



Homeland
Security

August 26, 2022

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

Kerry E. Doyle
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FROM: Dana Salvano-Dunn (b) (6)
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SUBJECT: Classification and Housing at Clay County Jail
Complaint No. 21-07-ICE-0380

Purpose: This memorandum provides recommendations in connection with the above referenced complaint, alleging that Clay County Jail (Clay County) in Brazil, Indiana failed to comply with the 2008 U.S. Immigration and Customs Enforcement (ICE) Performance-Based National Detention Standards (PBNDS 2008) as required by ICE's contract with Clay County. The Department of Homeland Security's (DHS) Office for Civil Rights and Civil Liberties (CRCL) concludes that Clay County failed to comply with the PBNDS 2008 when it reclassified an ICE detainee to a higher security level without new evidence or information, in order to alleviate a housing shortage for women detainees at the facility.

Background: On March 23, 2021, CRCL received email correspondence from the National Immigrant Justice Center (NIJC) on behalf of a female ICE detainee previously detained at Clay County ("Complainant").¹ Complainant alleged that she had been housed at Clay County for more than two months, despite her belief that it was an all-male facility. Complainant further alleged that she and three other female ICE detainees had been housed in a single cell for more than a month with at least two criminal inmates and/or detainees in violation of the PBNDS 2008.² CRCL reviewed the ICE Facilities List dated March 22, 2021, which draws information

¹ Please note that we have omitted from this memorandum Personally Identifiable Information (PII) relating to the complainant, as well as Clay County and ICE officers. These names are included in an attached memo so this memorandum can be freely shared, without the attachment, with those who do not have a need to know the PII.

² Although Complainant believed that the NDS 2019 applied, Clay County is governed by the earlier PBNDS 2008.

from ICE's Enforcement Integrated Database (EID). The Facilities List described Clay County as an all-male facility, but also noted that three female detainees were housed there at that time. Complainant was released on bond from Clay County on March 22, 2021, following a March 10, 2021, bond order from an immigration judge.

Investigation: CRCL sent a preliminary information request to ICE on May 18, 2021. On May 25, 2021, ICE responded in part, noting only that Clay County housed both male and female detainees. ICE Enforcement and Removal Operations' (ERO) preliminary response provided no explanation as to why the March 22, 2021, Facilities List had listed Clay County as an all-male facility. However, subsequent Facilities Lists received by CRCL have corrected this error and noted that it is a male and female facility. Because the error was corrected, CRCL thereafter narrowed the scope of its investigation to Complainant's second allegation, that she had been improperly housed with criminal detainees and/or inmates in violation of applicable detention standards.

On May 27, 2021, CRCL sent ICE a more narrowly tailored information request, which included requests for copies of Complainant's detention records and grievance files. On June 11, 2021, ICE ERO provided responsive records, as well as a written review of Complainant's case, by a Supervisory Detention and Deportation Officer (SDDO) for ERO's Chicago Field Office. On August 23, 2021, CRCL sent a supplemental request, consisting of follow-up questions as to the information relied upon in determining Complainant's housing classification and clarification regarding the criminal histories and housing classifications of those with whom she was housed at Clay County. ICE ERO responded to these requests on August 27, 2021. This memorandum refers to ICE ERO's May 25, June 11 and August 27, 2021 responses, including the records provided therewith, collectively, as the "ERO Responses."

Applicable Standards:

Performance-Based National Detention Standards 2008

Clay County is governed by the 2008 Performance-Based National Detention Standards. Part 2 Section 5 of the PBNDS 2008 comprises a Classification System standard (CSS), which requires that all facilities housing ICE detainees implement a "formal classification process for managing and separating detainees by threat risk that is based on verifiable and documented data." One purpose of this classification system is to ensure that "community, staff, contractors, volunteers, and detainees will be protected from harm..."³ It further states that, "[n]on-criminal detainees will be protected from harm by assigning detainees housing with persons of similar backgrounds and criminal history."⁴

³ *Id.* (emphasis added).

⁴ *Id.* at §II.

The PBNDS 2008 “Expected Practices” further note that the classification system, “shall assign detainees to the *least restrictive housing unit consistent with facility safety and security.*” (emphasis added). The section continues, in pertinent part:

Grouping detainees with comparable histories together and isolating those at one classification level from all others *reduces non-criminal and nonviolent detainees’ exposure to physical and psychological danger.* The system identifies and isolates the detainees whose histories indicate the characteristics of the “hardened criminal” who are most likely to *intimidate, threaten, or prey on the vulnerable.*⁵

(emphasis added). The PBNDS 2008 CSS sets forth three classification levels for ICE ERO detainees: low, medium, and high.

1. *PBNDS 2008 Level 1: Low Risk Detainees*

The PBNDS 2008 CSS identifies low custody as Level 1 and provides that Level 1 detainees may *not* be housed with other inmates or detainees, that:

- (1) are classified as Level 3 under the PBNDS 2008
- (2) have a felony conviction that included an act of physical violence or
- (3) have an aggravated felony conviction.

Under the guidelines, Level 1 detainees may be housed with others with minor criminal records or non-violent felonies.⁶

2. *PBNDS 2008 Level 2: Medium Risk Detainees*

The PBNDS 2008 CSS identifies medium custody as Level 2 and provides that Level 2 detainees may *not* be housed with other inmates or detainees:

- (1) whose most recent conviction was for any offense listed under the “Highest” section of the severity of offense guideline
- (2) who have a pattern or history of violent assaults, whether convicted or not or
- (3) were convicted for assault on a correctional officer while in custody where a previous institutional record suggests a pattern of assaults while in custody.

3. *Level 3: High Risk Detainees*

The PBNDS 2008 CSS identifies high classification as Level 3 and provides that such detainees:

- (1) may be reclassified to Level 2 only based on institutional behavior (detainee must be in custody for a minimum of 60 days before reclassification) and
- (2) shall not be assigned work duties outside their housing units.

⁵ *Id.* subsection G., “Housing Assignments” (emphasis added).


⁶ *Id.* at §V., F. 1.

The CSS further emphasizes, in bold type, that “**Level 3 detainees are:**

- **A high-risk category.**
- **Require medium to maximum security housing and**
- **Are always monitored and escorted.**
- **May not be co-mingled with Level 1 detainees.”⁷**

Analysis:

(b) (5), (b) (7)(E)



⁷ *Id.* (emphasis in original).

⁸ See Ex. B, February 10, 2021 Clay County Justice Center Memorandum, received as part of the ERO Responses.

(b) (5)



⁹ *Id.* at D.

(b) (5)




(b) (5)



(b) (5)



(b) (5), (b) (7)(E)



(b) (5)



Conclusions: Based on our review, CRCL concludes that:

1. (b) (5)
 - 2.
 - 3.
- 

¹³ *PBNDIS 2008* at §§ II and V.

(b) (5)

4.

5.

Recommendations:

CRCL recommends that ICE take the following actions:

1. Clay County should immediately cease the practice of reclassifying detainees for purposes of preventing overcrowding or having to place a higher-level detainee in segregation housing.

2. (b) (5)

3. ICE ERO should ensure that Clay County's Classification System complies and is implemented to meet the PBNDS 2008 and should actively oversee placements at Clay County in order to ensure ICE detainees are placed into appropriate categories separating them according to their past criminal convictions, and propensity for aggression and/or violence.
4. ICE ERO should ensure that Clay County's designated classification supervisor or first-line supervisor reviews the intake processing officer's classification files for accuracy and completeness on a "regular basis" in accordance with PBNDS 2008.
5. ICE ERO should ensure going forward that all Classification Reassessments and/or Special Reassessments for a detainee are properly documented, including the specific information relied upon in such assessments.
6. ICE ERO should ensure the housing classification training at all ICE facilities include a discussion of the danger, including the risk of bodily harm, of housing detainees and/or inmates with those of dissimilar criminal backgrounds, especially with respect to detainees and/or inmates with histories of aggravated felonies or crimes involving violence.
7. ICE ERO should ensure that detainee housing classifications are being reviewed by ICE officers as part of their oversight responsibilities during reviews and/or inspections of all of its facilities.

8. (b) (5)

(b) (5)

It is CRCL's statutory role to advise department leadership and personnel about civil rights and civil liberties issues, ensuring respect for civil rights and civil liberties in policy decisions and implementation of those decisions. We look forward to working with ICE to determine the best way to resolve these complaints. We request that ICE provide a response to CRCL 120 days whether it concurs or does not concur with these recommendations. If you concur, please include an action plan. Please send your response and any questions to (b) (6). CRCL will share your response with Meaghan Davant, the Policy Advisor who conducted this investigation.

Enclosure

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