



Homeland
Security

January 22, 2021

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

Michael P. Davis
Acting Principal Legal Advisor
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement

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

(b) (6)
Attorney Advisor, Legal Counsel Division
Office of the General Counsel

SUBJECT: La Palma Correctional Center
Complaint Nos. 21-02-ICE-0088, 21-02-ICE-0113,
21-03-ICE-0157, 21-03-ICE-0155, 21-03-ICE-0153, and
21-03-ICE-0158

The Office for Civil Rights and Civil Liberties (CRCL) has received complaints alleging that U.S. Immigration and Customs Enforcement (ICE) has violated individuals' civil rights and civil liberties at the La Palma Correctional Center (LPCC) in Eloy, Arizona. 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 for investigation and conduct an onsite investigation, 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 LPCC's operations more generally to address any systemic concerns.

COMPLAINTS

Complaint No. 21-02-ICE-0113

On November 16, 2020, CRCL received an email referral from the DHS Office of Inspector General employee, (b) (6), on behalf of (b) (6) who was an ICE detainee at the LPCC in Eloy, Arizona. During an OIG unannounced spot inspection, Ms. (b) (6) was interviewing Mr. (b) (6) when he stated he had been a victim of sexual assault at the La

Palma facility and had sought medical treatment. Mr. (b) (6) claimed that he had not received treatment, and because of that, he had been placing marbles up his penis to help with the pain that he has been experiencing. Mr. (b) (6) explained that he had been harming himself because he has not been receiving help from the medical staff at the LPCC. Ms. (b) (6) reported this allegation to the LPCC, and Mr. (b) (6) was reportedly seen by medical on September 17, 2020.

DHS system records indicate that Mr. (b) (6) was released from the LPCC on order of supervision on November 6, 2020, thus a medical referral was not issued.

Complaint No. 21-02-ICE-0088

On November 5, 2020, CRCL received email correspondence from (b) (6) of the Florence Immigrant and Refugee Rights Project on behalf of (b) (6), an ICE detainee at the LPCC. In the complaint, Mr. (b) (6) claimed that he was previously able to maintain his high-blood pressure with a healthy diet and exercise. However, since being in detention, Mr. (b) (6) alleged that he has not had access to nutritionally/healthy meals (food is high in carbs, salt, and starch), or access to steady exercise due to COVID-19 restrictions.

Further, Mr. (b) (6) stated that he noticed a worm in his food on September 29, 2020. Mr. (b) (6) reportedly brought this to the attention of Officer (b) (6), (b) (7)(C), who saw the worm and requested a new meal. However, at the time of the correspondence, Mr. (b) (6) remained upset at the sanitary standards at the facility, as he believed they are not inspecting the food being served to detainees. Mr. (b) (6) alleged that issues related to food started when COVID-19 restrictions were implemented.

Lastly, Mr. (b) (6) stated that in June 2020, he tested positive for COVID-19 and was medically isolated for 14 days. However, since returning to general population, he fears he will re-contract COVID-19, placing his health at further risk. Mr. (b) (6) stated that he has noticed changes to his health since his COVID-19 diagnosis, and that he consistently feels fatigued and has not regained his sense of smell since his June 2020¹.

Complaint No. 21-03-ICE-0158

On July 1, 2020, CRCL received email correspondence from (b) (6) regarding a use of force incident that happened at the LPCC on April 11, 2020. Specifically, Mr. (b) (6) alleges armed officers forcefully entered his cell, shooting paintball bullets and tear gas. Mr. (b) (6) alleges he was hit with five paintball bullets during this incident.

Complaint No. 21-03-ICE-0157

On August 7, 2020, CRCL received a DHS OIG referral regarding (b) (6), a detainee at the LPCC. Mr. (b) (6) alleges he had not been provided with

¹ CRCL issued a medical referral to ICE concerning Mr. (b) (6)'s allegations of experiencing persistent COVID symptoms. Mr. (b) (6) claims to have been diagnosed with COVID in June of 2020. He was paroled on November 6, 2020.

personal hygiene products, such as shampoo, since approximately July 13, 2020. Mr. (b) (6) stated that he has not been able to shower due to the lack of shampoo. Mr. (b) (6) further alleges that several detainees have been placed in quarantine due to COVID-19.

Complaint No. 21-03-ICE-0155

On September 25, 2020, CRCL received a DHS OIG referral (C2022740) regarding (b) (6) then detained at the LPCC. Mr. (b) (6) alleged that the LPCC is mixing COVID-19 positive detainees with detainees who do not have COVID-19. Mr. (b) (6) further alleged that detainees are getting sick due to spoiled food.

Complaint No. 21-03-ICE-0153

On November 17, 2020, CRCL received direct correspondence, via the CRCL hotline, from (b) (6), a detainee at the LPCC. According to the correspondence, Mr. (b) (6) alleged that his requests for documents pertaining to facility rules be translated into Russian have been denied.

Additional Concerns

In addition to the above complaints, CRCL has received over fifty allegations between fiscal year 2019 and 2021 concerning conditions of detention, religious accommodations, medical issues, and environmental health and safety concerns at LPCC. Although these allegations were not opened as complaint investigations at the time of initial review, the matters were maintained in the CRCL Compliance Information Layer and reviewed during Compliance's selection of onsite. Accordingly, CRCL will review the general issues raised in the allegations during CRCL's review of LPCC.

Based on these allegations, CRCL will conduct a virtual onsite investigation at the LPCC.²

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 by:

- 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;

² Due to the ongoing health risks associated with the COVID-19 pandemic, the Office for Civil Rights and Civil Liberties will be conducting its upcoming "onsite" investigations virtually.

- 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 “[a]ssess[] 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, language access, and religious accommodation for ICE detainees all 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 the Officer access to the “information, material, and resources necessary to fulfill the functions” of the office, including (but not limited to) 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 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 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 specified timeframe, and not edit or otherwise limit review of the information that is responsive to CRCL's request. Pursuant to § 2 of Directive 8010.1, CRCL understands that this request will be handled by the appropriate ICE program office.

³ 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).

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 request for 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 as well as any other applicable 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.

SCOPE OF REVIEW

The purpose of our review is to determine if the allegations in the complaints can be verified or disproven; whether 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.

QUESTIONS PRESENTED

(b) (5)



INITIATING THE INVESTIGATION

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

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