



Homeland
Security

April 8, 2020

MEMORANDUM FOR: Matthew T. Albence
Acting Director
U.S. Immigration and Customs Enforcement

Michael P. Davis
Executive Deputy Principal Legal Advisor
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U.S. Immigration and Customs Enforcement
(b)(6)

FROM: Cameron P. Quinn
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(b)(6)

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SUBJECT: Detention and Care of Pregnant Individuals by
U.S. Immigration and Customs Enforcement
Complaint Nos. 20-06-DHS-0433, 19-05-DHS-0180,
20-02-ICE-0124, 20-04-ICE-0273, 19-06-ICE-0269,
18-10-ICE-0491, and 17-12-ICE-0463

The Office for Civil Rights and Civil Liberties (CRCL) has opened complaints alleging that U.S. Immigration and Customs Enforcement (ICE) has violated the civil rights and civil liberties of pregnant individuals held in their custody. Allegedly, the standards governing the detention of pregnant individuals and the provision of their healthcare are insufficient and inconsistently applied, and where standards do exist, they are routinely violated. The purpose of this memorandum is to notify you of the complaints and describe the allegations, inform you that, consistent with its authority described below, CRCL will retain the complaints for investigation, and to explain how CRCL will work with ICE during our investigation.

As part of this investigation, consistent with its authority described in the CRCL and Scope of Review sections of this memorandum, CRCL will examine the allegations discussed below. Because the matters raise similar issues, CRCL will also look at the detention and care of pregnant individuals more generally to determine if the individual allegations are indicative of systemic civil rights and civil liberties violations. In order to accomplish this broad review, CRCL will:

1. (b)(5)

(b)(5)

2.

3.

4.

5.

Complaints

Complaint No. 20-06-DHS-0433

On March 4, 2020, CRCL reviewed a letter dated February 3, 2020, from Congressman Ron Wyden to Mark Morgan, CBP Acting Commissioner, and Matthew Albence, ICE Acting Director, regarding the treatment of pregnant migrants in ICE and CBP custody. Congressman Wyden stated that he traveled to the southern border in July 2019 and encountered a pregnant woman seeking asylum in the United States. According to Congressman Wyden, he was accompanied by a doctor at the Paso del Norte Port of Entry (POE) when the doctor quickly determined that the woman was in distress due to pregnancy-related complications and required immediate medical attention. Congressman Wyden stated that as he observed CBP officers process the woman and her family, he became concerned that she would not receive the medical care she needed in a timely manner. Congressman Wyden added, "Following my trip, I looked further into the treatment of pregnant women in detention facilities, including those managed by Immigration and Customs Enforcement (ICE) and I became increasingly concerned that this administration's revision of policies has only worsened a systemic problem."

Complaint No. 19-05-DHS-0180

On February 25, 2019, ICE and CBP issued a joint statement regarding a stillbirth in DHS custody. On February 22, 2019, while being processed for release, a 24-year-old Honduran woman later identified as (b)(6), went into premature labor and delivered a stillborn baby at the Port Isabel Detention Center (PIDC) in Los Fresnos, Texas. According to the statement, Ms. (b)(6) reported being six months pregnant at the time of her apprehension by the U.S. Border Patrol (USBP), shortly before midnight on February 18, 2019, near Hidalgo, Texas. While in USBP custody, she was taken to the hospital and cleared for release on February 21, 2019, after receiving two medical screenings. In the late afternoon on February 22, 2019, she was transferred to ICE custody to be processed for release. According to the statement, while being processed for release by ICE, she began complaining of abdominal discomfort and was examined by the ICE Health Service Corps (IHSC). The clinical director ordered that she be sent to the hospital and Emergency Medical Services (EMS) was called. At 27 weeks pregnant, Ms. (b)(6) delivered an unresponsive male infant

while still at the facility. The report states that IHSC initiated cardiopulmonary resuscitation (CPR) and EMS transported them both to the Valley Baptist Medical Center in Harlingen, Texas, where the infant was later pronounced dead. According to the statement, Ms. (b)(6) would remain in ICE custody awaiting medical clearance, after which time she would be released from custody.

Complaint No. 20-02-ICE-0124

On November 7, 2019, CRCL received email correspondence from The Dilley Pro Bono Project on behalf of (b)(6), a Resident at South Texas Family Residential Center (STFRC/"Dilley") in Dilley, Texas. According to The Dilley Pro Bono Project, Ms. (b)(6) was over seven-months pregnant, and had a history of pregnancy-related complications. Specifically, during a prior pregnancy, her child was born prematurely and died three days after birth. While detained at Dilley, Ms. (b)(6) reportedly experienced ongoing symptoms of concern which included nausea and fainting. Allegedly, Ms. (b)(6) was denied necessary specialty care and proper evaluation and assessment given her pregnancy symptoms, prior complicated pregnancy, and escalating symptoms that required evaluation from an obstetrician-gynecologist (OB/GYN).

The Dilley Pro Bono Project indicated that Ms. (b)(6) was scheduled for removal and had been cleared to fly based on IHSC's assessment. Their allegation stated, "We find this determination of particular concern, given consensus amongst the medical community that women in their third trimester should avoid flight, and long international flights in particular..." They also expressed concern that ICE was not complying with its policy of release in Ms. (b)(6) case, asserting that ICE policy prohibits the detention of individuals who are six months pregnant or more.

Complaint No. 20-04-ICE-0273

In January 2020, CRCL staff reviewed an article published by the North Jersey Record on June 25, 2019 titled, "Deportation halted for pregnant woman who was held at Bergen County Jail." According to the article, (b)(6)¹, a 33-year-old pregnant Guatemalan national, was arrested by ICE in April 2019 on an order of removal issued in December 2004. Further, (b)(6), one of Ms. (b)(6) legal representatives, claimed that Ms. (b)(6) found out she was pregnant while detained in ICE custody, and alleged that she was "treated poorly" while in ICE custody at Bergen County Jail. Allegedly, Ms. (b)(6) was seen by an OB/GYN for the first time in mid-June 2019. In the article, Ms. (b)(6) stated, "She (b)(6) has not been given certain meals, she has been denied medical care, and she said yesterday they weren't even giving her water. She is three months pregnant and has been having a really difficult time in detention in pretty horrific conditions."

¹ (b)(6)

Complaint No. 19-06-ICE-0269

On March 12, 2019, CRCL received email correspondence from The Dilley Pro Bono Project on behalf of ten former Residents at South Texas Family Residential Center (STFRC/“Dilley”) in Dilley, Texas. According to The Dilley Pro Bono Project, there is no gynecologist on staff at Dilley, pregnant women are often denied OB/GYN appointments, and the few that see an OB/GYN must travel over 70 miles from the facility to do so. She reported the following allegations below specific to individuals provided medical care at Dilley:

1. (b)(6) arrived at Dilley on or around February 22, 2019, while she was approximately two months pregnant. She reportedly informed medical personnel at Dilley that while traveling through Mexico, she had experienced vaginal bleeding, had to be hospitalized, and almost lost her baby. Facility medical staff allegedly told her she needed to see a gynecologist, but that there wasn’t one available at the facility.

2. (b)(6) arrived at Dilley on or around February 21, 2019, while she was approximately three months pregnant. Allegedly, she was not allowed to keep pain medication in her room to treat her severe daily headaches and when she went to the medical unit to request care, she was told to return the following day.

3. (b)(6) arrived at Dilley on or around November 3, 2018, while she was approximately five months pregnant. Allegedly, she was taken to the hospital due to a urinary tract infection so serious that she was bleeding. The doctor reportedly told her that her baby's life was at risk from the infection, but ICE allegedly did not take appropriate action.

4. (b)(6) arrived at Dilley on or around October 1, 2018, while she was approximately one month pregnant. She reportedly experienced extreme pregnancy-related symptoms requiring specialized care beyond the facility’s capabilities.

Dilley Pro Bono provided additional information for several other individuals who reportedly had high-risk pregnancies and pregnancy-related symptoms such as nausea; however, allegations of inadequate medical care were not specified.²

Complaint No. 18-10-ICE-0491

On July 13, 2018, CRCL received an email referral from the DHS OIG regarding (b)(6) (b)(6), a 38-year-old Honduran national and ICE detainee at Glades County Detention Center in Moore Haven, Florida. In a call to the OIG hotline on June 21, 2018, Ms.(b)(6) claimed that she was four months pregnant and alleged mistreatment at the facility. Specifically, Ms.(b)(6) made the following allegations: 1) an ICE officer twisted her arm behind her back forcing her to walk even though she alerted the officer she was pregnant and in pain; 2) pregnant women are not served enough food; 3) she received verbal and sexual threats from other female detainees in her cell and was denied a cell transfer; and, 4) she

² (b)(6)
(b)(6)

- 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. Specifically, CRCL is charged under 42 U.S.C. § 2000ee-1(a)(2) 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”. 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.” 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 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.” The procedures for CRCL 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 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.”

Additionally, DHS Instruction 046-01-002 (V)(B)(2) provides Component Heads are to ensure that CRCL is given access to information, material, and personnel determined by CRCL to be necessary to carry out or review investigations. This memorandum serves as a request for information or assistance pursuant to § 3.3 of ICE Directive 8010.1 "Administration and Management of Inquiries from the Office for Civil Rights and Civil Liberties."

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 Web site—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 on 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 by ICE 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.

QUESTION(S) PRESENTED

(b)(5)

INITIATING THE INVESTIGATION

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