



Homeland
Security

March 15, 2022

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)
Attorney Advisor, Legal Counsel Division
Office of the General Counsel

SUBJECT: Henderson Detention Center
Complaint Nos. 21-01-ICE-0042, 21-01-ICE-0056,
000255-22-ICE, and 000036-22-ICE

The Office for Civil Rights and Civil Liberties (CRCL) has opened 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 Henderson Detention Center (Henderson) in Henderson, NV. The purpose of this memorandum is to notify you of the complaints, describe the allegations, inform you that CRCL will retain the above-referenced complaints for investigation, and conduct an onsite investigation¹ at Henderson on March 28-31, 2022, and explain how CRCL will work with ICE during our investigation. As part of this investigation, and consistent with the authority described in the CRCL and Scope of Review sections below, CRCL will examine the allegations described in the complaints, and Henderson's operations more generally, to determine if the individual allegations are indicative of systemic civil rights and civil liberties issues. CRCL will also review other areas of the facility's operations that often raise civil rights and civil liberties issues. In addition to the general review, based upon the specific instances identified below, CRCL will be reviewing Henderson's COVID-19 policies, use of force policies, mental health and suicide prevention and intervention policies, and related policies during the onsite.²

¹ CRCL has not yet determined if the onsite investigation will be conducted virtually or in-person. CRCL will notify ICE of its plans closer to the onsite date, as the decision to travel will be dependent on available information and Centers for Disease Control (CDC) guidance regarding COVID-19.

² CRCL last conducted an onsite investigation of Henderson in March 2017 and sent a Recommendation Memo to ICE in June 2017. ICE provided CRCL with responses in June 2018. CRCL will not send a Close

COMPLAINTS

1. *Complaint No. 21-01-ICE-0042*³

On October 9, 2020, CRCL received an OIG referral email regarding a complaint made by twelve women detained at Henderson. In a letter to the OIG dated July 6, 2020, the complainants alleged that the facility violated the standards set forth in the National Detainee Handbook. Specifically, they allege discrimination based on nationality, citizenship, and country of origin; poor hygiene (especially as relates to Covid-19); and being housed with criminal offenders.

In addition, complainants allege infrequent underwear and sock exchange; underwear with blood and urine stains while men can buy new underwear via commissary; rags used for cleaning being washed with clothes; improper food temperature; lack of safe drinking water; lack of vitamins; lack of variety in kosher meals; lack of recreation and sufficient visitation time; shower temperature; lack of reading material; and lack of interpreters.

2. *Complaint No. 21-01-ICE-0056*⁴

On October 21, 2020, CRCL received a direct correspondence from (b)(6) an ICE detainee at Henderson. The complainant made several allegations against officers at the facility from May-September 2020. He alleged that an officer refused to give him toilet paper and stated that “this is not a toilet paper store” and that he needed to “find another way to wipe.” He also alleged detainees have no access to cleaning supplies, and that officers refuse to do laundry or provide linen exchanges. Regarding legal access, the complainant alleged that an officer would not make copies of legal documents for him and stated that the officer was not obligated to help ICE detainees, also that he was denied access to the law library and that officers refused to send legal mail and told him if he tried to send more, they would just put it in his personal property. Related to language access, he further alleged officers refused to hear requests from him because he is not fluent in English. Lastly, he alleged ICE detainees are restricted from reporting grievances to OIG because of restrictions on the phone and that officers refuse to follow protocol for requests and grievances.

3. *Complaint No. 000255-22-ICE*

On October 28, 2020, CRCL received direct correspondence from (b)(6) (the complainant), on behalf of himself and (b)(6), two ICE detainees then at Henderson. The complainant alleged that the facility has excessive restrictions on visitation rights, and that visits were suspended without proper notice to detainees and visitors. He also complained of excessive restrictions on recreation time and claims that the conditions at the facility are “degrading.” The complainant alleged that disciplinary sanctions included denial of basic cell furnishings and basic personal hygiene items and that ICE detainees in the facility are

Memo for our prior 2017 onsite investigation. Rather, CRCL will be reviewing similar issues and allegations during this onsite investigation.

³ CRCL sent a Short Form request to ICE ERO on November 12, 2020 and received ICE’s response on February 12, 2021.

⁴ CRCL sent a Referral to ICE Office of Professional Responsibility (OPR) on March 12, 2021 and received a response on November 8, 2021.

discriminated against by showing favoritism to Henderson inmates and denied access to DHS-supported programs and activities, such as recreational time. He also alleged that he was denied access to the law library and a lawyer.

4. *Complaint No. 000036-22-ICE*

On May 6, 2021, CRCL received a referral from the OIG of an October 13, 2020 complaint from (b)(6) (the complainant), an ICE detainee at Henderson. The complainant alleged that he had diabetes, had not received his medication and, as a result, his “feet were turning purple.”⁵ The complainant also expressed concern of contracting COVID-19 in detention.⁶

PRIOR RECOMMENDATIONS

CRCL previously conducted an onsite investigation from March 22-24, 2017, and on June 16, 2017, CRCL sent ICE an Expert Report Memorandum containing 48 recommendations, together with expert reports, and requested a formal response to the recommendations within 60 days. In June 2018, ICE responded to the recommendations providing comments to explain its responses. Of the 48 recommendations, ICE concurred with 16, partially concurred with one (1), and non-concurred with 31. In September 2019, ICE provided CRCL with its amended responses to CRCL’s recommendations. Of the 47 recommendations,⁷ ICE concurred with 23, partially concurred with 18, and non-concurred with 6. Given that CRCL originally received a large number of non-concurrences, some of which were later amended, CRCL also will use the onsite as an opportunity to assess changes made as a result of CRCL’s prior investigation and to evaluate if issues noted before are still present.

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;

⁵ CRCL did not send this to ICE as a medical referral because the complainant was no longer in custody at the time CRCL received the complaint.

⁶ This matter was not treated as a medical referral as the complainant was removed on October 20, 2020.

⁷ ICE appears to have inadvertently omitted Recommendation No. 17 in its amended response. As a result, ICE provided an amended response for 47 of the original 48 recommendations.

- 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.”⁸ 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 that 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 this Office 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 OHS 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 section 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 section 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.

⁸ In addition, pursuant to 42 U.S.C. § 2000ee-1(a)(2), CRCL has the authority to “periodically investigate and review department, agency, or elements 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)

Pursuant to section 2 of Directive 8010.1, CRCL understands that this request will be handled by the appropriate ICE program office or ICE's Office of Diversity and Civil Rights (ODCR).

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 its accompanying request for information are made 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 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.

PURPOSE AND SCOPE OF REVIEW

The purpose of this review is to determine if the allegations in the complaints can be verified or disproven, determine whether the facts suggest that the Constitution, a federal statute, or a Departmental policy has been violated, and to recommend 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.

We will review the following areas: conditions of detention, medical care, mental health care, detainee safety, segregation, the grievance system, and environmental health and safety. CRCL will also review the facility's COVID-19 practices during the review.

QUESTION(S) PRESENTED

(b)(5)



INITIATING THE INVESTIGATION

CRCL Policy Advisor (b)(6) will be handling this review. We request that ICE ERO schedule an initial discussion about these complaints and CRCL's plans for reviewing the matters with Ms. (b)(6) as soon as possible.

We look forward to working 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) or by email at (b)(6).

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