



Homeland  
Security

December 19, 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

(b) (6)

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

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Attorney Advisor, Legal Counsel Division  
Office of the General Counsel

SUBJECT: Overarching Investigation into  
Retaliation Allegations in ICE Custody  
Complaint Nos. 003877-22-ICE, 003887-22-ICE, 004613-22-ICE,  
003945-22-ICE, 005144-23-ICE, 003874-22-ICE, 004829-23-ICE,  
004365-22-ICE, 004904-23-ICE, and 005149-23-ICE

The U.S. Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties (CRCL) seeks to conduct a broad investigation of current U.S. Immigration and Customs Enforcement (ICE) processes to prevent, detect, investigate, and respond to retaliation allegations in ICE detention. This review is being conducted due to the increase in volume and gravity of retaliation allegations received from individuals in ICE custody since May 2021. This review will assess how retaliation allegations are addressed at five ICE facilities. These facilities were selected based upon the incoming retaliation allegations received and include (i) Imperial Regional Detention Facility (Imperial); (ii) Baker County Sheriff's Office (Baker); (iii) Krome North Service Processing Center (Krome); (iv) Stewart Detention Center (Stewart); and (v) Torrance County Detention Center (Torrance). CRCL is undertaking this review pursuant to its authority under 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1(d).

## BACKGROUND

In October 2022, CRCL conducted a review of all allegations received by CRCL from May 1, 2021, until July 6, 2022 that involved retaliation—or threats of retaliation—by ICE and facility personnel against individuals in ICE custody. During this 14-month time period, CRCL received a total of 192 allegations of retaliation, 138 of which led to investigations by CRCL. Some of the 192 allegations contained multiple instances and types of retaliation, and other allegations contained only a single instance of alleged retaliation. Many of these were covered in other investigations, however, CRCL retained the above-referenced allegations to use as representative samples for this investigation.<sup>1</sup> In addition, CRCL received dozens of additional allegations regarding retaliation since July 6, 2022.

### **New Allegations – Post May 2021**

On October 26, 2022, CRCL sent ICE leadership a one-page summary of the allegations received regarding retaliation over the 14-month period described above. The allegations were broken down by type of retaliation:

1. Segregation (administrative and disciplinary segregation).
2. Denial or delays in medical and mental health care or placement in medical/mental health housing.
3. Inter-facility transfers (retaliatory transfer between facilities).
4. Intra-facility transfers (retaliatory transfer between housing units within the same facility).
5. Abuse (including physical abuse, sexual abuse/harassment by facility staff and/or ICE officers).
6. Intimidation (including verbal abuse/harassment, dorm searches, questioning detainees about with whom they are talking on the phone, threats to transfer to segregation, threats of harm).
7. Loss of privileges (including family visitation, commissary, access to phones, access to recreation, access to day room).
8. Denial of access to counsel.
9. Unspecified fear of retaliation.
10. Disclosure, or threats of disclosure, of personal information (including criminal history, medical/mental health information/records, sexual abuse/harassment history, sexual preference or gender identity).
11. Other – All other types of retaliation that do not clearly fall into any other category.

In many of the instances reviewed, the alleged victims stated that they experienced the alleged retaliation as a result of reporting concerns about a range of issues, including alleged substandard conditions of confinement, alleged misconduct or abuse by ICE personnel or facility staff, and alleged discrimination or harassment. Of significant concern is that certain allegations alleged that the retaliation was in direct response to filing a civil rights complaint.

### **Prior CRCL Work Related to Retaliation**

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<sup>1</sup> As noted in the attached Request for Information, individualized requests for information for complaints alleging retaliation from each of the five representative facilities that are the focus of this review. Those complaints may include Complaint Nos.: 003877-22-ICE, 003887-22-ICE, 004613-22-ICE, 003945-22-ICE, 005144-23-ICE, 003874-22-Contact, 004829-23-ICE, 004365-22-ICE, 004904-23-ICE, 005149-23-ICE, 002660-21-ICE.

CRCL has issued expert recommendations relating to retaliation following onsite investigations at several facilities as well as in connection with CRCL's 2022 PREA Periodic Review. However, CRCL's investigations on retaliation have generally been focused on *individual* instances of retaliation or have been specific to the ICE facilities investigated during CRCL on-sites. As a result, these current and past investigations have not investigated the overall nature and prevalence of retaliation and whether there are systemic issues with ICE oversight or the facilities' processes for preventing, detecting, investigating and responding to allegations of retaliation in ICE custody.

### FOCUS OF THE REVIEW

This review will assess whether there are systemic issues with ICE's or the facilities' response to retaliation allegations by assessing how ICE and the facilities prevent, detect, investigate and respond to allegations of retaliation experienced by noncitizens in ICE custody at five representative ICE detention facilities. This review will evaluate how retaliation has been addressed generally at these five facilities as well as specifically related to a representative sample of alleged retaliation complaints filed by, or on behalf of, noncitizens in custody at these facilities.

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### CRCL

*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; and,
- 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. The procedures for our investigations and the recommendations they may generate are outlined in DHS Management Directive 3500.

*Access to information.* More particularly, 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.”

*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 issued pursuant to these authorities.

*Privilege and required transparency.* Our communications with DHS 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 recommendations.

## SCOPE OF REVIEW

The purpose of our review is to determine whether there are systemic problems with ICE's response to retaliation allegations; if the Constitution, a Federal statute, a Federal regulation, or a Departmental policy has been violated; whether ICE detention standards, policies and procedures safeguard against retaliation within the ICE detention system and ensure that there are appropriate oversight and investigative mechanisms in place to respond appropriately and expeditiously.

## QUESTIONS PRESENTED

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## INITIATING THE INVESTIGATION

At this time, we request that ICE schedule initial discussions with Policy Advisor (b) (6) [REDACTED] as soon as possible related to this investigation and the plans to review this matter. We look forward to working together. If you have any questions, please do not hesitate to contact Ms. (b) (6) [REDACTED] at (b) (6) [REDACTED] or (b) (6) [REDACTED].

Enclosure

Copy to:

Jason P. Houser  
Chief of Staff  
U.S. Immigration and Customs Enforcement  
(b) (6), (b) (7)(C) [REDACTED]

Claire Trickler-McNulty  
Assistant Director  
Office of Immigration Program Evaluation  
U.S. Immigration and Customs Enforcement  
(b) (6), (b) (7)(C) [REDACTED]

Deborah Fleischaker  
Assistant Director  
Office of Regulatory Affairs and Policy  
U.S. Immigration and Customs Enforcement  
(b) (6), (b) (7)(C)

Scott Lanum  
Assistant Director  
Office of Diversity and Civil Rights  
U.S. Immigration and Customs Enforcement  
(b) (6), (b) (7)(C)

Corey A. Price  
Executive Associate Director  
Enforcement and Removal Operations  
U.S. Immigration and Customs Enforcement  
(b) (6), (b) (7)(C)

Daniel Bible  
Deputy Executive Associate Director  
Enforcement and Removal Operations  
U.S. Immigration and Customs Enforcement  
(b) (6), (b) (7)(C)

Jason B. Mitchell  
Chief of Staff  
Enforcement and Removal Operations  
U.S. Immigration and Customs Enforcement  
(b) (6), (b) (7)(C)

Dr. Stewart D. Smith  
Assistant Director, ICE Health Service Corps  
Enforcement and Removal Operations  
U.S. Immigration and Customs Enforcement  
(b) (6), (b) (7)(C)

Dr. Ada Rivera  
Medical Director, ICE Health Service Corps  
Enforcement and Removal Operations  
U.S. Immigration and Customs Enforcement  
(b) (6), (b) (7)(C)

Monica Burke  
Acting Assistant Director, Custody Management  
Enforcement and Removal Operations  
U.S. Immigration and Customs Enforcement  
(b) (6), (b) (7)(C)

Stephen M. Antkowiak  
Acting Chief of Staff, Custody Management  
Enforcement and Removal Operations  
U.S. Immigration and Customs Enforcement  
(b) (6), (b) (7)(C)

Greg Hutton  
Acting Deputy Assistant Director, Custody Programs  
Enforcement and Removal Operations  
U.S. Immigration and Customs Enforcement  
(b) (6), (b) (7)(C)

Christopher S. Kelly  
Deputy Assistant Director  
Office of Regulatory Affairs and Policy  
U.S. Immigration and Customs Enforcement  
(b) (6), (b) (7)(C)