



Homeland
Security

March 4, 2024

MEMORANDUM FOR:

Patrick J. Lechleitner
Deputy Director and
Senior Official Performing the Duties of the Director
U.S. Immigration and Customs Enforcement

Kenneth Padilla
Acting 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

(b) (6)

Senior Attorney, Legal Counsel Division
Office of the General Counsel

SUBJECT:

Retention Memo: Strafford County Department of Corrections
Complaint Nos. 006026-23-ICE, 005847-23-ICE,
005945-23-ICE, and 006400-23-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 Strafford County Department of Corrections (Strafford) in Dover, New Hampshire. 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.¹ 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 Strafford's operations more generally to address any systemic civil rights concerns.

Allegations

Since FY22, CRCL has received approximately 32 allegations concerning general conditions of detention, medical care and mental health care at Strafford. CRCL opened four complaints as

¹ 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.

representative samples that cover the major issues in the allegations, as well as signify the serious nature and/or the frequency of the allegations.²

Complaints

The representative complaints exemplify the broad range of allegations noncitizens raised about conditions at Strafford, including: retaliation; failure to follow COVID-19 protocols; inappropriate use of force; coercion to not file complaints; failure to provide medical diets; physical abuse; suicide prevention, and sexual abuse and harassment of noncitizens by staff members. These complaints are described in detail below.

Complaint No. 006026-23-ICE

On March 31, 2023, CRCL received a referral from the DHS Office of Inspector General (OIG) concerning (b) (6) (Complainant) a noncitizen previously detained at Strafford. In a phone call to the OIG Hotline on March 27, 2023, Complainant alleged he was sexually assaulted by an officer at the facility.³ He further alleged that in February 2023, he was attacked by multiple “inmates” and “went to medical” and was subsequently taken to the hospital due to his injuries.

Additionally, Complainant alleged that on his way back from the hospital following the alleged attack, an unknown officer allegedly forced him to strip and then performed a cavity search approximately five times. Complainant alleged “this happens every time he comes from booking.” He further alleged that when he questions this practice, he is told, “Shut up and do as you are told.” Complainant also alleged that following his return from the hospital, he was placed in a room with no mattress, was refused bathroom privileges, and that this information had been reported to the supervisor but that “nothing has been done about either situation [sic].”

A separate complaint was opened related to a suicide attempt by Complainant. On January 15, 2023, CRCL received the ICE Daily Detainee Assault Report (DDAR) which indicated that, on January 14, 2023, ERO Boston reported a suicide attempt by a noncitizen, (b) (6) (b) (6) while in ICE custody at Strafford. The DDAR stated that after the noncitizen attempted suicide by tying clothes around his neck, Strafford staff used oleoresin capsicum (OC) spray and an electro-muscular disruption device on the noncitizen and then placed him in a restraint chair. CRCL issued Informal Advice to ICE on June 26, 2023, regarding the facility’s use of force in response to an attempted suicide, placement of the noncitizen in a restraint chair without cover and the facility’s failure to properly document the suicide attempt.

CRCL opened an investigation under Complaint No. 005567-23-ICE and on June 26, 2023, CRCL closed this complaint following the issuance of the Informal Advice. Given CRCL is undertaking a multidisciplinary review of Strafford, suicide prevention will be reviewed.

³ CRCL sent a PREA Information Request to ICE ERO on April 4, 2023, and received a Significant Incident Report (SIR) in response. According to the SIR, the Noncitizen “further reported he felt the SCDOC officer had sexual thoughts while telling him to squat during the search.” As of February 19, 2024, CRCL’s review of the facility’s PREA investigation is pending.

Complaint No. 005847-23-ICE

On March 6, 2023, CRCL received a referral from the DHS OIG on behalf of (b) (6) (Complainant) (b) (6), a noncitizen previously detained at Strafford. In a phone call to the OIG, the noncitizen alleged that he was served a meal containing fish on March 3, 2023 “despite being at the facility since 2021 and having [his] medical information stating [he was] not to consume fish.” In addition, the noncitizen alleged that officers at the facility “are attempting to coerce him into not filing complaints after filing previous complaints against the facility.”

Complaint No. 005945-23-ICE

On March 20, 2023, CRCL received direct email correspondence from (b) (6) of Freedom for Immigrants (FFI) reporting allegations made by an anonymous noncitizen in ICE custody at Strafford. According to FFI, on November 9, 2022, the anonymous noncitizen alleged that ICE officers at Stafford had not been following COVID-19 protocols, leading to a recurrence of COVID-19 within housing units. FFI further reported the noncitizen alleged that ICE officers return individuals who have tested positive for COVID-19 back to their housing unit rather than putting them in quarantine. FFI stated that the noncitizen alleged they had witnessed officers retaliating against noncitizens for questioning the facility’s COVID-19 practices by placing them in disciplinary segregation.

Complaint No. 006400-23-ICE

On May 23 and May 30, 2023, CRCL received direct email correspondence from supervising attorneys (b) (6), and interns (b) (6), and (b) (6) (b) (6) of the Yale Law School Worker and Immigrant Rights Advocacy Clinic reporting allegations on behalf of (b) (6) (Complainant) (b) (6), a noncitizen in ICE custody at Strafford. Complainant alleged that he was the victim of childhood sexual abuse and that he was being housed with other incarcerated people at Strafford who were being held on sex offense charges, which was severely exacerbating his symptoms of PTSD and causing him to be in a constant state of hypervigilance.⁴

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,

⁴ The allegation was opened as a complaint to investigate, in part, the applicability of ICE Directive 11005.3, “Using a Victim-Centered Approach with Noncitizen Crime Victims.” A medical referral was also sent to ICE ERO on the noncitizen’s behalf on May 26, 2023. CRCL received a response to the referral on September 28, 2023.

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. 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.”⁵ 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.”

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.

⁵ 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).

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



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 these matters 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

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