and avoidable takedown techniques.” CRCL, like OIDO, also raised language access concerns, noting that facility staff at Moshannon relied on noncitizens to translate and interpret for them when a language-proficient staff member was unavailable.<sup>15</sup> The CRCL investigation also uncovered that while there was a male staff member dedicated to interpretation services, seemingly for Spanish, the women detained at Moshannon for whom Spanish was the primary language had not received interpretation assistance, and were unaware of any dedicated staff member to facilitate language access.<sup>16</sup> Moshannon is also currently under investigation for a death-in-custody that occurred in December 2023.<sup>17</sup>

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<sup>10</sup> Letter from 220 Organizations, to President Biden and Secretary Mayorkas (Oct. 8, 2021) (on file with Detention Watch Network), [https://www.detentionwatchnetwork.org/sites/default/files/Stop%20ICE%20Expansion%20Org%20Sign%20On\\_10.8.21.pdf](https://www.detentionwatchnetwork.org/sites/default/files/Stop%20ICE%20Expansion%20Org%20Sign%20On_10.8.21.pdf).

<sup>11</sup> U.S. IMMIGR. & CUSTOMS ENF’T, PERFORMANCE-BASED NATIONAL DETENTION STANDARDS (2011), Rev. 2016, <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf> [hereinafter U.S. IMMIGR. & CUSTOMS ENF’T, PBNDS].

<sup>12</sup> OIDO REPORT, *supra* note 2, at 4.

<sup>13</sup> DEP’T OF HOMELAND SEC. OFF. FOR CIV. RTS. AND CIV. LIBERTIES, SUMMARY OF CRCL’S RECOMMENDATIONS AND ICE’S RESPONSE, MOSHANNON VALLEY PROCESSING CENTER (Jun. 23, 2023), [https://www.dhs.gov/sites/default/files/2024-04/23\\_090\\_crcl\\_close\\_summary\\_ice\\_calhoun\\_county\\_correctional\\_center\\_508\\_final.pdf](https://www.dhs.gov/sites/default/files/2024-04/23_090_crcl_close_summary_ice_calhoun_county_correctional_center_508_final.pdf).

<sup>14</sup> DEP’T OF HOMELAND SEC. OFF. FOR CIV. RTS. AND CIV. LIBERTIES, KEY CIVIL RIGHTS FINDINGS AND RECOMMENDATIONS SPOT-CHECK AT MOSHANNON VALLEY PROCESSING CENTER, COMPLAINT NO. 003761-22-ICE (Nov. 8, 2022), <https://www.documentcloud.org/documents/24459971-crcl-movalley-response-2024-crfo-00086-responsive-mar-6-2024>, at p. 1.

<sup>15</sup> *Id.*, pp. 6 – 7.

<sup>16</sup> *Id.*, p. 7.

<sup>17</sup> Rian Bossler, *Death investigation underway at Clearfield County ICE facility*, WTAJ (Dec. 12, 2023) <https://www.wtaj.com/news/local-news/death-investigation-underway-at-clearfield-county-ice-facility/>.

Moshannon is one of twelve ICE detention facilities that houses more than 1,000 noncitizens in detention.<sup>18</sup> It is the only one in the northeast.<sup>19</sup> ICE has detained at least 10,309 individuals at Moshannon from January 2022 through April 2024.<sup>20</sup> While 2,005 of those individuals were detained locally in Pennsylvania, most people were picked up throughout the region. The largest share of people, 2,755 individuals, were apprehended in New Jersey, with significant numbers coming from New York (764), Texas (756), Maryland (736), Arizona (587), Massachusetts (548), West Virginia (394), Delaware (282), and Virginia (221). The citizenship of origin for the vast majority of individuals at Moshannon is a country in Latin America or the Caribbean – 83.27%. While 79% of people were apprehended by ICE’s Enforcement and Removal Operations, 13% of individuals were first brought into custody by Customs and Border Protection. More than 97% of people detained at Moshannon were labeled as male, inclusive of seven people identified as transgender, with only 263 people labeled as female. The stark reality of ICE detention is reflected in numbers: the majority of people—6,072 individuals, or 68% of people—were only released from detention at Moshannon because they were deported. Overall, individuals detained at Moshannon spent an average of 72 days in detention. However, according to ICE’s data, the length of detention varied by race, with people identified as Black or Asian or Pacific Islander spending far more time overall in detention (inclusive of transfers between facilities) than people identified by ICE as other races.

ICE’s decision to contract with GEO for the detention of immigrants at Moshannon marks another trend in immigration detention – the increased consolidation of immigration detention in large facilities in remote and isolated communities. Moshannon is located in the outskirts of

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<sup>18</sup> Felicia J. Persaud, Twelve U.S. Immigration Detention Centers Each Surpass 1,000 Detainees, NEWS AMERICAS NOW (Jan. 12, 2024) <https://www.newsamericasnow.com/us-immigration-news-twelve-immigration-detention-centers-1k-detainees-trac/>.

<sup>19</sup> *Id.*

<sup>20</sup> As part of ongoing FOIA litigation in *Legal Servs. of N.J. v. ICE*, No. 23-CV-22222 (Filed Nov. 9, 2023, D.N.J.), on May 2, 2024, ICE produced to LSNJ a dataset including information on, *inter alia*, every individual detained by ICE at Moshannon during this period. The dataset, produced as 2024-ICLI-00007-4 Task to LESA\_LESA\_STU [hereinafter the “Dataset”], included Unique Identifiers so that LSNJ could control for multiple events affecting the same individual. After de-duplicating for individuals impacted by multiple ICE actions, and controlling for individuals who passed through Moshannon, ICE’s data shows that at least 10,309 people passed through Moshannon during this time period. Unless otherwise specified, the statistics within this Complaint are derived from that dataset and further explicated in the attached Ex. J, Wisotsky Decl.



Philipsburg, PA,<sup>21</sup> more than 200 miles from Philadelphia, and more than 250 miles from the Elizabeth Detention Center, home to the Immigration Court before which noncitizens are now ordered to appear virtually. Numerous reports have documented the negative and sometimes lethal impact such remote locations has on access to medical supports, public oversight, courts, legal services, and language-appropriate and culturally sensitive staffing.<sup>22</sup>

## **b. Placing Moshannon within the national context of immigration detention**

The number of people held in immigration detention is on the rise. While the absolute numbers of persons held in immigration custody fluctuates over time, as of April 2024, federal immigration authorities were holding 34,000 people in detention.<sup>23</sup> Operating in tandem with the rise in the overall population held in immigration detention has been the dramatic growth of the private prison industrial complex over the past two decades. By July 2023, ICE detained more

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<sup>21</sup> Data USA describes Philipsburg, PA as follows:

None of the households in Philipsburg, PA reported speaking a non-English language at home as their primary shared language. This does not consider the potential multi-lingual nature of households, but only the primary self-reported language spoken by all members of the household.

\* \* \*

Philipsburg, PA is home to a population of 2.78k people, from which 99.7% are citizens. As of 2022, 0.539% of Philipsburg, PA residents were born outside of the country (15 people).

In 2022, there were 11.4 times more White (Non-Hispanic) residents (2.54k people) in Philipsburg, PA than any other race or ethnicity. There were 222 Black or African American (Non-Hispanic) and 15 Other (Hispanic) residents, the second and third most common ethnic groups.

*Philipsburg, PA*, DATA USA (last visited Jul. 5, 2024), <https://datausa.io/profile/geo/philipsburg-pa>.

The Inter-American Commission on Human Rights, as early as 2010, noted its concerns about the negative impact detention had on immigrants' fundamental rights to due process, access to counsel, language access, and right to personal security, and how it ultimately deprives individuals of their rights to to liberty and security of person, and the right to seek asylum and to non-refoulement, among other internationally recognized human rights. *See* INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, REPORT ON IMMIGRATION IN THE UNITED STATES: DETENTION AND DUE PROCESS, OEA/Ser.L/V/II (Dec. 30, 2010).

<sup>22</sup> ACLU, Human Rights Watch, and National Immigrant Justice Center, *Justice Free Zones: U.S. Immigration Detention under the Trump Administration* (Apr. 30, 2020), <https://www.aclu.org/publications/justice-free-zones-us-immigration-detention-under-trump-administration>.

<sup>23</sup> *See ICE Detainees*, SYRACUSE TRAC IMMIGRATION, [https://trac.syr.edu/immigration/detentionstats/pop\\_agen\\_table.html](https://trac.syr.edu/immigration/detentionstats/pop_agen_table.html); *ICE Detention Numbers Lowest Since Start of Fiscal Year, ICE Expands Use of GPS Smartwatches*, SYRACUSE TRAC IMMIGRATION, (April 16, 2024), <https://trac.syr.edu/whatsnew/email.240416.html>.

than 90% of those held in private facilities,<sup>24</sup> a sharp increase from 73% in 2018.<sup>25</sup> The rise in immigration detention and increased reliance on private prison corporations for the detention of immigrants has led to increased reports of abusive conditions of confinement, egregious rights violations, and deaths while in ICE custody.<sup>26</sup>

As the number of noncitizens that federal authorities hold in detention continues to rise, so too do reports of abuse endured by immigrants held in ICE and CBP custody.<sup>27</sup> These complaints

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<sup>24</sup> Eunice Cho, *Unchecked Growth: Private Prison Corporations and Immigration Detention, Three Years Into the Biden Administration*, ACLU NEWS AND COMMENTARY (Aug. 7, 2023), <https://www.aclu.org/news/immigrants-rights/unchecked-growth-private-prison-corporations-and-immigration-detention-three-years-into-the-biden-administration#:~:text=In%20the%20last%20two%20years,operated%20by%20private%20prison%20corporations> (noting President Biden promised when campaigning for the Presidency to end the use of private prison facilities for the detention of immigrants, yet omitted DHS from an agency directive issued in January 2021 to phase out contracts with private prison corporations. Corporations such as GEO and CoreCivic have brought in \$1.05 billion and \$552.2 million respectively in their contracts with ICE). *See also* Setareh Ghandehari, Bob Libal, and Priya Sreenivasan, *Broken Promises: Limits of Biden's Executive Order on Private Prisons* (Steph Guilloud, Azadeh Shahshahani, Silky Shah, and Stacy Suh eds.), DETENTION WATCH NETWORK & PROJECT SOUTH (2021), [https://www.detentionwatchnetwork.org/sites/default/files/reports/Broken%20Promises\\_DWN%20and%20Project%20South.pdf](https://www.detentionwatchnetwork.org/sites/default/files/reports/Broken%20Promises_DWN%20and%20Project%20South.pdf); Bob Libal and Azadeh Shahshahani, *Op-Ed: End profit-driven detention in the immigration system as well as federal prisons*, L.A. TIMES (Dec. 15, 2021, 3:00 AM), <https://www.latimes.com/opinion/story/2021-12-15/end-privately-run-detention-in-the-immigration-system-as-well-as-federal-prisons>.

<sup>25</sup> Clyde Haberman, *For Private Prisons, Detaining Immigrants is Big Business*, NYTIMES (Oct. 1, 2018), <https://www.nytimes.com/2018/10/01/us/prisons-immigration-detention.html>. The report also notes that immigration detention accounts for the overwhelming majority of the population held in facilities owned and operated by private, for profit corporations, which house just 9% of the total prison population for individuals incarcerated on criminal charges.

<sup>26</sup> *See, e.g.*, Ghandehari *et al.*, *supra* note 24; Transnational Legal Clinic of the University of Pennsylvania Carey Law School, Project South, Detention Watch Network, *Submission to the UN Working Group on the use of mercenaries Addressing the Role of Private Military and Security Companies in Immigrant Detention and the Impact on the Protection of the Rights of All Migrants: Case Studies from the United States and particularly Detention Centers in Rural Georgia and Similarly Situated Facilities* (May 21, 2020), [https://projectsouth.org/wp-content/uploads/2020/05/OHCHR\\_WG-Submission\\_Project-South-and-DWN.pdf](https://projectsouth.org/wp-content/uploads/2020/05/OHCHR_WG-Submission_Project-South-and-DWN.pdf) ; Cho, *supra* note 24; Dwayne Fatherree, *Settlement Marks Step Toward Ending Abuses at for-Profit Immigrant Prisons*, SOUTHERN POVERTY LAW CENTER (Nov. 9, 2023), <https://www.splcenter.org/news/2023/11/09/corecivic-for-profit-immigrant-prisons-settlement>;

<sup>27</sup> The Center for Victims of Torture prepared a Backgrounder report, and an in-depth legal analysis addressing the ways in which U.S. immigration detention violates the Convention Against Torture, and other international human rights treaty provisions. Taylor Koehler, Esq., *Arbitrary and Cruel: How U.S. Immigration Detention Violates the Convention Against Torture and Other International Obligations*, CENTER FOR VICTIMS OF TORTURE (2021), [https://www.cvt.org/wp-content/uploads/2023/06/Arbitrary\\_and\\_Cruel\\_d5\\_FINAL.pdf](https://www.cvt.org/wp-content/uploads/2023/06/Arbitrary_and_Cruel_d5_FINAL.pdf). For updated reports on the nature of specific rights abuses carried out in detention centers across the United States, see e.g., Tom Dreisbach, *Government's own experts found 'barbaric' and 'negligent' conditions in ICE detention*, NPR ALL THINGS CONSIDERED, (Aug. 18, 2023) (detailing reports of abuse reported by inspectors with DHS Office of Civil Rights and Civil Liberties released after two years of FOIA litigation); ACLU *et al.*, *supra* note 22; INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *supra* note 21; Human Rights Watch, *US: 20 Years of Immigrant Abuses Under 1996 Laws, Arbitrary Detention, Fast-Track Deportation, Family Separation* (Apr. 25, 2016), <https://www.hrw.org/news/2016/04/25/us-20-years-immigrant-abuses>.

include forced labor in immigration detention,<sup>28</sup> sexual violence,<sup>29</sup> medical neglect and abuse,<sup>30</sup> racially disproportionate rates of prolonged detention, violence, and abuse against Black immigrants held in detention,<sup>31</sup> and serious harms caused by the overuse of solitary confinement or other forms of administrative segregation.<sup>32</sup>

Individuals whom ICE detains at Moshannon experience many of the same violations that others in detention face. It is against this backdrop that the specific complaints of abuse at Moshannon at the hands of private and public staff raised herein are brought.

### c. Legal Background

The government, including federal immigration agencies, has an affirmative duty to provide conditions of reasonable health and safety for the people it holds in its custody.<sup>33</sup> People in immigration detention, even those with prior criminal convictions or against whom government entities have brought criminal charges, are civil detainees and as such, are entitled to the same Fifth and Fourteenth Amendment due process protections as any other pretrial detainee.<sup>34</sup>

An ICE detention condition or practice may be unconstitutionally punitive if it (1) is intended to punish or is “imposed for the purpose of punishment” or (2) is not “reasonably related to a legitimate governmental objective” or is “excessive” in relation to the stated purpose.<sup>35</sup> Under this test, a person in ICE detention does not need to show proof of intent or motive to punish to

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<sup>28</sup> *Barrientos et al. v. CoreCivic Inc.*, 951 F.3d 1269, 1273 – 1275 (11th Cir. 2020) (affirming the District Court’s denial of defendants’ motion to dismiss) (Plaintiffs’ Amended Complaint for Class Certification and Jury Demand, Case No. 4:18-cv-00070-CDL Doc. 87 (M.D. Ga. Oct. 16, 2020), available at [https://www.splcenter.org/sites/default/files/documents/barrientos\\_amended\\_complaint\\_-\\_doc\\_87.pdf](https://www.splcenter.org/sites/default/files/documents/barrientos_amended_complaint_-_doc_87.pdf)); Alexandra Levy, *Fact Sheet: Human Trafficking and Forced Labor in For-Profit Detention Facilities*, BUSINESS & HUMAN RIGHTS RESOURCE CENTRE (Jun. 15, 2018), <https://www.business-humanrights.org/en/latest-news/fact-sheet-human-trafficking-forced-labor-in-for-profit-detention-facilities/>; Jonathan Booth, *Ending Forced Labor in ICE Detention Centers: A New Approach*, 3 *Georgetown Immig L. J.* 34, 574 (2020).

<sup>29</sup> Administrative Complaint, Sexual assault of detained immigrants by a nurse at Stewart Detention Center, a U.S. Department of Homeland Security immigration detention facility operated by CoreCivic (July 12, 2022), <https://www.splcenter.org/sites/default/files/stewart-detention-center-nurse-complaint-07-12-2022.pdf>; Nicole Lue, Joseph Nwadiuko, Parveen Parmar, and Amy Zeidan, *Trends in Sexual Assault Against Detainees in US Immigration Detention Centers, 2018-2022*, JAMA (Jan 24, 2023), <https://jamanetwork.com/journals/jama/fullarticle/2800675>.

<sup>30</sup> Nora Ellmann, *Immigration Detention is Dangerous for Women’s Health and Rights*, CENTER FOR AMERICAN PROGRESS (Oct. 21, 2019), <https://www.americanprogress.org/article/immigration-detention-dangerous-womens-health-rights/>.

<sup>31</sup> Timantha Goff et al., *Uncovering the Truth: Violence and Abuse Against Black Migrants in Immigration Detention*, BLACK ALLIANCE FOR JUST IMMIGRATION, BLACK LGBTQIA+ MIGRANT PROJECT, UNDOCUBLACK NETWORK, FREEDOM FOR IMMIGRANTS (Oct. 2022), <https://baji.org/wp-content/uploads/2022/10/Uncovering-the-Truth.pdf>.

<sup>32</sup> Harvard Immigration and Refugee Clinical Program et al., “*Endless Nightmare*”: *Torture and Inhuman Treatment in Solitary Confinement in U.S. Immigration Detention* (Feb. 2024), <https://phr.org/wp-content/uploads/2024/02/PHR-REPORT-ICE-Solitary-Confinement-2024.pdf>.

<sup>33</sup> *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 199–200 (1989).

<sup>34</sup> *See E. D. v. Sharkey*, 928 F.3d 299, 306–07 (3d Cir. 2019) (“This Circuit has longed [sic] viewed the legal rights of an immigration detainee to be analogous to those of a pretrial detainee.”). People in ICE detention may not be subject to punishment *at all*. *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) (“Due process requires that a pretrial detainee not be punished.”).

<sup>35</sup> *Id.* at 538–39.

prevail in establishing that ICE has unconstitutionally punished them. Instead, the question is whether, through objective evidence, the challenged condition or practice is not rationally related or is excessive in relation to the government’s purpose.<sup>36</sup>

Moreover, in any circumstance in which the government detains a person, it has a constitutional “obligation to provide medical care.”<sup>37</sup> After all, a person in detention “must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met. In the worst cases, such a failure may actually produce physical torture or a lingering death . . . [and] [i]n less serious cases, denial of medical care may result in pain and suffering.”<sup>38</sup> The Supreme Court has made explicit that a person can make out a constitutional claim for deliberate indifference to their serious medical needs “whether the indifference is manifested by prison doctors in their response to the prisoner’s needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed.”<sup>39</sup>

Beyond these constitutional protections, the Performance-Based National Detention Standards (“PBNDS”), issued and intermittently revised by ICE, provide a framework that detention facilities must adhere to, in order to maintain a safe and secure environment for people ICE keeps in civil detention. MVPC operates under PBNDS 2011 (Revised 2016).<sup>40</sup> Provisions under the PBNDS require, among other things, adequate medical and mental health care<sup>41</sup> and meaningful language access,<sup>42</sup> and prohibit gender-based discrimination.<sup>43</sup>

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<sup>36</sup> In 2015, the Supreme Court ruled in *Kingsley v. Hendrickson* that pretrial detainees enjoy greater protection against excessive force by staff than do convicted prisoners. 576 U.S. 389 (2015). While people who are serving time in prison for crimes must show a subjective intent of punishment in order to prevail in an Eighth Amendment excessive force claim, see *Hudson v. McMillian*, 503 U.S. 1, 9 (1992), the Supreme Court in *Kingsley* found that pretrial detainees do not have to prove that an officer was subjectively aware that their use of force was unreasonable. Instead, only the objective prong of the deliberate indifference test applies, that is whether the officer’s use of force was objectively unreasonable. *Kingsley*, 576 U.S. at 391–92, 397 (“[T]he appropriate standard for a pretrial detainee’s excessive force claim is solely an objective one.”). Since then, several circuit courts have extended the reasoning in *Kingsley* beyond excessive force to other claims brought by pretrial detainees, including medical care and other conditions of confinement. While the Third Circuit has not yet decided whether *Kingsley* is applicable in cases beyond the excessive force context, in a challenge by medically vulnerable people in ICE detention when the COVID pandemic first began, the Third Circuit, without analysis, said that “[t]o establish deliberate indifference, Petitioners must show the Government knew of and disregarded an excessive risk to their health and safety.” *Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 329 (3d Cir. 2020) (citing *Nicini v. Morra*, 212 F.3d 798, 811 (3d Cir. 2000)) (emphasis in original).

<sup>37</sup> *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). Decided in the more restrictive context of deliberate indifference to a medical need by a person incarcerated following a criminal conviction.

<sup>38</sup> *Id.* (internal quotation marks and citations omitted).

<sup>39</sup> *Id.* at 104-05 (footnotes omitted).

<sup>40</sup> U.S. IMMIGR. & CUSTOMS ENF’T, PBNDS, *supra* note 11, § 4.3 at 257–28.

<sup>41</sup> U.S. IMMIGR. & CUSTOMS ENF’T, PBNDS, *supra* note 11, § 2.1 (V)(F), at 55 (intake requirements), § 2.1 (V)(G)(2), at 56 (intake requirements); § 4.3(V)(E), at 264, § 4.3(V)(A)(8), at 260; § 4.3(V)(J), at 266, § 4.3(V)(AA)(5), at 276 (translation and interpretation requirements for medical and mental health care); § 2.12(V)(A)(2)(e), at 176 (translation and interpretation requirements related to solitary); § 2.13(V)(A), at 189 (communication between staff and people who are LEP); § 3.1(II)(8), at 214, 217, 220 (translation and interpretation requirements in disciplinary proceedings);

<sup>42</sup> U.S. IMMIGR. & CUSTOMS ENF’T, PBNDS, *supra* note 11.

<sup>43</sup> U.S. IMMIGR. & CUSTOMS ENF’T, PBNDS, *supra* note 11.

As detailed below, ICE and GEO have utterly failed to comply with their constitutional obligations to the Participants, as well as failing to meet many PBNDS standards.

## **II. ICE AND GEO DENY LANGUAGE ACCESS RIGHTS TO THE PEOPLE THEY DETAIN AT MOSHANNON.**

GEO and ICE staff at Moshannon routinely and consistently fail to provide meaningful language access<sup>44</sup> to individuals they hold in their custody. As detailed herein, this denial of language access begins from the moment an individual is first processed at Moshannon and persists through all oral and written communications and systems of communication, including in the provision of vital documents.<sup>45</sup> These failures permeate all aspects of daily life for people ICE detains there. Individuals with LEP are left unable to understand facility policies or procedures, or instructions and directives issued by officials, and are not provided with a meaningful opportunity to understand and respond to any disciplinary measures instituted, including placement into a segregated management unit. Individuals with LEP are also denied access to legal materials, including legal documents and application forms for submission to immigration court. Finally, as is explained in greater detail in Section III.b below, individuals at Moshannon are routinely denied adequate medical care. This situation is compounded and exacerbated for individuals with LEP for whom language interpretation and translation services are not made available to assist with the placing of a sick call to seek medical care or in the distribution of medication. When interpretation services are provided for the actual medical appointments, those services are often inadequate, inconsistent, and do not allow for meaningful communication between the individual and medical staff.

### **a. ICE and GEO Officials' routine denial of language access violates Title VI's prohibition of national origin discrimination and the PBNDS, and implicates the due process rights of persons with LEP detained at Moshannon.**

People detained by immigration authorities have the right to language justice, and to access services in the language in which they are proficient. That right has been recognized by the Executive, the supervising agency, and Congress. Almost a quarter of a century ago, the President issued Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (Aug. 11, 2000) ("E.O."), calling on federally funded agencies and contractors providing programs, activities, and operations to develop and implement plans to ensure the provision of meaningful language access to persons who are LEP. That E.O. explicitly recognized that failure to provide language access may constitute prohibited national origin discrimination

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<sup>44</sup> DHS LAP defines "meaningful access" as "the provision of language assistance services that results in accurate, timely, and effective communication at no cost to the person who is LEP. For individuals who are LEP, meaningful access denotes access that is not significantly restricted, delayed, or inferior as compared to programs or activities provided to English proficient individuals." U.S. DEP'T OF HOMELAND SEC., LANGUAGE ACCESS PLAN (Nov. 2023), IV (4), [https://www.dhs.gov/sites/default/files/2023-11/23\\_1115\\_dhs\\_updated-language-access-plan.pdf](https://www.dhs.gov/sites/default/files/2023-11/23_1115_dhs_updated-language-access-plan.pdf) [hereinafter DHS LAP].

<sup>45</sup> DHS LAP defines "vital document" as "a document that contains information that is critical for obtaining any aid, benefit, or services or is required by law. Vital documents can include: applications; consent and other forms that require signatures; complaint forms; notices of rights; notices on the availability of free language assistance; and letters or notices that require a response from the beneficiary, customer, or noncitizen." DHS LAP, *supra* note 39, (IV)(9).

under Title VI of the Civil Rights Act.<sup>46</sup> The DHS Language Access Plan (updated Nov. 2023) (“DHS LAP”), which follows from the E.O. 13166 mandate,<sup>47</sup> states: “It is the policy of DHS to provide meaningful access for individuals with limited English proficiency to operations, services, activities, and programs that support each Homeland Security mission area by providing quality language assistance services in a timely manner.”<sup>48</sup> The DHS LAP defines “meaningful access” as “the provision of language assistance services that results in accurate, timely, and effective communication at no cost to the person who is LEP.”<sup>49</sup> This language is reiterated in the ICE Language Access Plan (“ICE LAP”), which provides:

It is ICE policy to ensure that external LEP stakeholders have meaningful access to its programs, services, and activities by providing quality language assistance services in a timely manner. This includes providing timely and effective communication to . . . LEP individuals in ICE custody. This also includes identifying and translating vital documents into the most frequently encountered languages, providing interpretive services where appropriate, and educating personnel about language access responsibilities and how to utilize available language access resources.<sup>50</sup>

The DHS and ICE LAPs extend not only to the component parts of DHS itself, but also to the private corporations with which DHS contracts for the provision of services<sup>51</sup> – in this case, GEO.<sup>52</sup>

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<sup>46</sup> E.O. 13166 followed from U.S. Supreme Court precedent in *Lau v. Nichols*, 414 U.S. 563 (1974), firmly establishing that the failure to provide a meaningful opportunity to participate in federally-funded programs is a form of national origin discrimination in violation of Title VI of the Civil Rights Act of 1964. *See also* 6 CFR §21.1: “No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Homeland Security. The provisions established by this part shall be effective for all components of the Department, including all Department components that are transferred to the Department, except to the extent that a Department component already has existing title VI regulations.”

<sup>47</sup> DHS LAP, *supra* note 39, at p. 2, (stating as its Purpose: “This Language Access Plan implements DHS’s language access policy and updates the DHS plan to implement Executive Order 13166,” and further both the procedural and substantive requirements of the Executive Order as it relates to the implementation of its own Language Access Plan, as well as its requirement that DHS provide guidance to its recipients on their language access requirements specific to Title VI’s prohibition against national origin discrimination).

<sup>48</sup> DHS LAP, *supra* note 39, at p. 5.

<sup>49</sup> *Id.* at pp. 4-5.

<sup>50</sup> U.S. IMMIGR. & CUSTOMS ENF’T, LANGUAGE ACCESS PLAN (June 14, 2015), p. 3, <https://www.dhs.gov/sites/default/files/publications/ICE%20Language%20Access%20Plan.pdf> [hereinafter ICE LAP].

<sup>51</sup> 6 CFR §21.4. *See also* DHS LAP, *supra* note 39, at p. 3 (“The DHS Language Access Plan applies to all DHS Component employees and contractors who interact with members of the public . . . and [have] contact with individuals who are LEP.”).

<sup>52</sup> *See* U.S. DEP’T OF HOMELAND SEC., GUIDANCE TO FEDERAL FINANCIAL ASSISTANCE RECIPIENTS REGARDING TITLE VI PROHIBITION AGAINST NATIONAL ORIGIN DISCRIMINATION AFFECTING LIMITED ENGLISH PROFICIENT PERSONS (specifying “Jails and detention facilities that house detainees of Immigration and Customs Enforcement (ICE)” as covered recipients), [https://www.dhs.gov/sites/default/files/publications/summary-lep-guidance-english\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/summary-lep-guidance-english_0.pdf). DHS CRCL has been designated as the entity within DHS to oversee compliance of Title VI obligations, with specifically recognized responsibility to oversee implementation of and compliance with the DHS Language Access Plan. *See* DHS LAP, *supra* note 39, at p. 2, pp. 6-8.

The PBNDS provide further guidance on the minimum language access requirements specific to ICE detention.<sup>53</sup> Those standards specify throughout that detention centers shall provide individuals who are LEP with “language assistance, including bilingual staff or professional interpretation and translation services, to provide them with meaningful access to its programs and activities.” The PBNDS further provide that “[a]ll written materials provided to detainees shall generally be translated into Spanish. Where practicable, provisions for written translation shall be made for other significant segments of the population with limited English proficiency,” and where the LEP individual speaks a language in which the written material has not been translated, or where the individual is illiterate, “oral interpretation or assistance shall be provided.”<sup>54</sup> These requirements are acknowledged by and promised to people in detention as reflected in both the ICE National Detainee Handbook and Moshannon-specific supplement to that handbook.

Despite these clear requirements, it seems – based on all available information – that ICE and GEO officials do not record the primary language of persons held in ICE custody at Moshannon. While ICE and GEO appear to record country of citizenship, that information does not serve as an adequate proxy for primary language spoken, particularly given language variations within countries, as well as the large number of indigenous languages spoken in the countries of citizenship for persons detained by ICE.

Furthermore, both ICE and GEO officials at Moshannon routinely fail to provide on-call interpretation services, leaving individuals with LEP at Moshannon without interpretation or else reliant on other persons detained alongside them for interpretation and translation assistance in vulnerable and sensitive situations: to understand instructions and commands from Moshannon officials, to obtain assistance in accessing the library and services available in the legal library, to understand disciplinary proceedings and placements in solitary confinement or administrative segregation, and to request medical assistance and understand the medical interventions being provided to them. In its Summary of CRCL’s Recommendations and ICE’s Response Moshannon Valley Processing Center (2023), CRCL found that Moshannon staff “sometimes relie[d] on noncitizens [sic] to translate and interpret when a proficient staff member is not available.” In response, ICE agreed to remind staff of the “availability of language line interpretation services and to avoid using other noncitizens for translation and interpretation.”<sup>55</sup> Nonetheless, as the Participants detail, and as counsel herein have observed when conducting legal visits at Moshannon, individuals with LEP remain reliant on ad hoc interpretation and translation by individuals detained alongside them.

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<sup>53</sup> U.S. IMMIGR. & CUSTOMS ENF’T, PBNDS, *supra* note 11.

<sup>54</sup> *Id.* at § 1.2 (II)(16); 1.3 (II)(6); 2.1 (II)(9); 2.1 (V)(F).

<sup>55</sup> DHS OFFICE OF CIVIL RIGHTS AND CIVIL LIBERTIES, *Summary of CRCL’s Recommendations and ICE’s Response: Moshannon Valley Processing Center* (June 23, 2023) [https://www.dhs.gov/sites/default/files/2023-09/23\\_0620\\_crcl-close-summary-ice-moshannon-valley-processing-center-06-20-23.pdf](https://www.dhs.gov/sites/default/files/2023-09/23_0620_crcl-close-summary-ice-moshannon-valley-processing-center-06-20-23.pdf).

**b. The Participants have experienced denial of language access services while at Moshannon.**

**i. ICE and GEO officials fail to provide language access services in routine communications.**

Individuals with LEP who ICE detains at Moshannon are consistently denied the interpretation and translation services that are required per ICE’s own Language Access Plan for routine communications and the PBNDS,<sup>56</sup> significantly impacting all aspects of their day-to-day lives. Participants with LEP report that ICE and GEO staff never ask their primary language for communication,<sup>57</sup> and do not provide them with any written materials – including documents that constitute “vital records” – in any language other than English.<sup>58</sup> Participants also note the lack of any staff at Moshannon who speak any language other than English,<sup>59</sup> and either a lack of awareness of any available professional interpretation services (telephonically, or otherwise) or the refusal to provide services when requested.<sup>60</sup> As a result, the Participants and all individuals with LEP detained at Moshannon struggle to first comprehend and then to navigate the facility’s rules and procedures.<sup>61</sup> These experiences are reflected in Moshannon’s records showing scads of infractions, and a small number of individuals who then actually utilize Moshannon’s appeals process after being accused of a disciplinary infraction, presumably because people are not provided with information they understand on how to navigate the process.<sup>62</sup>

Jhordy, whose primary language is Spanish, reports that the only time a professional Spanish interpreter assisted with communication, from the time ICE first brought him into

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<sup>56</sup> ICE LAP, *supra* note 45, p. 15 (“ERO personnel will use telephonic interpretation for routine conversations with LEP detainees... [and] develop an LEP assessment tool to assess language access procedures as well as the effectiveness of LEP interventions for the detainee.”); U.S. IMMIGR. & CUSTOMS ENF’T, PBNDS, *passim*.

<sup>57</sup> Ex. E, Jhordy Decl., ¶ 7; *see also* DHS LAP, *supra* note 39, p. 7; ICE LAP, *supra* note 45, pp. 9–10 (mandating “ICE staff should, at the point of first contact with an LEP individual, make reasonable efforts to make an initial assessment of the need for language assistance services, and reasonable efforts to obtain such services if they are needed to effectively communicate with the individual. ICE staff should avoid assumptions about an individual’s primary language.”).

<sup>58</sup> Ex. E, Jhordy Decl., ¶ 8. The PBNDS requires provision of the Detainee Handbook in the persons primary language, or where such translated version is not available or the person is illiterate, “the facility administrator shall provide a translator or access to interpreter services as soon as possible for the purpose of orientation. When needed, and in compliance with security regulations, the facility administrator may contact an outside source.” U.S. IMMIGR. & CUSTOMS ENF’T, PBNDS, *supra* note 11, 2.1 (V)(G)(2) and (3). Below signed counsel observed sealed boxes in the intake screening rooms labeled Detainee Handbook with multiple different languages designated on the different boxes, but it is not clear that Handbooks have been circulated to individuals in their primary language, or that oral interpretation has been provided to persons who speak languages into which the Handbook has not been translated, such as Pulaar or Soninke, or other languages spoken by the large number of new arrivals from Mauritania who were detained at Moshannon beginning in the late summer and fall of 2023.

<sup>59</sup> Ex. E, Jhordy Decl. ¶ 9; Ex. C, Jane Decl. ¶ 3.

<sup>60</sup> *Id.*, Ex. F, Jose Decl., ¶ 7, Ex. H, Alvan Decl., ¶ 17.

<sup>61</sup> Ex. E, Jhordy Decl., ¶¶ 9, 11; Ex. G, Juan Decl., ¶ 4; Ex. C, Jane Decl., ¶ 16; *see also* The GEO Group Inc. and US DHS, *Supplement to the ICE National Resident Handbook: Moshannon Valley Processing Center* (2024), available on file with counsel. This handbook is, to the knowledge of Counsel signed below, available only in English, despite setting forth rules, policies and procedures to which all individuals detained at Moshannon are expected to adhere.

<sup>62</sup> Ex. J, Declaration of Shira Wisotsky at 42 (2024-ICLI-00007 0274). Of the 1,174 alleged disciplinary infractions that occurred in 2023 at Moshannon, 882 people were found “guilty.” Only 37 people appealed; none successfully.



detention in the beginning of September of 2023, was during a medical visit with a nurse.<sup>63</sup> He notes:

Announcements in the dorms are made over the loudspeaker in English. I have no idea what is being announced. Now I know that the many times a day that we are told things through the loudspeaker, the Moshannon staff is usually calling us for food or rec time. At the beginning, I missed meals, and especially lunch, when I did not understand what we were being told to do. Now, a friend will usually translate for me, and I know now to follow people like a sheep. I still do not understand everything, though, because announcements are not interpreted.

I have the same issues communicating with the ICE staff that works at Moshannon. They do not use an interpreter either. Whenever ICE officers come here to speak with us or deliver paperwork and answer questions, it is very difficult to speak with them and so I have learned not to bother them with my questions. I try not to have shame.<sup>64</sup>

Jason shares similar experiences. Jason speaks Mandarin, a language less commonly spoken at Moshannon, making the lack of access to professional interpretation services particularly difficult. He notes the ways in which the denial of language access impacted him:

The lack of language access . . . permeated my everyday interaction with the Correctional Officers (COs). In the beginning, I would ask for telephonic interpretations when I needed to communicate. Most of the time, they would refuse and provide no explanation. . . . I was extremely frustrated that I had to rely on my limited English to communicate. Because I was so used to being rejected for my request to access interpretation services, I stopped asking and tried my best to express myself in English, including the time I told the COs that I was going on a hunger strike. The COs had never offered to provide interpretation despite witnessing me struggle to express my ideas. They communicated with me using English, expecting me to understand whatever they said. That was the same case with the ICE officer who visited me with regard to my hunger strike. He did not provide me telephonic interpretation either but instead I had to resort to using my very limited English to communicate.<sup>65</sup>

An attorney providing pro bono legal services to individuals at Moshannon observes:

Many of our clients experienced significant or total lack of language access to engage in immigration processes in their primary languages while detained at MVPC.

For example, none of my clients from Mauritania spoke English. Their primary languages included Soninke, Pulaar, and Hassaniya, and MVPC lacks

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<sup>63</sup> Ex. E, Jhordy Decl. ¶ 9.

<sup>64</sup> *Id.* ¶ 13–14.

<sup>65</sup> Ex. D, Jason Decl. ¶ 27.

language services in these languages. Clients went days without speaking to anybody, in total isolation, due to the lack of interpreters at the facility and lack of access to interpretation and translation services.

This lack of language access affected conditions of confinement, as my clients could not communicate with detention personnel about anything, including asking for pain management medication when suffering from a head or toothache.

To my knowledge, none of the detainees with whom I interacted, either as clients or while doing intake with them, had been told that they could ask for interpretation services at the detention facility. The detainees relied on each other for help. Further, it is my understanding that my clients were not provided with the facility's handbook in any language let alone their primary language.<sup>66</sup>

Jane, Alvan, and Juan provide their personal accounts as to how they have stepped in as interpreters to assist those with LEP and who are dependent on them to communicate daily basic needs and to provide language assistance. As Jane reports:

Because I am multilingual and speak English, I interpret for other people multiple times a day because all of the staff at Moshannon only speak English and they do not use interpreters to help them communicate with people in detention.

....

When I am not available to interpret for other people, people have to point and use hand signals to try to communicate their needs to facility staff. I have never seen staff use telephonic interpretation other than in some medical appointments.

For example, if someone needs toilet paper, people bring an empty toilet paper roll to staff to show what they need or else they do not get toilet paper. For things that they do not have an item to point to, people just wait until I can interpret for them and go without the items they may need.<sup>67</sup>

But Jane, Alvan, and Juan, like others detained at Moshannon who are relied on for *ad hoc* interpretation and translation services, have not been provided either the language skills training or the ethical training of professional interpreters.<sup>68</sup> Juan notes that he is not even fluent in English, and considers himself to be “between low and medium proficiency,”<sup>69</sup> but that he is called upon by ICE officers to interpret about once a week, while the GEO staff ask him to interpret almost every day. He states:

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<sup>66</sup> Ex. I, Decl. of Veronica Tobar Thronson, ¶¶ 8–11.

<sup>67</sup> Ex. C, Jane Decl. ¶¶ 3, 6–7. Complainant Doe noted that there had been one Spanish-speaking Resident Advisor (RA), but she was no longer at Moshannon. *Id.* ¶ 3.

<sup>68</sup> DHS LAP, *supra* note 39, p. 4 (recognizing interpreting as a “complex task that combines several abilities beyond language competence in order to enable delivery of an effective professional interpretation in a given setting... Professional interpreters are subject to specific codes of conduct and should be trained in interpretive skills, ethics, and subject-matter language,” and similarly noting that translation “also involves specific skills, experience, and training and may require official certification depending on the context and need of the Component.”).

<sup>69</sup> Ex. G, Juan Decl., ¶ 2.

When the ICE officers and the staff at Moshannon realized that I could speak some English, they began asking me to interpret. I felt bad for the people who couldn't understand what the officers were saying, so I agreed to help, thinking it was the only option.

....

I don't always know the right words to use, since I am not fluent in English. I have never been trained as an interpreter or translator. I honestly think it is not right for GEO staff or ICE officers to use me to interpret, and I feel badly when I don't know a word or phrase, but I know how desperate we all feel and I want to help in any way that I can.<sup>70</sup>

Reliance on such *ad hoc* and untrained interpretation and translation services directly violate both DHS and ICE's language access plan, and the PBNDS.<sup>71</sup>

**ii. ICE and GEO's denial of interpretation and translation services has a discriminatory impact on disciplinary actions, including transfers to the solitary housing unit, or lock-ins.<sup>72</sup>**

The failure of GEO staff to engage telephonic interpretation and translation services results in the discriminatory enforcement of disciplinary measures and leaves individuals with LEP without a means for instituting or communicating an appeal or grievance.

Jason reports an incident in which a staff person's refusal to provide interpretation services resulted in his being held in solitary confinement overnight. The on-site Correctional Officer ("CO") refused his request to use the restroom while waiting to be transported back to the dorm after a medical appointment, and Jason then asked for the CO's name. Shortly thereafter, another CO arrived and began walking Jason to the segregated housing unit ("SHU"). When Jason realized where he was being taken, he asked for telephonic interpretation so he could ask why he was being taken to the SHU. Although the CO did get an interpreter on the phone, the interpreter did not provide any explanation beyond "they were investigating." When Jason was released from solitary the following day, he was told there had been a misunderstanding. As he notes: "If I had been given language interpretation in the first place, the incident would not have taken place."<sup>73</sup>

Catherine similarly reported that her inability to communicate with staff "because they will not use interpreters to speak with" her resulted in her being locked in a cell for fourteen (14) days without explanation after leaving medical following a physical assault she suffered.

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<sup>70</sup> *Id.* ¶¶ 4 and 6.

<sup>71</sup> DHS LAP, *supra* note 39, p. 7; ICE LAP, *supra* note 45, p. 9; U.S. IMMIGR. & CUSTOMS ENF'T, PBNDS, *supra* note 11.

<sup>72</sup> Men and women at Moshannon are segregated into different building units and are not allowed to interact. The one segregated housing unit (SHU) at Moshannon is used for men only, as men comprise the majority of the population detained at Moshannon. Women therefore are not transferred to the SHU when subjected to segregated disciplinary or protective custody, but instead are "locked in" the cell they ordinarily occupy.

<sup>73</sup> Ex. D, Jason Decl., ¶¶ 28–29.

Staff did not give me a reason for locking me in, but it was related to the attack. I got some papers about it, but the papers were only in English. I asked a friend that knows English to read it to me and explain it. My friend said that I was locked in as a punishment because I was involved in a fight and that I would have to stay locked in while they investigated it.<sup>74</sup>

Although the captain, a supervisor, used an interpreter over the phone with Catherine once in talking with her after she was placed in lock down, he dismissed her concerns that she was being punished after having been attacked in her room while she was sleeping and would not answer her questions about the investigation. He instead instructed her to “stop asking so many questions.” During the purported investigation, officials at no time advised Catherine of her rights in Spanish pertaining to the disciplinary and appeal process, and instead sought to silence her. To her knowledge, and to the knowledge of below signed counsel, copies of the rules of conduct were not provided to Catherine or posted in Spanish, let alone other languages spoken by significant segments of the population.<sup>75</sup>

Jose recounts the multiple abusive experiences he has endured at Moshannon, and not having had the rules or any information about the grievance processes communicated to him either orally or in writing in Spanish, the language he identified during intake as his primary language. As he reports:

When ICE first transferred me to Moshannon, the staff at intake did ask me what language I speak. Even though I explained to them then that I speak Spanish, the regular Moshannon and ICE staff do not use an interpreter to communicate with me. Even the intake staff provided me with paperwork in English only, and did not give me a copy in Spanish of the prison packet you get when you first come here.<sup>76</sup>

After suffering a brutal assault, he – like Catherine – was put in solitary. And, like Catherine, when he tried to speak with the captain, a supervisor, he was not provided with an interpreter.

I spoke with the Captain about [being put in protective custody]. Even though he did not use an interpreter to speak with me, I tried to explain that I did not want to go into protective custody, I did not want to go in the hole. I said if I was not safe in the second unit, they could put me in the third unit where I have never been housed before. The Captain emphasized that I must sign the paper for protective custody because I had problems with people. If I did not sign it, they would put me in the hole anyway. I signed it because I did not think I had a choice.<sup>77</sup>

Not only did the Moshannon staff not provide Jose with interpretation services so that he could understand what was being communicated to him and could communicate his objections and

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<sup>74</sup> Ex. A, Catherine Decl., ¶¶ 4, 16.

<sup>75</sup> Ex. A, Catherine Decl., ¶ 17; U.S. IMMIGR. & CUSTOMS ENF'T, PBNDS, *supra* note 11, §§ 3.1 (II)(8), 3.1(V)(B).

<sup>76</sup> Ex. F, Jose Decl., ¶¶ 3–4.

<sup>77</sup> *Id.* ¶ 19.

concerns in response, the Moshannon staff instructed him to sign a document written in a language he could not understand.<sup>78</sup>

What followed was a series of increasingly violent and abusive treatment at the hands of Moshannon staff. An officer slammed a window shut on Jose's finger, and staff denied him requested medical care.<sup>79</sup> Later, GEO officers sprayed him with pepper spray seemingly for no reason and then failed to provide timely medical attention after he had fallen to the ground. Jose describes that he was "trembling and having an attack" from the chemical spray.<sup>80</sup> Staff also handcuffed and threatened him while in the SHU.<sup>81</sup> In none of these interactions did the Moshannon staff provide an interpreter or access to interpretation or translation services to allow for Jose to better communicate or understand what was happening. Jose recounts a particularly painful and abusive incident, to which he attributes lack of interpretation services as a precipitating cause.

The officers did something terrible to me. It happened after a conversation where the first officer did not use an interpreter, and we were not understanding each other. The officer asked for a paper with a phone number in my hand, but I needed that phone number, so I did not give it to him and put it in my pocket. I do not know why he wanted the phone number. I was trying to explain about the paper, and I was speaking in Spanish because I only know a little English and I am learning.

The officer handcuffed me in the cell. Fifteen to twenty guards then came and dragged me out of the cell and brought me, handcuffed, to a room without a camera. They stripped me naked and looked all over my body. Three people were touching me – the rest were watching or holding me down.

The position I was in was so painful, especially because of the injuries to my back.

The officers touched me. They moved my genitalia around with force, including manipulating my testicles.... They forced me to go on all fours and they moved my testicles left and right to see under. The officers penetrated me with a finger into my buttocks. Then they told me to push and cough to see if I had anything in my organs and to see if anything would come out. They found nothing because there was nothing there, there never was. There was never a reason to think there was something there.

During the search they were laughing at me and making fun of me. That happened when I was naked and on all fours. I couldn't understand what they were

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<sup>78</sup> U.S. IMMIGR. & CUSTOMS ENF'T, PBNDS, *supra* note 11, §§ 3.1 (II) (5) – (6), (8) ("At each step of the disciplinary and appeal process, the detainee shall be advised in writing of his/her rights in a language he/she understands, and translation or interpretation services shall be provided as needed.")

<sup>79</sup> Ex. F, Jose Decl., ¶¶ 29–30.

<sup>80</sup> *Id.* ¶¶ 34–36.

<sup>81</sup> *Id.* ¶ 37.

saying. I felt so terrible. I still feel so terrible, when 10 people gang up on you like this, you can't feel well. Nobody can.

I do not think that this horrible incident would have happened if the person talking to me had used an interpreter, and we could have communicated in a language that I speak. Then maybe he could have understood that there was no problem.<sup>82</sup>

What the officials subjected Jose to was an unnecessary and humiliating search that likely would not have occurred had Jose been provided with appropriate language access.<sup>83</sup> Indeed, it is even more outrageous given that he was being held in protective custody against his will and his only alleged offense was not being able to communicate with the official in response to the official's demands. The entire incident took place without any effort to understand Jose's attempted explanation as to what the piece of paper was or ensure his understanding of what was being demanded of him and why. Furthermore, as with Catherine, at no time during his stay at Moshannon, was Jose provided information about how to pursue a grievance, nor was he provided the opportunity to do so in Spanish. The PBNDS require that people be advised in writing of their rights in a language they understand for any disciplinary action taken, and they are entitled to have access to forms for submitting written requests, grievances, or concerns to ICE/ERO in a language they understand.<sup>84</sup> Neither Catherine nor Jose were provided such access. Moshannon's failure to do so resulted in unwarranted (and potentially retaliatory) use of disciplinary action such as lock-ins and placement in the SHU. Individuals with LEP subjected to such actions are then denied access to any appeal or grievance procedure in response, raising significant constitutional due process concerns.<sup>85</sup>

Attorneys representing individuals at Moshannon provide their own first-person accounts of the lack of translated policies and procedures, and the lack of interpretation services provided to communicate those policies and procedures. They also provide accounts of Moshannon staff issuing commands to persons with LEP in English only and then responding to the individual's lack of comprehension in a punitive, and at times, aggressive fashion. Attorney Shira Wisotsky observed during legal visits in March 2024:

Since my last visit in October, there were . . . new policies posted throughout the visitation room. . . . The policies were posted in English and Spanish only, and not

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<sup>82</sup> *Id.* ¶¶ 22–27.

<sup>83</sup> U.S. IMMIGR. & CUSTOMS ENF'T, PBNDS, *supra* note 11, § 3.1(II)(14) (“At all steps in the disciplinary process, any sanctions imposed shall be commensurate with the severity of the committed prohibited act and intended to encourage the detainee to conform with rules and regulations in the future.”).

<sup>84</sup> U.S. IMMIGR. & CUSTOMS ENF'T, PBNDS, *supra* note 11, § 2.13 (V)(B).

<sup>85</sup> In *Wolff v. McDonnell*, 418 U.S. 539, 570, (1974), the U.S. Supreme Court held that disciplinary proceedings in carceral settings, where a person is likely subject to solitary as discipline, must include: a written notice of charges; a written statement of evidence; and the opportunity for an inmate to call witnesses and present evidence. *Id.*, at 564–566. The Second Circuit, in examining the due process protections set forth in *Wolff* as applied specifically to persons with LEP, affirmed the lower court's finding that, “unless Spanish [or non-English] speaking inmates understand and can communicate with the hearing board, they are being denied the due process protections guaranteed in *Wolff*.” *Powell v. Ward*, 487 F. Supp. 917, 932 (S.D.N.Y. 1980), *aff'd and modified*, 643 F.2d 924, 932 (2d Cir. 1981).

in other languages regularly used by individuals in detention or by loved ones who visit people in detention. There was also no notice posted in any language as an individual's right to receive an oral translation of the written postings and how to obtain such an oral translation. Nor was there information posted in any language as to how to request or access a professional interpreter to answer questions about the new policies.<sup>86</sup>

She then describes the following series of interactions between staff at Moshannon and individuals with LEP detained there, interactions that could have escalated to something more severe including disciplinary action taken, all because of the lack of interpretation services provided:

I observed three different correctional staff members in the visitation room inventorying the persons of people in detention being brought in for visits. Not one of the people in detention was proficient in English. Although there was a telephone on the desk, not one of the staff members used it to access a language line so that they could communicate with the people in detention they were speaking with.

One of the staff members raised her voice, almost yelling, when the individual in detention obviously did not understand what she was saying to him. Her speaking louder in English, without an interpreter, did not result in the individual comprehending what she was saying.

One of the staff members asked questions of another individual in detention about what clothing he had on his body. He clearly did not understand, but nodded and shrugged his shoulders. The correctional staff took that as "yes" answers to her questions about what clothing the individual had on his body.

One of the correctional staff began screaming orders, in English, at a Spanish-speaking individual in detention. She was asking him to move into a room and sit down. The individual, who was not English proficient, was clearly confused. The correctional staff became irate, the situation appeared to be escalating, and I became increasingly nervous that she would subject this person to discipline for not responding to orders that he did not understand. I therefore stepped in and tried to interpret for this individual, in a language in which I am not proficient. The individual immediately complied with what was being asked from him.<sup>87</sup>

Attorney Veronica Tobar Thronson similarly reports:

My students and I represented an asylum seeker from Uzbekistan who was detained at MVPC. Prior to a spring 2024 visit to the detention facility, my students and I had requested to meet with this asylum seeker to conduct an intake. We had brought an in-person Uzbek interpreter with us. The asylum seeker was brought to the visitation room without any of his paperwork and when he attempted to go back to get his paperwork, a detention officer started yelling at him "Get back! Get back!"

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<sup>86</sup> Ex. J, Wisotsky Decl., ¶ 18.

<sup>87</sup> *Id.* ¶¶ 22–25.

The detainee could neither understand nor communicate to explain that he needed his paperwork. We tried to intervene and deescalate, asking the detainee to forego retrieving his paperwork at that point and to just talk to us because we were concerned that he would be taken back into his room without having a chance to speak to an attorney. While we were meeting with him, a different officer came to tell him, in English, that his behavior would not be tolerated.<sup>88</sup>

Moshannon's own records reveal that staff at Moshannon do not record whether language access was provided during incidents that result in discipline of people in detention and language proficiency therefore does not factor into disciplinary proceedings. As detailed in Attorney Wisotsky's declaration, as part of LSNJ's FOIA litigation, ICE produced copies of all of Moshannon's Significant Incident Reports from February 25, 2022 through May 15, 2024. These reports contain numerous incidents stemming from people in detention allegedly refusing to comply with orders, but there is no documentation whatsoever of whether the individual is proficient in English or if interpretation was provided. For example, as described in a report from Moshannon to ICE:

On January 24, 2024 . . . contract staff at [Moshannon] notified ERO Philadelphia of a calculated use of force incident involving ICE detainee [Redacted], a 44-year-old citizen of Mexico. On January 24, 2024, at approximately 0900 hours EST, [Moshannon] contract staff attempted to remove [Redacted] from his cell in preparation for his transport to Columbia Regional Care Center (CRCC) in Columbia, SC for mental health services. When MVPC staff asked [Redacted] to comply, he refused to leave his cell. MVPC staff then entered the cell, guided him to the floor, and placed him in handcuffs and leg restraints. MVPC staff then escorted [Redacted] to a medical exam room, where he was evaluated before being escorted to intake for transport.<sup>89</sup>

Similarly, as described by Moshannon:

On November 15, 2023 . . . GEO contract staff at [MVPC] notified ERO Philadelphia of a calculated use of force incident involving ICE detainee [Redacted], a 37-year old citizen of Georgia. On November 15, 2023, at approximately 0030 hours EST, [Redacted] refused multiple orders to come to the door of the holding room in the admission areas to be placed in restraints before being transferred to the medical unit. GEO assembled a team to extract [Redacted] from the holding room. At 0334 hours EST, after [Redacted] again refused orders to come to the door of the holding room, the team entered the holding room. The lead Resident Assistant (RA) utilized a shield to pin [Redacted] to the wall and bench, while other members of the team secured [Redacted] in hand and leg restraints. GEO staff then escorted [Redacted] to the medical unit.<sup>90</sup>

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<sup>88</sup> Ex. I, Thronson Decl., ¶ 16.

<sup>89</sup> Ex. J, Wisotsky Decl. at 31 (2024-ICLI-00007 0489).

<sup>90</sup> Ex. J, Wisotsky Decl. at 27 (2024-ICLI-00007 0469).



As Alvan observes, it is not just that interpreters are not provided to people with LEP at Moshannon, but that the staff of Moshannon “rel[y] on the fact that some people do not have a strong grasp of English to understand the protocols in place so that they can get away with doing things their own way.”<sup>91</sup> After detailing his own experiences in engaging the grievance process following an invasive strip search to which he was forced to submit, he states:

Other people who do not know English well enough would not be able to understand the rules and file grievance complaints like I did when they felt like their rights were similarly violated. I notice that RAs and other staff from MVPC and ICE often make assumptions about people based on their ability to speak English and then try to take advantage of them. One time, a guard told me that I was better than the other detained people for being “so American” I can tell that the guards who know me tend to be more cautious around me because I am more outspoken and understand English well.<sup>92</sup>

As illustrated through the above narratives, the ICE and GEO staff’s failure to provide interpretation and translation services as required under the PBNDS results in the persistent exclusion of persons with LEP and the denial of their fundamental due process as they try to navigate the detention setting at Moshannon. As set forth below, this denial of language access also has a direct and compounding impact on individual’s ability to participate in their legal proceedings and access medical services.

**iii. ICE and GEO officials fail to provide language access in the provision of non-medical services, including access to the law library and legal services and religious services.**

The denial of meaningful language access permeates the provision of all services at Moshannon, in violation of DHS and ICE’s own articulation of its Title VI obligations, as set forth in the PBNDS and detailed language access plans. In particular, the failure to provide interpretation and translation services to allow for equal access to the law library and, by extension, to full and equal participation in one’s immigration proceedings, further implicates the due process rights of persons with LEP who are detained at Moshannon. So too does Moshannon’s failure to provide equal access to religious materials and religious services to persons with LEP, which negatively impacts their exercise of religion.<sup>93</sup>

As illustrated by Jhordy’s experience, the denial of professional interpretation and translation services directly impeded his due process rights to privacy and to fully participate in the immigration proceedings brought against him. Jhordy did not have an immigration attorney to assist with the initial filing of his asylum application, yet Moshannon did not provide any assistance in obtaining Spanish-language translation to facilitate completion of the application. Instead, Jhordy had to use a friend to help with translation and felt forced to leave out key details related to why he feels unsafe to return to his home country. As he notes, “The friend had to see

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<sup>91</sup> Ex. H, Alvan Decl., ¶ 17.

<sup>92</sup> *Id.* ¶ 21.

<sup>93</sup> U.S. IMMIGR. & CUSTOMS ENF’T, PBNDS, *supra* note 11, §§ 5.5 (I) and (II) (10).

all the details in my asylum application. I was uncomfortable but I did not have any other option. The first time I drafted my story I left out a lot of details about the sexual assault that I experienced.”<sup>94</sup> Although not an issue in Jhordy’s case as the immigration judge ultimately found him credible, there are many instances in which discrepancies between initial applications for relief and subsequent applications or testimony will put someone at risk of an adverse credibility finding with an immigration judge and denial of humanitarian relief.

Pro bono attorney Veronica Tobar Thronson reports:

The lack of language access also prevented clients from complying with mandates from the Immigration Court to prepare and file asylum applications in English. We encountered asylum applicants who were [ordered] removed simply because they could not complete asylum paperwork in English.

On September 29, 2023, my law students and I visited the MVPC and met for the first time with a detained asylum applicant from Mauritania whose primary language is Soninke. He had received a final order of removal after failing a Credible Fear Interview conducted in a language other than Soninke. Upon our intervention, he was issued a Notice to Appear and placed in regular removal proceedings. He was granted asylum by the Immigration Court in February 2024.<sup>95</sup>

As illustrated by this example, the lack of language interpretation services for persons unable to obtain legal counsel can be fatal to their case, and place them at enormous risk of harm.

Relatedly, Jane reports on the difficulties in making legal calls and the lack of guidance provided to all persons in how to access legal services. But she emphasizes the added difficulty that persons with LEP must confront.<sup>96</sup> She describes that individuals with LEP also face restrictions on their participation in religious services, and in their exercise of religion because of Moshannon’s refusal to provide interpretation and translation services:

There are . . . limitations in what languages religious programming is offered. Even though I speak English, I prefer to read the Bible in my native language because that is the language I am most fluent in. I have asked for a Bible in my native language for myself and other people multiple times, but I have never received one. I feel like it should not be so hard to get access to things like this.

The chaplain at Moshannon only speaks English and there is no church in languages other than English and sometimes Spanish. There is only one time I can recall, around May 2023, that the chaplain used Spanish interpretation for church services but that is it. There is really nothing else to do here, like classes, if you do not speak English.<sup>97</sup>

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<sup>94</sup> Ex. E, Jhordy Decl., ¶ 10.

<sup>95</sup> Ex. I, Thronson Decl., ¶¶ 12–13.

<sup>96</sup> Ex. C, Jane Decl., ¶¶ 15–16.

<sup>97</sup> Ex. C, Jane Decl., ¶¶ 17–18.

The PBNDS provide that people detained by ICE “shall have regular opportunities to participate in practices of their religious faiths,” and there shall be no discrimination based on any individual’s race, ethnicity, or national origin, in the participation and practice of one’s faith.<sup>98</sup> They further provide:

Detainees shall be provided information about religious programs at the facility, ... in a language or manner the detainee can understand.

The facility shall provide communication assistance to detainees with disabilities and detainees who are limited in their English proficiency (LEP). The facility will ... provide detainees who are LEP with language assistance, including bilingual staff or professional interpretation and translation services, to provide them with meaningful access to its programs and activities.<sup>99</sup>

As Jane poignantly shares, “Not having religious programming in a native language is damaging to my emotional wellbeing. Sometimes our faith is all we have while we are here.”<sup>100</sup>

#### **iv. ICE and GEO officials routinely deny language access in the provision of medical care at Moshannon.**

While access to medical care is woefully inadequate for all people ICE detains at Moshannon, as detailed in the declarations of people detained there, and in the Section that follows, the situation is compounded for persons with LEP. As noted by the Participants, individuals who are not proficient in written and spoken English have exceptional difficulty in placing a sick call. And for those who ultimately are seen by the medical staff, the interpretation services provided are limited and entirely inadequate, if provided at all.

The 2024 Moshannon Supplement to the ICE National Resident Handbook issued by DHS and GEO (“Moshannon Handbook Supplement”) provides that individuals seeking medical care must submit requests for sick calls by completing a medical request form that, according to the Handbook, Moshannon should make available in English and Spanish—and no additional languages<sup>101</sup>

None of the Participants in this Complaint were provided with a medical request form in Spanish. Instead, they understood from others that medical requests are to be made through the Talton tablet system, also referenced in the Moshannon Handbook Supplement. Yet, the Talton tablet system, according to Participants, is set at the default language of English, and one must

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<sup>98</sup> U.S. IMMIGR. & CUSTOMS ENF’T, PBNDS, *supra* note 11, §§ 5.5 (II) (1) – (2).

<sup>99</sup> U.S. IMMIGR. & CUSTOMS ENF’T, PBNDS, *supra* note 11, §§ 5.5 (II) (9) – (10).

<sup>100</sup> Ex. C, Jane Decl., ¶ 19.

<sup>101</sup> The GEO Group, Inc. and US DHS, *Moshannon Supplement to the ICE National Resident Handbook* (2024) at 10. Available on file with counsel.

navigate the English interface to access the Spanish and French language pages.<sup>102</sup> And, as noted by Jane, “I have not seen a detained person who speaks a language other than those supported on the tablet get help from staff to communicate through the tablet. If you cannot submit a tablet grievance to medical . . . or read the tablet instructions, then you cannot send a request.”<sup>103</sup> Instead, individuals with LEP are most often dependent on others detained alongside them to place a sick call or seek medical care.<sup>104</sup> This forced reliance on another person to submit a request for medical attention amounts to a deprivation of the right to privacy.

Jhordy explains how he had to rely on a friend to assist with getting medical attention, and the challenges he confronted even with his friend’s help:

I have had a throat infection for months while at Moshannon. There are a few times when I was spitting blood from my throat and tried to ask the staff for help, and to call a medic. They did not even use an interpreter then. A friend tried to help me translate, but the corrections staff just told him to tell me to ask for a medical appointment through the tablet. You can change the tablet to Spanish but when the answer to a request arrives, it’s in English.<sup>105</sup>

Jason describes the challenges he had in requesting medical attention as a non-English and non-Spanish speaker. Jason, who had been told by others detained with him that he needed to submit his medical requests through the tablet system, needed help from others who were detained to translate what he wanted to say onto the tablet, because the default language on the tablet was English and there was no translation available in Mandarin.<sup>106</sup> He also reports that during the medical visits themselves, when interpretation services were provided, they were inconsistent, and he often had a difficult time communicating through the interpreter.<sup>107</sup>

Jason, who suffered from pain from tumors on his forehead, reports:

Advocating to the staff at MVPC to deal with my forehead tumors was a constant struggle. I felt neglected and mistreated as MVPC repeatedly delayed the date of my scheduled surgical consultation. Furthermore, the medical staff did not always give me the opportunity to use telephonic interpretation services, so I had a difficult time expressing myself as well as understanding their words. They did not explain to me the reason for this inconsistency of the availability of telephonic interpretation, and I had never gotten help from an in-person interpreter. I was very confused by the lack of clear communication.<sup>108</sup>

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<sup>102</sup> Ex. C, Jane Decl., ¶ 9.

<sup>103</sup> *Id.* ¶¶ 10–11.

<sup>104</sup> *Id.* ¶ 12 (“I have seen nurses use telephonic interpretation, but that is only after you figure out how to submit a medical request or you ask someone else to do it for you, which feels like an invasion of their privacy. I sometimes help other people who do not speak English.”).

<sup>105</sup> Ex. E, Jhordy Decl., ¶ 12.

<sup>106</sup> Ex. D, Jason Decl., ¶ 24.

<sup>107</sup> *Id.* ¶¶ 25–26.

<sup>108</sup> Ex. D, Jason Decl., ¶ 11.

He notes that several interpreters sounded as though they were native Cantonese speakers, but he is a Mandarin speaker, creating communication difficulties.<sup>109</sup> As he states:

During one visit, the interpretation was so poor that I requested another interpreter. Sadly, the new interpreter was no better, and the medical staff ignored my request for another change. I could not even express my frustrations adequately in English, and I simply had to make do with the poor interpretations that were offered. I was not sure if the interpreter was able to convey the severity of my pain and my anxiety to get my tumors treated. I could not help but wonder if I could have gotten better medical care at MVPC if I spoke English fluently.<sup>110</sup>

Catherine similarly details the routine denial of language access in the provision of medical care. She twice sought medical attention after being assaulted by another person detained at Moshannon.<sup>111</sup> Catherine noted that the nurse used an interpreter just once when she first arrived in the office following the first assault when she was hit in the face with a piece of wood, but during the remaining three hours, the nurse only spoke to her in English and did not employ an interpreter.<sup>112</sup> Instead, the nurse brought her to a cell where she would check on her periodically and ask her – in English – how she was doing. “I told her I wasn’t doing very well,” reports Catherine, “but she did not use an interpreter so she could not fully understand my answers, and she did not do anything but give me Tylenol and tell me to sleep.”<sup>113</sup> Following her second assault, when the same woman hit her in the eye with a padlock and bit her breast so that it was bleeding, the nurse again only sought the services of an interpreter once to communicate. Catherine was given cream, but no one explained to her what the cream was for. For her eye, which was already swollen when she arrived at the medical unit, she was simply told to take ibuprofen. She spent two days in the nurse’s office without further medical care, and without any interpretation services.<sup>114</sup>

Damar, whose primary language is Jamaican Patois, also experienced difficulty accessing adequate medical treatment because of communication difficulties. While Jamaican Patois is an English-based creole language, “Whenever I speak English, not my dialect, people have a hard time understanding me because of my accent. I also feel like I cannot fully express myself in English to English-only speakers without using my dialect.”<sup>115</sup> He noted a further barrier presented by the forms and the tablet system, in that they are dependent on being able to read and write in English, due to minimal English literacy. The failure of the medical staff to use an interpreter resulted in Damar not receiving necessary medical care, even though he was urinating and coughing up blood for six (6) months while detained. Damar reports:

During my time at Moshannon, I met with medical staff on several occasions. Although I was experiencing what I felt was a medical emergency, they never used or offered to use interpretation. I would repeatedly ask medical staff “do you

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<sup>109</sup> *Id.* ¶ 25.

<sup>110</sup> *Id.* ¶ 26.

<sup>111</sup> Ex. A, Catherine Decl., ¶¶ 8–12.

<sup>112</sup> *Id.* ¶ 8.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* ¶¶ 11–12.

<sup>115</sup> Ex. B, Damar Decl., ¶ 5.

understand me,” or “can you understand me” and they would respond “yes,” so I figured that they did not need to use interpretation to speak to me and I would not ask for it. However, unfortunately, I realized on multiple occasions, based on their body language and responses to some of my statements or questions, that they did not understand me. I would be saying something serious and they would laugh or say something confusing in response or just not acknowledge what I said.<sup>116</sup>

Instead, I had to insist on asking them if they understood me. I would try to talk slow and change my accent. However, they never offered to use interpretation. I also did not realize there were options for interpretation in my dialect so I did not ask for it explicitly.<sup>117</sup>

The medical staff would never take initiative to ask for clarification or for details during appointments. They would just ask Yes or No questions mostly, and on one occasion, a doctor even laughed at me for the way I was speaking. I did not understand what medications they were prescribing me, they would just fill out paperwork and tell me to sign and take it, but we could not have dialogue about what the medication was or what the side effects were because they did not use interpretation.<sup>118</sup>

As Damar’s medical health deteriorated, so too did his mental health until he ultimately tried to die by suicide. When he finally saw a psychologist following the suicide attempt, he again experienced the frustrations in not being able to effectively communicate because of the lack of interpretation services made available. The two times a counselor spoke with him, the conversation lasted approximately five to ten minutes, during which the psychologist asked him only the most basic questions.<sup>119</sup> Damar reports, “I had a hard time expressing myself because of the language barrier. I asked the psychologist again whether he understood me, and he would say ‘yes.’ However, these sessions felt like wasted efforts because of the language barrier.”<sup>120</sup> Jane expresses similar frustrations over the limited options non-English speakers have to speak with qualified people about mental health concerns. She accounts: “On the rare occasion that you do get to speak to a professional, they do not use interpretation consistently so there is no way you can fully express psychological or emotional issues in a non-native or non-fluent language.”<sup>121</sup>

Alvan, Jane, and Juan each discuss the role they have played in trying to fill the language access void so that individuals detained alongside them get the necessary medical attention. As Alvan states: “People who do not speak English extraordinarily well are often taken advantage of and looked down on by the guards. I have seen this repeatedly when I help my friends who speak less English communicate with staff at Moshannon.”<sup>122</sup> He then provides a specific example of trying to get medical attention for a friend with LEP who broke his leg while in detention, noting

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<sup>116</sup> *Id.* ¶ 6.

<sup>117</sup> *Id.* ¶ 7.

<sup>118</sup> *Id.* ¶ 8.

<sup>119</sup> *Id.* ¶ 30.

<sup>120</sup> *Id.* ¶ 31.

<sup>121</sup> Ex. C, Jane Decl., ¶ 23.

<sup>122</sup> Ex. H, Alvan Decl., ¶ 15.

that “he struggled to get any medical attention or the surgery he needed.” As Alvan recounts: “I worked with him to communicate with the staff, but I noticed that those who work at [Moshannon] use high-level vocabulary just to confuse and diminish those who speak less English. I feel strongly his needs would not have been met if I was not there to communicate on his behalf.”<sup>123</sup>

Jane reports that for the women, medical staff often come to the dorm to see women who were able to successfully file a medical complaint. In those situations, Jane is “often” asked to “interpret for other women in my dorm during their medical appointments or interactions with nurses or medical staff. This is difficult because I feel like I am invading their privacy. Staff does not care though and, in fact, sometimes staff, including medical staff, will ask me to interpret for them so that they can communicate with a person in detention.”<sup>124</sup> Juan similarly reports discomfort with the violation of privacy that directly results from him being called upon to interpret:

Because I am interpreting for medical staff, people sometimes have to tell me very personal and sensitive information. For example, I interpret people’s personal mental health details, like their addiction issues, history of depression, and family problems. It makes me uncomfortable to know this information, but I want to help. I also know what medication other people in detention are taking, and frequently why they are taking it.<sup>125</sup>

Jane also reports having to instruct on medication, noting: “I have instructed other detained people on how to take their medications and answered questions about their medication, like about side effects or concerns they have, because nurses sometimes prefer just asking me to do it instead of using telephonic interpretation.”<sup>126</sup> The failure of Moshannon staff to provide professional interpretation services alongside the provision of medical treatment, and particularly when distributing medication, directly impedes an individual’s ability to provide their informed consent to the treatments provided.<sup>127</sup>

The failure of ICE and GEO staff to provide language access to the people they detain permeates every aspect of daily lives for the individuals in their custody. That failure is particularly evident in the barriers people detained at Moshannon face when seeking access to medical and mental health care.

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<sup>123</sup> *Id.* ¶ 16.

<sup>124</sup> Ex. C, Jane Decl., ¶ 13.

<sup>125</sup> Ex. G., Juan Decl., ¶ 5. The PBNDS § 4.3(II)(20) specifically provides that the dispensation and administration of medication “shall be conducted in a manner that seeks to preserve the privacy and personal health information of detainees.” U.S. IMMIGR. & CUSTOMS ENF’T, PBNDS, *supra* note 11, § 4.3(II)(20).

<sup>126</sup> Ex. C, Jane Decl., ¶ 14.

<sup>127</sup> Ex. B, Damar Decl., ¶¶ 16 and 26 (reporting that he was given medication without any explanation as to what they were or how they were to help, and further noting that the medication provided did not alleviate the symptoms he was experiencing). *See also* U.S. IMMIGR. & CUSTOMS ENF’T, PBNDS, *supra* note 11, § 4.3 (II)(24) (“Informed consent standards shall be observed and adequately documented. Staff shall make reasonable efforts to ensure that detainees understand their medical condition and care.”); U.S. Gov’t Accountability Office, *Immigration Detention: ICE Needs to Strengthen Oversight of Informed Consent for Medical Care* (Oct. 18, 2022), pp. 19, , <https://www.gao.gov/products/gao-23-105196>.

The denial of interpretation and translation assistance reflects the overall discriminatory and dismissive attitude staff convey towards individuals with LEP. As Jane notes: “All of the guards only speak English and they laugh at people who cannot speak English or who speak it badly. I personally see how lack of language access affects people who do not speak English.”<sup>128</sup> This observation was reiterated by Alvan: “People who do not speak English extraordinarily well are often taken advantage of and looked down on by the guards. I have seen this repeatedly when I help my friends who speak less English communicate with staff at Moshannon.”<sup>129</sup>

### **III. ICE AND GEO ROUTINELY DENY TIMELY AND ADEQUATE MEDICAL AND MENTAL HEALTH CARE TO THE PEOPLE THEY DETAIN AT MOSHANNON.**

#### **a. ICE and GEO officials have an obligation to provide timely, comprehensive, and adequate medical care to all persons held in their custody at Moshannon.**

ICE and GEO officials have an affirmative obligation to provide timely, effective, and high-quality medical and mental health care to persons detained in their custody at Moshannon. In addition to the constitutional requirements outlined in the introductory section of this Complaint, the PBNDS provide that noncitizens held in ICE custody “shall have access to a continuum of health care services, including screening, prevention, health education, diagnosis and treatment.”<sup>130</sup> These services shall be provided in a manner that: recognizes the particularized language and communication needs of all individuals;<sup>131</sup> ensures individuals’ privacy with regard

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<sup>128</sup> Ex. C, Jane Decl., ¶¶ 4–5.

<sup>129</sup> Ex. H, Alvan Decl., ¶ 15.

<sup>130</sup> U.S. IMMIGR. & CUSTOMS ENF’T, PBNDS, *supra* note 11, § 4.3 (II)(1).

<sup>131</sup> *Id.* § 4.3 (II)(3).



to their health status;<sup>132</sup> and, observes informed consent<sup>133</sup> standards whereby individuals “understand their medical condition and care.”<sup>134</sup>

The PBNDS also set forth clear requirements for ensuring persons seeking medical care can access those services, which include ensuring “a sick call procedure that allows detainees the unrestricted opportunity to freely request health care services (including mental health and dental services) provided by a physician or other qualified medical staff in a clinical setting.” The procedures “shall be communicated in writing and verbally to detainees during their orientation.”<sup>135</sup> The PBNDS further specify that “an established procedure shall be in place at all facilities to ensure that all sick call requests are received and triaged by appropriate medical personnel within 24 hours after a detainee submits the request,” and “[i]n an urgent situation, the housing unit officer shall notify medical personnel immediately.” All individuals held in detention, including those held in a segregation management unit, shall have access to sick call.<sup>136</sup>

For persons detained at Moshannon with LEP, ICE and GEO share responsibility under Title VI and the PBNDS (further elaborated upon in DHS and ICE’s Language Access Plans) for providing “appropriate interpretation and language services for LEP detainees related to medical and mental health care. Where appropriate staff interpretation is not available, facilities will make use of professional interpretation services.”<sup>137</sup> The PBNDS mandates that when procedures require

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<sup>132</sup> *Id.* § 4.3 (II)(23) and (25).

<sup>133</sup> As provided by the American Medical Association’s Principles of Medical Ethics:

The process of informed consent occurs when communication between a patient and physician results in the patient’s authorization or agreement to undergo a specific medical intervention. In seeking a patient’s informed consent (or the consent of the patient’s surrogate if the patient lacks decision-making capacity or declines to participate in making decisions), physicians should:

- (a) Assess the patient’s ability to understand relevant medical information and the implications of treatment alternatives and to make an independent, voluntary decision.
- (b) Present relevant information accurately and sensitively, in keeping with the patient’s preferences for receiving medical information. The physician should include information about:
  - a. the diagnosis (when known);
  - b. the nature and purpose of recommended interventions;
  - c. the burdens, risks, and expected benefits of all options, including forgoing treatment.
- (c) Document the informed consent conversation and the patient’s (or surrogate’s) decision in the medical record in some manner. When the patient/surrogate has provided specific written consent, the consent form should be included in the record.

In emergencies, when a decision must be made urgently, the patient is not able to participate in decision making, and the patient’s surrogate is not available, physicians may initiate treatment without prior informed consent. In such situations, the physician should inform the patient/surrogate at the earliest opportunity and obtain consent for ongoing treatment in keeping with these guidelines.

AM. MED. ASS’N *Code of Medical Ethics: Informed Consent*, <https://code-medical-ethics.ama-assn.org/ethics-opinions/informed-consent>.

<sup>134</sup> U.S. IMMIGR. & CUSTOMS ENF’T, PBNDS, *supra* note 11, § 4.3 (II)(24).

<sup>135</sup> *Id.* § 4.3(V)(S).

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* § 4.3(V)(E).

a written request slip for seeking a sick visit, “such slips shall be provided in English and the most common languages spoken by the detainee population of that facility,” and interpretation or translation services or other assistance shall be provided to persons with LEP as needed.<sup>138</sup> The PBNDS assign clear responsibility to ICE and GEO officials to effectively communicate to the populations detained in their custody the availability of language access services, and how they may be obtained.<sup>139</sup> The PBNDS also make explicit that “Detainees shall not be used for interpretation services during any medical or mental health service. Interpretation and translation services by other detainees shall only be provided in an emergency medical situation.”<sup>140</sup>

The ICE Health Service Corps (“IHSC”), which operates within ICE ERO, has oversight responsibility to ensure ICE-contracted facilities comply with ICE detention standards.<sup>141</sup> In FY 2023, IHSC had oversight responsibility for more than 191,850 noncitizens detained in 128 non-IHSC-staffed facilities and “directly supported ICE field leadership on medical issues within their area of responsibility.”<sup>142</sup> CRCL has previously investigated IHSC’s provision of medical and mental health care and its oversight over contracted facilities, and in a set of detailed recommendations responding to an IHSC whistleblower complaint, CRCL found:

Data driven quality improvement processes are considered a foundational principle and practice of modern medicine, yet the seriousness of the medical and mental health issues that the detainees experienced in [the complaints reviewed by CRCL] demonstrates the need to develop or improve policies and procedures in this area that might prevent similar outcomes.<sup>143</sup>

CRCL, relying on IHSC Directive 11-06, Risk Management Policy, and the relevant NCCHC Standards for Mental Health Services, require “the mental health care delivery system [be] systematically analyzed for needed improvement, and when a need is identified, that staff develop, implement, and monitor strategies for improvement.”<sup>144</sup>

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<sup>138</sup> *Id.* § 4.3(V)(S).

<sup>139</sup> *Id.* § 4.3(V)(E) (“Facilities shall post signs in medical intake areas in English, Spanish, and other languages spoken by significant segments of the facility’s detainee population listing what language assistance is available during any medical or mental health treatment, diagnostic test, or evaluation.”).

<sup>140</sup> *Id.*

<sup>141</sup> U.S..IMMIGR. & CUSTOMS ENF’T, *ICE Health Service Corps focused on best patient outcomes*, <https://www.ice.gov/features/health-service-corps> (last updated Jan. 24, 2024).

<sup>142</sup> *Id.*; see also U.S..IMMIGR. & CUSTOMS ENF’T, ICE RELEASES FISCAL YEAR 2023 ANNUAL REPORT (Dec. 29, 2023), <https://www.ice.gov/news/releases/ice-releases-fiscal-year-2023-annual-report>.

<sup>143</sup> Memorandum from Peter E. Mina, Off. for Civ. Rts. and Civ. Liberties, to Tae Johnson, U.S. Immigr. & Customs Enf’t, *ICE Health Service Corps (IHSC) Medical/Mental Health Care and Oversight (Part II), Complaint Nos. 17-06-ICE-0582, et al.* (April 28, 2021), p. 11 (noting “Data driven quality improvement processes are considered a foundational principle and practice of modern medicine, yet the seriousness of the medical and mental health issues that the detainees experienced in these complaints demonstrates the need to develop or improve policies and procedures in this area that might prevent similar outcomes.”)

<sup>144</sup> *Id.* at 12 (citing to NCCHC Standard P-A-06, Continuous Quality Improvement (CQI) Program, and NCCHC Standards for Mental Health Services (MH-A-06, an essential standard, requiring “a continuous quality improvement (CQI) program [that] monitors and improves mental health care delivered in the facility.”).

As set forth herein, GEO and ICE officials have consistently failed to meet the PBNDS specific to medical and mental health care.<sup>145</sup> The documented failure on the part of ICE and GEO officials to provide timely and comprehensive medical and mental health care to all persons detained at Moshannon, regardless of language ability, demonstrates a callous disregard for the health and well-being of the people they detain.<sup>146</sup> Some accounts reveal a level of medical neglect on the part of ICE and GEO officials that indicates a “deliberate indifference” to a “serious medical need,” thereby raising likely constitutional violations under the Fourteenth Amendment.<sup>147</sup>

**b. ICE and GEO Officials routinely fail to meet their obligation to provide timely, comprehensive, and appropriate medical services to persons detained in their custody at Moshannon.**

On December 6, 2023, Frankline Okpu, a 37-year-old Cameroonian national, died while ICE held him in custody at Moshannon. ICE reported the cause of death as: “MDMA (ecstasy) toxicity with the following other significant conditions: atherosclerotic coronary artery disease (narrowing of the arteries that deliver blood to the heart), mild cardiomegaly (heart enlargement), and diminutive (severe narrowing) right coronary artery.”<sup>148</sup> The Death Report issued by ICE also revealed that during Mr. Okpu’s more than eight months in detention, he had “several medical encounters.”<sup>149</sup> Mr. Okpu is one of ten (10) noncitizens who have died in ICE detention in the first eight (8) months of the current fiscal year – more than twice the number of those who have died in all twelve months of five of the six preceding years,<sup>150</sup> demonstrating the deadly nature of immigration detention.

The accounts provided herein illustrate the numerous barriers the Participants in this Complaint particularly, and individuals detained at Moshannon generally, confront in accessing medical care. For those who are ultimately seen by medical staff at Moshannon, the medical and mental health care, diagnostics, and treatment plans provided are inadequate. Those who require outside medical care face exceedingly long delays in obtaining the required approvals for and scheduling of such services by ICE, often being referred back and forth between ICE and Moshannon medical staff, with neither taking responsibility for ensuring that the individuals’ underlying medical needs are diagnosed or treated. Vulnerable populations, such as persons with LEP, women, and LGBTQI\*+ persons face compounding barriers to receipt of timely and comprehensive medical and mental care.

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<sup>145</sup> Specific provisions of the PBNDS are indicated in the review of individuals’ specific accounts in the following subsection.

<sup>146</sup> See AMERICAN CIVIL LIBERTIES UNION (ACLU), PHYSICIANS FOR HUMAN RIGHTS (PHR), AND AMERICAN OVERSIGHT, *Deadly Failures: Preventable Deaths in U.S. Immigrant Detention* (June 21, 2024), <https://www.aclu.org/publications/deadly-failures-preventable-deaths-in-us-immigrant-detention>.

<sup>147</sup> *Natale v. Camden Cty. Corr. Facility*, 318 F.3d 575, 581 (3d Cir. 2003)

<sup>148</sup> U.S. IMMIGR. & CUSTOMS ENF’T, *Detainee Death Report: OKPU, Frankline*, p. 2, <https://www.ice.gov/doclib/foia/reports/ddrFranklineOkpu.pdf>.

<sup>149</sup> *Id.*, at p. 1.

<sup>150</sup> Daniella Silva, The number of deaths in ICE custody is already more than double all of last year, NBC NEWS (June 1, 2024), <https://www.nbcnews.com/news/us-news/number-deaths-ice-custody-already-double-last-year-rcna154659>.

**i. Denial or delay in provision of a continuum of health care services at Moshannon, includes screening, prevention, health education, diagnosis and treatment.<sup>151</sup>**

The Participants in this Complaint report how ICE and Moshannon medical staff have routinely dismissed their medical concerns and have either significantly delayed or ultimately denied them access to needed medical care.<sup>152</sup>

When ICE took Alvan into custody, he had a scheduled appointment for a medical exam following a surgery to address complications he was experiencing from varicose veins just one month earlier. He had also been prescribed a medical compression stocking to facilitate the healing and reduce the risk of developing blood clots. Because this medical treatment plan predated his ICE detention, Alvan communicated his need for the prescribed compression stocking, and the need to attend the follow-up appointment with his surgeon at his initial medical intake screening. The nurse responded that only ICE could authorize his transportation to an outside facility for medical care, and ICE replied that his medical needs should instead be addressed by the medical staff at Moshannon.<sup>153</sup>

Soon after GEO medical staff and ICE denied this care, Alvan's leg "became very painful and swollen." He requested a medical appointment via the tablet system, noting the difficulties in gaining access to the tablets, and reports that requests made through the paper slip system are processed much more slowly. When he went to medical, the Moshannon medical staff dismissed him without a physical examination, and instead simply prescribed aspirin. His requests for compression stockings and for an outside medical examination were denied. He submitted another request the following month, and again was denied. The medical staff told him they could not authorize his transport to Maryland for his follow up medical appointment and he should make that request through ICE. For his compression stocking, he was simply told that they did not have those in stock at Moshannon and apparently made no effort to order or otherwise obtain them.<sup>154</sup> He and his lawyer both requested a meeting with an ICE representative to request authorization for his post-surgical follow-up medical appointment. But as Alvan reports, "[W]hen I contacted ICE about my concerns, I was told that my request was not going to be granted and was directed to request the follow-up through the [Moshannon] medical staff. No explanation was provided for the rejection of my request."<sup>155</sup>

Alvan recounts how the Moshannon medical staff and ICE repeatedly dismissed his concerns and denied him prescribed medical care.

In June, two months after my arrival at MVPC, I requested the stocking and outside follow-up care again. This time, I was told that there were no stockings in my size

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<sup>151</sup> U.S. IMMIGR. & CUSTOMS ENF'T, PBNDS, *supra* note 11, § 4.3 (II)(1).

<sup>152</sup> *Id.*, § 4.3(II)(4) ("Detainees shall be able to request health services on a daily basis and shall receive timely follow-up.").

<sup>153</sup> Ex. H, Alvan Decl., ¶¶ 4–6.

<sup>154</sup> U.S. IMMIGR. & CUSTOMS ENF'T, PBNDS, *supra* note 11, §§ 4.3 (II) (6) – (8), (V) (A) (2), (3).

<sup>155</sup> Ex. H, Alvan Decl., ¶¶ 7–10. Furthermore, a review of the medical records reveals that no medical examination to assess post-surgical recovery and associated health risks was conducted.

at the facility. Regarding the follow-up, I was once again directed to speak to ICE, who in return told me to discuss the request with MVPC. I was again turned away without reason.<sup>156</sup>

As with other Participants in this complaint, Alvan was directed by Moshannon medical staff to speak with ICE and then by ICE to speak with Moshannon medical staff, never to get his medical needs adequately addressed. Instead, a nurse at Moshannon provided Alvan – independent of official channels within the Moshannon medical staffing unit – with two regular compression stockings, but they did not satisfy his medical needs.<sup>157</sup> As a result, Alvan reports:

I am still in daily pain and discomfort. I have to take long walks to keep the swelling in my leg down. Even more frighteningly, I have yet to be physically examined or receive any kind of follow-up care for my surgery. I am scared I have developed blood clots without knowing it.

This whole experience left me feeling ignored and unheard. I feel like a bug trapped in a spider's web that is too small for the spider to even eat. I am so frustrated and exhausted from being brushed to the side and I feel there is no way for me to get the care I need.<sup>158</sup>

Jason likewise describes how Moshannon medical staff and ICE similarly dismissed his requests for medical care for a pre-existing condition that only got progressively worse throughout detention, and a similar pattern of being shifted between the medical staff at Moshannon and ICE, without either taking ultimate responsibility for the care he sought.<sup>159</sup> Jason's efforts to access medical care were further frustrated by ICE and Moshannon officials' repeated denials of his requests for regular and competent professional interpretation services so that he could communicate in Mandarin.<sup>160</sup>

Throughout my entire time in ICE custody and to this day, I have suffered from two tumors on the left side of my forehead and one on my chest. These tumors cause me severe pain and disrupt my sleep. Furthermore, they have been growing and spreading. Despite repeated requests for medical assistance to address my tumors, MVPC did not provide adequate medical care by not providing me with timely medical examinations and treatment. The unnecessary delays not only prolonged my pain, but I also have not been able to get a biopsy to know whether the tumors are cancerous.

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While I was detained, ICE and MVPC took no responsibility for ensuring that even my most basic medical needs were met. Furthermore, my requests for

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<sup>156</sup> *Id.* ¶ 11.

<sup>157</sup> *Id.* ¶ 12.

<sup>158</sup> *Id.* ¶¶ 13–14.

<sup>159</sup> Ex. D, Jason Decl. *See* U.S. IMMIGR. & CUSTOMS ENF'T, PBNDS, *supra* note 11, §§ 4.3 (II) (1), (6) – (8), (12).

<sup>160</sup> U.S. IMMIGR. & CUSTOMS ENF'T, PBNDS, *supra* note 11, §§ 4.3 (II) (3) and (V) (A) (8).

interpretation services were often denied even though I only have a very basic understanding of English. MVPC did not provide me with adequate interpretation services to help me effectively communicate and express my medical needs.<sup>161</sup>

Jason, who had previously been detained at Moshannon when it operated as a BOP facility, had obtained a medical consult for his forehead tumors with a doctor from an outside hospital who wanted to remove the tumor immediately and conduct a biopsy. The BOP ultimately approved the surgery, but Moshannon shut down as a BOP facility and Jason was transferred before the surgery could happen, and the prison to which he had been transferred disregarded his requests and the prior approval for the surgery. Like Alvan, when Jason was brought back to Moshannon, this time in ICE custody, he requested medical attention for his pre-existing condition – in his case tumors that were growing bigger and more painful. As with Alvan, medical officials took no action.<sup>162</sup>

Shortly thereafter, Jason noticed a new lump on his chest and was experiencing pain at the site of the lump, and another lump had developed alongside the still-growing tumor on his forehead. He reports: “Because of the position of these tumors and the constant pain, I am suffering from severe sleeping issues as I cannot sleep on my sides.”<sup>163</sup> He submitted a sick call, and medical staff told him a request had been made for outside consultation for potential surgery, which had been scheduled for late August. But that appointment did not happen until November, after Jason threatened to go on a hunger strike.

As Jason states, and as his account illustrates, “[a]dvocating to the staff at MVPC to deal with my forehead tumors was a constant struggle.”<sup>164</sup> The appointment that had been scheduled for late August was rescheduled to September, purportedly by the doctor’s office. Then in early September, he learned that his appointment had again been rescheduled to an unspecified date in October. Frustrated by the delay, Jason requested help from an English-speaking friend, and submitted a letter to the ICE Philadelphia Field Office on September 30, 2023. He did not receive a response to his complaint. Instead, he was told on October 7, 2023 by the medical staff at Moshannon that his surgical consultation had again been rescheduled for November.<sup>165</sup>

In the interim, Jason reports that in August 2023, the pain from the tumor on his chest became “overwhelming,” and he submitted an emergency sick request.<sup>166</sup> He received a mammogram and in mid-September he was told that the mammogram did not find malignancy, and, as he reports, medical staff “used it as an excuse not to do anything for me.”<sup>167</sup> But, as Jason further recounts:

The result did not change the fact that I could feel the lump growing and causing me pain. Moreover, I was not convinced that the mammogram result could fully rule out the possibility of cancer. What I needed was to have the lump removed and

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<sup>161</sup> *Id.* ¶¶ 2 and 4.

<sup>162</sup> *Id.* ¶ 8.

<sup>163</sup> *Id.* ¶ 9.

<sup>164</sup> *Id.* ¶ 11.

<sup>165</sup> *Id.* ¶¶ 12–15.

<sup>166</sup> *Id.* ¶10.

<sup>167</sup> *Id.*

biopsied, so I also requested to have an MRI because it is more accurate for cancer diagnosis. However, the medical staff dismissed my request, telling me that it was not a standard test and my lump was not life-threatening. I could not believe how they could be so dismissive of my pain.<sup>168</sup>

Jason finally had a medical consult with an external doctor on November 8, 2023, five (5) months after the initial request.<sup>169</sup> He was not provided with any interpretation services during medical consult.<sup>170</sup> Despite the limitations on his ability to communicate, Jason understood that the doctor reiterated the recommendation made in 2021 that he be scheduled for immediate surgical removal of his tumors. To the best of his knowledge, that surgery was never scheduled.<sup>171</sup>

On November 21, 2023, an RA [Resident Advisor] asked me for an address I could stay at when I am released on bond. This confirmed my suspicion that MVPC was intentionally delaying my treatment to avoid incurring costs, even though they were fully aware of the urgency of my condition.

The medical staff told me repeatedly that I needed to be patient, but how could I when I was in such pain, and I feared that the tumors might be cancerous? What if it was cancer, but because the facility delayed proper examination and treatment by five months now, the window of opportunity for optimal treatment has passed?<sup>172</sup>

As noted herein and above in Sec. II.b.iv., Jason’s difficulties in obtaining medical care were compounded by his inability to communicate with the medical staff and with ICE. Jason, who is a Mandarin speaker, was forced to try to communicate with his very limited English language abilities or obtain help from another person detained alongside him who spoke English. ICE and the medical staff only occasionally provided him with the requested interpretation, and when they did, he reported their Mandarin “was difficult to understand,” and he “did not think they were accurately translating [his] words into English.” He reports one medical visit where he requested a different interpreter because the interpretation provided “was so poor,” but “[s]adly, the new interpreter was no better, and the medical staff ignored my request for another change.”<sup>173</sup>

I could not even express my frustrations adequately in English, and I simply had to make do with the poor interpretations that were offered. I was not sure if the interpreter was able to convey the severity of my pain and my anxiety to get my tumors treated. I could not help but wonder if I could have gotten better medical care at MVPC if I spoke English fluently.<sup>174</sup>

Jason’s difficulties in communicating his medical needs and in accessing medical care because of Moshannon and ICE officials’ repeated failure, and at times explicit refusal, to provide competent

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<sup>168</sup> *Id.*

<sup>169</sup> *Id.* ¶ 17.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.* ¶¶ 17–18.

<sup>172</sup> *Id.* ¶¶ 19–20.

<sup>173</sup> *Id.* ¶¶ 25–26.

<sup>174</sup> *Id.* ¶ 26.

interpretation services is an experience reported by all of the participants in this Complaint with LEP, as detailed above.

Jason and Alvan's complaints about the failure of the Moshannon medical staff to provide comprehensive medical care are repeated in the declarations provided by all of the Participants, including for medical and mental health issues that surfaced upon detention, as well as those directly resulting from incidents of violence at the detention center. As Jhordy reports:

In October 2023, I developed a sore throat and was feeling very ill, and I started to get pale. I realized I needed medical help. I now know that I have been suffering from a fungal infection in my throat and mouth. I did not receive any real medicine until February 2024, and I am still experiencing symptoms.

When I first started feeling sick, last October, I tried to get in contact with the medic. I have been to the medical unit many times since then – almost two times per week. The reason I keep asking for medical help is because I have been experiencing severe symptoms. I have had a lot of pain. I have had times I could not swallow or eat. Sometimes I had a fever. I have had blisters in my mouth and throat, and four or five times in the past few months I have spat out blood. My food has had no flavor, no taste.

Each time that I have gone to the medical unit, the nurse would tell me that I was fine, maybe I had allergies. She would give me ibuprofen and Tylenol, but no other medication. The nurse would look in my throat, and take my vital signs, but not provide any care. There are no doctors at Moshannon to provide any care.

Finally, in February, for the first time a nurse tried to diagnose me. She swabbed my throat four months after I first started experiencing symptoms. That is when they realized I had an infection and gave me medicine to treat the infection.

I took medicine for seven days. I am not spitting out blood anymore, but I am still having symptoms. I still have a sore throat and it kind of bothers me when I swallow. After I finished the 7 days of treatment, I went back and they just gave some medicine for allergies. For them, if there is no blood then everything is fine. It was frustrating so I stopped going.<sup>175</sup>

Jhordy describes the futility he felt in seeking medical care as follows: “There is no point in me asking for help anymore. I am just waiting for this nightmare to end.”<sup>176</sup>

Damar similarly experienced excessive delays in obtaining a medical evaluation when he was both coughing up and urinating blood. His symptoms began in March 2023, and when he showed the Resident Advisor (“RA”) the blood he had coughed up in the sink, the RA told him to

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<sup>175</sup> Ex. E, Jhordy Decl., ¶¶ 15–19.

<sup>176</sup> *Id.* ¶ 20.



submit a medical complaint on the tablet.<sup>177</sup> It took two to three days for him to get a response and be seen by the nurse, who told him there was nothing that could be done for him at Moshannon. As Damar recounts: “I was shocked about this since I felt like this was an emergency.”<sup>178</sup> Damar spoke to his RA who brought in the Captain, and the Captain reiterated that there was nothing they could do for him at Moshannon aside from prescribe antacids, which did not help. He reports, “I was taking the antacid medications for about 1-2 weeks. I was not very sure what the medications were or what it was supposed to do but it did not help. They also took two blood tests, a rectal exam and a urine test, but they never verbally explained the results of these tests to me.”<sup>179</sup> The Moshannon medical staff’s failure to communicate with Damar further evidences an overall failure of ensuring informed consent in the process of medical assessments and the provision of medical treatment, discussed above in Sec. II.b.iv specific to persons with LEP.

For two more months, Damar continued to urinate and cough up blood multiple times a day, yet his requests to see an outside doctor continued to be ignored.

Throughout April and May, I submitted multiple medical complaints through the tablet system pleading to see an outside doctor because I was afraid I could die. The medication was not working. I was still urinating and coughing up blood.<sup>180</sup>

After seeing the blood that Damar was coughing up, an RA called medical to have Damar seen by an outside doctor, but the nurse responded it was the doctor’s decision as to whether he needed to see an outside doctor. The doctor then shifted responsibility to ICE, saying it was ICE who had to approve the visit.<sup>181</sup> It was not until May 30, 2023, that Damar was told they would consider ordering a CT scan of his abdomen.<sup>182</sup> Damar then waited another month for ICE to approve the appointment, and on June 29, 2023, nearly 4 months after his first symptoms, he was finally brought to an outside hospital for a CT scan and it was discovered he had a kidney stones. The diagnosis, however, did not result in his receipt of adequate medical care and did not alleviate his condition.

While at the hospital, the doctor did not speak to me, answer any of my questions, or ask me any questions. The doctor handed my paperwork to the RA who escorted me to the hospital and communicated with him only. I did not know what was going on.

After the CT scan, they took me back to Moshannon. At this point, they continued to provide me with a pill that was supposed to help flush out the kidney stones and told me to drink a lot of water, but that did not help my overall condition. They did not provide me with medication to help with the pain. I continued to

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<sup>177</sup> Ex. B, Damar Decl., ¶¶ 12–13 (noting that there was no option for him to submit his complaint in his own language, and instead he had to do so in English).

<sup>178</sup> *Id.* ¶ 14.

<sup>179</sup> *Id.* ¶ 16; *see also* U.S. IMMIGR. & CUSTOMS ENF’T, PBNDS, *supra* note 11, §§ 4.3 (II) (24) and (V) (AA).

<sup>180</sup> Ex. B, Damar Decl., ¶ 18.

<sup>181</sup> *Id.* ¶ 19.

<sup>182</sup> *Id.* ¶ 20.

submit medical complaints but there was [sic] no major changes in my condition or my treatment.

....

I fear that for 6 months I could have sought preventative care and avoided potentially long-lasting impacts to my health. Instead, my health deteriorated while I was at Moshannon and I had no option for seeking help.<sup>183</sup>

Catherine similarly reports significant delays in obtaining the specialized medical attention she required:

After I arrived at Moshannon, I started experiencing medical symptoms I have never felt before. Each morning I have been feeling dizzy and my head hurts, and I have trouble catching my breath. I do not know why this is happening. I have submitted medical requests at least eight times but a doctor has not come to see me or talk to me. The only help staff at Moshannon give is Tylenol and Ibuprofen, and those medicines do not take my symptoms away.<sup>184</sup>

Around one month after I arrived at Moshannon, I was having serious pain. I was given a pap smear, and it came back with abnormal cells. The staff then sent me out to get further testing with medical professionals outside of Moshannon. Those professionals told me that I had ovarian cysts and that I was going to need surgery to remove or burn the growths. After I returned to Moshannon, staff said they were going to program a date for surgery but I have not received any updates about that. I asked when the surgery was going to be scheduled but they said the person on the outside has to arrange the appointment for me. They did not say when it would be scheduled or anything else about it. I have not received the surgery or had any other treatment. I still experience pain.<sup>185</sup>

When Catherine required medical attention following two separate assaults by another person detained in her pod, her medical needs were similarly dismissed by Moshannon medical staff. Immediately following the first assault, when she was hit on the face with a piece of wood, she was taken to the Nurse's office. She was never seen by a doctor, and was instead held for observation for three hours, and given Tylenol.<sup>186</sup> As noted above, the nurse did not use an interpreter to communicate with her during the three hours she was being observed, and Catherine was not able to communicate how she was feeling, or any symptoms she was experiencing.<sup>187</sup> Catherine was then released, and brought back to her dorm, she continued to experience dizziness, but was not taken back to medical.

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<sup>183</sup> *Id.* ¶¶ 22–24. Damar, as noted above, recounted how the lack of language interpretation hindered his ability to communicate with the medical staff and hindered his understanding and ability to consent to the diagnostic exams conducted and medications provided, *see supra*, n. 117–119, in violation of U.S. IMMIGR. & CUSTOMS ENF'T, PBNDS, *supra* note 11, §§ 4.3 (II) (3) and (V) (AA) (5).

<sup>184</sup> Ex. A, Catherine Decl., ¶ 6.

<sup>185</sup> *Id.* ¶ 7.

<sup>186</sup> *Id.* ¶ 8.

<sup>187</sup> *Id.*

The only thing staff at Moshannon do when I am feeling dizzy is tell me to put in a medical request but then they tell me that I have to wait and the medical request is not being processed.<sup>188</sup>

The second time that Catherine was assaulted, she was again brought to see the nurse. She had been hit in the eye with a padlock and bitten on her breast. She was bleeding where she had been bitten, and her eye was swollen. The nurse kept her for observation for 2 days, during which she was provided with a cream, but was never told what the cream was,<sup>189</sup> and told to take Ibuprofen for her eye.

I still have injuries from both times I was attacked at Moshannon. I have had a bump on my head that is very painful and giving me headaches since the first attack. The mark on my breast from the second time I was attacked has not healed and my face is so swollen.

I have been locked in my cell since I was returned from the nurse's office after the second attack. Since being locked in, I have asked for medical help eight or nine times because my head hurts, I am feeling dizzy, and I am not feeling well because of the wounds that I have. When I ask about my requests, staff just tell me that the appointment is in process. Since I have been locked in, no one from medical has come to see me and I have not been brought to the nurse.<sup>190</sup>

The stories shared by the individuals participating in this Complaint represent a complete failure of the medical staff at Moshannon and of ICE to take responsibility for ensuring the “access to appropriate and necessary medical, . . . and mental health care, including emergency services” the PBNDS are designed to ensure, while also demonstrating a lack of effective oversight on the part of IHSC.<sup>191</sup>

## **ii. Denial of access to mental health care is also a significant issue at Moshannon.**

In addition to the persistent delays and ultimate denial of adequate medical care described above, Jason, Jhordy, and Jane all describe the dismissive attitude Moshannon medical staff have demonstrated with regard to the provision of mental health care. Their accounts also highlight the challenges they and others with LEP have had in communicating with mental health professionals at Moshannon, noting the failure to provide competent and professional interpretation services as evidence of the lack of care provided to their mental health and the mental health of all persons detained at Moshannon.<sup>192</sup>

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<sup>188</sup> *Id.* ¶ 9.

<sup>189</sup> U.S. IMMIGR. & CUSTOMS ENF'T, PBNDS, *supra* note 11, § 4.3 (II) (24).

<sup>190</sup> Ex. A, Catherine Decl., ¶¶ 14–15.

<sup>191</sup> U.S. IMMIGR. & CUSTOMS ENF'T, PBNDS, *supra* note 11, § 4.3 (I).

<sup>192</sup> *See, e.g.*, Ex. C, Jane Decl., ¶ 23 (“There are limited to no other options to speak with qualified people about mental health issues especially if you do not speak English. On the rare occasion that you do get to speak to a professional, they do not use interpretation consistently so there is no way you can fully express psychological or emotional issues in a non-native or non-fluent language.”).

Damar reports:

While detained at Moshannon, I experienced severe depression, anxiety, and suicidal ideations. I would often have night terrors and panic attacks. I would sleep with a medical mask on because my breathing would get so erratic and I felt that the mask would help.

Before my suicide attempt, around March 10, I informed medical staff that I was feeling anxious and depressed and they prescribed a sleeping pill or sedative that was supposed to help my anxiety. The medication only made me feel worse. I felt more tired and zombie-like. The medication did nothing to help my sadness or suicidal feelings.

Around mid-March, I attempted suicide by repeatedly hitting my head against the metal bedpost in my dorm. Fortunately, a friend in my dorm stopped me and held me back from continuing to hurt myself. . . . My friend talked to me and I explained to him that my health was deteriorating and I had no hope that I would leave the facility anytime soon.<sup>193</sup>

Immediately after, the RA notified the captain and case manager, and the case manager came to speak with him for approximately two or three hours, but it was another two to three weeks before he was seen by a psychologist, and he was never seen by medical for resulting head injuries.<sup>194</sup> When Damar finally met with the psychologist, the combination of language barriers and the psychologist's dismissive attitude resulted in very brief and unhelpful conversations.

We had two counseling sessions but they only lasted about 5-10 minutes each time and interpretation was never used. I would ask the psychologist "do you understand me" or "are you understanding what I'm saying" and the psychologist would respond "yes," so I did not think to request interpretation. I thought that if the psychologist had difficulty understanding me, they would utilize interpretation.

When I spoke with the psychologist on two separate occasions after my suicide attempt, so he could check on my mental health, the questions were very basic and I had a hard time expressing myself because of the language barrier. I asked the psychologist again whether he understood me, and he would say "yes." However, these sessions felt like wasted efforts because of the language barrier.

The psychologist even recorded in my medical records that he thought I was only telling him about my trauma so that he could document it which would then help my asylum claim. If a professional psychologist is questioning my intentions in seeking treatment, especially after suicide attempt, I do not feel comfortable with them providing me with therapy. The staff seem like they are not on your side.

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<sup>193</sup> Ex. B, Damar Decl., ¶¶ 25–27.

<sup>194</sup> *Id.* ¶ 28.

I continued to battle daily suicidal ideations until ICE released me. During those 6 months, I felt like the facility was trying to break my spirit. . . .<sup>195</sup>

Jane, who has struggled with depression while at Moshannon, similarly reports the dismissive attitude of the Moshannon staff when addressing the medical, and particularly mental health, needs of individuals detained there.

Medical staff are usually dismissive of our medical complaints anyways. They have said things to me like “you are only reporting medical ailments to try to get out of here” and they do not take you seriously.

One time a woman in my dorm had a severe psychological breakdown and she took all of her clothes off, urinated, and defecated on herself in the dorm. Prior to her breakdown, she could not communicate to the guards what she was going through because she did not speak English and the guards did not bother to use interpretation. The guards put her into her bed, but she fell out of her bed and hit her head. They then took her to the hospital. The entire time she was showing clear symptoms of being in extreme distress the medical staff said, “She just wants to leave the facility” and “she’s faking it.”<sup>196</sup>

This dismissive attitude carries over into the mental health care treatment provided. As Jane reports:

There is no reason to go to see the psychiatrist because they will just give you pills and I do not want pills. The last time I saw the psychiatrist, they tried to prescribe me sleeping pills, but I did not want them. I did not want to become reliant on pills while I am detained because it does not feel safe. I do not want to be sleeping all of the time or unaware of my surroundings. I am afraid of dependency as well.

Many women in my dorm are on pills for sleep and depression and it scares me because I do not want to end up like them. They cannot sleep without the pills and they act differently. They sleep a lot and become zombie-like. It also seems to cloud people’s judgment.<sup>197</sup>

The experiences of the Participants in this Complaint are consistent with the ICE Significant Incident Reports from Moshannon provided to LSNJ as part of its FOIA litigation. For instance, Moshannon staff consistently use physical force and chemical agents against people in mental health crises, and inconsistently refer those individuals for medical treatment. For example,

On May 4, 2024 . . . contracted staff at [MVPC] . . . notified ERO Philadelphia of an Immediate Use of Force discharge of [oleorosin capsicum (“OC”)] spray incident, involving [Redacted], a 20-year-old citizen of El Salvador. . . MVPC staff

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<sup>195</sup> *Id.* ¶¶ 30–33.

<sup>196</sup> Ex. C, Jane Decl., ¶¶ 24–25.

<sup>197</sup> Ex. C, Jane Decl., ¶¶ 21–22.

responded to the Special Management Unit due to [Redacted] covering the window of cell 401 and threatening self-harm. A GEO supervisor arrived, at approximately 1627, and gave [Redacted] a direct order to remove the coverings from the window. [Redacted] defied the order and continued to threaten self-harm. At that time, the GEO supervisor gave an order for the door to be breached using a ballistic shield. Upon entry, [Redacted] threw a mattress at the team requiring a three second burst of OC spray to coerce compliance. The GEO supervisor discharged another three second burst of OC spray and ordered [Redacted] to submit to restraints after he threw the mattress again. [Redacted] then complied and submitted to hand restraints. MVPC staff escorted [Redacted] to the medical exam room, decontaminated him, and conducted a medical assessment. [Redacted] was found to receive a small laceration on his knuckle with no other injuries. MVPC staff then escorted [Redacted] to the medical department, cell 104, and placed him on constant observation due to threats of self-harm. MVPC staff removed the clothing from [Redacted] with shears due to his refusal to remove his clothing when entering constant watch. No staff injuries were reported as a result of this Use of Force Incident.<sup>198</sup>

As compared with a few other individuals for whom de-escalation techniques were used and the receipt of mental health treatment was recorded,<sup>199</sup> there is no report of de-escalation techniques here or of any referral to mental health services for this individual, following this incident.

Likewise, as recorded by GEO,

On April 27, 2023 . . . a 32-year old citizen of Jordan, had attempted to commit an act of self-harm by tying a bed sheet around his neck while under psychological observation. At 7:54 pm first responders were called to health services, removed the bedsheet and moved [Redacted] to a suicide watch cell without force. Once inside the cell, [Redacted] lunged toward the RA Supervisor at which time an immediate use of force was initiated. [Redacted] became combative and was escorted onto the bed. Resident advisors applied ambulatory restraints and placed [Redacted] into a suicide smock and removed his clothes by cutting. Health services completed a restraint check and found no issues with circulation and noted no injuries. At 8:00 pm, Facility administrator ODDO authorized the continued use of

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<sup>198</sup> Ex. J, Wisotsky Decl. at 35 (2024 ICLI-00007 0544).

<sup>199</sup> See, e.g., Ex. J, Wisotsky Decl. at 19 (2024 ICLI-00007 0371) (“[A] 32-year old citizen of Jamaica was observed cutting himself with a piece of metal he had removed from the call box inside the cell. Earlier that same day MVPC officials placed [Redacted] on suicide protocols with constant observation due to [Redacted] making suicidal ideations. [Redacted] damaged the call box and camera inside his medical cell. MVPC officials and a Deportation Officer made repeated, prolonged attempts to deescalate the situation. . . . [Redacted] remains on suicide protocols and continues to receive mental health treatment.”); *id.* at 15 (2024 ICLI-00007 0366) (describing that MVPC officials were called to a solitary confinement cell after officers “observed [Redacted] banging his head off the wall repeatedly, then standing on a toilet in his cell attempting to hang himself. [Redacted] stated he was going to kill himself and wrapped bed sheets loosely around his neck and attempted to attach the sheets to the top bunk in his cell. . . . [Redacted] remains on suicide watch with constant observation. MVPC officials initiated suicide protocols and will continue to provide mental health services.”).

restraints with 15 minute restraint checks and 2 hour supervisory checks. RA Supervisors and facility staff performed restraint checks at 9:52 pm, continuing ambulatory restraint at 11:50pm, [Redacted] was calm and ambulatory restraints were removed. ERO Philadelphia notified IHSC.

There was no record of mental health services being contacted for this individual, or whether an interpreter was needed or used when staff was communicating with this person, and particularly when they were applying restraints or cutting off his clothing, forcing nudity.<sup>200</sup>

Similarly, as documented by Moshannon staff, they used force against a thirty-year old citizen of Chile during a mental health crisis, rather than allowing mental health staff to work with that individual:

On August 19, 2022, at approximately 7:30 pm, MVPC officials took [redacted] to the medical unit to be assessed for psychological issues related to a possible bipolar manic episode. [Redacted] refused to comply with MVPC officials' orders and they subsequently placed him in hand restraints. Medical staff then assessed [Redacted] and placed him in an observation cell. While in the observation cell, [Redacted] used toilet water to slip the hand restraints off his wrists. [Redacted] then refused to return the handcuffs to staff and hid them on his person. MVPC officials entered [Redacted] observation cell to retrieve the handcuffs. [Redacted] remained defiant to MVPC officials' orders and did not obey commands to submit to restraints or move. MVPC officials took [Redacted] to the ground, re-applied hand restraints, and recovered the handcuffs . . . [Redacted] has been referred to MVPC and IHSC for mental health treatment.<sup>201</sup>

Of the individuals detained at Moshannon during the 29 months for which ICE provided data to LSJN as part of its FOIA litigation, 1,008 were on the "mental health roster," or prescribed psychotropic medication.<sup>202</sup> However, as detailed by those detained at Moshannon whose declarations are included herein, and as documented in Moshannon's own reports, Moshannon correctional and medical staff responses to significant mental health issues falls far short of PBNDS requirements regarding the specifics of what is to be included in a mental health evaluation: a five to ten minute consultation, particularly when adequate and competent interpretation services are not provided, is not comprehensive and cannot cover the full mental health history and other issues that are to be covered. And none of the participants in this Complaint were provided with a treatment or management plan to address the mental health issues they confronted.<sup>203</sup> Moreover, ICE and Moshannon do not have *any* written policies and procedures for the treatment or housing of people diagnosed with mental health and/or psychiatric conditions.<sup>204</sup>

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<sup>200</sup> Ex. J, Wisotsky, Decl. at 23 (2024 ICLI-00007 0397).

<sup>201</sup> Ex. J, Wisotsky Decl. at 11 (2024 ICLI-00007 0329).

<sup>202</sup> As part of the same litigation, ICE also produced to LSJN an excel of all individuals at Moshannon placed on the mental health roster, 2024-ICLI-000007 Highlighted.xlsx. Ex. J, Wisotsky Decl., ¶ 31.

<sup>203</sup> U.S. IMMIGR. & CUSTOMS ENF'T, PBNDS, *supra* note 11, § 4.3 (V)(O).

<sup>204</sup> *Compare* Complaint, *LSJN v. ICE*, No. 2:23-CV-22222 (D.N.J. Nov. 9, 2023), ECF No. 1, at 13 (describing requests) *with* Status Report, ECF No. 15, at 2-3 ("ICE conducted a search for documents responsive to these requests and located no such records.").

The lack of policy and planning has immediate detrimental impacts on the people that ICE and GEO Group detain at Moshannon.

**i. ICE and GEO officials deny women comprehensive medical and gynecological care sufficient to meet their health-based needs at Moshannon.**

It is well established that ICE and the facilities that contract with it are required to provide basic health care, including gynecological care, to the people they hold in detention.<sup>205</sup> And yet, the inadequacies of women’s health care in immigration detention facilities are historic, pervasive, and well documented. Over a decade ago, Human Rights Watch published a report on the struggles of women detained by immigration to obtain basic health care.<sup>206</sup> The report identified deficiencies in routine gynecological care under policies that significantly limited access to non-emergency gynecological care,<sup>207</sup> an issue that continues to be exemplified today, by Moshannon, a hastily converted former male-only prison facility that was neither designed nor modified to meet women’s health care needs when ICE began to detain women there.

In stark contrast to other forms of medical care that are provided by medical staff on-site, the lack of gynecological care in-house at Moshannon means that women must be approved for treatment and, only if permitted, go through the humiliating process of being shackled, transferred, and taken off-site to be seen at an outside provider,<sup>208</sup> deterring people from seeking care. Despite a clear requirement set forth in the PBNDS that preventative services specific to women’s health, including mammograms, be scheduled, those services are rarely provided.<sup>209</sup>

As Jane details:

Before I was placed in ICE detention, I got my period every month to the exact date. Around about April 2023 is the last time I had a regular period. I know of many other women who have told me their periods have stopped being regular.

I think it is related to stress, but we do not have access to gynecological care here, they have to take you to an outside hospital for that. So while we are detained here, we are not sure if . . . these symptoms are something that will have effects that are more lasting. My diet is also so terrible here, so it could be that as well.

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<sup>205</sup> The standards for women’s medical care are prescribed in Part 4.4 of the PBNDS. These standards apply to contract detention facilities that, like Moshannon, house ICE/ERO detainees. U.S. IMMIGR. & CUSTOMS ENF’T, PBNDS at 4.4(I). The standards prescribe that women in detention routinely receive “age appropriate gynecological and obstetrical health care, consistent with recognized community guidelines for women’s health services.” *Id.* at 4.4(II)(1). Moreover, ICE cannot be deliberately indifferent to the medical needs of those it detains. *Natale v. Camden Cnty. Corr. Facility*, 318 F.3d 575, 581 (3d Cir. 2003) (applied in pre-trial detention context); *E.D v. Sharkey*, 928 F.3d 299, 306 (3d Cir. 2019) (“This Circuit has longed [sic] viewed the legal rights of an immigration detainee to be analogous to those of a pretrial detainee.”).

<sup>206</sup> HUMAN RIGHTS WATCH, *DETAINED AND DISMISSED: WOMEN’S STRUGGLE TO OBTAIN HEALTH CARE IN UNITED STATES IMMIGRATION DETENTION* (2009).

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> U.S. IMMIGR. & CUSTOMS ENF’T, PBNDS, § 4.4(V)(d).



I have never sought out gynecological care at the facility, but back in July 2023, they told me because of my age, I would need a mammogram soon. However, it was never scheduled.

Gynecological care is not sufficient here which is why I never bring up problems with my menstrual cycle or anything else because I hear from other women that they cannot get access to it either or its really difficult. Knowing that you have to be taken to an outside hospital in order to get care makes people less interested because they shackle you when they take you off site. Why would anyone want to go through that humiliation? It deters us from seeking preventative or even emergency care. They will only take you to the hospital, or to see a proper doctor, when they determine that it is an emergency so most women, including myself, do not bother seeking care or complaining about it.<sup>210</sup>

Catherine reports similar concerns, exacerbated by the acute symptoms she experienced while detained at Moshannon. About one month after her arrival at Moshannon, she began experiencing serious pain.<sup>211</sup> After a pap smear identified abnormal cells, Catherine was sent for further testing with medical professionals outside of the facility,<sup>212</sup> Catherine was diagnosed with ovarian growths. Those painful growths required surgery to remove.<sup>213</sup> Staff at Moshannon told Catherine that they would schedule the surgery, but never said when it would be scheduled. Staff then failed to respond to any of Catherine’s subsequent questions about when the procedure would take place.<sup>214</sup> Not only did Catherine not receive the surgery she needed, no other medical treatment was provided for her gynecological conditions. She lived in pain for months at Moshannon until she was deported.<sup>215</sup>

Additionally, Moshannon deters women from seeking medical care by providing inadequate language access for women to communicate needs to Moshannon staff.<sup>216</sup> Consequently, Jane avoided seeking medical care for medical problems with her menstrual

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<sup>210</sup> Ex. C, Jane Decl., ¶¶ 27–30.

<sup>211</sup> See Ex. A, Catherine Decl., ¶ 7.

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> This is not the first documented instance in which ICE has been faulted for using language barriers as an excuse to deny gynecological care. In *Rosemarie M. v. Morton*, the Middle District of Florida granted a preliminary injunction to a woman in ICE detention suffering from gynecological complications. 671 F. Supp. 2d 1311, 1313 (M.D. Fla. 2009). The plaintiff had been diagnosed and treated while in state custody, but treatment ceased when she was transferred to ICE. *Id.* Although the plaintiff was “seen by a number of physicians and provided with numerous forms of diagnostic testing, she ha[d] not received any of the procedures that [were] recommended by the physicians as treatment for her condition.” *Id.* When ordering ICE to provide the necessary treatment, it highlighted that “[w]hile Defendants maintain[ed] that [the] Plaintiff [] refused to consent to the recommended procedures, at worst, the record reflects that [she] was confused as to the content of the various forms she was being asked to sign due to *language barriers*.” *Id.* (emphasis added).

cycle.<sup>217</sup> When staff at Moshannon told Jane that she would need a mammogram, they never scheduled it.<sup>218</sup>

Although ICE and its contractees, like Moshannon, are obligated to provide adequate gynecological care under both the PBNDS and the constitutional standards that govern medical access in immigration detention,<sup>219</sup> Catherine and Jane’s experiences demonstrate that ICE and Moshannon fail to meet even the lowest of standards.

#### **IV. ICE AND GEO HAVE NO PROCESS TO PROVIDE REASONABLE ACCOMODATIONS TO PEOPLE WITH MEDICAL DISABILITIES AT MOSHANNON.**

The Rehabilitation Act of 1973 “was the first broad federal statute aimed at eradicating discrimination against individuals with disabilities.”<sup>220</sup> Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 794 *et seq.*, prohibits organizations that receive financial assistance from any federal agency, like Moshannon, from discriminating against qualified individuals<sup>221</sup> with disabilities, and it applies to noncitizens in removal proceedings.<sup>222</sup> Likewise, DHS regulations expressly require that its agencies provide reasonable modifications for people with disabilities so that they can participate in the benefits and services the agency provides.<sup>223</sup> Particularly in the context of detention settings, the programs and activities covered by the Rehabilitation Act are “extremely broad in scope and includes anything a public entity does.”<sup>224</sup> The Act does not require evidence of a medical diagnosis; proof from an individual’s personal experience showing that the impairment is substantial is sufficient to qualify for protections.

Once an entity like Moshannon is on notice of a person’s disability, it is required to *affirmatively* engage in an inquiry as to whether a reasonable accommodation is needed to ensure the individual has equal access to the services of the programs and activities of the public entity.<sup>225</sup>

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<sup>217</sup> Ex. C, Jane Decl., ¶ 29.

<sup>218</sup> *Id.* ¶ 29.

<sup>219</sup> The Third Circuit evaluates claims for deliberate indifference to a medical need under the Fourteenth Amendment Due Process Clause. *See Natale v. Camden Cnty. Corr. Facility*, 318 F.3d 575, 581 (3d Cir. 2003). In the context of immigration detention, constitutional claims for deliberate indifference to a medical need are properly evaluated under the Fifth Amendment Due Process Clause. *Natale v. Camden Cnty. Corr. Facility*, 318 F.3d 575, 581 (3d Cir. 2003) (applied in pre-trial detention context); *E.D v. Sharkey*, 928 F.3d 299, 306 (3d Cir. 2019) (“This Circuit has long viewed the legal rights of an immigration detainee to be analogous to those of a pretrial detainee.”). The Third Circuit “has found no reason to apply a different standard than that set forth in *Estelle* [and applicable to people with convictions] when evaluating whether a claim for inadequate medical care by a pre-trial detainee is sufficient.” *Natale*, 318 F.3d at 581 (citing *Estelle v. Gamble*, 429 U.S. 91, 103-04 (1997) (additional citation omitted)).

<sup>220</sup> *Helen L. v. DiDario*, 46 F.3d 325, 330 (3d Cir. 1995), *as amended* (Feb. 2, 1995).

<sup>221</sup> The Rehabilitation Act defines an “individual with a disability” as, *inter alia*, any person who has “a physical or mental impairment which substantially limits one or more major life activities of such individual.” 29 U.S.C. § 705(20)(B).

<sup>222</sup> *See, e.g., Franco-Gonzales v. Holder*, 767 F. Supp. 2d 1034, 1051-52 (C.D. Cal. 2010).

<sup>223</sup> 6 C.F.R. §§ 15.1-15.70; *see also Durham v. Kelley*, 82 F.4th 217, 226 (3d Cir. 2023) (“Refusing to make reasonable accommodations is tantamount to denying access.”).

<sup>224</sup> *Furgess v. Pa. Dep’t of Corrs.*, 933 F.3d 285, 289 (3d Cir. 2019).

<sup>225</sup> *Berardelli v. Allied Servs. Inst. of Rehab. Med.*, 900 F.3d, 104, 114-15 (3d Cir. 2018) (finding that, as recognized by the Supreme Court, the prohibition on discrimination includes ‘an affirmative obligation . . . that ‘an otherwise

Put another way, “the term ‘discriminate against a qualified individual on the basis of disability’ includes” “not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability . . . unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity.”<sup>226</sup> Inherent to the reasonable accommodation requirement, and in “[d]etermining what specific actions should be taken,” is an “interactive process involving participation by both sides.”<sup>227</sup>

In the context of immigration detention, there are multiple pathways through which ICE and Moshannon staff become aware that an individual could have a disability and require a reasonable accommodation to access services. And yet, staff detailed to Moshannon do not have any protocols for responding to accommodation requests or engaging in the interactive process.

As Jose describes:

After I was assaulted at Moshannon, I tried to figure out how to get a minor accommodation to help alleviate my pain. I was never provided with any information on how to ask for a reasonable accommodation request, at least not in any language that I understand, and so I tried to navigate that by myself.

For months, since the assault, I asked for a mattress that will not hurt me. The bed I slept on in the hole was made of iron and metal. There was no pillow. The bed was very small, and the mattress so thin. I felt the metal on my body when I tried to sleep, and it was just so painful with my back injury. I asked everyone here to help accommodate me—all I wanted was a mattress that is thicker and will not hurt me. I asked the Captain. I spoke with the doctor here. I asked for help using the tablet. I made the same request over and over and over and over again. Every time I went to the doctor. Constantly. Moshannon staff says I had to speak with the doctor. The doctor says it had to be authorized by ICE. They sent me in circles with no answer, no help.

There was no response, for nearly two months, to my request for this minor accommodation to help me alleviate my now chronic back pain. Nobody listened to me. Nobody helped me make the pain less, even in this small way.<sup>228</sup>

Although Jose was retaliatorily transferred from Moshannon after telling staff about this forthcoming Complaint, he still requires the requested accommodations. If Jose is still detained at the time CRCL investigates this Complaint, **he asks that CRCL intervene and facilitate an interactive process so that he can exercise his dignity and statutory rights to a reasonable**

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qualified handicapped individual must be provided with meaningful access to the benefit that the grantee offers’ and that federally funded programs were required to make ‘reasonable accommodations’ or ‘reasonable modifications’ . . . when necessary to assure such ‘meaningful access’” (quoting *Alexander v. Choate*, 469 U.S. 287, 300–01 (1985).<sup>226</sup> *Sandor v. Borough*, 92 F. Supp. 3d 355, 358 (W.D. Pa. 2015) (quoting 42 U.S.C. § 12112).

<sup>227</sup> *Mengine v. Runyon*, 114 F.3d 415, 420 (3d Cir. 1997) (internal alterations and citations omitted); see also *Baxter v. Pa. Dep’t of Corrs.*, 661 F. App’x 754, 758 (3d Cir. 2016) (summary order) (assuming interactive process requirement in case involving incarcerated individual); *Havens v. Colo. Dep’t of Corrs.*, 897 F.3d 1250, 1263 (10th Cir. 2018) (applying interactive process requirement in prison context).

<sup>228</sup> Ex. F, Jose Decl., ¶¶ 16–18.

**accommodation.** And regardless of Jose’s detention status, CRCL and the designated 504 officer must act to establish and oversee a reliable process through which people detained at Moshannon can engage in a timely and interactive process to seek reasonable accommodations for medical disabilities.

Jason described similar treatment when he faced difficulties in obtaining treatment for Hepatitis B and anxiety. He was prescribed two medications, which the medical staff dispensed during the evening pill distribution. But as Jason explained to medical staff, he was most often asleep before the pills were brought to him because the pain from his tumors made sleeping through the night difficult. Jason sought a medical accommodation requesting that he be added to the mid-day pill-call because of his sleep issues and missed pill-calls, but the medical staff persisted in bringing his medication at night. While the medical records report that he refused the medications, Jason is clear that he never refused medication, and notes that he did not sign the documents claiming he did.<sup>229</sup>

Jason has been seeking a basic accommodation so that he can garner the same benefit as his able-bodied peers in detention—sleep.<sup>230</sup> Jason asked for a simple adjustment to his pill schedule so that he could access medication prescribed to him. Moshannon and ICE’s lack of processes denied both of them the services required under the Rehabilitation Act.

## V. RACE DISCRIMINATION IS PERVASIVE AT MOSHANNON.

The above accounts detailing ICE and GEO officials’ persistent and routine denial of language access, access to medical care, and denial of reasonable accommodation requests to individuals with LEP illustrate a pattern and practice of discrimination on the basis of national origin, in violation of Title VI of the Civil Rights Act.<sup>231</sup> Unfortunately, they also signal a much more significant issue of racialized discrimination experienced by individuals held in ICE custody at Moshannon, particularly as it pertains to persons identified as Black and Asian, in further violation of Title VI.

This pervasive discrimination on the basis of perceived race persists contrary to stated policy, as written in the Moshannon Valley Processing Center Supplement to the ICE National Resident Handbook, “that no individual be discriminated against because of age, race, color, creed, religion, sexual orientation, physical challenges, or national origin. Interpretation services are available to all residents.”<sup>232</sup> CRCL is mandated under 6 U.S.C. § 345(a) to “review and assess information concerning abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion, by employees and officials of the Department.” CRCL is further mandated to “oversee compliance with constitutional, statutory, regulatory, policy, and other requirements relating to the civil rights and civil liberties of individuals affected by the programs and activities

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<sup>229</sup> *Id.* ¶ 21–23.

<sup>230</sup> *Cf. Furgess v. Pa. Dep’t of Corrs.*, 933 F.3d 285, 291 (3d Cir. 2019).

<sup>231</sup> 42 U.S.C. §§ 2000d.

<sup>232</sup> The Moshannon Handbook Supplement at 3. The Moshannon Handbook Supplement also specifies in the “Resident Rights and Responsibilities, ... 2. The right of freedom from discrimination based on religion, national origin, gender, sexual orientation, handicap, or political beliefs.”

of the Department,” and to investigate all complaints related thereto.<sup>233</sup> This mandate extends oversight to GEO, and its operations at Moshannon.

As noted in Sec. I, Background, above, Moshannon is located in a community that is overwhelmingly comprised of U.S. citizens who identify as White (Non-Hispanic).<sup>234</sup> This results in a candidate pool for employees at Moshannon with very little racial or ethnic diversity. Indeed, Damar reports that individuals detained at Moshannon have not interacted with or seen a single Black staff worker from either ICE or GEO. As Damar notes, that “was isolating” for him.<sup>235</sup>

Jane similarly describes racial isolation and race discrimination at Moshannon, and states:

There are only about six black women detained here and, to my knowledge, there are no black staff that work here. It is very isolating to be a woman detained here and even more isolating to be black.<sup>236</sup>

Jane details the ways in which Black women are treated differently in terms of access to jobs, certain privileges, and generalized treatment and respect:

The staff at Moshannon treat Black people differently. For example, the guards do not greet me when I greet them, or they ignore me altogether or act afraid of me by always avoiding eye contact.<sup>237</sup>

Jason also describes the racialized isolation and denial of respect he experienced at Moshannon, and the staff’s promotion of that isolation, as well as the ways in which language-based discrimination serves as a proxy for racialized national-origin discrimination.

In addition to the language barriers, I experienced racial discrimination. I wanted to live close to fellow Chinese immigrants so that we could help each other in times of need and have someone to talk to. We tried to apply to be moved into the same dorm, but our applications seemed to be overlooked by the COs. They pretended not to understand our requests, even though I noticed that non-Chinese groups do not face such hurdles with similar requests. It was very frustrating and unfair.

I felt that one resident assistant (RA) was acting particularly racist against me and other Chinese immigrants. Every time I spoke to her with simple requests in English, she acted like she did not understand what I was saying, even though the other RAs had no issue understanding my English.<sup>238</sup>

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<sup>233</sup> 6 USC § 345 (a)(1), (4), and (6).

<sup>234</sup> DATA USA *supra*, note 21.

<sup>235</sup> Ex. B, Damar Decl., ¶ 37.

<sup>236</sup> Ex. C, Jane Decl., ¶ 48–49.

<sup>237</sup> *Id.* ¶ 46.

<sup>238</sup> Ex. D, Jason Decl., ¶¶ 30–31.

Alvan describes the environment at Moshannon as follows:

I . . . feel that a racialized undertone permeates MVPC. Detainees who are black get treated like animals. This is how I felt when I was strip searched without reason in front of a camera. When I speak to guards, I feel as though they look down on me and my intellect because of the color of my skin. I have had guards try to take advantage of this, like when a staff member took a photo of me on his personal device and then told me he was allowed to do so. This atmosphere of racial undertones and discrimination towards those who don't speak English make it even more difficult for me and others in MVPC to seek and obtain the care that we need.<sup>239</sup>

Participants in this complaint recount explicitly racially derogatory commentary made by staff at Moshannon. Alvan, for example, recounts hearing some of the staff say, “you’re messing up our country, poisoning our blood.”<sup>240</sup> Jose provides an account of a particularly disturbing and more racially explicit act of aggression he experienced at the hands of a GEO staff member on May 22, 2024. He recalls the officer, who was White, entering his cell to put handcuffs on him, noting he was “so violent and aggressive,” and that he hurt his already injured finger, but then refused to take him to medical to address the pain he was experiencing. During this incident, the officer said to Jose, “you Blacks deserve to be dead, you all are shit.”<sup>241</sup> As Jose recounts,

This was not the first time that the police officers at Moshannon said racist things to me while in the protective custody unit. For example, another officer called me “ugly monkey.”<sup>242</sup>

These examples of overt racism on the part of staff at Moshannon provide a critical backdrop for understanding the public records data provided to LSNJ in response to FOIA litigation, which reveals that individuals identified as Black or Asian and Pacific Islander spent a disproportionately longer time in detention at Moshannon as compared to those identified as White.<sup>243</sup> On average, individuals apprehended by ERO and detained at Moshannon spend an average of 76.34 days in detention, with people identified as White spending an average of 68.13 days in custody. In contrast, people identified as Black and Not of Hispanic Origin spend an average of 154.29 days in detention, while people identified as Asian or Pacific Islander spend an average of 113.77 days in custody.

## VI. CONCLUSION

As detailed in this Complaint, GEO and ICE consistently and pervasively fail to meet constitutional standards, statutory standards, and their own minimum standards of care for people held at the Moshannon Valley Processing Center. People that GEO and ICE detain at that facility are routinely denied language justice, access to medical and mental health care, and the ability to

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<sup>239</sup> Ex. H, Alvan Decl, ¶ 22.

<sup>240</sup> *Id.* ¶ 31.

<sup>241</sup> Ex. F, Jose Decl, ¶ 31-32.

<sup>242</sup> *Id.* ¶ 33.

<sup>243</sup> *See supra*, Sec. I, Background. *See also*, Ex. J, Wisotsky Decl., ¶ 41 and accompanying chart.

seek reasonable accommodations for disabilities. People of Color are subjected to derogatory and racist words and actions. CRCL, along with ICE and its components, and GEO must take immediate corrective action so that the people in their custody are afforded *at least* the most basic level of rights and dignity. Both the Constitution and PBNDS require ICE and GEO to meet their obligations.

## VII. RECOMMENDATIONS

As detailed herein, and particularly as described by the Participants in this Complaint, GEO and ICE regularly and routinely violate the rights of the people that they detain at the Moshannon Valley Processing Center in Philipsburg, Pennsylvania. People that GEO and ICE detain at Moshannon are denied their constitutional and statutory rights, and are not provided even the minimum standard of care required by ICE's own Performance-Based National Detention Standards. As the Participants in this Complaint describe, even the most basic dignitary norms are consistently dishonored.

We urge **CRCL** to work with ICE and other Department offices and components to incorporate strict liability mechanisms into the contracts with Moshannon and other non-profit detention centers so that when civil rights standards, policies, and norms are violated the federal contracts have progressive and significant monetary repercussions and increased oversight mechanisms.

We also urge **CRCL** to open an immediate investigation into the allegations contained herein, and offer extensive recommendations to DHS, ICE, and the IHSC on how they can address the serious complaints put forth by the Participants in this matter. Those recommendations are certainly not limited to, but should at minimum include:

- a. **Corrective measures to ensure language justice for people with Limited English Proficiency.**
  - i. Staff must ask and document the primary and secondary languages and literacy of the people that they detain, and then honor that marker by interacting with people in their primary language and providing people with copies of all rules, regulations, and vital documents in their primary language. Vital documents include but are not limited to disciplinary documents, grievance forms, and medical documents.
    1. GEO and ICE staff can ask people to identify their primary language using an accessible chart or card, as used by the City of Philadelphia and many other government offices across the country.
  - ii. GEO and ICE must ensure access to qualified, professional interpretation services (by either qualified staff or telephonic interpretation) including, but not limited to, medical and mental health appointments; law library use; before and during disciplinary proceedings; during any search of an individual's body, including a strip or cavity search; during routine

interactions between staff and people detained; and in all interactions with ICE.

- iii. People who are LEP and detained by ICE and GEO must be provided with competent and qualified professional interpretation during all interactions with medical and mental health staff, in all circumstances.
  - 1. The provision of those services must be monitored and reinforced. Medical staff should be required to identify and document language needs and services each time they chart. Charts must be periodically and systematically reviewed by IHSC.
  - 2. Medical staff may not use other people in detention to interpret confidential and sensitive information, or during medical appointments or the distribution of medication.
- iv. GEO and ICE should use prerecorded announcements for the loudspeaker, in multiple languages, including for notice of count and security sweeps.
- v. The Talton Tablet system must be accessible to people with LEP, including those who cannot navigate through any English-language writings. The Tablet should be accessible to people who speak at least the top ten most frequently used languages at the facility. That system should account for people asking GEO staff to assist with legal and court access, and in scheduling medical appointments.
- vi. Medical and mental health staff, ICE staff including IHSC staff, and GEO staff must be routinely trained and evaluated on when and how to properly use interpretation and translation services.

**b. Corrective measures to guarantee that people receive minimally adequate, informed, and competent medical and mental health care in a language that they understand.**

- i. GEO and IHSC must invest in and install on-site gynecological care and treatment options for women and people who require gynecological treatment so that they can have the same access to routine health care that is available to men.
  - 1. Women and people who require gynecological care should receive preventative health care like mammograms and pap smears on a routine basis and consistent with recommended guidelines based on age, medical history, family history, and other relevant factors.
  - 2. Feminine hygiene products like tampons and menstrual pads (not underwear liners) should be provided free-of-charge.



- ii. GEO should eliminate the use of shackles during off-site medical appointments to eliminate a deterrence to people seeking needed medical treatment.
- iii. IHSC and GEO must coordinate the provision of care, and ICE and its components should be required to promptly respond to requests for off-site medical procedures or treatments, at least within five business days after a routine request and within twenty-four hours for an emergent request.
- iv. Medical and mental health providers must adhere to the AMA ethical guidelines pertaining to informed consent prior to administering treatment, including prescribing medications or taking blood or urine samples. Informed consent must be obtained in the primary language of the person in detention and documented.
- v. Medical staff must be prohibited from marking appointments or treatments, like medication, as “refused” due to a language barrier or conflict in schedule.

**c. Developing a robust and interactive process for people with disabilities to request and obtain reasonable accommodations.**

- i. ICE and GEO staff must develop an interactive process by which people with disabilities can request and timely obtain reasonable accommodations and appeal any denial. That process must be transparent and clear as to who has responsibility to evaluate requests and engage in the process. Any process must include consultation with the individual with the disability to understand their medical limitations, and to identify potential accommodations and alternatives.
- ii. While people with disabilities need not file a formal reasonable accommodation request to trigger the interactive process, information on how to do so must be provided in multiple languages upon entrance to Moshannon, and if and when people detained there seek medical assistance.
- iii. Any interactive process must include a clear mechanism by which people can appeal a denial of a reasonable accommodation or the granting of an alternative accommodation that might not meet their needs.
- iv. ICE, CBP, and all other federal agencies that detain non-citizens must develop a centralized mechanism by which reasonable accommodations continue should a person in their custody be transferred to a different facility.

**d. Ending the mistreatment of people detained by ICE and GEO, including stopping all racial discrimination and discrimination on the basis of sexual orientation and disability status.**

- i. Consistent with accepted medical practice, the use of solitary confinement and administrative segregation must end.
- ii. An individual may not be subjected to disciplinary infractions for failing to follow a staff command or order that they did not understand due to language or disability, or for an incident stemming from a misunderstanding based on the lack of language access.
- iii. Any disciplinary infraction for a person with LEP, and particularly if that individual risks placement in administrative segregation, must be reviewed and approved by the facility's warden and the DFOD prior to placement.
- iv. Religious items should not be considered contraband.
- v. There must be increased mechanisms for staff oversight, accountability, discipline, and performance review when a person in detention alleges discriminatory behavior, or if discriminatory behavior by a staff member is observed by any member of ICE or GEO staff.
- vi. Retaliation should not be tolerated, and staff must be held accountable for retaliatory actions.

**We further urge CRCL to ensure that its investigation is transparent and inclusive, and ensures the protection and full recognition of the rights of the individual complainants, declarants, and other potential witnesses to this complaint, and work with the ultimate goal of ensuring accountability and non-repetition of the rights violations identified herein. To that end, we recommend CRCL take the following steps:**

- Coordinate with below signed counsel in all outreach and communications with individual represented complainants;
- Take steps to ensure communications with individual Participants to this complaint – particularly those who remain detained at Moshannon – are carried out in a timely fashion, and in a manner that safeguards their well-being, safety, and legal rights;
- In light of the pervasive accounts of retribution and the prison-like environment reported by individuals detained at Moshannon, and resulting fear that resulted in three of our Participants proceeding pseudonymously, and many others to opt out of participation, include as part of the investigation listening sessions with immigrant community stakeholders – including family members of those detained and formerly detained at Moshannon, as well as persons formerly detained at Moshannon, and counsel to persons

detained at Moshannon – to better understand the context and the pervasiveness of the complaints raised herein; and

- At the conclusion of the investigation, provide a full and public record of the findings and recommendations resulting from the investigation, in a manner that preserves the confidentiality of individual complainants, declarants, and other witnesses who wish for their identities to be concealed from the public, and put in place steps aimed at ensuring accountability and non-repetition of any violations found in the course of the investigation, with planned follow-up with below signed counsel and other stakeholders.

Should you need any additional information, please do not hesitate to contact our legal team at: Sarah Paoletti: [paoletti@law.upenn.edu](mailto:paoletti@law.upenn.edu); Shira Wisotsky: [swisotsky@lsnj.org](mailto:swisotsky@lsnj.org), and Vanessa Stine: [vstine@aclupa.org](mailto:vstine@aclupa.org). Thank you and we look forward to coordinating with your office throughout the investigation process.

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