



Homeland
Security

August 25, 2016

MEMORANDUM FOR: Thomas Homan
Executive Associate Director
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement

FROM: Tamara J. Kessler *TJK*
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SUBJECT: Expert Recommendations Memorandum—Theo Lacy Facility
Complaint Nos. 15-07-ICE-0478, 15-10-ICE-0576, 15-10-ICE-
0707, 15-12-ICE-0618, and 15-12-ICE-0659

The U.S. Department of Homeland Security's (DHS) Office for Civil Rights and Civil Liberties (CRCL) is conducting an investigation into conditions of detention for U.S. Immigration and Customs Enforcement (ICE) detainees at the Theo Lacy Facility (TLF) in Orange, California. In response to the complaint allegations summarized below, and consistent with CRCL's overall concern with facility operations in relation to civil rights and civil liberties issues, CRCL conducted an onsite investigation at TLF on December 8, 2015.

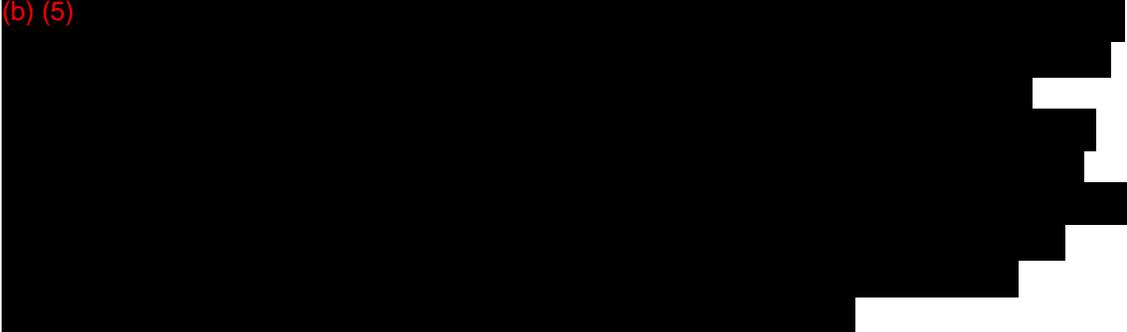
On April 15, 2015, CRCL received notice from ICE regarding the death of an individual who was detained at TLF for over two years. Immediately prior to his death, the detainee was transferred from TLF to the Adelanto Detention Facility (ADF), located in Adelanto, California. Additionally, between April and September 2015, CRCL received five separate complaints involving TLF alleging verbal and physical abuse of detainees by TLF officers, as well as raising allegations of inadequate medical care, recreation, access to telephones, and law library. CRCL also received allegations reporting inappropriate responses to use of force incidents, and overuse of segregation at TLF.

We greatly appreciate the cooperation and assistance provided by ICE and TLF personnel before and during the onsite. As part of the TLF investigation, CRCL engaged the assistance of two subject-matter experts: a corrections expert, and a medical expert. As a result of detainee and

TLF staff interviews, document and record reviews, and direct observation, the subject-matter experts identified concerns regarding detention conditions and medical care at the facility. At the conclusion of the CRCL onsite on December 8, 2015, as part of the exit-briefing for TLF senior management and ICE ERO field office management, CRCL and the subject-matter experts discussed the investigation findings and provided recommendations to address the concerns.

Recommendations¹

Corrections

1. (b) (5) 
2. (b) (5) 
3. TLF fails to meet the 2008 PBNDS SMU Standard requiring maintenance of critical SMU daily housing records, which must record the daily security and welfare checks of detainees housed in the SMU during medical rounds and when meals are served. They must also document whether and when showers, recreation, telephones, and law library access was provided. These records are mandated by the 2008 PBNDS in order to protect the health and welfare of the ICE detainees. A sample review of TLF detainee detention files for ICE detainees in the SMU were either missing required SMU records, or contained incomplete SMU records (e.g. Form I-888 or its equivalent). To correct this violation, TLF must maintain the required SMU records and also ensure the records are placed in the detainee's permanent detention file upon release from the SMU. (2008 PBNDS: SMU)

¹ In general, CRCL's experts relied on the applicable 2008 Performance-Based National Detention Standards (PBNDS 2008) for the TLF onsite as they were the standards the facility is contractually obligated to implement.

4. TLF fails to include all documents, forms and other required information related to the detainee in the detention file as mandated by the 2008 PBNDS Detention Files Standard. The Standard requires facility staff to add all documents in the detainee's detention file that are associated with normal operations during the detainee's stay at the facility. The reviewed detention files did not contain the mandated documentation, including the Release Order, Individual SMU Housing Record, Form I-888 (or equivalent), and other records for those detainees held in the SMU for either disciplinary or administrative reasons. TLF must correct this violation and ensure detainee's files are maintained in conformance with the Standard. (2008 PBNDS: Detention Files)
5. TLF fails to forward the detainee's entire SMU record and attached Segregation Orders to the Chief of Security for inclusion in the detainee's detention file when the detainee is released from the SMU, as required by the 2008 PBNDS. The 2008 PBNDS SMU Standard mandates that upon a detainee's release from the SMU, the releasing officer shall attach the detainee's entire SMU housing unit record to either the Administrative Segregation Order, or the Disciplinary Segregation Order, and forward it to the Chief of Security for inclusion in the detainee's detention file. TLF must correct this violation and ensure maintenance of all documentation related to ICE detainees housed in the SMU, and then placement and retention of that documentation in the detainee's detention file, in compliance with the Standard. (2008 PBNDS: SMU)
6. TLF refused to provide CRCL with information and records requested for the investigation of ICE detainee complaints reporting TLF staff mistreatment and retaliation, even though this is mandated by the 2008 PBNDS and federal authority. The Orange County Sheriff's Department (OCSD) *denied* CRCL access to this information during the investigation based on California's Peace Officers Bill of Rights (POBOR) constraints.² This denial of CRCL's legitimate request prevented CRCL from completing an authorized review of allegations. ICE must ensure the OCSD provides all information relevant to the detention of ICE Detainees when requested. (2008 PBNDS: Grievance System, Use of Force and Restraints, 42 U. S. C. § 2000ee-1, Management Directive 3500).

7. (b) (5) 

² West's Ann. Cal. Gov. Code § 3303

8. (b) (5) [REDACTED]
9. (b) (5) [REDACTED]

Medical Care

10. CRCL found lapses in medical care at TLF, including lapses in the medical care that was critical to the detainee who died soon after his transfer to ADF. Though TLF has recognized those voids and made significant improvements, TLF must ensure those improvements are ongoing and include tracking and coordination of care for those detainees with complex and serious health problems. The medical unit should continue with development of the chronic care unit, develop policies and procedures that the new unit must follow in order to track chronic care needs, and determine who will provide leadership oversight to ensure lapses in care do not reoccur in the future. (2008 PBNDS: Medical Care)
11. TLF failed to send the critically ill detainee's medical records with him when he was transferred to ADF, in violation of the 2008 PBNDS Medical Care Standard. Had TLF adhered to the Standard's requirements and ensured those records arrived at ADF with the detainee, the ADF medical unit may have been able to provide the appropriate medical care that the detainee needed but did not receive while at TLF. TLF must follow the 2008 PBNDS by ensuring that the required medical records always accompany ICE detainees when they are transferred to other detention facilities. (2008 PBNDS: Medical Care, Transfer of Detainees)

Enclosed with this memorandum are the full reports and recommendations prepared by the two subject-matter experts. The above list of recommendations are compiled from those reports.

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. We look forward to working with ICE to determine the best way to resolve the findings and recommendations. We request that ICE provides your concur or non-concur response to CRCL within 60 days of receipt of this memorandum. If you concur, please include an action plan. You may send your response by email. If you have any questions, please contact Senior Policy Advisor (b) (6) [REDACTED] by telephone at (b) (6) [REDACTED] or by email at (b) (6) [REDACTED]

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Enclosures

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