



**Homeland
Security**

October 21, 2021

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

Kerry E. Doyle
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)
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SUBJECT: Baker County Detention Center
Complaint Nos. 001326-21-ICE, 001729-21-ICE,
21-05-ICE-0253, 20-09-ICE-0738, and 20-11-ICE-0923

The Office for Civil Rights and Civil Liberties (CRCL) has received complaints alleging that U.S. Immigration and Customs Enforcement (ICE) has potentially violated the civil rights and civil liberties of detainees in ICE custody at the Baker County Detention Center (BCDC) in Macclenny, Florida. 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 other allegations for investigation and conduct an onsite investigation at the BCDC on November 8 - 10, 2021, and explain how CRCL will work with ICE during the investigation. As part of this investigation, consistent with its authority described in the CRCL and Scope of Review sections of this memorandum, CRCL will examine the allegations summarized below and will look at BCDC's operations more generally to address any systemic concerns. CRCL will also review other areas of the facility's operations that often raise important civil rights and civil liberties issues. Based upon the specific instances identified below, CRCL will focus on BCDC's COVID policies, use of force policies, and suicide prevention and intervention policies during the onsite, as well as review the facility generally.

Use of Force:

In reviewing the JIOC-ICE, DDAR from February 2020 – August 2021, CRCL noted several occasions where BCDC used knee strikes and take down methods.¹ CRCL also noted that oleoresin capsicum (OC) spray was reportedly used 11 times to gain control of detainees during BCDC use of force incidents during this timeframe. Below is a sampling of the most concerning use of force incidents collected from the ICE reports:

- On February 12, 2021, ERO Miami reported the use of OC on a Haitian national housed at the BCDC. On February 11, 2021, the detainee allegedly refused BCDC staff commands to cease disruptive behavior and submit to hand restraints. BCDC staff deployed a one-second burst of OC spray and took the detainee to the ground to apply hand restraints. BCDC staff escorted the detainee to the medical unit, the detainee was decontaminated and medically cleared. The detainee was placed in administrative segregation pending a disciplinary review.
- On May 28, 2020, ERO Miami reported the use of OC spray on a Jamaican national housed at BCDC. On the same date, the detainee allegedly refused to open his mouth for a BCDC nurse to verify that he had swallowed his medication. BCDC deputies responded and gave the detainee multiple verbal commands to open his mouth, which he refused. BCDC staff reportedly administered a one second burst of OC spray to gain compliance.
- On May 5, 2020, ERO Miami reported the use of force on a Brazilian national housed at the BCDC. On May 4, 2020, BCDC staff engaged in a use of force situation when the detainee allegedly refused to comply with BCDC staff's verbal commands and became physically resistant. In order to gain compliance, BCDC staff placed the detainee against a wall and used knee strikes.

Conditions of Detention:

1. Complaint No. 001326-21-ICE

On July 20, 2021, CRCL received a referral from the Department of Homeland Security Office of the Inspector General (OIG) regarding (b)(6) (unknown A#), an ICE detainee at BCDC. In a phone call to the OIG on July 20, 2021, the complainant alleged that insufficient food was provided to detainees at the facility. He also alleged that detainees are not receiving the required change of clothing and are wearing the same jumpsuit for a week, detainees were infrequently provided cleaning supplies and currently have no COVID cleaning supplies. The complainant alleged detainees were using shampoo to wipe down the tables because they did not have any chemicals for cleaning.

¹ Joint Intelligence Operations Center (JIOC-ICE) Daily Detainee Assault Reports (DDAR) capture, among other things, “any allegations of sexual assault, physical assault and use of force incidents/allegations occurring in ICE detention settings.”

2. Complaint No 001729-21-ICE

On August 12, 2021 CRCL received a referral from the OIG regarding (b)(6), an ICE detainee at BCDC. In a phone call to the OIG on August 11, 2021, the complainant alleged there were multiple MS-13 gang members at the facility. The complainant alleged gang members are making shanks in their cells and there was a gang member named "Silencio" who had instigated multiple sexual assault attacks at the facility. The complainant stated he worried about being attacked.²

3. Complaint No. 21-05-ICE-0253

On January 27, 2021, CRCL received direct correspondence from (b)(6), a detainee at BCDC. The complainant alleged his due process rights were violated when he was denied access to video court on either December 10th or December 18, 2020. He alleged he was scheduled for a video hearing on an evidentiary motion to vacate conviction at the Okaloosa County Court and was denied opportunity by his ICE Deportation Officer.

4. Complaint No. 20-11-ICE-0923

On August 11, 2020, CRCL received an email referral from the OIG regarding (b)(6), an ICE detainee at BCDC. In a call to the OIG hotline on July 15, 2020, Mr. (b)(6) reported he went to medical staff and complained of body aches and was told he had arthritis. Mr. (b)(6) alleges many detainees in his pod (B7) had symptoms of COVID-19, but no one was being tested, and the pod was not being cleaned. He also claimed detainees had become ill in the past three weeks and showed symptoms of COVID-19 but were only given ibuprofen.

5. Complaint No. 20-09-ICE-0738

On June 3, 2020, CRCL received an email referral from the OIG regarding (b)(6), an ICE detainee at BCDC. The complainant alleged that on May 4, 2020, Officer (b)(6), (b)(7)(C) and Officer (b)(6), (b)(7)(C) physically abused him for no reason. The complainant alleged the officers bent his arm which caused him to cry from the pain. The complainant also alleges officers also kicked him on both legs.

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;

² Upon review of the allegations, CRCL informed ICE of the safety issue. ICE reported that there was only one known gang member at the facility. (b)(6) staff conducted a search of the dorms and 1 weapon was found. Since August 12, 2021, random searches have been conducted, and no more weapons have been found.

- 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.”³ Additionally, pursuant to DHS Delegation Number 19003, issued October 26, 2012, the Secretary has delegated to the Officer of CRCL the authority to “assess 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, lack of arbitrary punishment, and religious accommodation for ICE detainees are examples of issues that raise civil rights and liberties concerns. The procedures for CRCL investigations and the recommendations those investigations 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 CRCL access to the “information, material, and resources necessary to fulfill the functions” of the office, including 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[e] 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

³ In addition, 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).

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 timeframe indicated below, and not edit or otherwise limit review of the information that is responsive to CRCL’s request. Pursuant to § 2 of Directive 8010.1,

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 accompanying request for documents and 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. Under 6 U.S.C. § 345(b), however, we submit an annual report to Congress—also posted on CRCL’s Web site—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. This review will also examine the additional areas specified above for similar concerns related to protection of civil rights and civil liberties. It is our goal to produce a report that will assist you in making ICE the best agency possible.

QUESTION(S) PRESENTED

(b)(5)



INITIATING THE INVESTIGATION

CRCL has already taken steps to begin its investigation of these complaints, which are assigned to (b)(6), Policy Advisor, CRCL. We look forward to working 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 Mr. (b)(6) by phone at (b)(6) or by email at (b)(6)

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