



Homeland
Security

September 1, 2023

MEMORANDUM FOR: Patrick J. Lechleitner
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)
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Office of the General Counsel

SUBJECT: **Retention Memo:** Segregation of Individuals with a Mental Health Disability and/or Serious Mental Illness
Complaint Nos. 006267-23-ICE, 001124-21-ICE, 004341-22-ICE, 005725-23-ICE, 005783-23-ICE, 005794-23-ICE, and 006099-23-ICE

Over the past four years, the U.S. Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL) has opened more than 60 complaints related to the segregation of individuals in ICE custody with an alleged mental health disability (MHD) or Serious Mental Illness (SMI).¹ These allegations have arisen at different, geographically diverse, ICE detention facilities. These facilities operate under differing government

¹ “SMI” is the generally accepted and preferred term within the medical community. The National Institute of Mental Health defines SMI as a “mental, behavioral, or emotional disorder resulting in serious functional impairment, which substantially interferes with or limits one or more major life activities.” See <https://www.nimh.nih.gov/health/statistics/mental-illness>.

ICE Directive 11063.2 §3.11 refers to a “Serious Mental Disorder or Condition (SMD)” as a condition characterized by a Qualified Health Care Provider (QHCP) after determining an individual in custody: a) Has a mental disorder that is causing serious limitations in communication, memory, or general mental and/or intellectual functioning ...or b) Is exhibiting ...active psychiatric symptoms and/or behavior...or: 2)...significant symptoms of a) Psychosis or Psychotic Disorder; b) Bipolar Disorder; c) Schizophrenia or Schizoaffective Disorder; d) Major Depressive Disorder with Psychotic Features; e) Dementia and/or a Neurocognitive Disorder; and/or Intellectual Development Disorder. For purposes of this investigation, we will use the term “SMI” to refer to both SMI and SMD.

agreements, a range of ICE detention standards, and further vary according to the specific provider(s) of mental health services.

To address the various issues implicated in these allegations, CRCL identified a representative sample of seven complaints to capture the types of allegations CRCL received from Fiscal Year (FY) 2020 – FY2023. Each complaint has been summarized below, with an emphasis on the allegations pertaining to intersection of mental health and segregation.

Per our process, CRCL previously opened and notified ICE of five of these investigations through complaint initiation documents related to the individual matters. The purpose of this memorandum is to notify you of the two additional complaints and to indicate that all seven complaints are now retained for the broader investigation.

ALLEGATIONS

As noted above, CRCL previously requested information related to the first five complaints summarized below. Accordingly, ICE is already aware of these matters and previously provided CRCL documents and other information related to these complaints,² however they are included in the description for clarity.

1. Complaint No. 001124-21-ICE

On July 2, 2021, CRCL received email correspondence from attorney (b) (6) on behalf of (b) (6), a noncitizen in ICE custody at ICA-Farmville in Farmville, Virginia. Allegedly, the noncitizen's mental health issues were not adequately evaluated and considered throughout the disciplinary process for a June 2021 incident resulting in disciplinary segregation. Specifically, his attorney stated that the noncitizen's conditions at the time of the incident included: "Chronic Post-Traumatic Stress Disorder, Unspecified Schizophrenia Spectrum and other Psychotic Disorder." Additionally, according to the detainee's attorney, the detainee was on hunger strike without psychiatric medication at the time of the incident.

2. Complaint No. 004341-22-ICE

On July 15, 2022, CRCL received a CRCL Form Complaint from the Florence Immigrant & Refugee Rights Project (FIRRP) on behalf of (b) (6) a noncitizen detained at Florence. The correspondence alleged that the noncitizen initially requested to be housed in segregation, away from the general population, due to ongoing mental health issues related to a prior sexual assault but was later placed in the Mental Health Unit for suicide watch. This was confirmed by ICE medical records. The complaint states that "[s]ince then, [the noncitizen] has been on suicide watch and has been boarding in the Mental Health Unit of administrative segregation" where he has not been able to make any legal calls, have legal visits, have access to his legal documents or send or receive mail.

3. Complaint No. 005725-23-ICE

² CRCL Complaint Nos. 001124-21-ICE, 004341-22-ICE, 005725-23-ICE, 005794-23-ICE and 006099-23-ICE.

On February 16, 2023, CRCL received correspondence from the ACLU of New Mexico regarding concerns about medical and mental health matters at Torrance. The correspondence alleged that, on or about January 28, 2023, a noncitizen attempted suicide by trying to throw himself off the balcony of a housing unit and that noncitizens “continue to be deterred from reporting intent to self-harm or suicidal ideation out of fear of being placed in isolation and subject to degrading conditions that cause their mental health to further deteriorate.”

4. Complaint No. 005794-23-ICE

On January 21, 2023, CRCL received email correspondence from (b) (6), an attorney with National Immigrant Justice Center (NIJC) on behalf of her client, (v) (6), a noncitizen detained at Prairieland Detention Center in Alvarado, Texas. The correspondence alleged the noncitizen has significant concurrent mental health issues, including major depressive disorder, bipolar disorder, post-traumatic stress disorder (PTSD), and schizophrenia, schizoaffective disorder, or psychosis and had not received adequate mental health care or disability accommodations. The correspondence also alleged the facility has placed the noncitizen in segregation based on his mental illness and that this resulted in the delay or discontinuation of important mental health medications. The correspondence further alleged that the noncitizen had on several instances refused to seek mental health care, or to report suicidal ideations, based on his fear of being placed in segregation.

5. Complaint No. 006099-23-ICE

On March 27, 2023, CRCL received correspondence from (b) (6) with the National Immigrant Justice Center on behalf of (b) (6) a noncitizen formerly in ICE custody at Sherburne County Jail in Elk River, Minnesota. The complaint alleged the noncitizen, who suffers from a MHD, was denied adequate mental health care and placed in segregation as a form of “treatment.”

As noted above, CRCL is opening the two complaints summarized below and retaining them as part of this investigation. CRCL has not yet requested information from ICE regarding these complaints but will do so in the Request for Information (RFI) submitted herewith.

6. Complaint No. 005783-23-ICE

On June 2, 2022, CRCL received a complaint from (b) (6) with NIJC on behalf of several noncitizens, including (b) (v) formerly detained at Dodge County Jail in Juneau, Wisconsin. The correspondence alleged that this noncitizen was diagnosed with bipolar disorder prior to detention, informed the facility of his condition at intake and requested medication, but never received a comprehensive mental health exam or medication duration his four-month detention. The correspondence also stated that the noncitizen was placed in some form of isolation five times during his detention without receiving any evaluation by a qualified mental health provider prior to placement, or appropriate monitoring during placement, resulting in the deterioration of the noncitizen’s mental health.

7. Complaint No. 006267-23-ICE

On April 27, 2023, CRCL received direct email correspondence from (b) (6) on behalf of (b) (6) a noncitizen detained at Moshannon Valley Processing Center (Moshannon) in Philipsburg, Pennsylvania. The correspondence alleged that the noncitizen had several concurrent SMIs, including bipolar disorder, anxiety, PTSD, and depression. According to the complaint, prior to his time in custody, the noncitizen attended therapy and was taking multiple medications to treat his mental illness but did not receive any therapy or his prescribed medications at Moshannon. The correspondence further alleged that, after filing a grievance against an officer, he was placed in solitary confinement for 30 days, with no explanation. Moreover, the same day he was released from segregation, he was placed back in solitary for being in an unauthorized area. This serial use of segregation appears to be the result of behavior stemming from his mental health issues. The noncitizen alleged that the stress of going back into solitary confinement so soon after release was too much for him to bear and, that evening, he attempted suicide.³

ADDITIONAL AREAS TO BE REVIEWED

The allegations discussed above relate to the segregation of individuals in ICE custody with a MHD and/or SMI. In addition to these allegations, it is possible that our investigation will reveal other matters of concern; if this occurs, we will inform you.

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; and,
- 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

³ The noncitizen's suicide attempt occurred on or about March 4, 2023, more than two months prior to CRCL receiving the correspondence. The noncitizen was subsequently released on July 18, 2023, and his proceedings were terminated.

rights, civil liberties, and profiling on the basis of race, ethnicity, or religion. The procedures for our investigations and the recommendations they may generate are outlined in DHS Management Directive 3500.

Access to information. More particularly, 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[e] cooperation by all agency employees;” and
- “Access[] documents and files that may have information deemed by CRCL to be relevant.”

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 issued pursuant to these authorities.

Privilege and required transparency. Our communications with DHS 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 recommendations.

SCOPE OF REVIEW

The purpose of our review is to 1) determine whether ICE has complied with applicable policies and procedures regarding the identification of individuals in ICE custody with a MHD and/or SMI; 2) determine whether ICE has complied with applicable policies and procedures related to the segregation of individuals in ICE custody with a MHD and/or SMI; 3) investigate the allegations in the complaints referenced; 4) determine if the facts we find suggest that the Constitution, a federal statute, or a Departmental policy has been violated; and 5) assess whether ICE should take any steps to address concerns found during the investigation.

QUESTIONS PRESENTED

(b) (5)

(b) (5)

INITIATING THE INVESTIGATION

CRCL has requested additional information in the RFI and may request additional information as the investigation proceeds. (b) (6) will be handling the review. We request that ICE schedule an initial discussion with Ms. (b) (6) as soon as possible. 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) by phone at (b) (6) or by email at (b) (6).

Enclosure

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