



August 16, 2024

MEMORANDUM FOR:

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Senior Official Performing the Duties of the Director
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FROM:

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SUBJECT:

**Retention Memorandum/Implementation Review
Memorandum:**
Moshannon Valley Processing Center
Complaint Nos. CR-013596; CR-013726;
CR-012025; CR-009215; 008064-24-ICE; CR-013756

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 Moshannon Valley Processing Center (Moshannon) in Philipsburg, Pennsylvania. The purpose of this memorandum is to inform you that CRCL will conduct a multidisciplinary onsite investigation¹ at Moshannon to investigate the complaints described below and review Moshannon's operations more generally to address any systemic civil rights concerns.²

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.

² See [6 U.S.C. § 345](#) and [42 U.S.C. § 2000ee-1](#).

In addition to the multidisciplinary onsite investigation, CRCL will conduct an Implementation Review³ to assess ICE’s implementation of nine recommendations from CRCL’s prior targeted onsite at Moshannon in August 2022.^{4 5}

Allegations

Since the beginning of Fiscal Year 2024, CRCL has received approximately 88 incoming matters alleging civil rights and civil liberties violations at Moshannon. Of those, CRCL opened approximately 33 as complaints for investigation. Of those 33 complaints, 78% relate to medical and mental health care, 15% allege inadequate language access, 21% allege due process and/or legal access violations, 12% allege excessive use of force and/or abuse of authority, 16% allege retaliation, 12% allege PREA violations and 6% involve deaths of noncitizens at Moshannon.

Complaints

After reviewing these allegations, CRCL decided to conduct a multidisciplinary onsite investigation at Moshannon and grouped the below six complaints as representative samples, due to the serious nature and/or the frequency of the allegations.⁶

1. Complaint No. CR-013596

On July 10, 2024, CRCL received direct correspondence from the American Civil Liberties Union (ACLU) of Pennsylvania⁷ on behalf of several current and former noncitizens at Moshannon:

(b) (6)⁸, (b) (6)⁹, (b) (6)¹⁰, (b) (6)¹¹, (b) (6)¹², and (b) (6)¹³.

The correspondence alleged several civil rights and civil liberties violations involving:

³ An implementation review is an investigation that assesses a component’s implementation of CRCL’s prior recommendations and to identify areas requiring further attention by the component. Implementation Reviews generally will include follow-up recommendations, to the component.

⁴ On May 15, 2023, ICE provided final responses to CRCL’s recommendations stemming from its “spot-check” onsite investigation, which was focused on use of force and Prison Rape Elimination Act (PREA) complaints. In its response, ICE concurred with nine CRCL recommendations in the areas of Staffing, Use of Force, PREA, Transgender Care, and Language Access. Since then, CRCL has received approximate 150 allegations concerning inadequate medical care and general conditions of detention, including use of force and PREA allegations.

⁵ That onsite resulted in the issuance of a Key Findings and Recommendations Memorandum to ICE on November 22, 2022.

⁶ CRCL is also investigating the disability related allegations separately under CR-014024.

⁷ Other signatories of the letter include representatives from the University of Pennsylvania Carey Law School Transnational Legal Clinic and Legal Services of New Jersey.

⁸ Removed on July 8, 2024.

⁹ Transferred to NW ICE Processing Center in Tacoma.

¹⁰ Currently at Moshannon.

¹¹ Removed on December 19, 2023.

¹² Released on bond.

¹³ The correspondence also provided additional names of noncitizens, (b) (6) (A # unknown), Jane Doe (Pseudonym – name unknown, A# unknown), (b) (6) (A # unknown). Without an A number, CRCL is unable to investigate allegations with regard to these individuals. Should CRCL learn of their A numbers, during the onsite, CRCL will investigate.

- **Inadequate language access:** Moshannon staff and ICE allegedly fail to provide meaningful language access to noncitizens in both written and oral communication,¹⁴ to include the Talton tablet system,¹⁵ where the default language is set to English. The complaint also alleged that the denial of language access has left noncitizens with Limited English Proficiency (LEP) unable to communicate and understand the rules, procedures or commands of Moshannon staff and permeates all aspects of daily life at Moshannon, from intake and to all vital programs. LEP noncitizens must rely on ad hoc interpretation and translation by other noncitizens. For example, an LEP noncitizen allegedly spent three hours in medical without interpretation services after being attacked, including during one trip to medical for a black eye and bites, when the LEP noncitizen was not provided interpretation services over two days in medical.
- **Inadequate medical care:** Moshannon medical staff allegedly fail to provide timely and adequate medical services for both acute and long-term medical needs, and routinely evade their obligations by shifting responsibility between ICE and Moshannon staff. The complaint alleged that the denial of language access further impedes access to timely and adequate medical care.
- **Inadequate mental health care:** Moshannon medical staff allegedly have a "dismissive" attitude with regard to the provision of mental health care and those who are referred for mental health had trouble communicating with mental health professionals as Moshannon does not provide interpretation services. The complaint also alleges incidents regarding staff using force instead of de-escalation techniques on noncitizens who are suicidal, with no referral to mental health services. One noncitizen reported a failure to provide medical and mental health care after his second suicide attempt.
- **Discrimination based on race, sexual orientation and disability:**¹⁶ Allegedly, there are implicit and explicit forms of race discrimination for Black noncitizens at Moshannon, who are treated as "animals," or referred to as "ugly monkey." One noncitizen was allegedly told by an Officer "you Blacks deserve to be dead, you all are shit." The complaint alleged that white noncitizens spend an average of 68.13 days in custody, while Black noncitizens spend an average of 154.29 days in detention and Asian noncitizens spend an average of 113.77 days in custody at Moshannon.¹⁷
- **Unwarranted escalation:** The complaint alleged that staff unnecessarily escalated a situation due to language miscommunication over a piece of paper in an LEP noncitizen's possession. According to the complaint, the incident resulted in the LEP noncitizen being handcuffed, dragged to a room, forcibly strip searched with officers touching his genitalia with force and manipulating his testicles, and then forced him on all fours where he was digitally penetrated. During this incident, officers allegedly were laughing and making fun of him.

¹⁴ Languages for which insufficiently meaningful access is being alleged include Spanish, Mandarin, and certain indigenous Mauritanian languages. Complainants note "the lack of any staff at Moshannon who speak any language other than English."

¹⁵ Tablets provided by Talton Communications are used to exchange non-confidential (monitored and recorded) messages with legal representatives and to conduct phone or video visits.

¹⁶ CRCL opened a separate investigation on the disability allegations under CR-014024.

¹⁷ This data is allegedly based on 29 months (January 2022 through April 2024) of public records provided to LSNJ in response to FOIA litigation, which reveals that individuals identified as Black or Asian and Pacific Islander spent a disproportionately longer time in detention at Moshannon as compared to those identified as White.

- **Use of force:** The complaint alleged excessive and arbitrary security tactics by facility officers creating a climate of hostility and fear.
- **Disciplinary system:** Noncitizens allegedly suffer disproportionate or unwarranted disciplinary procedures, with no meaningful access to grievance or appeal procedures as they are they are unable to communicate with those around them and unable to understand the rules and procedures or commands of facility staff.

2. Complaint No. CR-013726

On July 12, 2024, CRCL received a DHS Office of Inspector General (OIG) referral regarding allegations about medical care¹⁸, the grievance and disciplinary process, retaliation, and abuse of authority from (b) (6) (Complainant), a noncitizen at the Moshannon. Complainant alleged he filed a grievance against a nurse on June 1, 2024, for being verbally abusive to noncitizens and refusing to give him his medicine. He further alleged that following the grievance, he was accused of abusing the grievance system.

He filed two additional grievances on June 15, 2024, after witnessing the same nurse again scream and verbally abuse noncitizens requesting medical care and for being hostile towards him. On June 18, 2024, Complainant was allegedly written up for filing a grievance and taken to the special housing unit and his personal belongings were thrown away. Following which, the facility held a hearing for “over-filing” grievances, but he was not given an opportunity to testify and was told that it is not necessary that he testify at all. Complainant claimed after this incident he began experiencing retaliation and harassment.¹⁹ He requested documentation of the hearing to file an appeal but officers stated they lost the paperwork.

3. Complaint No. CR-012025²⁰

On May 10, 2024, CRCL received direct correspondence from attorney (b) (6) on behalf of (b) (6), a noncitizen formerly detained at Moshannon.²¹ The correspondence alleged that on April 29, 2024, the noncitizen was attacked by several other noncitizens in the recreation yard, resulting in a bleeding lip, lacerations, and swelling to his head chest and ribs. The complaint alleged that he was seen by a nurse and provided with a provisional amount of Tylenol, without any examination or X-rays to determine what, if any internal injuries he sustained. He was then placed in special housing, with the same noncitizens that attacked him.

¹⁸CRCL opened a medical referral complaint under CR-013385 and sent the request to ICE on July 2, 2024. To date, no response has been received sent a medical referral.

¹⁹ Examples include: his phone privileges are limited while other noncitizens continue to have their regular allotted phone time; he is not allowed to receive commissary; he is also not allowed to receive any further education; and, assigned nurses visit his cell every day at 6 AM to disturb his sleep and ask him personal questions about his mental health.

²⁰ CRCL sent a medical referral on May 13, 2024. On June 28, 2024, ICE responded, and the information is pending CRCL analysis.

²¹ As of July 25, 2024, the noncitizen was released into HSI custody.

4. Complaint No. CR-009215

On February 26, 2024, CRCL received direct correspondence from Attorney (b) (6) on behalf of (b) (6), a noncitizen formerly at Moshannon.²² The complaint alleged that an unknown substance may have been placed in the noncitizen's food or drink on the morning of January 27, 2024 by an unknown individual. The consumption of this alleged unknown substance led to the noncitizen's medical emergency.²³ The noncitizen was allegedly taken to an external hospital for treatment of "an altered state of mind"²⁴ and at the hospital was handcuffed to the bed and not allowed to call his family or attorney.

In a supplemental correspondence, dated April 2, 2024, Attorney (b) (6) alleged that noncitizen was directed by guards to sign forms in English at the hospital that he did not understand. Upon return to the facility, Complainant alleged that the facility placed the noncitizen in solitary confinement, without an explanation of his disciplinary violation. On January 29, 2024, the facility allegedly found him in violation of "conduct that disrupts...security," in spite of medical documentation indicating that noncitizen fainted from dehydration. Complainant also alleged that the noncitizen was not allowed to present any evidence or witnesses at his disciplinary hearing.

5. Complaint No. 008064-24-ICE

On December 7, 2023, CRCL received a death notification from ICE concerning Frankline Okpu (b) (6), a 37-year-old citizen, who was previously in ICE custody at Moshannon. According to the summary, during intake on March 29, 2023, Moshannon medical personnel noted no significant medical concerns. On December 4, 2023, staff conducted a random search of Mr. Okpu for suspected contraband, which resulted in him assaulting a Resident Advisor (RA). He was placed in Administrative Segregation pending a disciplinary hearing. Medical assessed him at the time and noted no concerns.

On December 6, 2023, in an attempt to serve him lunch in the special management unit, the facility staff found the noncitizen in bed, unresponsive. Medical staff who were still in the unit immediately began CPR and life-saving measures to include conducting CPR, utilizing an automated external defibrillator (AED) device, and administering Narcan. Upon EMS staff arriving on the scene, they took over life-saving measures, including continuing CPR and administering Epinephrine. EMS personnel pronounced him deceased.

6. Complaint No. CR-013726²⁵

On July 16, 2024, CRCL received a direct correspondence from (b) (6) on behalf of her mother, (b) (6), a noncitizen detained at Moshannon. The correspondence alleged ongoing sexual harassment by the chaplain. Allegedly after the noncitizen filed a complaint with the facility on May 8, 2024²⁶, she was placed in solitary confinement and the chaplain continued to harass her by visiting her outside of the cell and entering the cell on multiple occasions.

²² Noncitizen was released on bond February 17, 2024

²³ All toxicology reports were negative.

²⁴ As listed on the facility Incident of Prohibited Acts and Notice of Charges, dated January 27, 2024.

²⁵ CRCL also received an OIG referral from noncitizen, (b) (6), assigned as CR-012121.

²⁶ PREA incident number is 24Y228L217083, with an incident date of April 16, 2024.

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.”²⁷ 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;”

²⁷ 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.

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

This investigation will address whether ICE and Moshannon personnel have conformed to ICE standards, policies and procedures, and to civil rights requirements, in the treatment of detained noncitizens at this facility.

CRCL will also look at conditions generally to ensure that the issues raised are not systemic to the overall operation of the facility. It is possible that our investigation will reveal other matters of concern; if this occurs, we will inform you.

INITIATING THE INVESTIGATION

CRCL has already taken steps to begin its investigation, which is assigned to (b) (6), Senior Policy Advisor and (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) at (b) (6) and Mr. (b) (6) at (b) (6)

Enclosure

COPY TO: (Printed on memo and sent by email)

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