



**Homeland
Security**

August 18, 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)
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Office for Civil Rights and Civil Liberties

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SUBJECT: Orange County Jail
Complaint Nos. 002794-22-ICE, 003367-22-ICE,
003782-22-ICE, 003631-22-ICE, 003481-22-ICE,
003394-22-ICE, and 003355-22-ICE

The Office for Civil Rights and Civil Liberties (CRCL) has received 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 Orange County Jail in Goshen, New York. The purpose of this memorandum is to notify you of the complaints and describe the allegations, inform you that CRCL will retain the above-referenced complaints and other allegations for investigation and conduct an onsite investigation at OCJ on September 26-29, 2022, and explain how CRCL will work with ICE during the investigation.

Prior to the upcoming onsite, CRCL conducted a spot-check at OCJ on May 5-6, 2022 based upon a quick succession of serious allegations related to discrimination, excessive use of force, language access, and the provision of medical and mental health care. During that review, CRCL was accompanied by a medical doctor and conditions of detention subject matter expert (SME). Following the spot-check, on July 29, 2022, CRCL issued a memorandum that contained high-level recommendations for immediate action by ICE. A copy of this document is attached.

As part the current broad overall investigation, consistent with its authority, CRCL will examine the allegations summarized below to include a review of the provision of mental health care and environmental health and safety. CRCL will also be reviewing OCJ's operations more generally

to address any systemic concerns including policies related to COVID, suicide prevention and intervention, use of force, grievance system, and food service, as well as other areas of the facility's operations that often raise important civil rights and civil liberties issues.¹ Finally, CRCL will be assessing whether the recommendations issued in the spot-check memorandum are underway.

COMPLAINT ALLEGATIONS

1. Complaint No. 002794-22-ICE

On November 12, 2021, CRCL received email correspondence from the New York University (NYU) School of Law Immigrant Rights Clinic (“Complainant”) on behalf of “L.G.C.,” an ICE detainee at Orange County Jail (OCJ) in Goshen, New York. The complainant’s email stated that they were “calling for [L.G.C.’s] release and an investigation of [OCJ].” The correspondence also included a Petition for Writ of Habeas Corpus and Exhibits dated October 27, 2021 which was filed on L.G.C.’s behalf. The Petition’s Preliminary Statement indicated that L.G.C. had significant mental health-related conditions, borderline intellectual functioning, and was expressing suicidal ideations. Complainant alleged that OCJ was inadequately treating L.G.C.’s conditions (ex. expressing disbelief regarding his diagnoses and suicidality as well as withholding and abruptly altering his medication dosage). Complainant further alleged that officers subjected L.G.C. to threats of punishment and verbal harassment for seeking help, had access to legal counsel impeded, and was not provided with information in a language that he understood (Spanish).²

2. Complaint No. 003367-22-ICE

On February 17, 2022, CRCL received email correspondence from five non-governmental organizations (NGOs) (“Complainants”)³ on behalf of ten anonymous ICE detainees at OCJ. The allegations included claims that detainees are subjected to racism and religious discrimination by OCJ officers. Moreover, the complainants alleged that public databases⁴ connect two OCJ staff members to “racist, anti-immigrant, and otherwise disturbing social media content” including an email account with the handle “nazicommando.”⁵ The complainants allege that in light of the “ongoing racist and retaliatory abuse,” numerous officers should be “removed from any position in which they exercise power over detained people.”⁶

¹ CRCL’s September onsite investigation will include four SMEs in the following areas: medical and mental health care, conditions of detention, and environmental health and safety.

² On the day of receipt, CRCL referred the allegations to ICE ERO via the CRCL/ICE Medical Referral Process. On March 30, 2022, CRCL shared its findings with ICE via an Informal Advice email. Additionally, CRCL sent the correspondence to the Joint Intake Center (JIC) for awareness of the non-medical allegations (i.e., staff misconduct allegations.)

³ Envision Freedom Fund, Catholic Charities Community Services – Archdiocese of New York, For the Many, Freedom for Immigrants, New York Lawyers for the Public Interest (“NYLPI”), and NYU School of Law Immigrant Rights Clinic

⁴ Lexis Nexis, MySpace, and Twitter

⁵ See accompanying PII Memo

⁶ See accompanying PII Memo

The complaint also included several allegations regarding medical and mental health care, conditions of detention and environmental health and safety allegations, including: failure to provide basic medical and mental health care; inadequate management of chronic care conditions; use of pain medication as a substitute for care; lack of both outpatient care and dental services; excessive use of force; retaliation; excessive cell lock-ins; misuse of segregation; inadequate religious accommodations and language access; extreme mail delays and inconsistent and prohibitively expensive phone service; inedible food; freezing temperatures; scarce toiletries and cleaning products; dirty laundry and insufficient clothing.

3. Complaint No. 003782-22-ICE

On April 28, 2022, CRCL received additional email correspondence from the NYU Law School Immigrant Rights Clinic (“Complainant”) on behalf of “L.G.C.” According to the complainant, L.G.C. has “mental health and cognitive disabilities” and “has been subjected to ongoing violations of his rights, including racist abuse, prolonged isolation, physical assault, and medical mistreatment.”⁷

Medical and Mental Health

OCJ allegedly declined to consider differential diagnosis and findings made by outside mental health providers and made no notation of or alteration to L.G.C.’s care and treatment based on his cognitive impairment.⁸

OCJ allegedly did not provide any medication or treatment for L.G.C. when he tested positive for COVID-19 on November 18, 2021 until December 2, 2021. Moreover, L.G.C. requested the COVID-19 vaccine on April 13, 2022, but had not received it as of April 28, 2022.

Excessive Use of Force, Staff-Detainee Communication, and Retaliation

L.G.C. has allegedly been subject to “at least three major incidents of harassment and retaliatory disciplinary segregation by OCJ personnel,” including excessive use of force. According to the complainant, L.G.C. has reported “abuse and mistreatment” by OCJ staff throughout his detention.⁹ According to the complainant, “[u]pon information and belief, [OCJ] closed its investigation of the Dec. 1, 2021 complaint on or around January 7, 2022, without interviewing L.G.C. or any detained people.”¹⁰

⁷ CRCL determined that this complaint would be handled separately from the previous Habeas-related matter (Complaint No. 002794-22-ICE) as it contained additional allegations.

⁸ Evaluations conducted in or around March 2021 by a licensed clinical social worker (LCSW) and in or around September 2021 by a Clinical/Forensic Neuropsychologist.

⁹ See accompanying PII Memo

¹⁰ Following these incidents, the complainant alleged that counsel for L.G.C. asked ICE and OCJ, through the U.S. Attorney’s Office on or around December 3, 2021, to prevent the guards named in L.G.C.’s DHS complaint from interacting with him at the facility. The U.S. Attorney’s Office reportedly informed L.G.C.’s counsel on December 9, 2021 in writing that the government did “not have the personnel available to ensure that L.G.C. is not interfacing with any officers referenced in any of petitioner’s complaints.” A second request was allegedly made on or around February 9, 2022 and was also denied.

Additionally, L.G.C. alleged that OCJ officers were involved with “racist, xenophobic, biased, and extremist social media, including social media content” and an OCJ Sergeant and Officer are specifically tied to the content.¹¹

In February 2022, L.G.C. and other OCJ detainees reportedly participated in a hunger strike “in protest of the poor conditions and ongoing abuse by officers.” Allegedly, OCJ widely used lock-ins in response to the hunger strike, “locking those who participated in the hunger strike in their cells as punishment.”

Language Access. Allegedly, “[OCJ] mental health staff have failed to provide consistent, adequate interpretation in L.G.C.’s only fluent language (Spanish)...”

Segregation. According to the complainant, “Despite his mental and cognitive disabilities and the risk of harm and further decompensation due to prolonged isolation, L.G.C. has continued to be subjected to prolonged forms of solitary confinement, including disciplinary segregation and administrative segregation.”

4. Complaint No. 003631-22-ICE

On April 6, 2022, CRCL received an email referral from the DHS Office of Inspector General (OIG) regarding a complaint made via telephone on April 4, 2022 by a representative of Envision Freedom Fund (“Complainants”) on behalf of unnamed OCJ detainees. Complainant alleged that the detainees are subjected to racial and religious discrimination; detainees are being wrongfully convicted or called guilty for things they did not do; detainees are being co-mingled with other detainees who have tested positive for COVID-19; detainees with medical problems are not being treated correctly; and an OCJ Sergeant can be seen on social media being racist and posting anti-immigration images.¹²

5. Complaint No. 003481-22-ICE

On March 10, 2022, CRCL received email correspondence from Freedom for Immigrants (“Complainant”) on behalf of “D.M.,” an ICE detainee at OCJ. According to the complainant, the detainee has been subjected to “COVID-19 negligence, medical neglect, abuse, and unsafe conditions.” Specifically, D.M. was allegedly quarantined with individuals who tested positive for COVID-19 while he tested negative; there is a shortage of personal protective equipment; and requesting a replacement cloth mask is unnecessarily complicated. D.M. alleged that OCJ does not offer programs for psychological help and when he went to facility psychologists to inform them that he was hearing noises, they told him that it was probably just people snoring in the cells. Mr. (b)(6) reportedly continues to suffer from depression, anxiety, and panic attacks.

D.M. also alleged multiple instances of verbal and physical abuse by OCJ officers and medical staff.¹³ Furthermore, D.M. alleged that the facility did not have heat, which was causing

¹¹ See accompanying PII Memo

¹² See accompanying PII Memo

¹³ See accompanying PII Memo

detainees to get sick, and that the facility serves “horrible and malnourished [sp]” food that lacks variety. Due to the alleged malnutrition, D.M. developed stomach issues and was only given Tums for his pain.

6. Complaint No. 003394-22-ICE

On February 23, 2022, CRCL received a telephone call from an anonymous individual who alleged that ICE detainees at OCJ are served outdated food, receive little to no medical care, the facility lacks heat, and detainees are subjected to retaliation by officers.

7. Complaint No. 003355-22-ICE

On February 16, 2022, CRCL was made aware of Twitter posts subsequently re-posted by Daniel Kowalski, the Editor-in-Chief of Bender’s Immigration Bulletin. The posts dated February 15, 2022, alleged that a sprinkler burst in an OCJ unit and flooded it with two plus inches of brown, dirty water. Allegedly, the detainees in the unit were forced to clean up the filthy water with minimal cleaning supplies, even though it was due to no fault of their own and was due to the negligence of the facility. The posts stated, “Folks don’t feel safe sleeping in the unit but the only other option they’ve been offered is an empty unit with no working heat. [Expletive] like this is the everyday experience of ppl who are detained.”¹⁴

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

¹⁴ See: https://twitter.com/a_z_j/status/1493673189431463945?s=21&t=Ykc8gUyJbzz6YeWts_zbjw

appropriately incorporated into Department programs and activities.”¹⁵ 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 of issues that raise civil rights and liberties concerns. The procedures for CRCL investigations and the recommendations those investigations 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 CRCL 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 DHS 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
- “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 § 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 § 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 § 2 of Directive 8010.1,

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 the accompanying request for documents and information are issued 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 Web site—that is

¹⁵ In addition, pursuant to 42 U.S.C. § 2000ee-1(a)(2), CRCL has the authority to “periodically investigate and review department, agency, or element 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).

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.

SCOPE OF REVIEW

The purpose of our review is to determine if the allegations in the complaints can be verified or disproven; if the facts we find suggest that the Constitution, a federal statute, or a Departmental policy has been violated; and 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. This review will also examine the additional areas specified above for similar concerns related to protection of civil rights and civil liberties. It is our goal to produce a report that will assist you in making ICE the best agency possible.

QUESTION(S) PRESENTED

(b)(5)



INITIATING THE INVESTIGATION

CRCL has already taken steps to begin its investigation of these complaints, which are assigned to (b)(6), Policy Advisor, CRCL. We look forward to working together to determine all the facts surrounding this matter and if appropriate, the best way forward. If you have any questions, please do not hesitate to contact Ms. (b)(6) by email at (b)(6)

Enclosures

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