



**Homeland
Security**

October 7, 2020

MEMORANDUM FOR: Tony H. Pham
Senior Official Performing the Duties of the Director
U.S. Immigration and Customs Enforcement

Michael P. Davis
Executive Deputy 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
(b) (6)
Attorney Advisor, Legal Counsel Division
Office of the General Counsel

SUBJECT: Otay Mesa Detention Center
Complaint Nos. 20-06-ICE-0490, 20-07-ICE-0611,
20-08-ICE-0693, and 20-10-ICE-0833

The Office for Civil Rights and Civil Liberties (CRCL) has received allegations that U.S. Immigration and Customs Enforcement (ICE) violated the civil rights and civil liberties of detainees at the Otay Mesa Detention Center (OMDC) in San Diego County, California. The purpose of this memorandum is to notify you of the complaints, describe the allegations, inform you that, consistent with its authority described below, CRCL will retain them for investigation and conduct an onsite investigation at OMDC on October 26-28, 2020, and explain how CRCL will work with ICE during the investigation.¹

The allegations raise issues regarding conditions of detention, medical and mental health care, suicide prevention and intervention, sexual abuse and assault prevention and intervention, and environmental health and safety. During the onsite, CRCL will also look at OMDC's operations more generally to determine if the individual allegations or findings are indicative of systemic civil rights and civil liberties issues and will review other areas of the facility's operations that may also raise important civil rights and civil liberties issues.

¹ Due to the ongoing health risks associated with the COVID-19 pandemic, the Office for Civil Rights and Civil Liberties will be conducting this upcoming "onsite" investigation virtually.

ALLEGATIONS

According to ICE's Daily Detainee Assault Report (DDAR), which captures, among other things, "any allegations of Detainee on Detainee sexual assault, Staff on Detainee sexual assault, physical assault and use of force incidents/allegations occurring in ICE detention settings," OMDC reported 50 such incidents from May 2019 to May 2020 (29 Detainee on Detainee sexual assaults, 15 use of force incidents, five Staff on Detainee sexual assaults and one assault). Due to the number of reports at OMDC during this time period, CRCL's investigation will include examining possible systemic issues related to these alleged assaults. A sample of potentially significant reports are highlighted below. Also contained below are individual allegations CRCL received involving OMDC outside of the DDAR.

Use of Force and Suicide Prevention and Intervention:

- On April 24, 2020, ERO San Diego reported the use of oleoresin capsicum (OC) on a Mexican national detainee at the OMDC. On April 20, 2020, the detainee was witnessed attempting to harm himself in his cell by wrapping a braided bedsheet around his neck. OMDC staff issued verbal commands to the detainee, however the detainee refused to comply. The report noted a single burst of OC spray into the cell and a second burst of OC spray into the cell while giving verbal commands to the detainee. At that time, the detainee walked to the door of the cell and submitted to hand restraints. OMDC medical staff evaluated the detainee and contract officers, who confirmed that neither sustained any injuries.²
- On April 8, 2020, ERO San Diego reported the use of oleoresin capsicum (OC) on a Kazakhstani national detainee housed at OMDC. On April 6, 2020, contract staff issued orders to the detainee to submit to restraints while in an intake cell. The detainee ignored all commands resulting in staff deploying two bursts of OC spray with no effect. Four additional bursts of OC spray were deployed, and the detainee continued to refuse all commands. A cell extraction team was used in order to secure the detainee. The detainee was decontaminated and escorted to medical, where IHSC cleared the detainee for placement in the restrictive housing unit.³

Sexual Abuse and Assault Prevention and Intervention:

- On January 27, 2020, ERO San Diego reported a Honduran national detainee was allegedly the victim of sexual harassment by a staff member at the OMDC. On January 26, 2020, the alleged victim stated a staff member inappropriately touched her while being searched after returning from the dining hall. OMDC escorted the subject to medical where she was evaluated by IHSC, and a mental health provider. OMDC returned the subject to her housing unit and reassigned the staff member pending an investigation.⁴

² (b) (7)(E)

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- On October 11, 2019, ERO San Diego reported a Salvadoran national detainee alleged being sexually assaulted by a Haitian national detainee at OMDC. On October 10, 2019, the detainee alleged he was sexually assaulted by the subject on several occasions. All PREA protocols were initiated and medical evaluations with IHSC medical staff indicated no injuries to either detainee. The alleged victim was returned to general population, and the alleged subject was placed in restrictive housing.⁵
- On October 9, 2019, ERO San Diego reported a Russian national detainee alleged being sexually assaulted by a Core Civic Detention Officer at the OMDC in San Diego, California. On October 4, 2019, the alleged victim reported that he was inappropriately touched by the officer on two occasions during pat down searches. The alleged victim was escorted to medical for evaluation and later returned to general population after medical/mental health clearance.
- On August 21, 2019, ERO San Diego reported that a Mexican national detainee reported being sexual assaulted by a Mexican national detainee while housed at the OMDC. On August 20, 2019, the alleged victim claimed the alleged perpetrator had inappropriately touched her. The alleged victim was evaluated for physical and mental health and referred to victim advocacy services. The alleged perpetrator was escorted to segregated housing pending investigation.⁶

Medical and Mental Health Care:

- On May 6, 2020, CRCL received a notification from ICE ERO regarding the death of 57-year old citizen of El Salvador, (b) (6) an ICE detainee at OMDC. On April 24, 2020, at approximately 5:30 p.m. PDT, ERO San Diego transferred Mr. (b) (6) to the Paradise Valley Hospital (PVH) in National City, CA due to Mr. (b) (6) having COVID-19 symptoms (hypoxia). On the same date, IHSC administered a test for COVID-19. The results returned that day indicating that Mr. (b) (6) did have COVID-19.⁷
- On April 1, 2020, CRCL received correspondence from Mr. (b) (6), an ICE detainee at OMDC. In the correspondence dated March 25, 2020, Mr. (b) (6) states that he has mental problems, hears voices, and has schizophrenia. He claims that he cannot concentrate in court and is driven to despair in prison. He reports that he is taking a controlled medication. He also states that he tried to commit suicide, and facility staff took him to the hospital. He asserts that he had cut the veins in his neck and his wrists. Mr. (b) (6) claims that facility staff does not listen to him.⁸
- On March 6, 2020, CRCL received an email referral from the DHS OIG (C2010446) regarding Mr. (b) (6), an ICE detainee at Otay

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⁷ 20-08-ICE-0693

⁸ On April 22, 2020, CRCL forwarded this matter to ICE as a Medical Referral for 20-07-ICE-0611.

Mesa (San Diego CCA) in San Diego, California. According to Mr. (b) (6), he was not allowed to see a physician for his injuries allegedly suffered on from use of force incidents on January 3, 2020, and January 13, 2020.⁹

ADDITIONAL AREAS TO BE REVIEWED

In addition to the allegations discussed above relating to conditions of detention, medical and mental health care, suicide prevention and intervention, sexual abuse and assault prevention and intervention, and environmental health and safety, CRCL plans to review segregation and the special management unit, classification of detainees, use of force, the disciplinary system, law libraries and legal materials, and language access, as well as any other areas that could potentially raise important civil rights and civil liberties issues.

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.”¹⁰ 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

⁹ 20-06-ICE-0490

¹⁰ 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).

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 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 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, 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 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 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; determine whether the facts we find suggest that the Constitution, a federal statute, or a Departmental policy has been violated; and to determine what steps, if any, should be taken 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. It is possible that our investigation will reveal other matters of concern; if this occurs, we will inform you.

QUESTION(S) PRESENTED

(b) (5)



INITIATING THE INVESTIGATION

CRCL will be in contact with ICE ERO staff about this complaint and CRCL's plans for reviewing the matter, which is assigned to (b) (6), Policy Advisor, and (b) (6), Policy Advisor. 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 Ms. (b) (6) at (b) (6)

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