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Security

May 25, 2022

MEMORANDUM FOR: Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement

Kerry E. Doyle
Principal Legal Advisor
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement

FROM: Dana Salvano-Dunn (b)(6)
Director, Compliance Branch
Office for Civil Rights and Civil Liberties

(b)(6)
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SUBJECT: Torrance County Detention Facility
Complaint Nos. 001306-21-ICE, 001303-21-ICE,
001305-21-ICE, 001210-21-ICE, 001212-21-ICE,
001213-21-ICE, 001584-21-ICE, 002368-21-ICE,
002934-22-ICE, 002899-22-ICE, 002930-22-ICE,
002929-22-ICE, 002970-22-ICE, and 003855-22-ICE

The Office for Civil Rights and Civil Liberties (CRCL) has opened complaints alleging that U.S. Immigration and Customs Enforcement (ICE) has potentially violated the civil rights and civil liberties of detainees in ICE custody at the Torrance County Detention Facility (Torrance) in Estancia, New Mexico. The purpose of this memorandum is to notify you of the complaints, describe the allegations, inform you that CRCL will retain the above-referenced complaints for investigation, and conduct an onsite investigation at Torrance on June 27-30, 2022, and explain how CRCL will work with ICE during our investigation¹. In addition to the general review, based upon the specific instances identified below, CRCL will be reviewing Torrance's COVID-19 policies, medical care policies, mental health and suicide prevention and intervention policies, environmental health and safety, and general conditions of detention.

¹ CRCL previously conducted a spot-check investigation at Torrance on April 19, 2022.

COMPLAINTS

1. *Complaint No. 001306-21-ICE*²

On July 13, 2021, CRCL received an email referral from the DHS OIG regarding (b)(6), an ICE detainee at Torrance. In a call to the OIG hotline on July 12, 2021, the complainant alleged that he received inadequate medical care for extreme back pain and medical staff laughed in his face when he asked for on July 8, 2021 medication to address the issue. The Complainant further alleged that there is no air conditioning in his cell block and there is standing water in some of the cells that smells rotten. The complainant was paroled on August 5, 2021.

2. *Complaint No. 001303-21-ICE*³

On July 13, 2021, CRCL received an email referral from the DHS OIG regarding (b)(6), an ICE detainee at Torrance. In a call to the OIG hotline on July 12, 2021, the complainant reported that he experienced many side effects after recovering from COVID-19, such as tiredness and coughing. Complainant reported that he witnessed other detainees being released due to asthma complications and therefore believes he should be released due to his COVID-19 complications. The complainant further alleged that there are leaks in the sinks, the air conditioning is broken, the bed sheets are dusty, the food is horrible, phones are often disconnected, and the officers are always yelling at the detainees. The complainant was paroled on July 28, 2021.

3. *Complaint No. 001305-21-ICE*⁴

On July 13, 2021, CRCL received an email referral from the DHS OIG regarding (b)(6), an ICE detainee at Torrance. In a call to the OIG hotline on July 12, 2021, the complainant alleged that the food served at the facility is inedible and his cell had been flooded with black water for the past 20 days. He also alleged that grievances are ignored, and medical attention is not provided. The complainant was paroled on July 27, 2021.

4. *Complaint No. 001210-21-ICE*⁵

On July 13, 2021, CRCL received an email referral from the DHS OIG regarding (b)(6), an ICE detainee at Torrance. In a call to the OIG hotline on July 12, 2021, the detainee alleged that he received inadequate medical care for Human Immunodeficiency Virus (HIV). Specifically, he alleged that he had not received his necessary daily HIV medication since July 9, 2021. Further, on or around June 12, 2021, he allegedly had a nasal allergy and was taken to the doctor one week after, which he considered a long-time considering his HIV condition.

² CRCL sent a Referral for the non-medical allegations to ICE Office of Professional Responsibility (OPR) on January 24, 2022.

³ CRCL sent a Referral for the non-medical allegations to ICE Office of Professional Responsibility (OPR) on January 24, 2022. A medical referral was not sent as the individual was out of custody when received by CRCL.

⁴ CRCL sent a Referral for the non-medical allegations to ICE Office of Professional Responsibility (OPR) on January 24, 2022.

⁵ CRCL sent a medical referral to ICE on July 14, 2021, and received ICE's response on September 27, 2021.

The complainant also reported that he is experiencing stomach problems as a result of the amount of bread he is being fed.

5. *Complaint No. 001212-21-ICE*⁶

On July 13, 2021, CRCL received an email referral from the DHS OIG regarding (b)(6), an ICE detainee at Torrance. In a call to the OIG hotline on July 12, 2021, the detainee alleged that he suffers from asthma and had not received proper medical attention for over a month. In connection with non-medical related allegations, the detainee alleged that the cells are flooded with water. The complainant was released on July 18, 2021.

6. *Complaint No. 001213-21-ICE*⁷

On July 13, 2021, CRCL received an email referral from the DHS OIG regarding (b)(6) an ICE detainee at Torrance. In a call to the OIG hotline on July 12, 2021, the detainee alleged that he was receiving inadequate medical care for high blood pressure and asthma. He also reported that he had been having anxiety attacks from trauma suffered while in custody. The complainant further alleged that he was moved to a cell block that has no air conditioning and water was flooding from one cell into others.

7. *Complaint No. 001584-21-ICE*⁸

On August 3, 2021, CRCL received an email from (b)(6) on behalf of her husband, (b)(6) a detainee at Torrance. The complaint alleged the facility is not providing water for the detainees, only giving them juice and coffee at mealtimes. She alleged that on or around July 22, 2021, her husband requested water for hand washing, proper air conditioning, and toilets that flushed. She further alleged the handwashing stations did not work or have clean water and that for the first four days at Torrance, the detainees were held in a holding area that was hot and did not have air conditioning and the toilets were non-functional.

8. *Complaint No. 002368-21-ICE*⁹

On September 13, 2021, CRCL received an email from (b)(6), an attorney with the El Paso Immigration Collaborative on behalf of 10 detained men from Senegal, all ICE detainees held in four detention centers in the El Paso AOR, including Torrance.¹⁰ The complainant alleged that the detainees primarily speak the Wolof language and cannot communicate with attorneys, the ICE deportation officers, the court, medical providers, or asylum officers due to a lack of language access services.

⁶ CRCL sent a Referral to ICE Office of Professional Responsibility (OPR) on January 25, 2022.

⁷ CRCL sent a Referral to ICE Office of Professional Responsibility (OPR) on January 24, 2022.

⁸ CRCL sent a Short Form request to ICE ERO on November 4, 2021, and received ICE's response on December 21, 2021.

⁹ CRCL sent a Short Form request to ICE ERO on December 20, 2021, and received ICE's response on January 27, 2021.

¹⁰ (b)(6)

Specifically, the complaint alleged that it can often take two (2) weeks to arrange for a phone call with a detainee because of the limited resources of the contractors inside of the detention center and the VTC court schedule. These difficulties and the need to sync it with the limited availability of Wolof interpreters and the need for advanced arrangements allegedly make communication with Wolof speaking clients functionally impossible.

9. and 10. Complaint No. 002934-22-ICE and Complaint No. 002899-22-ICE

On November 23, 2021, CRCL received a letter from the ACLU of New Mexico, American Immigration Council, American Immigration Lawyers Association, Innovation Law Lab, and National Immigration Project of the National Lawyers Guild (together “complainant”), regarding Torrance. In a letter to the CRCL Officer, the Office of the Immigration Detention Ombudsman, the DHS OIG, and the Director of EOIR, the complainant alleged that Haitian detainees at the facility were being denied access to counsel, language access, information about the asylum process, and individualized custody determinations. In addition, the complainant alleged poor conditions of detention, including lack of adequate medical care, water that causes body rashes and/or itching, and poor quality and/or inedible food.

Specific to legal access, the complaint alleged that Haitian detainees were being denied access to counsel because, since September 27, 2021, the El Paso Immigration Collective (EPIC) has been unable to provide legal services to Haitian migrants detained at Torrance. The complainant alleged that facility staff frequently denied EPIC’s request for legal calls or failed to respond to the request for days. EPIC also reported that ICE allegedly told EPIC staff that to provide a group legal presentation they would have to meet the requirements of legal orientation program providers which requires pre-approval of a syllabus and the limitation of attendance only to people who have expressed interest on a sign-up sheet, which ICE would not commit to providing in Haitian Creole. Complainant further alleges that while ICE has reportedly allowed EPIC staff to conduct calls with people in detention, ICE has limited the calls to five (5) per day.

In regard to language access, the complaint alleged that Haitian detainees cannot communicate with ICE or facility staff, and interpretation often relies on other people in detention or family members over the phone because no Haitian Creole interpretation services are reportedly unavailable at the facility. Specifically, the complainant alleged that Haitian migrants at Torrance reported that they do not know what is happening on their cases due to the lack of interpretation services. They further reported not understanding the asylum process because the videos shown about the asylum process are only available in English and Spanish.

Finally, the complainants allege the facility is reportedly in poor conditions and detainees receive inadequate medical care as well as water that causes rash or itching, and poor food quality.

11. Complaint No. 002930-22-ICE¹¹

On December 1, 2021, CRCL received an internal email from a Senior Policy Advisor regarding (b)(6), a detainee at Torrance. During CRCL’s interviews of Haitian

¹¹ CRCL sent a Short Form request to ICE ERO on January 28, 2022, and received ICE’s response on February 14, 2022.

migrants detained at the facility¹², he stated that the only potable water available at Torrance was from sink faucets and that the television in his pod was not working despite repeated requests to detention officers to fix it.

12. Complaint No. 002929-22-ICE¹³

During CRCL's interviews of Haitian migrants detained at Torrance on December 1, 2021, (b)(6) informed CRCL that he was not receiving appropriate medical care. According to the detainee, he reported to detention officers that he has a medical issue with his heart but was referred to a psychologist rather than a physician.

13. Complaint No. 002970-22-ICE

On December 8, 2021, CRCL received a referral from the OIG regarding (b)(6), an ICE detainee at Torrance. In a telephone call to the OIG on December 8, 2021, the complainant alleged that two (2) ICE officers working at the detention center, Officer (b)(6), (b)(7)(C) and Officer (b)(6), (b)(7)(C), were harassing and provoking him. The complainant alleged the officers constantly come at night to his cell and throw out his food, plates, and mattress. The complainant further alleged that the officers only harass him, and no other detainees and he believes it is based on his race.

14. Complaint No. 003855-22-ICE

On March 16, 2022, CRCL reviewed a report issued by the DHS Office of Inspector General (OIG) titled "Management Alert: Immediate Removal of All Detainees from the Torrance County Detention Facility," No. OIG-22-31. The report, dated March 16, 2022, notifies ICE of urgent issues that require immediate attention and action, and calls for immediate removal of all detainees. Specifically, the OIG determined that ICE must take immediate steps to address the critical staffing shortages that have led to safety risks and unsanitary living conditions at Torrance.

PRIOR RECOMMENDATIONS

CRCL previously conducted a spot-check investigation on April 19, 2022, looking into allegations of unsanitary facility conditions, including lack of access to clean drinking water, that required a more immediate response. Following the spot-check, CRCL sent ICE a brief memorandum outlining the observations that required immediate attention. Specifically, CRCL noted staffing shortages, non-functioning intercoms in housing unit, language access concerns, and lack of privacy during legal visits. CRCL will use the onsite as an opportunity to assess changes made as a result of CRCL's prior spot-check investigation and to evaluate if issues noted before are still present.

¹² The interview with the complainant was conducted as part of CRCL's investigation into the CBP Del Rio investigation.

¹³ CRCL sent a medical referral to ICE ERO on December 3, 2021.

CRCL Mission. CRCL supports the Department's mission to secure the Nation while preserving individual liberty, fairness, and equality under the law. CRCL integrates civil rights and civil liberties into all the Department's activities:

- Promoting respect for civil rights and civil liberties in policy creation and implementation by advising Department leadership and personnel, and state and local partners;
- Communicating with individuals and communities whose civil rights and civil liberties may be affected by Department activities, informing them about policies and avenues of redress, and promoting appropriate attention within the Department to their experiences and concerns;
- Investigating and resolving civil rights and civil liberties complaints filed by the public regarding Department policies or activities, or actions taken by Department personnel;
- Leading the Department's equal employment opportunity programs and promoting workforce diversity and merit system principles.

CRCL authorities. Under 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, CRCL is charged with investigating and assessing complaints against DHS employees and officials of abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion. In investigating complaints, if CRCL believes that the complaints raise similar issues, CRCL may look into whether there are systemic problems that justify a broader investigation. Pursuant to its authority under 6 U.S.C. § 345(a)(3), CRCL shall assist components to “periodically review Department policies and procedures to ensure that the protection of civil rights and civil liberties is appropriately incorporated into Department programs and activities.”¹⁴ Additionally, pursuant to DHS Delegation Number 19003, issued October 26, 2012, the Secretary has delegated to the Officer of CRCL the authority to “assess new and existing policies throughout the Department for the policies’ impact on civil rights and civil liberties” and “review . . . programs within any Component to ensure compliance with standards established by the Officer for CRCL to protect civil rights and civil liberties.” Issues such as appropriate treatment by ICE officials, access to medical care, lack of arbitrary punishment, and religious accommodation for ICE detainees are examples that may raise civil rights and liberties concerns. The procedures for our investigations, and the recommendations they may generate, are outlined in DHS Management Directive 3500, DHS Instruction 046-01-001, and DHS Instruction 046-01-002.

Access to information. 42 U.S.C. § 2000ee-1(d) grants this Office access to the “information, material, and resources necessary to fulfill the functions” of the office, including the complaint investigation function; Management Directive 3500 further authorizes CRCL to:

- “Notify [] the relevant OHS component(s) involved of the matter and its acceptance by CRCL, and whether the matter will be handled by CRCL or by the component organization;”
- “Interview[] persons and obtain [] other information deemed by CRCL to be relevant and require[e] cooperation by all agency employees;” and

¹⁴ In addition, pursuant to 42 U.S.C. § 2000ee-1(a)(2), CRCL has the authority to “periodically investigate and review department, agency, or elements actions, policies, procedures, guidelines, and related laws and their implementation to ensure that such department, agency, or element is adequately considering privacy and civil liberties in its actions.” (emphasis added)

- “Access[] documents and files that may have information deemed by CRCL to be relevant.”

Further guidance is contained in DHS Instruction 046-01-002, and, pursuant to section 3.3 of ICE Directive 8010.1, “Administration and Management of Inquiries from the Office for Civil Rights and Civil Liberties,” this is a request for information or assistance. Under section 3.3 of Directive 8010.1, ICE will provide the requested information and materials to CRCL within the timeframe indicated below, and not edit or otherwise limit review of the information that is responsive to CRCL's request. Pursuant to section 2 of Directive 8010.1, CRCL understands that this request will be handled by the appropriate ICE program office or ICE's Office of Diversity and Civil Rights (ODCR).

Reprisals forbidden. In addition, 42 U.S.C. § 2000ee-1(e) forbids any Federal employee to subject a complainant or witness to any "action constituting a reprisal, or threat of reprisal, for making a complaint or for disclosing information to" CRCL in the course of this investigation.

This memorandum and its accompanying request for information are made pursuant to these authorities.

Privilege and required transparency. Our communications with ICE personnel and documents generated during this review, particularly the final report, will be protected to the maximum extent possible by attorney-client and deliberative process privileges. Under 6 U.S.C. § 345(b), however, we submit an annual report to Congress-also posted on CRCL’s website-that is required to detail “any allegations of [civil rights/civil liberties] abuses . . . and any actions taken by the Department in response to such allegations.”

We look forward to working with your staff on this matter and will report back to you our findings and any recommendations.

PURPOSE AND SCOPE OF REVIEW

The purpose of this review is to determine if the allegations in the complaints can be verified or disproven, determine whether the facts suggest that the Constitution, a federal statute, or a Departmental policy has been violated, and to recommend what steps, if any, should be taken by ICE to address the complaints both individually (if the problem is ongoing) and as a matter of policy.

We will review the following areas: conditions of detention, medical care, mental health care, detainee safety, segregation, the grievance system, and environmental health and safety. CRCL will also review the facility’s COVID-19 practices during the review.

QUESTION(S) PRESENTED

(b)(5)



INITIATING THE INVESTIGATION

CRCL Senior Policy Advisor (b)(6) will be handling this review. We request that ICE ERO schedule an initial discussion about these complaints and CRCL's plans for reviewing the matters with Ms. (b)(6) as soon as possible.

We look forward to working together to determine all the facts surrounding these matters and if appropriate, the best way forward. If you have any questions, please do not hesitate to contact Ms. (b)(6) at (b)(6) or by email at (b)(6).

Enclosure

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