



Homeland
Security

July 18, 2023

MEMORANDUM FOR: Corey A. Price
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U.S. Immigration and Customs Enforcement

FROM: Dana Salvano-Dunn (b) (6)
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SUBJECT: Orange County Jail (OCJ)
Complaint Nos.: 002794-22-ICE, 003367-22-ICE, 003782-22-ICE,
003631-22-ICE, 003481-22-ICE, 003394-22-ICE, 003355-22-ICE

The U.S. Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL), conducted an investigation into conditions of detention for U.S. Immigration and Customs Enforcement (ICE) noncitizens at the Orange County Jail (OCJ) in Goshen, New York. CRCL's onsite investigation occurred October 17-19, 2022, in response to complaints regarding excessive use of force, staff-noncitizen communication, and retaliation.¹

We greatly appreciate the cooperation and assistance provided by ICE and OCJ staff before and during the in-person onsite investigation. As part of the investigation, CRCL engaged the assistance of four subject-matter experts: a conditions of detention expert, an environmental health and safety expert, medical doctor, and a mental health expert. As a result of noncitizen and staff interviews, document and record reviews, and direct observation, the subject-matter experts (SMEs) identified concerns in their areas.

On October 29, 2022, as part of the onsite closing discussion, CRCL and the SMEs discussed preliminary findings and recommendations with ICE field office staff, personnel from ICE Enforcement and Removal Operations (ERO) headquarters, and facility personnel. Following the onsite investigation, CRCL sent an email to ICE on November 3, 2022, summarizing these initial recommendations, to ensure ICE had sufficient information to begin to initiate proposed changes.

¹ Prior to the upcoming onsite, CRCL conducted a spot-check at OCJ on May 5-6, 2022, based upon allegations related to discrimination, excessive use of force, language access, and the provision of medical and mental health care. During that review, CRCL was accompanied by a medical doctor and conditions of detention subject matter expert (SME). Following the spot-check, on July 29, 2022, CRCL issued a memorandum to ICE that contained high-level recommendations for immediate action.

The recommendations have been divided into priority and non-priority recommendations. Priority recommendations are listed in the body of this memorandum and CRCL requests that ICE formally concur or non-concur with these recommendations and provide CRCL with an implementation plan for all accepted recommendations within 120 days of issuance. Non-priority recommendations are contained in a separate attachment to this memorandum. Although CRCL is not requesting formal responses to these, we encourage ICE to consider these non-priority recommendations and implement them to the fullest extent possible.

Conditions of Detention

CRCL's conditions of detention SME evaluated the facility in relation to the NDS 2019 and other ICE and DHS directives and plans, the Rehabilitation Act of 1973, the COVID-19 Pandemic Response Requirements (PRR) and the HALT Act.² This investigation also considered the key findings and recommendations from CRCL's spot-check investigation in May 2022. CRCL's conditions of detention expert made the following recommendations at OCJ:

1. (b) (5) [REDACTED] the ICE Assistant Field Office Director (FOD) or designee should participate in the after-action review of every use of force (UOF) incident including reviewing medical and staff reports and videos to provide increased oversight, as required by the standard. Joint facility and ICE after-action use of force reviews ensure the facility is properly assessing the reasonableness of the use of force taken. (*NDS 2019, 2.8 Use of Force and Restraints*)
2. CRCL found several instances where OCJ's Detainee Handbook were not consistent or did not comply with institutional operational policy, practices and the NDS 2019. For example, the handbook's property section does not list shorts, coats, or medical appliances as authorized property (when per facility operational practices these are authorized items); and it states that discharge meetings are to occur 30 days prior to release (despite not occurring or being authorized for noncitizens). OCJ should review and revise handbook sections to be in accord with policy, practices, and the NDS 2019. In particular, revision need to occur related to orientation recreation, property, discharge planning, disciplinary segregation, and the HALT Act. (*NDS 2019, Detainee Handbook 6.1; Recreation 5.2, and Special Management Units 2.9 and HALT Act*)

² The Humane Alternatives to Long-Term Solitary Confinement Act ("HALT"), Legislative Bill s2836 was considered during CRCL's review as OCJ has revised facility policies to incorporate required legislative mandates. The HALT Act was implemented in 2022 and significantly impacts the procedures in which correctional facilities in New York may confine an inmate [noncitizen] for disciplinary or administrative purposes. The HALT Act prohibits the use of segregated confinement for any inmate [noncitizen] in a special population and established significant time limitations in which a detainee can be segregated or confined to a cell.

3. The admission section of OCJ's Detainee Handbook does not state that authorized personal property will include additional disability-related aides as approved by OCJ. Per NDS 2019, facilities must provide disability related aides. The admission section of the OCJ Detainee Handbook and facility policy should be revised to add an item which allows disability-related aides as approved by OCJ to ensure that noncitizens with a disability have equal opportunity to participate in the facility's programs and services. *(NDS 2019, Detainee Handbook 6.1; 4.7 Disability Identification, Assessment and Accommodation, Section 504 of the Rehabilitation Act)*
4. (b) (5) [REDACTED] OCJ's Detainee Handbook should be updated to provide COVID-19 related direction and information to noncitizens or alternatively, an insert for the handbook should be created that can be modified whenever the PRR is updated. *(NDS 2019, 6.1 Detainee Handbook; PRR, Version 9.0)*
5. (b) (5) [REDACTED]
6. (b) (5) [REDACTED]
7. (b) (5) [REDACTED] The forms should be translated into a language the LEP noncitizens understand, or the language line should be used in all cases to ensure understanding and effective communication of any document the LEP noncitizen is required to sign. There should be a notation on any document for which translation was provided to the LEP noncitizen. *(NDS 2019, All, DHS, and ICE Language Access Plans)*

³ This includes disciplinary forms, jail orders, grievance forms, schedules, hard copy detainee handbook, etc.

8. OCJ issues tablets to noncitizens to access many services and submit requests; however, adequate training is not provided to noncitizens on how to utilize the tablets. LEP noncitizens experience additional usage issues due to language barriers. OCJ should provide training to noncitizens on how to utilize tablets during the admission and orientation process, including how to access important information such as the handbook, and the training should be available in multiple languages for LEP noncitizens. *(NDS 2019, DHS and ICE Language Access Plans)*

9. (b) (5)

10. (b) (5)

11. (b) (5)

12. (b) (5)

The responsible individual should also maintain a listing of vulnerable detainees with special needs or disabilities pending release to enable the assessment and facilitation of any special accommodations that need to be made to ensure a safe release into the community. *(NDS 2019, Admission and Release 2.1. II. J, Disability Identification, Assessment, and Accommodation 4.7.II.A.IV, Medical Care 4.3, ICE Directive 11071.1)*

⁴ 4.3 mandates, “Medical personnel will be given advance notice prior to the release, transfer or removal of a detainee, so that they may provide for any medical needs associated with the transfer or release.”

⁵ (b) (5)

13. (b) (5) OCJ should revise its (b) (5) practice to specify a position responsible for the coordination between custody and medical who is responsible for noncitizen release notifications so that a coordinated release and discharge planning process is occurring, and mandated medication supplies are provided to noncitizens upon release. (NDS 2019, Admission and Release 2.1. II. J, Disability Identification, Assessment, and Accommodation 4.7.II.A.IV, Medical Care 5.4, ICE Directive 11071.1)

14. OCJ maintains five separate physical detention files (classification, administrative, records, pod, and a blue file) for each noncitizen (not including medical and justice) and upon release, four separate detention files are maintained. Any entity (including ICE) requesting a detainee's file will not receive documents from all five files during the noncitizen's stay and all four files after a noncitizen's release. (b) (5)

[Redacted]

15. (b) (5)

16. (b) (5)

17. (b) (5)

6 (b) (5)

7 (b) (5)

(b) (5)

ICE should ensure that OCJ takes appropriate corrective action against any employee who discriminates against any noncitizen or subjects any noncitizen(s) to disrespectful treatment, derogatory comments, harassment, or retaliation. (NDS 2019, Grievance System 6.2)

18. Noncitizens in multiple group interviews made complaints regarding mistreatment by OCJ custody staff including discriminatory and disrespectful treatment, derogatory comments, and verbal harassment. (b) (5)

(b) (5)

- 19.

(b) (5)

OCJ should ensure any grievance involving a SAAPI/PREA allegation is referred to the SAAPI/PREA Coordinator for investigation and ensure all SAAPI protocols are followed. (NDS 2019, 2.11 Sexual Abuse and Assault Prevention and Intervention)

20. OCJ applies group discipline restrictions in the female housing unit and female noncitizens experience restrictions based on female county inmate behavior violations which includes limitations on using the microwave and vending machine. ICE should ensure that female noncitizens are not being subjected to “group discipline” and restrictions based on the behavior and rule violations of female county inmates. (NDS 2019, Disciplinary System 3.1)

21. OCJ’s custody staff vacancies resulted in a 70 bed decrease to the medium-high and high bed capacity. ICE should not increase medium high to high noncitizen population levels at OCJ until custody staff vacancy levels throughout the facility are filled and all noncitizen programs, services and security needs are fulfilled. (NDS 2019, Facility Security and Control 2.3)

- 22.

(b) (5)

⁸ (b) (5)

(b) (5)

Medical Care

CRCL's medical SME made the following recommendations related to NDS 2019:

- 23. (b) (5)
- 24. (b) (5)
- 25. The medical staff are not completing a refusal form when a noncitizen refuses care. If a noncitizen refuses medical care, the medical staff should complete a refusal form for the medical refusals. *(NDS 2019, 4.3 Medical Care, II. O)*
- 26. (b) (5)
- 27. The intake medical staff are not referring noncitizens to the medical provider for their medical condition. The medical staff should perform a detailed screening and refer the noncitizen to the medical provider for all noted medical conditions. *(NDS 2019, 4.3 Medical Care, II. D)*
- 28. (b) (5)
- 29. (b) (5)
- 30. (b) (5) The medical provider should conduct a detailed assessment and address all the medical complaints and conditions during the evaluation. *(NDS 2019, 4.3 Medical Care, II. E)*
- 31. There is a delay in treatment for dental pain. Noncitizens with dental pain should be evaluated by the nurse and started on medications for pain, when indicated, while waiting to see the dentist. *(NDS 2019, 4.3 Medical Care, II. H)*

32. (b) (5) [Redacted]

33. (b) (5) [Redacted]

34. (b) (5) [Redacted]

35. (b) (5) [Redacted]

36. Female noncitizens are not routinely offered preventive care. A pelvic and breast examination, pap test, baseline mammography, and sexually transmitted disease (STD) testing should be offered and provided as deemed appropriate or necessary by a health care practitioner. (*NDS 2019, 4.3 Medical Care, II. U-1*)

37. (b) (5) [Redacted]

Mental Health Care

CRCL’s mental health SME made the following recommendations related to NDS 2019 and National Commission on Correctional Health Care (NCCHC) Standards:

38. (b) (5) [Redacted]

39. (b) (5) [Redacted]

40. (b) (5) [Redacted]

41. (b) (5) [Redacted]

42. (b) (5) [Redacted]

43. (b) (5) [Redacted]

44. (b) (5) [Redacted]

Environmental Health and Safety

⁹ (b) (5) [Redacted]

CRCL's environmental health and safety expert made the following recommendations related to NDS 2019:

45. (b) (5)

[REDACTED]

Therefore, ICE supervision at OCJ should take a more active role in ensuring compliance with the NDS 2019 Food Service standard. Also, OCJ should implement a multidisciplinary team or committee that minimally includes the Food Service Administrator, a designee from the OCJ administration, the Health Services Administrator (or designee), a staff member from noncitizen housing, and others as appropriate, such as the religious services coordinator. The team or committee should meet at least quarterly to evaluate the menus, implement a tool to assess the noncitizens' acceptance of the menus and analyze the data, review food related grievances, assess the overall satisfaction with the foodservice program, recommend changes based on their findings, and ensure that any previous recommendations were implemented to facilitate compliance with the NDS 2019 standard stating meals shall be nutritious and attractively presented. (*NDS 2019, 4.1 Food Service, I. Policy*)

46. OCJ has not yet updated the detainee handbook to reflect the policy change that allows noncitizens to wear "hoodies" in the dayroom. Previously, noncitizens informed CRCL that wearing hoodies in the day room could result in disciplinary action. OCJ should update the noncitizen handbook section: General Rules, Facility Clothing, 5., stating, "Orange hoodies may not be worn in the dayroom. Orange hoodies may only be work [sic] in the yard or in your cell except on the way to the yard" to reflect the revised policy that allows the orange sweatshirts to be worn in the dayroom. (*NDS 2019, 6.1 Noncitizen Handbook, II. Standards and Procedures*)

47. During interviews, several noncitizens stated that they were not aware that they could ask for replacement personal hygiene items. Per the NDS, replenishment of personal hygiene products like shampoo and lotions are available to noncitizens at no additional cost. OCJ should revise the section of the facility handbook stating, "14. Personal Hygiene Items, Shampoo and lotion is available upon admission and for purchase through Commissary," to clarify that replenishment of shampoo and lotion is available to noncitizens, at no cost, on an as-needed basis, in accordance with the NDS 2019 Personal Hygiene standard. (*NDS 2019, 4.4 Personal Hygiene, II. Standards and Procedures, F. Personal Hygiene Items and NDS 2019, 6.1 Detainee Handbook, Standards and Procedures, B.*)

48. The Safety Data Sheet (SDS) for the Spartan (brand) Sparcreme cleaning agent, states that it has an oral acute toxicity level of 4, it can cause skin corrosion and irritation, eye damage and irritation, and the use of personal protective equipment (PPE) including splash goggles and rubber, or other chemical resistant gloves are required.

OCJ noncitizens were observed using Sparcreme without PPE. OCJ supervision should ensure compliance with the NDS 2019 when using cleaning chemicals, including the Spartan (brand) Sparcreme cleaning chemical. *(NDS 2019, 1.1 Environmental Health and Safety, II. Standards and Procedures, 3. Personal Responsibility)*

49. Noncitizens reported being issued clothing that was several sizes too large and not being issued various laundry items such as bedding. In CRCL interviews, noncitizens acknowledged that they were getting the correct size or the needed item from other noncitizens who were leaving the facility. This is a serious concern because noncitizens should not share clothing and bedding for health and hygiene reasons. OCJ should ensure compliance with the NDS 2019, Personal Hygiene standard stating that all new noncitizens shall be issued clean, indoor/outdoor, temperature-appropriate, presentable clothing during in-processing. *(NDS 2019, 4.4 Personal Hygiene, II. Standards and Procedures, B. Issuance of Clothing)*

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 within 120 days indicating 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 CRCLRecommendations@hq.dhs.gov. CRCL will share your response with (b) (6), the Policy Advisor who conducted this investigation.

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