



Homeland
Security

May 5, 2023

MEMORANDUM FOR: Tae D. Johnson
Deputy Director and
Senior Official Performing the Duties of the 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

Lisa Taylor, (b) (6)
Attorney Advisor, Legal Counsel Division
Office of the General Counsel

SUBJECT: Boone County Jail
Complaint Nos. 005634-23-ICE, 004709-23-ICE, 005801-23-ICE,
005872-23-ICE, 004827-23-ICE, and 000022W-23-ICE

The Office for Civil Rights and Civil Liberties (CRCL) has received complaints alleging that U.S. Immigration and Customs Enforcement (ICE) has violated individuals' civil rights and civil liberties at Boone County Jail (Boone) in Burlington, Kentucky. 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 for investigation and conduct an onsite investigation, and explain how CRCL will work with ICE during our investigation. As part of this investigation, and consistent with its authority described in the CRCL and Scope of Review sections below, CRCL will examine the allegations summarized below and will look at Boone's operations more generally to address any systemic civil rights and civil liberties concerns.

Complaints

Complaint No. 005634-23-ICE¹

On February 1, 2023, CRCL received allegations regarding (b) (6) (“noncitizen”), a noncitizen formerly detained at Boone. The complainant stated he was forced to sleep on the floor and experienced injuries as a result. In addition, the noncitizen alleged that he was experiencing extreme back pain, “chest complications” and headaches as a result of the alleged inhumane treatment. He reportedly complained of his injuries and received no medical follow up for over a week.

Complaint No. 004709-23-ICE²

On September 6, 2023, (b) (6), National Immigrant Justice Center (NIJC) (“complainant”), wrote to CRCL on behalf of (b) (6) (“noncitizen”), a noncitizen formerly detained at Boone. The letter stated he had a serious mental illness and described abuse and violence he allegedly experienced while restrained in segregation. According to the letter, the noncitizen does not know why he was placed in segregation. NIJC alleged the noncitizen was not receiving necessary medical care and that Boone staff responded to his medical episodes with physical abuse and segregation. According to the complainant, “[noncitizen] has suffered abuse and violence by Boone County officers who used pepper spray, a pepper ball gun, and excessive restraints in response to his severe mental health symptoms associated with a psychotic disorder while he was detained in inhumane conditions in solitary confinement.”

Complaint No. 004827-23-ICE³

On April 13, 2022, (b) (6) an attorney with clients at Boone, wrote to CRCL concerning several issues related to the I-web platform.⁴ Mr. (b) (6) alleged that call scheduling delays have greatly increased, with an up to two-week wait to speak with clients. Boone is also allegedly prioritizing paid calls, as others in his organization can set up a call within a day if using the paid option.⁵ He also stated he has difficulty communicating with his clients because of poor call quality. Finally, due to the need to register in advance with I-web, he is unable to connect interpreters to the conversation and therefore cannot meaningfully communicate with his clients.

¹ On February 1, 2023, CRCL sent a medical referral to ERO regarding allegations made by complainant of back pain, “chest complications” and headaches.” On March 3, 2023, ERO responded to CRCL, denying that Mr. (b) (6) was forced to sleep on the floor and stated that he received medical treatment after reporting it on February 1, 2023.

² On September 8, 2022, CRCL sent a medical referral to ERO. On October 11, 2022, ERO responded to CRCL substantiating the allegations that Boone did not provide appropriate medical care, failed to document post use of force physical examination, and failed to follow its suicide prevention policy by not releasing him from solitary confinement. The response unsubstantiated the allegation that Boone used solitary confinement to respond to serious mental health episodes, saying segregation was used for the purpose of mental health observation and suicide watch. ERO stated it will issue a corrective action plan.

³ On February 15, 2023, CRCL referred this matter to OIDO who is present at Boone to ensure the noncitizen received his legal calls. As of May 1, 2023, this referral remains pending.

⁴ I-web is a paid platform created and maintained by Boone County Jail which facilitates the scheduling of meetings between legal counsel and their noncitizen clients detained at Boone.

⁵ The complainant is alleging that Boone is prioritizing the scheduling of calls that are paid for via the I-web platform over calls made using the pro bono platform available in the housing units.

Complaint Nos. 005801-23-ICE and 005872-23-ICE

On March 1, 2023, CRCL received an OIG referral from (b) (6) (“noncitizen”), a noncitizen at Boone, who complained of challenges submitting. On March 8, 2023, CRCL subsequently received direct correspondence from the complainant, alleging new concerns, including delays in receiving his legal mail which he says has caused a delay in his court proceedings of two months. In addition, he alleges that Boone gives them meager food portions and only provides the correct food when ICE officials are there to observe. He also states noncitizens are being held together with county and state prisoners, and that there is overcrowding and noncitizens are sleeping on the floor. One cell mate allegedly slept on the floor for three weeks. On March 16, 2023, CRCL received an additional referral from OIG concerning the noncitizen, alleging that when ICE officials visited Boone, facility staff purposely moved “inmates”⁶ to other cells to give the appearance that the facility is not overcrowded and that Boone returned the inmates to overcrowded cells after ICE officials left the facility. Further, he claimed that noncitizens are not allowed recreation every day and sometimes are not given recreation three days in a row. Finally, he alleges that Sergeant (b) (6), (b) (7)(C) at Boone has threatened him and others with being placed in the special housing unit for filing complaints against Boone.

Complaint No. 000022W-23-ICE

On March 28, 2023, CRCL received incoming correspondence via direct web form submission from National Immigrant Justice Center (NIJC) on behalf of (b) (6) (“noncitizen”), a noncitizen at Boone. The noncitizen alleges that he is a type one diabetic and not receiving a diet appropriate for his condition. The noncitizen alleges that while Boone initially gave him a diet low in sugar and carbohydrates for the first three days he was there, they stopped doing so to the detriment of his health. The noncitizen reports that he saw spikes in his blood sugar after eating regular meals. In response he states he stopped eating, which caused his blood sugar to get too low, causing him to be weak and tired. The noncitizen reports he only speaks Spanish and is unable to communicate with staff at Boone because nobody speaks Spanish. The noncitizen also alleges overcrowding and that people are sleeping on the floor. He says he slept on the floor of the recreation room for his first few days at Boone and again when he was transferred to subsequent pods. He alleges between 20-30 people were sleeping on the floor of the telephone and recreation rooms in recent days. He alleges his current cell has one person sleeping on the floor because eleven people are assigned to a room fitting ten. Finally, the complainant reports unsafe conditions at Boone with black mold growing in their cell and a “foul smell of mold.” He reports that in March 2023, he and other individuals petitioned Boone to address it and have received no response.

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:

⁶ It is not clear from the OIG referral whether the complainant is referring to inmates or noncitizens here.

- 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.”⁷ Additionally, pursuant to DHS Delegation Number 19003, issued October 26, 2012, the Secretary has delegated to the Officer of CRCL the authority to “[a]ssess[] 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, arbitrary punishment, language access, and religious accommodation for ICE detainees 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 the Officer access to the “information, material, and resources necessary to fulfill the functions” of the office, including (but not limited to) 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 cooperation by all agency employees;” and
- “Access documents and files that may have information deemed by CRCL to be relevant.”

⁷ 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).

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 specified timeframe, and not edit or otherwise limit review of the information that is responsive to CRCL’s request. Pursuant to § 2 of Directive 8010.1, CRCL understands that this request will be handled by the appropriate ICE program office.

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 request for 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 as well as any other applicable 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.

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.

QUESTIONS PRESENTED

(b) (6)



INITIATING THE INVESTIGATION

CRCL has already taken steps to begin its investigation, which is assigned to (b) (6) Policy Advisor. We look forward to continuing to work 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 phone at (b) (6) or by email at (b) (6)

Enclosure

Copy to:

Deborah Fleischaker
Acting Chief of Staff
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

Claire Trickler-McNulty
Assistant Director
Office of Immigration Program Evaluation
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
Chief of Staff, Custody Management
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

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

Greg Hutton
Unit Chief, 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)