



Homeland  
Security

July 30, 2020

MEMORANDUM TO: Enrique M. Lucero  
Executive Associate Director  
Enforcement and Removal Operations  
U.S. Immigration and Customs Enforcement  
(b)(6)

FROM: Peter E. Mina  
Deputy Officer for Programs and Compliance  
Office for Civil Rights and Civil Liberties  
(b)(6)

Dana Salvano-Dunn,  
Director, Compliance Branch  
Office for Civil Rights and Civil Liberties

SUBJECT: Otero County Processing Center  
Complaint No. 19-06-ICE-0216.

The U.S. Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL) conducted an investigation into conditions of detention for U.S. Immigration and Customs Enforcement (ICE) LGBTQ detainees at the Otero County Processing Center (Otero) in Chaparral, New Mexico. CRCL's review of Otero focused on allegations CRCL received from representatives of the American Civil Liberties Union (ACLU) of New Mexico, the Las Americas Immigrant Advocacy Center, and the Santa Fe Dreamers Project.

On March 25, 2019, CRCL received email correspondence signed by representatives of the ACLU of New Mexico, the Las Americas Immigrant Advocacy Center, and the Santa Fe Dreamers Project alleging sexual harassment, discrimination, and abuse of LGBTQ detainees at Otero; inadequate medical care; staff retaliation against gay men and transgender women who have complained about detention conditions; and improper use of segregation.

Specifically, the sexual abuse and sexual harassment allegations stated that transgender women must bathe and sleep in housing units with male detainees who sexually harass and threaten them, including propositioning them for sex. According to the correspondence, male detainees reportedly "leer[] at [transgender women] offering to 'help' them bathe. ... Other men ask women for sex while they try to sleep." Additionally, the allegations state that correctional officers subject gay men and transgender women to frequent pat-down searches and are subjected to frequent homophobic and transphobic slurs from other detainees that are unaddressed by facility staff. Relatedly, they also allege that correctional officers make transphobic comments such as, "Walk like a man! You better sit like a man!" Regarding medical care, the correspondence alleged the facility denied requests to provide hormone treatment to three transgender women who had been taking hormones for gender

dysphoria and that facility staff are slow to respond to requests for medical care, including mental health care submitted by transgender women and gay men –stating that it “takes days, if not weeks,” for staff to respond to their medical and mental health care requests.

CRCL initiated an investigation on May 21, 2019 and issued to ICE a request for information. ICE responded on August 6, 2019, providing copies of policies, grievance, and incident reports. CRCL’s conditions of confinement expert reviewed the materials provided by ICE and found operational deficiencies related grievances. These grievances included complaints regarding disciplinary action, segregation, staff mistreatment, language access, medical services, dental services, religious discrimination, safety, sexual abuse and assault prevention and intervention of LGBTQ detainees as well as non LGBTQ detainees.

Upon receipt of these concerns, CRCL considered whether Otero might require a broader on-site review. Following a review of the database for allegations related to Otero, CRCL identified Otero as one of the facilities where it would conduct a Fiscal Year (FY)21 on-site inspection and sought to move that investigation up to FY20 upon receipt of the above-referenced correspondence, planning to expand upon this initial investigation during that review. However due to COVID-19, CRCL postponed this on-site inspection. Given the serious nature of the concerns noted by CRCL corrections expert, CRCL wanted to ensure that these recommendations were not delayed until the on-site investigation could safely proceed.

Although CRCL’s expert would have provided additional recommendations following an on-site investigation, her review of the information provided by ICE revealed significant deficiencies in Otero’s grievance process, disciplinary process, use of segregation and medical care. CRCL’s expert also recommends that CRCL conduct an on-site investigation of Otero to examine the facilities’ compliance with 2011 PBNDS (revised 2016) as soon as possible. CRCL intends to do that once conditions allow.<sup>1</sup>

Attached to this memorandum is the expert’s report related to the initial investigation. With this memorandum, and consistent with our standard practice, we request that you indicate whether ICE concurs with the expert recommendations, and that for those agreed to, you provide an action plan within 60 days.

1. **Grievance System:** CRCL’s expert found significant deficiencies in Otero’s grievance process. Specifically, grievances were not thoroughly investigated, the responses were not personalized, and an overwhelming number of the grievances alleged a culture where detainees are subject to rude, discourteous and discriminatory treatment in violation of the 2011 PBNDS (revised in 2016). 2011 PBNDS, 6.2 Grievance System; ICE National Detention Handbook, April 2016.<sup>2</sup> Accordingly, Otero and ICE should:
  - a. Jointly review all detainee grievances from 2019 until the present alleging officer mistreatment, harassment and abuse and to identify which complaints merit

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<sup>1</sup> Due to the ongoing health risks associated with the COVID-19 pandemic, CRCL will be conducting its upcoming “on-site” to Otero virtually. CRCL intends to complete the full review in FY21.

<sup>2</sup> Enforcement and Removal Operations National Detainee Handbook, April 2016, page 4, “...ICE’s policy is to treat all detainees with dignity and respect...”

further investigation.

- b. Identify those officers with multiple detainee mistreatment complaints and thoroughly investigate the allegations.
  - c. Review the grievance officer's current method of investigating grievances to improve the grievance investigation practices and identify areas for additional training and oversight. Once completed, Otero should document its findings and ensure related training is offered.
  - d. Ensure that detainees who file grievances or report staff mistreatment are protected from retaliation by developing and implementing a muster or roll call that remind staff about the non-retaliation policies. (Detainee Grievance System Standard is found in the Standard's Procedures section (V.B.7); American Correctional Association's Adult Local Detention Facility Performance Based Standard 4-ALDF-6A-07).
2. **Discipline and Segregation:** Of the 129 grievances CRCL's expert reviewed, 14% concerned discipline and segregation, particularly focused on due process and segregation time concerns. CRCL's expert found that in at least three instances a detainee's grievance resulted in a segregation time being shortened or a detainee being released from segregation. 2011 PBNDS, 2.12 Special Management Units. Although CRCL's expert reported that she would need to review detainee files, disciplinary reports and incidents orders to reasonably assess the discipline and segregation grievances at Otero, she recommends that Otero and ICE review detainee segregation placement to ensure that:
- a. the length of time in segregation is appropriate and that the circumstances are consistent with 2011 PBNDS and
  - b. mental health rounds are conducted to ensure that detainees who might be experiencing a mental health episode related to the length in time in segregation receive appropriate mental health care.
3. **Mental Health Care:** As previously noted, CRCL's expert expressed concern regarding the potential impact prolonged segregation has on a detainee's mental health. For example, CRCL's expert reviewed one grievance where the detainee reported that segregation was impacting his mental health. She was concerned with the Grievance Officer's failure to address serious mental health concerns raised by a detainee in response to a disciplinary charge and housing in segregation. CRCL's on-site investigation will review the provision of mental health care at Otero, until that time CRCL's expert recommends that Otero and ICE should ensure that grievances raising mental health concerns are referred to Mental Health for review.
4. **Medical Care:** CRCL's expert reviewed seven medical and dental care grievances that mentioned medical co-payment fees. The PBNDS 2011 does not authorize medical

copayment fees to be charged, “[w]hen medical copayment fees are imposed, the program ensures at a minimum: All residents are advised, in writing, at the time of admission to the facility of the guidelines of the copayment program.” 2011 PBNDS 4.3 Medical Care, II. 9. Based on her review of these grievances, CRCL’s expert found that Otero’s Access to Health Care policy is not compliant with the PBNDS 2011. Accordingly, Otero and ICE should:

- a. (b)(5)
- b. Revise the Access to Health Care policy and specifically state detainees shall not be charged medical copayment fees.

It is CRCL’s statutory role to advise department leadership and personnel about civil rights and civil liberties issues, ensuring respect for civil rights and civil liberties in policy decisions and implementation of those decisions. We look forward to working with ICE to determine the best way to resolve these complaints. We request that ICE provide a response to CRCL within 60 days, whether it concurs or non-concurs with these recommendations. If ICE concurs, please include an action plan. The response can be sent by email. If there are any questions, please contact Senior Policy Advisor, (b)(6) by telephone at (b)(6) or by email at (b)(6)

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Enclosure