

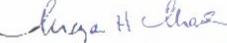


Homeland
Security

May 4, 2016

MEMORANDUM FOR: Sarah R. Saldaña
Director
U.S. Immigration and Customs Enforcement

Gwendolyn Keyes Fleming
Principal Legal Advisor
U.S. Immigration and Customs Enforcement

FROM: Megan H. Mack 
Officer for Civil Rights and Civil Liberties

Susan Mathias 
Assistant General Counsel (Legal Counsel)
Office of General Counsel

SUBJECT: Chippewa County Correctional Facility and
Calhoun County Correctional Facility
Complaint No. 09-12-ICE-0165¹

This memorandum discusses the outcome of the investigation conducted by the U.S. Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL), into conditions of detention for U.S. Immigration and Customs Enforcement (ICE) detainees at the Chippewa County Correctional Facility (Chippewa) in Sault Sainte Marie, Wisconsin, and the Calhoun County Correctional Facility (Calhoun) in Battle Creek, Michigan. Following a collaborative process between ICE and CRCL that focused on findings and recommendations made by CRCL's subject matter experts, CRCL considers the majority of the issues identified by the experts to be resolved. Consequently, as of the date of this memorandum, CRCL is closing the above-listed complaint.

Background (Chippewa): CRCL received a complaint alleging inappropriate use of force and discrimination by Chippewa correctional officials from January 12 to June 4, 2009.

On September 24, 2009, CRCL received a letter from the complainant alleging that on February 3, 2009, two Chippewa correctional officers shot him in the back with a TASER while he was lying face down in bed, causing injuries. The complainant claimed the incident caused him back pain and internal bleeding, that he was inappropriately placed in segregation following the

¹ Please note that we have omitted from this document Personally Identifiable Information (PII) relating to the subject referenced in this memorandum.

incident, and that he was denied medical attention for two days. The detainee stated that he did not pose a threat to correctional officials at the time of the incident, and that they later admitted the incident was the result of miscommunication.

The complainant also recalled an incident when a correctional officer allegedly threatened another detainee with murder by saying he would “take him out back and shoot him in the back of the head.” The complainant submitted a handwritten statement from that detainee.

Lastly, the complainant alleged issues with access to legal materials and telephone access, and medical care. The complainant raised concerns about the provision of medical care to black detainees as compared to white detainees. He referenced an incident in which a correctional official allowed a white detainee to take food with medication, but then denied the same to a black detainee. The complainant also stated that Chippewa medical officials take days to respond to requests and that many detainees are in need of medical care.

Background (Calhoun): The complainant also alleged issues with food service, access to legal materials, telephone access, and issuance and exchange of clothing, bedding, and towels. The complainant described a practice where detainees without clothing wrap themselves in bed sheets for up to eight hours while waiting to receive new uniforms.

The Investigation and Expert Recommendations

CRCL conducted site visits to Chippewa on March 1-2, 2010, and Calhoun on March 3, 2010. CRCL brought two subject matter experts on site, a medical doctor and a penologist. In August 2012, CRCL provided ICE with a memorandum that detailed the 16 recommendations made by the experts regarding Calhoun, and the 20 recommendations regarding Chippewa. The recommendations addressed medical care and general corrections. CRCL requested a response from ICE to the reports.

In a memorandum received by CRCL on March 16, 2015, ICE responded to the recommendations and provided comments to explain its responses. ICE either concurred or partially concurred with all 16 of the recommendations involving Calhoun.

A number of positive changes stemmed from CRCL’s Calhoun recommendations and ICE’s responses, including the following:

- CRCL recommended that “Calhoun should consider expanding its system for capturing, analyzing, and responding to errors from medication errors to all errors.” In its response, ICE concurred and reported that Calhoun has implemented a quality improvement (QI) program that reviews various topics for possible errors.
- CRCL recommended that “in the absence of the primary RN, intake physicals should be done by another RN or the physician, not an LPN.” In its response, ICE concurred and reported that “Intake physicals are completed by RNs. Licensed practical nurses (LPNs) are no longer conducting the intake physicals.”

CRCL recommended that (b) (7)(E)

ICE partially concurred with a CRCL recommendation that Calhoun involve health care staff (preferably mental health staff) in decisions which deprive detainees of liberty, such as a lockdown. In its response, ICE only agreed that medical staff should be engaged in the decision to segregate a detainee if it is based on a medical condition. CRCL expressed its disagreement to ICE in a November 25, 2015, memorandum, asking it to reconsider. In a December 21, 2015, response to this memorandum, ICE maintained its position, stating that the NDS does not require medical staff to be involved in all decisions involving segregation or lockdowns unless there is a known medical reason. CRCL continues to disagree with this position, but requires no additional response at this point regarding this recommendation. CRCL will continue to engage with ICE on this issue as opportunities arise.

Of the 20 expert recommendations CRCL made regarding Chippewa, ICE concurred or partially concurred with 19 and non-concurred with one. A number of positive changes stemmed from these recommendations and responses, including the following:

- CRCL stated that “[t]he most serious and pressing problem facing Chippewa is the quality of health care services provided by the physician. Based on my evaluation, the quality of care is well below the standard of care I would expect in this setting; most of the problems identified in this report flow from inadequate health care leadership.” In its response, ICE concurred and reported that “[f]ollowing the site visit, ICE hired a new health care provider that implemented staff and policy changes and passed NDS inspections in 2011 and 2013.”
- CRCL recommended that “Chippewa should develop a policy for detection and analysis of patient care errors and repair of errors found. This should be incorporated within a larger Continuous Quality Improvement program.” In its response, ICE concurred and reported that “In September 2012, Chippewa began a Quality Improvement (QI) program. The QI program consists of monthly reviews of medical records and other documents to identify areas needing improvement.”

ICE non-concurred with a recommendation to separate the health care portion of the booking intake screening from the rest of the intake screen and transfer it to the physician and health record. ICE stated that copies of the medical portion of the intake screening are provided to the medical staff to place into the medical records. CRCL requires no additional response to this recommendation.

Conclusion. Following the collaborative process described above, CRCL has concluded that this complaint will be closed. CRCL will continue to monitor allegations received from the detainee population at both facilities. We appreciate ICE’s collaboration with CRCL on these recommendations.

It is CRCL's statutory role to advise Department leadership and personnel about civil rights and civil liberties issues, ensuring respect for civil rights and civil liberties in policy decisions and implementation of those decisions. As a result, we appreciate the work that has been done by ICE, Calhoun, and Chippewa to address CRCL's concerns. We have taken into account this important work in addressing our concerns, and accordingly CRCL is formally closing the complaint identified in this memorandum. If you have any questions, please contact the Director of the Compliance Branch, Dana Salvano-Dunn, at (b) (6) or (b) (6) [REDACTED].

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