



Homeland
Security

May 4, 2016

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

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

Susan Mathias 
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SUBJECT: Otero County Processing Center Investigation
CRCL Complaint Nos. 11-06-ICE-0128; 12-02-ICE-0016;
12-02-ICE-0017

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 Otero County Processing Center (Otero) located in Chaparral, New Mexico. Following a collaborative process between ICE and CRCL that focused on findings and recommendations made by CRCL's subject-matter experts, CRCL considers the issues identified by the experts to be resolved. Consequently, CRCL has closed the complaint listed above.

Background: From March 13-15, 2012, CRCL conducted an onsite investigation of Otero to review medical and mental health care, environmental health and safety, conditions of detention, and correctional policies and procedures. As part of the onsite investigation, CRCL used four subject-matter experts: a medical consultant, a mental health consultant, an environmental health and safety consultant, and a penologist. As a result of detainee and staff interviews, direct observations, and document reviews, the subject-matter experts identified concerns regarding conditions at the facility. On December 4, 2012, CRCL provided ICE with a memorandum that detailed the 50 expert recommendations and best practices made by the experts following the site visit. Their recommendations addressed medical and mental health care, environmental health and safety, and conditions of detention.

In a memorandum dated January 6, 2015, ICE responded to the recommendations made by CRCL. ICE concurred or partially concurred with 42 of the 50 recommendations. ICE did not respond to eight of the recommendations because it identified them as best practices and not required by the 2011 Performance Based National Detention Standards.¹ Of the 42 recommendations to which ICE concurred or partially concurred, ICE provided adequate comments to explain its responses to and implementation of the medical and mental health care recommendations. The recommendations related to corrections fell into the best practices area and official concurrence was not required. However, ICE responded adequately to only 14 of the 21 environmental health and safety recommendations. In an effort to resolve the remaining issues, on December 8, 2015, CRCL requested additional information on the six recommendations that CRCL found the ICE responses to be incomplete.²

On December 21, 2015, ICE provided updated responses to 19 of the 21 environmental health and safety responses, including five of the six recommendations for which CRCL requested additional information. Based on these updated responses, CRCL believes that ICE has adequately addressed the environmental health and safety recommendations and has provided adequate comments to explain its responses and implementation.

Recommendations resolved and closed. Following the collaborative process described above, CRCL has concluded that ICE has adequately addressed the 50 expert recommendations. We appreciate ICE's collaboration with CRCL on these recommendations and would like to highlight the following examples of positive changes that stemmed from this work:

- Regarding medical care, CRCL recommended that Otero "strengthen its policies for medication refusal. These changes should consider situations in which fewer than three missed doses in a row or multiple non-consecutive misses trigger clinical action. Policies should also ensure that paperwork is handled in a consistent manner and monitoring should be implemented to assure that this happens. The changes should also eliminate the need for clinical judgments to be made by LVNs." In its response, ICE concurred, noting that "[o]n June 19, 2013, MTC Medical implemented a new process, to include relevant staff training, whereby an individual's first refusal of medication is properly documented on the refusal form and in the medical chart. A RN/LVN will then meet with the detainee to discuss the risks associated with refusing to follow the treatment/medication regimen with him/her. Any second refusal will be addressed in the same manner, but upon the third refusal for medical will be elevated and a physician or mid-level will address it with the individual. Additionally, on January 2, 2014, MTC Medical created a refusal log to facilitate the [Director of Nursing's] prompt review of each day's medication refusals in order to identify any 'red flags' that might require more immediate attention from a mid-level provider or physician. The IHSC FMC will continue to monitor the facility's management of medication refusals."

¹ ICE requested, and CRCL agreed, that ICE did not have to respond to Recommendations labeled as "best practices." These included Recommendations 15-17 in Medical Care, Recommendation 46 in Environmental Health and Safety, and Recommendations 47-50 in Detention.

² Recommendations 24, 36, 41, 43, and 44.

- Regarding mental health care, CRCL recommended that “[d]uring segregation rounds [Otero] officers should position themselves far enough during face-to-face private encounters, the officer should be positioned outside of the interview room unless closer observation is requested by the clinician or by consensus between security and the clinician if security is aware of a security concern.” In its response, ICE concurred, noting that “[a]s of January 2013, the segregation officer now stands far enough away so that he does not hear the conversation between the patient and the counselor yet close enough to rapidly respond in an emergent situation.” ICE went on to explain that “[w]hen the detainee is being seen in the clinician’s office, the escorting officers will remain outside of the office, but they will continue to observe the detainee through the door window.”
- Regarding environmental health and safety, CRCL recommended that Otero should “[i]nclude the shower squad on the housekeeping schedule, delineate their duties, and develop detailed written procedures for completing the tasks assigned to the shower squad.” In its initial response, ICE partially concurred, noting that the Otero “Housekeeping Plan requires that general cleaning tasks are regularly completed in the housing units, offices, dayrooms, restrooms, showers and sleeping areas, and ICE has confirmed that this routine cleaning is currently occurring.” ICE updated its initial response in the December 21 Memorandum explaining that ICE concurs with the recommendation and that the “Shower Squad tasks have been incorporated to the House Keeping Plan. All detainees receiving training concerning their duties and procedures for completing the required tasks upon acceptance into the volunteer worker program.”

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 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. This memorandum is our final report regarding Otero. If you have any questions, please contact the Director of the Compliance Branch, Dana Salvano-Dunn, at (b) (6) or (b) (6)

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