



Homeland
Security

March 12, 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)
Director, Compliance Branch
Office for Civil Rights and Civil Liberties

(b) (6)

Senior Counsel, Legal Counsel Division
Office of the General Counsel

SUBJECT:

Retention Memorandum: Multidisciplinary Onsite
Investigation at Denver Contract Detention Facility
Complaint Nos. 005936-23-ICE, 006358-23-ICE,
007025-23-ICE, 007091-23-ICE, 007178-23-ICE,
008125-24-ICE, and 008410-24-ICE

I. Purpose

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 Denver Contract Detention Facility (DCDF) in Aurora, Colorado. The purpose of this memorandum is to inform you that CRCL will conduct a multidisciplinary onsite investigation to investigate the complaints described below.¹ As part of this multidisciplinary onsite 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 DCDF operations more generally, to address any systemic civil rights concerns.

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.

II. Complaints

Since January 2023, CRCL received approximately 25 allegations concerning the care and treatment of noncitizens at DCDF. CRCL opened seven complaints for investigation. These complaints were selected as representative samples to cover the major issues raised, as well as signify the serious nature and/or the frequency of the allegations.

The representative complaints include allegations of sexual assault; inadequate medical and mental health care; inappropriate and excessive use of segregation; unsafe conditions created by staff; a lack of due process with discipline; insufficient responses to racially-motivated attacks; poor conditions; and abusive and discriminatory behavior by staff, including retaliation.

Complaint No. 005936-23-ICE

On March 16, 2023, CRCL received email correspondence from Complainant (b) (6) with the Rocky Mountain Immigrant Advocacy Network (RMIAN) regarding (b) (6), a noncitizen at DCDF with Schizoaffective Disorder and Post Traumatic Stress Disorder. The complainant alleged that the noncitizen and his friend were subjects of racially motivated attacks, and that DCDF did not take steps to protect them. In addition, the noncitizen allegedly witnessed his roommate commit suicide while at DCDF, which coupled with a prolonged stay in segregation, has contributed to a decline in his mental health.²

Complaint No. 006358-23-ICE³

On May 17, 2023, CRCL received a referral from the DHS Office of Inspector General (OIG) concerning (b) (6), a noncitizen previously detained at DCDF. According to the OIG, the complainant alleged that she has been experiencing retaliation and discrimination from various officers at the facility stemming from an alleged incident on March 15, 2023, when her housing unit refused to eat raw and contaminated chicken. According to the complaint, when the noncitizens requested the chicken to be microwaved, the officers refused. Further, the complainant alleged one of the officers retaliated by refusing to provide her housing unit with dinner for three straight days. Additionally, the complainant alleged that since this incident, this officer has retaliated further against her, calling her names and telling other officers that “she wants to choke [complainant] to death.” Complainant alleged that when she requests to speak with the officer’s supervisor, the officer falsifies documents in order to write her housing unit up.

Additionally, the complainant alleged another officer refused to give her cleaning products because she is Arabic and this officer also made false allegations against her, including stating that she did not like Black people, as an excuse to refuse her cleaning products.

Lastly, the complainant alleged that on April 4, 2023, she had an allergic reaction and a nurse approached her to discuss it. Complainant alleged that she refused to speak with the nurse because

² CRCL opened this as a Medical Referral under 006073-23-ICE and closed its investigation on September 28, 2023.

³ On May 17, 2023, CRCL sent a medical referral to ERO and ERO responded on June 22, 2023. Additionally, on July 19, 2023, CRCL sent a short form request to ERO and received a response from ERO on September 18, 2023.

this nurse previously denied her the medication necessary to treat her condition. The nurse allegedly screamed at the complainant in a profane manner when she asked to file a grievance. The complainant alleges that the facility told her to “let it go” in response to her grievance. The complainant then allegedly went on a hunger strike until she could see another nurse. When the facility provided a new nurse, she was the daughter of the previous nurse, and allegedly refused to provide the complainant’s medication on May 14, 2023.

Complaint No. 007025-23-ICE⁴

On July 13, 2023, CRCL received direct correspondence from RMIAN on behalf of eight noncitizens⁵ detained at DCDF. According to RMIAN, the noncitizens made the following allegations:

- Staff allegedly routinely share complaints made by noncitizens with the alleged offenders, creating a dangerous environment and preventing victims from coming forward out of fear of further victimization.
- Staff show a callous disregard when noncitizens, including those with a documented history of victimization and trauma, report feeling unsafe. In one incident where a noncitizen reported being threatened by another who was clearly showing symptoms of mental deterioration, staff allegedly said they “can’t do anything until something [bad] happens,” and that they should fight each other. Even a nurse allegedly told one noncitizen to fight back harder. When one noncitizen asked why staff did not help, staff allegedly replied, “I have a family and I am not risking my life.”
- Staff allegedly routinely fail to protect the safety of noncitizens in the facility. One complainant stated, “When there is a fight, the staff puts you right back together with the person who caused the problem.” And when speaking with an officer, the officer allegedly said, “You know how GEO policy is, they just put you back in the same dorm.” Another complainant said staff take a “wait and see” approach when presented with knowingly dangerous situations.
- Staff allegedly use segregation as a threat and as punishment, creating a retaliatory environment. One complainant stated, “If I spoke too loudly, solitary. If I climbed on top of a table to get a guard’s attention, solitary. If I had suicidal thoughts, solitary. When the guards would tease me about being deported back to my home country and make airplane sounds at me and gesture like a plane was taking me away, I would become upset and then get solitary for being upset.” Another complainant stated he prefers to sleep on the bottom bunk because he does not have the strength to get to the top. An officer threatened to send him to segregation if he did not move to the top bunk, so he climbed to the top and remained there all day missing meals because he could not get back down.

⁴ On August 24, 2023, CRCL sent a medical referral to ERO. ERO responded on January 3, 2024.

⁵ (b) (6) (8 U.S.C. § 1367) (b) (6) (8 U.S.C. § 1367) (b) (6) (8 U.S.C. § 1367) (b) (6) (8 U.S.C. § 1367) (b) (6). Please note those protected by 8 U.S.C. § 1367.

- Noncitizens with serious mental illness were noted as especially vulnerable at DCDF. One complainant reported, “The threat of being placed back in the SHU [Special Housing Unit] has made my anxiety and other mental health problems even worse. It felt like they were using the threat of being placed in the SHU in order to control us. It wasn’t to make anyone any safer.” After those threats, the complainant cut herself with a razor “to get some control” and because it “felt better.” The medical provider then allegedly threatened to send her to segregation.
- DCDF allegedly does not provide appropriate mental health care to those in segregation. One complainant stated she “hadn’t seen shadows or heard voices in a long time, but those symptoms started coming back when I was in the SHU. I was alone and hallucinating and scared.”
- DCDF allegedly has unsafe and unsanitary conditions in segregation. One complainant stated, “The table was also very dirty, and stained, with milk and other food remains.” Another reported a sewer line backup spilled into her cell and the facility did not respond to her complaints.
- Noncitizens were allegedly denied due process often resulting in noncitizens being sent to segregation for minor or unproven infractions. One complainant stated he was attacked and sent to segregation for fifteen days. He stated, “ICE and GEO didn’t do anything to protect me,” and that “[t]here were cameras recording the incident but no one ... ever talked with me about what happened.” Another, on his first day at DCDF, was allegedly put in segregation for three days for eating too slowly and another was falsely accused of spitting on a peer’s bed and placed in segregation only to be released after six days, simply being told that she was found “not guilty.”
- DCDF allegedly does not provide sufficient medical and mental health care. According to the complaint, a noncitizen with serious mental illness stated the psychologist at the facility mocked him and discounted what he told him despite a documented mental health history, including being released by ICE previously because of deteriorating mental health. Additionally, he was placed in segregation about ten times, including for fifteen days after an attempted suicide.
 - Another noncitizen with mental health issues stated, “When I go to see [the psychiatrist] to process some of what is going on, he often starts talking about the bible. He has asked me, ‘what would Jesus do?’ He has also tried to show me videos about Jesus during therapy.” On another occasion the noncitizen allegedly stopped a nurse from giving her a wrong injection.

Complaint Nos. 007091-23-ICE⁶ and 008125-24-ICE

On August 30, 2023, CRCL received direct correspondence from RMIAN on behalf of (b) (6) (b) (6), a noncitizen at DCDF. The complainant alleged that a nurse told the noncitizen to make a sick call on May 16, 2023, and when he showed up to the appointment, the nurse sexually assaulted him, allegedly saying she liked that the noncitizen was “pure African.” The noncitizen was diagnosed with depression and experienced mental health symptoms, including auditory hallucinations, but reportedly expressed reluctance to visit the medical unit for fear of abuse.⁷

In subsequent correspondence received from RMIAN on October 26, 2023, the same noncitizen alleged he was sexually assaulted by a doctor during a mental health counseling session.

Complaint No. 007178-23-ICE

On September 8, 2023, CRCL received direct correspondence from RMIAN on behalf of (b) (6) (b) (6), a noncitizen at DCDF. The noncitizen alleged while he was held in the medical unit under suicide watch, ICE withheld any materials which would enable him to draft a motion to reopen, as he is representing himself in immigration court, and has denied reasonable accommodations.⁸ RMIAN alleged that when they attempted to visit the noncitizen on September 1, 2023, DCDF stated that the noncitizen could not receive paperwork related to his legal options.

Complaint No. 008410-24-ICE

On December 3, 2023, and January 3, 2024, CRCL received direct correspondence from (b) (6) (b) (6), alleging that officers at DCDF treat noncitizens as subhuman and that grievances are ineffective because superiors care more about protecting officers than professionalism. Relatedly, he alleged that DCDF purposefully places groups in conflict together and does not respond to escalating tensions. Complainant reported that in response to a grievance he sent about a group of noncitizens who were antagonizing he and other noncitizens, DCDF allegedly responded, saying “There are more of you, sort this out yourself.” He also alleged officers often use rude and profane language thinking that noncitizens cannot understand them.

Regarding conditions at the facility, complainant reported poor and inadequate food, frigid temperatures in the housing units, and a lack of recreational time. He also alleges that noncitizens are unable to prepare for their legal proceedings because DCDF denies them access to the law library and printers, often saying “paper ain’t cheap.”

Finally, he alleged that Muslim noncitizens were discriminated against by DCDF, who allegedly threatened disciplinary action when noncitizens went to pray. In defense of their actions, DCDF officers allegedly said the noncitizens “were endangering the facility by disrupting its security.”

⁶ CRCL sent a PREA info request on August 31, 2023, to which ERO responded on August 31, 2023, indicating that they had determined the PREA allegation to be positive. The investigation remains pending.

⁷ According to the complainant, the Aurora Police Department has an open case concerning these allegations.

⁸ CRCL opened a Section 504 disability accommodation investigation under 007202-23-ICE and will address related issues there.

III. 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. 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.”⁹ 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;”

⁹ 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).

- “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.

IV. 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.

V. QUESTIONS PRESENTED



VI. 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 (b) (6) at (b) (6)

Enclosure

Copy to:

Michael D. Lumpkin
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)

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

Raymond Linnan (RJ)
Acting Deputy Assistant Director, Policy
Office of Regulatory Affairs and Policy
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

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

Russell Hott
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)

Monica Burke
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)

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

Nathalie Lummert
Chief, Custody Programs Division (CPD) Special Populations and Programs Unit (SPPU)
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)

RDML Jennifer Moon
Deputy Assistant Director, Health Care Compliance, ICE Health Service Corps
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)