



June 7, 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)  
Senior Attorney, Legal Counsel Division  
Office of the General Counsel

SUBJECT: **Retention Memo:** Buffalo (Batavia) Service Processing  
Center Onsite  
Complaint Nos. 004735-23-ICE, 004718-22-ICE,  
004615-22-ICE, 003804-22-ICE, 005701-23-ICE,  
and 004614-22-ICE

The Office for Civil Rights and Civil Liberties (CRCL) has received allegations that U.S. Immigration and Customs Enforcement (ICE) has violated the civil rights and civil liberties of noncitizens at the Buffalo (Batavia) Service Processing Center (BSPC) in Batavia, 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 conduct a multidisciplinary onsite investigation, and explain how CRCL will work with ICE during our investigation.<sup>1</sup> 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 BSPC operations more generally to address any systemic civil rights concerns.

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<sup>1</sup> CRCL's onsite investigative work at ICE detention facilities falls under three categories of onsite investigations: 1) Multidisciplinary Onsites; 2) Spot Checks; and 3) Targeted Onsites. CRCL's Multidisciplinary Onsites investigate a broad range of alleged civil rights and civil liberties violations within multiple disciplines, including conditions of detention, medical and mental health care, and environmental health and safety.

## **Allegations**

Of the 33 allegations received over the past year, CRCL opened six complaints as representative samples, due to the serious nature and/or the frequency of the allegations. These are described below.

## **Complaints**

The representative complaints exemplify a broad range of allegations that noncitizens have raised about conditions at BSPC. These included: unhygienic living conditions; lack of confidentiality with legal mail; barriers to completing legal paperwork; inadequate language access (particularly for legal access); unsafe volunteer work program practices; dental delays; inadequate telephone services; and problematic grievance processes. Other complaints raise concerns about the food served at BSPC, as well as inadequate and delayed medical care conditions. In addition, other complaints alleged problems with commissary and phone pricing. Finally, CRCL received allegations issues related to retaliation from BSPC personnel, the use of segregation exacerbating mental health issues, and failure to provide religious accommodations.

### **Complaint No. 004735-23-ICE<sup>2</sup>**

On September 13, 2022, CRCL received a U.S. Department of Homeland Security (DHS) Office of Inspector General (OIG) referral reporting allegations made by the complainant, (b) (6), alleging unhygienic living conditions and lack of legal access at BSPC. Complainant also alleged that the facility refused to provide hygiene products and that employees were reading and making copies of noncitizen legal mail. Additionally, complainant stated that the facility refuses to provide noncitizens black ink pens, which are required to fill out their asylum applications, providing blue ink pens, which can cause the application to be denied, and that ICE is not responsive to grievances against the facility or its employees.

Subsequently, on February 2, 2023, CRCL received a second letter directly from complainant alleging that specific Performance Based National Detention Standards (PBNDS) standards were being violated, including Standards 1.2 (Environmental Health and Safety), 4.1 (Food Service), 4.3 (Medical Care), 4.5 (Personal Hygiene), 5.1 (Correspondence and Other Mail), 5.6 (Telephone Access), 5.8 (Voluntary Work Program), 6.2 (Grievance System), and 6.3 (Law Libraries and Legal Material). Among other violations, complainant alleged that the majority of volunteer noncitizens in the work programs do not have meaningful access to the Material Safety Data Sheets (MSDS) because they do not read or speak English. Additionally, the noncitizens are unable to see a dentist for at least 5 months as there is no dentist on site, the telephones in the housing units have been inoperable for weeks, grievances are ignored and/or not properly addressed, there is no access to Spanish language materials in the law library and bilingual employees refuse to help detainees with Limited English Proficiency, and that facility staff takes several days to fix broken law library equipment.

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<sup>2</sup> On October 17, 2022, CRCL initiated a short form investigation; however, due to the multidisciplinary onsite investigations, this complaint has been changed to a retained complaint.

### **Complaint No. 004718-22-ICE<sup>3</sup>**

On September 8, 2022, CRCL received a DHS OIG referral from complainant (b) (6), alleging that officers at the facility did not allow him to make calls to his family or his lawyer, and that he had only been able to make two calls since arriving at the facility.<sup>4</sup>

Complainant also alleged his room at the facility is always cold, so he sleeps on the floor in all of his clothes and that the shower water is always extremely cold. Finally, he reported that he brought up these conditions with the facility's supervisor, but the supervisor did nothing to change anything

### **Complaint No. 004615-22-ICE<sup>5</sup>**

On August 17, 2022, CRCL received a DHS OIG referral from (b) (6), who has been detained at BSPC since February 16, 2022. In a telephone call to the DHS OIG, Complainant alleged that ICE officers took the things that he bought from commissary on August 16, 2022. Specifically, he stated that ICE officers took his personal items and religious items and told him that they cannot help him with any complaint, and they cannot give the items back.

### **Complaint No. 003804-22-ICE<sup>6</sup>**

On May 6, 2022, CRCL received a complaint from (b) (6) with Freedom for Immigrants, Inc. on behalf the complainant, (b) (6) who alleges that the facility is “price gouging” noncitizens for phone calls and items in the commissary, stating that phone calls are \$4 for 15-minute phone calls and commissary items are charged at a 400% increase from standard pricing. Despite these prices, he alleged that he will often get reduced quantities of paid for items. Complainant alleged the food is extremely unhealthy and fattening, effecting his high blood pressure that the medical staff is not properly treating.

### **Complaint No. 005701-23-ICE<sup>7</sup>**

On February 14, 2023, CRCL received allegations from attorney Inna Parizher on behalf of her client, noncitizen (b) (6). According to the attorney, the noncitizen alleged that he was placed in isolation between December 21, 2022, and January 2, 2023, in retaliation for refusing to cooperate with efforts to remove him to Russia. Additionally, the noncitizen alleged that ICE continued to take “punitive” actions against him, including making him wear an orange<sup>8</sup> jumpsuit, limiting his ability to shower, and threatening him with prison time if he refused to sign documents. The attorney also alleged that the involved officers knew his mental health was “already

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<sup>3</sup> On September 20, 2022, CRCL initiated an investigation into this allegation by requesting documents and records from ICE, however, due to the multidisciplinary onsite investigations, this complaint has been changed to a retained complaint.

<sup>4</sup> The noncitizen was released on parole on October 5, 2022.

<sup>5</sup> On August 18, 2022, CRCL initiated an investigation into this allegation by requesting documents and records from ICE, however, due to the multidisciplinary onsite investigations, this complaint has been changed to a retained complaint.

<sup>6</sup> On May 6, 2022, CRCL opened this allegation as a medical referral and forwarded it to ERO/IHSC for review. On June 23, 2022, ERO/IHSC responded to CRCL unsubstantiating the complainant’s allegations.

<sup>7</sup> On February 15, 2023, CRCL opened this allegation as a medical referral and forwarded it to ERO/IHSC for review. On March 27, 2023, ERO/IHSC responded to CRCL unsubstantiating the complainant’s allegations.

<sup>8</sup> Orange is the color of the criminal detainees at the facility as opposed to the color worn by ICE detainees.

fragile and that he was taking medication.” The correspondence claimed that both the time and segregation and these alleged punitive acts resulted in a deterioration of the noncitizen’s mental health.

### **Complaint No. 004614-22-ICE<sup>9</sup>**

On August 17, 2022, CRCL received a DHS OIG referral from complainant (b) (6), a Rastafarian, alleging that on August 17, 2023, an officer approached him and told him to remove his religious head gear, called a “crown.”<sup>10</sup> The complainant stated that he could not remove his crown because doing so would go against his religion. According to the complainant, he was then allegedly told to strip and was then handcuffed by four different officers. The complainant also stated that the officers verbally abused him, and made fun of his appearance and head gear, leaving him feeling unsafe.<sup>11</sup>

### **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;
- 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.”<sup>12</sup> Additionally, pursuant to DHS Delegation Number

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<sup>9</sup> On August 18, 2022, CRCL initiated an investigation into this allegation by requesting documents and records from ICE.

<sup>10</sup> According to Rastafarian beliefs, uncut and uncombed hair represents a natural state of being and by covering their hair, they are protecting it from negative energies.

<sup>11</sup> Noncitizen was removed to Jamaica on August 23, 2022.

<sup>12</sup> 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

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.”

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.

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such department, agency, or element is adequately considering privacy and civil liberties in its actions” (emphasis added).

**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) (5)



**INITIATING THE INVESTIGATION**

CRCL has already taken steps to begin its investigation, which is assigned to (b) (6), Senior 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) 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)