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Via E-mail

Keith Skille, AIA
GBD Architects, Inc.
1120 NW Couch St., #300
Portland, OR 97209

Re: 4310 SW Macadam Ave

Dear Keith:

The purpose of this letter is to answer the following question: will the intended use of the ICE facility involve "judicially required" detention. After my review of the pertinent federal statutory and case law, it is apparent that to the extent detention will occur in the facility, it is administrative and civil in nature and not judicially required.

"Judicial" is defined as "of, relating to, or by the court." *Black's Law Dictionary, Ninth Edition*, p. 922. So, for example, judicial power is defined as

The authority vested in courts and judges to hear and decide cases and to make binding judgments on them; the power to construe and apply the law when controversies arise over what has been done or not done under it.

Under federal law, this power is vested in the U.S. Supreme Court and in whatever inferior courts Congress establishes.

Black's, p. 924.

No judge or court is involved in the detention portion of the process administered by U.S. Immigration and Customs Enforcement. Federal law, specifically The Immigration and Nationality Act ("INA") determines how a person who is not a U.S. citizen is detained and

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lawfully removed to the individual's country of origin. The INA empowers the Attorney General to apprehend and detain an alien pending a decision, reached through a hearing, on whether the alien is to be removed from the United States. *See* 8 U.S.C. § 1226(a). *See Zadvyas v. Davius et al.*, 533 U.S. 678, 690 (2001).

As a civil, administrative proceeding, the detention does not meet the definition of "judicially required". A judge is not involved in the detention process. Detention under the INA has been described as "civil confinement." *Zadvyas* at 691. The justifications for this type of detention are not to punish or sanction the aliens, only to facilitate their lawful removal after a hearing can occur. *Demore v. Kim* 538 U.S. 510, 532 (2003).

The best and perhaps only example of detention that is judicially required is that which occurs as part of the system of criminal justice. Upon arrest, the accused is incarcerated. His incarceration comes under the jurisdiction of the court, which sets bail and the conditions of his release from incarceration. If convicted, a judge determines the sentence, which may include jail if the crime and statute so require it. In short, the entire process of detention is controlled by the court and judge.

In summary, any detention that occurs in the facility in question involves neither a judge nor court. Being civil and administrative in nature, it is not judicially required.

Very truly yours,

Howard W. Carsman

HWC

cc: Patrick R. Prendergast
Rod Grinberg

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