



Homeland
Security

May 4, 2021

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

John D. Trasviña
Principal Legal Advisor
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement

FROM: Peter E. Mina (b)(6)
Deputy Officer for Programs and Compliance
Office for Civil Rights and Civil Liberties

Robert O'Malley e/s
Attorney Advisor, Legal Counsel Division
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SUBJECT: Winn Correctional Center
Complaint Nos. 21-01-ICE-0027, 20-09-ICE-0770,
21-04-ICE-0191, 21-02-ICE-0121, 21-02-ICE-0123,
21-05-ICE-0248, and 12-04-ICE-0184.

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 Winn Correctional Center ("Winn") in Winnfield, LA. 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 a virtual onsite investigation at Winn on July 26-29, 2021, 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 Winn'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 Winn's COVID-19 policies, use of force policies, suicide prevention and intervention policies, and related policies during the virtual onsite.

COMPLAINTS

1. Complaint No. 21-01-ICE-0027¹

On September 28, 2020, CRCL received a death notification from ICE ERO regarding (b)(6) a 56-year-old citizen of the Marshall Islands and ICE detainee at Winn. Mr. (b)(6) entered ICE custody on May 1, 2020 and tested positive for COVID-19 on August 25, 2020. On that day, he was admitted to Winn Parish Medical Center due to shortness of breath and bibasilar crackles in lower lobes of his lungs. On August 28, 2020, he was transferred to St. Francis Cabrini Hospital for a higher level of care for treatment of bacterial pneumonia, the result of COVID-19. Mr. (b)(6) condition worsened, and he passed away on September 26, 2020.

2. Complaint No. 20-09-ICE-0770²

On June 17, 2020, CRCL received direct correspondence from (b)(6) an ICE detainee at Winn. Mr. (b)(6) alleged that he has mental illness and high blood pressure and was taking medication every day. He stated that he was very afraid of being detained as conditions were becoming worse at Winn due to COVID-19. He alleged that at least 30 people had tested positive for COVID-19. He further alleged that he had coronavirus symptoms, including loss of smell and taste, and had repeatedly requested a COVID-19 test, but that facility staff had repeatedly refused to test him.

On July 29, 2020, CRCL received additional direct correspondence from Mr. (b)(6) alleging that he was not being provided “good” vegetarian food and that because he was COVID-19 positive, his health was weakened. He also claimed that the facility served him gravy made with beef. He further alleged the doctor prescribed extra milk in his diet and afternoon snacks, but the food service administrator refused to give them to him. (b)(6), (b)(5), (b) (7)(E)

3. Complaint No. 21-04-ICE-0191

On November 3, 2020, CRCL received direct correspondence from (b)(6), a former ICE detainee at Winn. Mr. (b)(6) alleged that he suffered from seizure, anxiety, and depression, and attempted suicide prior to his arrival at Winn, while detained at Broward Transitional Center. Upon arrival at Winn, he alleged that the facility labeled him suicidal and put him in a segregation cell. Mr. (b)(6) alleged that the cell had cockroaches and that he was given only bread for multiple days. He also claimed he told the facility staff he was not suicidal and that he spoke with TeleMed, and the provider allegedly told the facility to stop feeding him the foods he was being served and to allow him to use a bed. He alleged the facility did neither. Mr. (b)(6) claimed that he was in the cell for five days and that he thought he was going to die as he was not permitted to contact friends and family at that time. (b)(6), (b)(5), (b) (7)(E)

¹ ICE has uploaded documents regarding this death to SharePoint but has not yet completed its Detainee Death Review.

² CRCL sent a Medical Referral regarding this complaint to ICE on June 22, 2020 and received ICE’s Preliminary Response on July 23, 2020. CRCL sent a supplemental Medical Referral to ICE on August 4, 2020 and received ICE’s response on September 21, 2020. CRCL subsequently sent another follow-up request to ICE on September 28, 2020 and has not yet heard back from ICE.

4. *Complaint No. 21-02-ICE-0121*³

On November 9, 2020, CRCL received direct correspondence from (b)(6) of the Texas A&M University School of Law on behalf of (b)(6), a Cameroonian former detainee at Winn who was reportedly exposed to oleoresin capsicum (OC) spray three times between March 2020 and July 2020. ICE officers allegedly used OC spray on Mr. (b)(6) entire dorm in March, June, and July 2020. The complaint states that Mr. (b)(6) has high blood pressure and that he did not receive adequate medical care after being exposed to OC spray. The complaint also alleged that the officers at the facility do not like black people and treat the white detainees differently than the black detainees. Allegedly, officers called Mr. (b)(6) hairstyle "a pineapple" and told him that he "smelled." (b)(6), (b)(5), (b) (7)(E)

5. *Complaint No. 21-02-ICE-0123*⁴

On November 6, 2020, CRCL received direct correspondence from (b)(6) of the Texas A&M University School of Law on behalf of (b)(6), a former ICE detainee at Winn. The complaint alleged that officers pepper-sprayed Mr. (b)(6) s dorm to control the detainees after they voiced complaints about lack of water and not being granted parole. Mr. (b)(6) alleged that the spray made him sick, causing itchy and red skin, a headache and other pain, coughing, and crying. He also alleged that he wrote a grievance regarding the incident, but never received an answer. (b)(6), (b)(5), (b) (7)(E)

6. *Complaint No. 21-05-ICE-0248*⁵

On February 2, 2021, CRCL received direct correspondence from (b)(6), Freedom for Immigrants, Louisiana Advocates for Immigrants in Detention, Al Otro Lado, and Advocates for Immigrant Rights.⁶ They wrote on behalf of three Cameroonian detainees at Winn: (b)(6) The men submitted accompanying affidavits stating that they were physically forced to give their fingerprints on deportation documents. The detainees alleged that officers tripped them, that officers put their knees on their necks and stood on their backs, causing them to have difficulty breathing, and that they felt like the officers were trying to break their ankles and fingers. They felt this was racist and due to them being black. They alleged that they had lasting pain afterwards and were traumatized by the incidents. The complainants are concerned that the signatures/fingerprints will be construed as a sign that they have accepted "voluntary departure" and will be used against them in their efforts to stay their deportations.

³ CRCL sent a Medical Referral to ICE ERO on November 24, 2020 and received ICE's preliminary response on March 23, 2021. The response stated that there was nothing in Mr. (b)(6)'s medical record related to him being pepper-sprayed.

⁴ CRCL sent a Medical Referral to ICE ERO on November 25, 2020 and received ICE's preliminary response on March 24, 2021. The response stated that there was nothing in Mr. (b)(6)'s medical record related to him being pepper-sprayed.

⁵ CRCL sent a separate short-form information request on March 4, 2021, including a request to interview the three detainees before the virtual onsite investigation in May 2021.

⁶ On February 25, 2021, CRCL also received a letter from Senator Elizabeth Warren and six other Senators referencing this complaint, calling it "disturbing," and inquiring about an investigation.

7. *Complaint No. 21-04-ICE-0184*

On March 26, 2020, CRCL received correspondence from the Santa Fe Dreamers Project regarding the detention conditions impacting the health and safety of LGBTQI and HIV-positive detainees at Winn. The correspondence alleges the following about LGBTQI and HIV-positive detainees:

- widespread abuse and mistreatment;
- failure to provide access to adequate medical and mental health care;
- discrimination and verbal abuse by facility staff;
- failure to timely adjudicate parole requests or consider transfer requests; and
- COVID-19-related concerns with this vulnerable population.

On January 6, 2021, CRCL received supplemental correspondence from the Santa Fe Dreamers Project including the names and A-numbers associated with the allegations, particularly those involving inadequate medical and mental health care. Upon review of the specific instances, the medical care allegations included:

- tooth pain and irregular medication schedule;
- inadequate care for a broken leg;
- severe spinal issues;
- drastic weight loss due to tooth pain;
- suicide attempt; and
- lack of HIV-positive medical care.

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.”⁷ 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. 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

⁷ 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)

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: medical care, mental health care, suicide prevention, 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. Prokop 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. Prokop by phone at (b)(6) or by email at (b)(6)

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