



Homeland
Security

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

Michael P. Davis
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FROM: Cameron P. Quinn (b)(6)
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SUBJECT: CRCL Complaint No. 20-05-ICE-0381
ICE's Oversight Concerning the Use of Segregation

CRCL seeks to assess ICE's segregation oversight program and provide policy recommendations, if warranted, to help the Department ensure that its segregation oversight is complete, in accordance with requirements, and fulfilling the stated goal that, "[p]lacement in segregation should occur only when necessary and in compliance with applicable detention standards. In particular, placement in administrative segregation due to a special vulnerability should be used only as a last resort and when no other viable housing options exist."¹

BACKGROUND

In Fiscal Year (FY) 2013, the U.S. Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL) collaborated with the U.S. Immigration and Customs Enforcement (ICE) to conduct a full assessment of the use of segregation in ICE detention facilities. Following this review, on September 4, 2013, ICE promulgated a national directive on the Review of the Use of Segregation for ICE Detainees (Segregation Directive), Directive 11065.1. ICE and CRCL thereafter worked to develop an effective reporting and tracking mechanism, as well as guidance to implement the requirements of the Segregation Directive. In

¹ ICE Directive 11065.1, "Review of the Use of Segregation for ICE Detainees," September 4, 2013, Section 2. Policy, pg. 1.

addition to calling for improved reporting and tracking mechanisms, the Segregation Directive established a new segregation subcommittee of the Detention Monitoring Council (DMC) to ensure effective, timely and comprehensive review of the segregation reports. Under the Directive, a representative of CRCL may request to participate in the subcommittee meetings.² Over the succeeding years, CRCL has monitored the implementation of the Segregation Directive and provided regular feedback to ICE on the placement of individual detainees in segregated housing, including by facilitating the convening of the segregation subcommittee of the DMC to discuss systemic issues through the lens of individual cases.³

In FY 2016, following the issuance of the Department of Justice’s “Report and Recommendations Concerning the Use of Restrictive Housing,” CRCL worked collaboratively with ICE to incorporate the DOJ recommendations into ICE policy and procedures related to the use of segregation. As part of this effort, CRCL worked with ICE to incorporate the DOJ recommendations into ICE’s 2016 revision of the 2011 Performance-Based National Detention Standards (PBNDS). In FY 2017 and FY 2018, CRCL participated in ICE’s working group to update and streamline the National Detention Standards (NDS), which included working with ICE to strengthen the civil rights and civil liberties protections in the NDS standards governing the use of segregation.⁴

Separate from the Directive, CRCL continues to regularly investigate segregation-related allegations in individual complaint investigations, as well as during facility onsite investigations.⁵

² “CMD and ODPP shall co-chair a subcommittee of the DMC that will ensure an effective, timely and comprehensive review of the segregation reports sent to Headquarters from the FODs. The subcommittee shall include representatives from ERO Field Operations, IHSC, the ICE Office of the Principal Legal Advisor, the Office of Professional Responsibility, and the ICE Office of Acquisition Management. A representative from the DHS Office for Civil Rights and Civil Liberties (CRCL) may participate in subcommittee meetings as CRCL deems appropriate, but CRCL shall not use information ICE shares with CRCL pursuant to such participation in any CRCL investigation or inquiry.” See Segregation Directive, Section 7.5.1, Detention Monitoring Council, pg. 10.

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⁴ The 2019 NDS were subsequently implemented on March 1, 2020.

⁵ Per the complaint process, incoming allegations related to segregation are processed and reviewed as potential complaints, and a subset of those are opened and investigated, possibly resulting in recommendations to ICE. As part of CRCL’s onsite investigations at ICE detention facilities, CRCL typically has a corrections expert review the

Given the various policy changes, increased tracking needs, and requirements for heightened oversight from ICE Headquarters (HQ) concerning the use of segregation since the issuance of the Segregation Directive, CRCL is conducting a periodic review of ICE's segregation oversight. This review will focus on how ICE HQ and ICE field offices have implemented the requirements of the Segregation Directive, related policies and procedures, and ICE's oversight of facility-level requirements, including those from the ICE's detention standards. The purpose of this memorandum is to explain how CRCL will work with you during this investigation.

CRCL is undertaking this review pursuant to its authority under 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1.

FOCUS OF THE REVIEW

This review will assess the overarching framework of ICE's segregation oversight program and how ICE personnel are executing requirements from the Segregation Directive, as well as the detention standards. This review will also consider how ICE has carried out the requirements of the Segregation Directive and has monitored compliance with the detention standards in response to several individual cases involving segregation placements.

At a minimum, this review will assess the implementation of relevant requirements from the following policies and standards:

1. Segregation Directive
2. PBNDS 2011, 2016 Revisions
 - a. 2.12, Special Management Units
 - b. 3.1, Disciplinary System
 - c. 4.6, Significant Self-harm and Suicide Prevention and Intervention
3. PBNDS 2008
 - a. Special Management Units
 - b. Disciplinary System
 - c. Suicide Prevention and Intervention
4. NDS 2019
 - a. 2.9, Special Management Units
 - b. 3.1, Disciplinary System
 - c. 4.5, Significant Self-harm and Suicide Prevention and Intervention

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:

facility's use of segregation from a systemic perspective. These investigations are followed by expert recommendations to ICE addressing any issues found.

- 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 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 determine if ICE is implementing requirements as directed in the Segregation Directive and other ICE policies; if the Constitution, a Federal statute, a Federal regulation, or a Departmental policy has been violated; what steps, if any, should ICE take to improve its oversight concerning the use of segregation; and what steps, if any, should DHS take to address any individual segregation placements that may be found to be in violation of ICE policy and procedures, both individually (if the matter is ongoing) and as a matter of policy.

QUESTIONS PRESENTED

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INITIATING THE INVESTIGATION

CRCL has taken steps to begin its review of a collected sample of segregation placements. These cases represent different aspects of the segregation program and have been selected to assist CRCL in assessing the success of the current ICE segregation oversight program. In addition, CRCL will request additional information and/or request interviews as the investigation proceeds.

At this time, we request that ICE schedule initial discussions with Senior Policy Advisors Donnesha Correll and Elena Feroz as soon as possible related to our complaint and the plans to review this matter. We look forward to working together. If you have any questions, please do not hesitate to contact Ms. (b)(6) at (b)(6) and Ms. (b)(6) at (b)(6)

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