



Homeland  
Security

May 10, 2023

MEMORANDUM FOR: Tae D. Johnson  
Deputy Director and  
Senior Official Performing the Duties of the 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: Clay County Jail  
Complaint Nos. 004944-23-ICE, 005070-23-ICE,  
and 005645-23-ICE.

The Office for Civil Rights and Civil Liberties (CRCL) has opened complaints alleging that U.S. Immigration and Customs Enforcement (ICE) has violated individuals' civil rights and civil liberties at the Clay County Jail (Clay County) in Brazil, Indiana. 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 investigation at Clay County on July 24-27, 2023, and explain how CRCL will work with ICE during our investigation. As part of this investigation, and consistent with its authority described in the CRCL and Scope of Review sections below, CRCL will examine the allegations summarized below and will look at Clay County's operations more generally to address any systemic concerns.

## COMPLAINTS

**1. Recent CRCL Targeted Investigation:** On August 1-2, 2022, CRCL conducted a targeted investigation at Clay County, focused specifically on use of force incidents.<sup>1</sup> On September 13,

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<sup>1</sup> Following the targeted investigation, CRCL sent ICE a brief memorandum outlining the observations that required immediate attention. Specifically, CRCL's subject matter expert found that Clay County's Use of Force policies do

2022, CRCL provided to ICE our findings and recommendations and on March 20, 2023, ICE provided responses to our recommendations. Issues of concern found include inadequate use of force policies, no formal inventory and inspection of all security equipment, and deficiencies in After-Action Reviews. CRCL assess changes made as a result of CRCL's prior targeted investigation and to evaluate if prior issues persist.

## **2. *Complaint No. 004944-23-ICE***

Based upon observations made during the August targeted investigation, where CRCL identified numerous concerns outside of the use of force incidents that needed further investigation, CRCL opened a complaint related to environmental concerns at Clay County. Specifically, CRCL observed excessive mold and paint peeling in the showers, a significant amount of trash in the housing units, and mattresses that appeared unusable. CRCL shared these observations verbally at the out-briefing with ICE on August 3, 2022, and informed ICE that a separate, multidisciplinary onsite investigation of Clay County would be conducted to follow-up on these issues.<sup>2</sup>

## **3. *Complaint No. 005070-23-ICE***

On October 19, 2022, CRCL received direct correspondence from (b) (6), with Freedom for Immigrants (FFI), regarding previous correspondence sent to CRCL and ICE ERO, filed by both FFI and Indiana Assistance to Immigrants in Detention (AID), dated September 30, 2022. In the September correspondence, the complainants urge oversight entities within DHS, such as Office of the Immigration Detention Ombudsman, Office of Inspector General, and CRCL, to review the allegations concerning Clay County including the denial of community stakeholder visits inside the facility is part of a larger effort to hinder noncitizens inside Clay County from reporting these conditions of detention concerns and alleged abuses.

## **4. *Complaint No. 005645-23-ICE*<sup>3</sup>**

On February 1, 2023, CRCL received direct postal mail dated January 6, 2023, from Indiana AID on behalf of (b) (6) (non-citizen), detained at Clay County. The letter states the non-citizen "reported on January 3, 2023, that the standard of medical care he is entitled to for his diagnosed skin condition is not being met. If left untreated, his skin condition will worsen and cause even greater distress." The letter continued to state that the non-citizen "suffers from chronic mild superficial perivascular dermatitis with focal interface changes and extravasated red blood cells."

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not adhere to multiple requirements of the Performance Based National Detention Standards 2008 Use of Force and Restraints Standard. CRCL will use the onsite as an opportunity to assess changes made as a result of CRCL's prior targeted investigation and to evaluate if issues noted before are still present.

<sup>2</sup> CRCL's onsite investigative work at ICE detention facilities falls under three categories of onsite investigations: 1) Multidisciplinary Onsites; 2) Spot Checks; and 3) Targeted Onsites. CRCL's August 2022 investigation at Clay was a Targeted Onsite, which means it was focused, or targeted, on a specific discipline or the interplay between two disciplines. In contrast, 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.

<sup>3</sup> CRCL sent a medical referral to ICE on February 7, 2023.

## 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.”<sup>4</sup> 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:

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<sup>4</sup> 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)

- “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 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 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.

QUESTION(S) PRESENTED

(b) (5)



INITIATING THE INVESTIGATION

CRCL Senior 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).

Enclosure

Copy to:

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