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March 21, 2023

VIA ELECTRONIC AND PRIORITY MAIL

Katherine Culliton-González
Shoba Sivaprasad Wadhia
Office for Civil Rights and Civil Liberties
Compliance Branch, Mail Stop #0190
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave SE
Washington, D.C. 20528-0190
CRCLCompliance@hq.dhs.gov

Joseph V. Cuffari
General Office of the Inspector General, Mail Stop #0305
U.S. Department of Homeland Security
245 Murray Lane SW
Washington, D.C. 20528-0305
dhs-oig.officepublicaffairs@oig.dhs.gov

David Gersten
Office of the Immigration Detention Ombudsman
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave SE
Washington, D.C. 20528
david.gersten@hq.dhs.gov

**RE: Ongoing Abuse at Orange County Correctional Facility
Supplement to Complaints Filed February 17, 2022 and April 20, 2022**

Officers for Civil Rights and Civil Liberties Culliton-González and Wadhia, Inspector General Cuffari, and Ombudsman Gersten:

Brooklyn Defender Services, Catholic Charities Community Services – Archdiocese of New York, Envision Freedom Fund, For the Many, Freedom for Immigrants, New York Lawyers for the Public Interest, and NYU Law Immigrant Rights Clinic write to supplement previously-submitted complaints filed on February 17, 2022 and April 20, 2022, seeking redress for ongoing civil rights violations against

people detained at Orange County Correctional Facility (“OCCF”).¹ This supplement is supported by information regarding the recent experiences of several individuals recently detained at OCCF, “Ms. Q”, “Ms. G”, and “Mr. D”.² Interviews with these individuals and further information, such as medical records, are available upon request to the signatory organizations, which include their counsel of record. **We request a response in writing within one week detailing a remedial plan of action.**

As the accounts of Ms. Q, Ms. G, and Mr. D describe, Immigration and Customs Enforcement (“ICE”) and OCCF continue to violate the rights of people detained at OCCF. These rights include access to adequate medical care, access to safe and nutritious food, and nonpunitive and safe conditions.³ Moreover, ICE and OCCF continue to violate the agency’s own National Detention Standards (“NDS”), which similarly prohibit discrimination, excessive use of force, improper use of solitary confinement, and medical neglect, and also mandate sanitary and safe conditions.⁴

In response to the inaction of DHS and OCCF, detained people, advocates, and government officials have continued to challenge the abuses endemic to the facility. For example, on July 29, 2022, activists rallied in Foley Square, calling for the release of detained immigrants at OCCF and condemning the retaliatory transfers of roughly 70 people, including many who participated in the February and April 2022 complaints to your offices.⁵ On January 18, 2023, activists and community members gathered in Foley Square to amplify the story of Ms. Q, who was detained in OCCF and faced retaliation for speaking up about the atrocities of ICE detention.⁶

The flagrant violations of detained individuals’ rights and liberties described in the February and April 2022 complaints and supplemented herein require immediate action from DHS. We therefore restate the recommendations made in the February and April complaints. CRCL should, pursuant to its authority under 6 U.S.C. § 345, immediately recommend:

1. Release of all individuals detained at OCCF to their communities;
2. Termination of ICE’s Intergovernmental Services Agreement (“IGSA”) with OCCF; and
3. Pending release and termination of the IGSA, investigation of the conditions detailed herein, including medical abuse and neglect, inadequate food and nutrition, and abuse of power.

¹ Catholic Charities et al., Civil Rights and Civil Liberties Compl. (Feb. 17, 2022),

https://www.law.nyu.edu/sites/default/files/OCCF%20Multi-Organization%20DHS%20CRCL%20Complaint%20and%20Index_2%2017%202022.pdf [hereinafter Feb. Compl.];

Catholic Charities et al., Civil Rights and Civil Liberties Compl. (Apr. 20, 2022),

https://www.law.nyu.edu/sites/default/files/2022.04.20%20CRCL%20Complaint%20Supplement_File%20Copy.pdf [hereinafter Apr. Compl.].

² The real names and any identifying information of detained people have been anonymized to protect them from potential retaliation.

³ See *Zadvydas v. Davis*, 533 U.S. 678, 694 (2001); *Charles v. Orange Cty.*, 925 F.3d 73, 85 (2d Cir. 2019); see also *Cruz v. Beto*, 405 U.S. 319, 321 (1972); *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244 (1983); Feb. Compl. 2 n.2.

⁴ See U.S. Immigration and Customs Enforcement, 2019 National Detention Standards for Non-Dedicated Facilities §§ 1.1, 2.8, 2.9, 3.1, 4.3 (2019), <https://www.ice.gov/detain/detention-oversight/2019> [hereinafter NDS 2019] (setting forth standards for environmental health and safety, use of force and restraints, special management units, disciplinary system, medical care, and religious practice).

⁵ *Protest Against Movement of ICE Detainees in Orange County* (CBS N.Y. television broadcast, July 29, 2022),

<https://www.cbsnews.com/newyork/video/protest-against-movement-of-ice-detainees-in-orange-county/>.

⁶ Envision Freedom Fund (formerly BKBailFund) (@EnvFreeFund), Twitter (Jan. 18, 2023, 2:24 PM),

<https://twitter.com/envfreefund/status/1615792360906194945?s=46&t=j1zXZIEb49Dx5UUpCqbiZA>.

I. Medical Neglect and Abuse

The pattern and practice of medical indifference at OCCF—which violate constitutional protections⁷ and the NDS⁸—have made detained people fear that ICE and OCCF do not care about their lives. Multiple accounts, relayed in our February and April 2022 complaints, confirmed that requests for medical attention regularly go unanswered, and medical treatment is often delayed and inadequate. Those reports indicated that ICE and OCCF are in clear violation of the agency’s own detention standards requiring comprehensive, routine and preventative healthcare, specialty healthcare, and timely responses to medical complaints, among other forms of access to appropriate medical, dental, and mental health care.⁹ The NDS provide that detained people shall receive “[c]omprehensive, routine and preventive health care”, “[e]mergency care”, “[s]pecialty health care”, and “[t]imely responses to medical complaints.”¹⁰ The NDS also provide that medication must be delivered with “specific instructions” and the staff must “keep written records of all medication” distributed to detained people.¹¹ Furthermore, the NDS state that detained people shall receive “[s]taff or professional language services necessary to allow for meaningful access for detainees with limited English proficiency (LEP), and effective communication for detainees with disabilities, during any medical or mental health appointment, sick call, treatment, or consultation.”¹² Moreover, as noted below, detained people cannot be subjected to retaliation or punishment for seeking to assert their rights.¹³

Despite both entreaties and demands from activists, advocates, and family members of those detained,¹⁴ ICE and OCCF continue to fall short of these self-promulgated standards for medical treatment. For example, Ms. Q is a longtime New York resident who was re-detained by ICE at OCCF in December 2022 following her outspoken criticism of her treatment by ICE and her filing of a Federal Tort Claims Act notice of claim against ICE for fracturing her ankle in 2021.¹⁵ Since her re-detention in December 2022, Ms. Q suffered a serious decline in her physical and mental health. ICE shackled Ms. Q tightly around the ankle they previously fractured, exacerbating her chronic pain. ICE and OCCF also have refused to provide Ms. Q with access to psychiatric medication for her Post-Traumatic Stress Disorder and related mental health issues. Ms. Q filed a lawsuit against ICE for their action that alleges in relevant part deliberate indifference to her serious medical needs. As detailed in that lawsuit, Ms. Q alerted medical personnel at OCCF and ICE of her physical and mental health needs but has been provided with inadequate care. Most alarmingly, despite being on alert of the psychological counseling and psychiatric medication she was receiving prior to her re-detention, ICE and OCCF have provided Ms. Q with no therapy or medication since they have imprisoned her, despite multiple sick call slips and requests for treatment. A survivor of multiple traumas including childhood sexual abuse, Ms. Q requires treatment and medication to address the anxiety, depression, night terrors, panic attacks, and insomnia she faces as a result of her Post-Traumatic Stress Disorder. Two independent evaluations have confirmed that ICE and OCCF’s lack of care has led to

⁷ See generally *Estelle v. Gamble*, 429 U.S. 97 (1976).

⁸ See NDS 2019, *supra* note 4, at 112 (Standard 4.3, Medical Care) (stating that detained people should receive “medically necessary and appropriate medical, dental and mental health care and pharmaceutical services,” as well as “timely responses to medical complaints”).

⁹ See NDS 2019, *supra* note 4, at 112, and see *Apr. Compl.*.

¹⁰ NDS 2019, *supra* note 4, at 112.

¹¹ *Id.* at 117.

¹² *Id.* at 112, 115.

¹³ *Id.* at 95.

¹⁴ See, e.g., New York Lawyers for the Public Interest, Still Detained and Denied: The Health Crisis in Immigration Detention Continues, <https://nylpi.org/wp-content/uploads/2020/04/NYLPI-report-Detained-Denied.pdf> (last accessed Feb. 17, 2023).

¹⁵ Ms. Q was granted her freedom on bond on March 16, 2023. She remains available to meet with investigators about her experience at OCCF.

a predictable deterioration of her mental health. These needs, coupled with the punitive conditions of confinement described below, violate her constitutional rights and even the most minimum standards of care.

Ms. G similarly reports inadequate medical care throughout the duration of her detention at OCCF, which began in November 2022. When Ms. G arrived to OCCF, she had already been experiencing severe and constant headaches for a period of many months. These pains began while she was detained in federal custody (November 2021-November 2022) and as a result of a head injury she experienced from a fall. Ms. G's repeated requests for medical care at OCCF were often dismissed, ignored, or met with extreme disdain by staff. One staff member reprimanded Ms. G for submitting too many requests for medical attention and told her there were not enough doctors or nurses to meet the needs of all those detained. Ms. G also struggled to communicate her medical needs and concerns to staff due to language barriers and animosity from non-Spanish speaking staff. OCCF was prescribing Ms. G medication, but its purpose was not communicated to Ms. G in a manner or language she could understand. Ms. G was under the impression that the medication she was taking was for her headaches. Later, she came to learn that OCCF may have been giving her the wrong medication. In February 2022, Ms. G was informed by OCCF staff that they staff had mistakenly prescribed and given her medication for diabetes and other conditions Ms. G was not suffering from. This infuriated and terrified Ms. G. She explains that she felt ill, had nausea and sometimes vomited after she took the misprescribed medication. As explained in more detail below, OCCF later reprimanded and disciplined Ms. G for having the very medication that OCCF had incorrectly prescribed to her.

Mr. D also has struggled to receive care for the duration of his time at OCCF. He began experiencing vision loss while at Hudson County Jail in New Jersey. When he was transferred to OCCF, he was initially prescribed glasses. However, in late August or September 2022 his vision in his right eye had largely degraded. His attorney exchanged emails with ICE about securing medical care. Mr. D then had an MRI on February 2, 2023, which according to the associated medical records, diagnosed Mr. D with a brain cyst and loss of eyesight. When his attorney called Mr. D to discuss the results, nobody had yet informed Mr. D that he has a brain cyst—even though the jail had known for nearly two weeks by that date—and Mr. D was unaware if there would be any follow-up appointments. Mr. D also reported ongoing headaches. Mr. D's attorney subsequently emailed ICE about the problem and requested release due to the lack of care. Several days later, OCCF sent Mr. D to see a doctor. The doctor made referrals for multiple evaluations, including follow-up care within a couple weeks. Aside from a radiology scan, none of these appointments had occurred as of four weeks later, although he later was scheduled for several appointments. His loss of vision and brain cyst remain untreated. Soon after finding out about the brain cyst, Mr. D spoke to a deportation officer and asked if he would receive surgery. The deportation officer told him that his health problems were not serious and that he would only receive surgery if it were a matter of life or death. He is nearly blind in his right eye and continues to feel constant intense headaches. Mr. D went months with no regular medication for his headaches until March 17, 2023. He put in medical slips to request treatment for his pain without any response from the jail during this time..

In addition to his vision and brain conditions, Mr. D has experienced profound pain in his right arm in December 2021. The pain was so bad that he was unable to hold a cup. OCCF gave him ibuprofen only after three weeks, despite him turning in multiple slips for medical attention. OCCF eventually performed a blood test on Mr. D and determined that he had a vitamin D deficiency, for which the jail gave him supplements. However, OCCF eventually stopped giving him the vitamin D supplements.

Finally, Mr. D injured his leg in or around June 2022 in the recreation yard. OCCF sent him to the hospital for an x-ray because his leg was too swollen to determine if his leg was broken. The nurse at OCCF told Mr. D that he was supposed to receive another x-ray, but OCCF never sent him to receive another. Mr. D was also supposed to receive ice everyday for the swelling. However, he was only given ice two times despite being in recovery for eight days.

II. Other Violations of Health and Safety Standards Regarding Food Services and Nutrition due to Deplorable Conditions

People detained at OCCF continue to report suffering in unsanitary, unsafe conditions with inadequate access to nutritious food. These issues persist despite NDS requirements to the contrary.¹⁶ For example, the NDS require that “[f]ood is fit for consumption and appropriately presented” and that the facility “base menu selections on a nutritional program meeting or exceeding minimum U.S. recommended daily allowances.”¹⁷

Mr. D previously worked in the kitchen. He reported that, prior to the change in food service, he observed problems with the food served to detainees, namely that the food was rotten and expired. Mr. D noticed in January 2023 that OCCF was serving chicken that had expired in July 2022, and on February 25, 2023 he noticed chicken that expired in June 2022. Mr. D noticed that some of the chicken was green, and that when he cooked some meat he could smell it had gone bad.

Mr. D’s account is confirmed by Ms. G and Ms. Q, who were alerted of the expired and rotten food. Ms. G reports feelings of horror and disgust after learning about the repulsive and unacceptable food being provided to those detained at OCCF. Ms. G also explains that after she was warned about the inedible food (around January 2023), she tried to only eat items purchased from the commissary. Ms. G reports that as of early March 2023, there was a positive change in the food at OCCF and more options became available. Ms. Q similarly reports that prior to the change in food in March 2023, the food served to her has been inedible and her medical records demonstrate that she has experienced periods of stomach aches and nausea at OCCF. Like Ms. G, Ms. Q has been forced to rely on commissary funds to purchase expensive pre-packaged food to prevent hunger, and has lost a significant amount of weight since being detained at OCCF. Even reliance on commissary foods has proven difficult because all women in her unit have been denied access to the microwave during periods when a small number of women in the unit (not under ICE custody) have been disciplined for fighting.

III. Abuse of Power, Retaliation, and Culture of Impunity

People detained at OCCF report that the response to their complaints about food, healthcare, safety, and hygiene has been scorn, dismissal, and even retaliation rather than the swift corrective action that these conditions warrant. Indeed, OCCF officials have gone so far as to suppress efforts of concerned detainees to spread awareness of unsafe conditions to their peers. Finally, OCCF has abused its power to impose solitary confinement and strip searches on people in ICE custody, including vulnerable individuals.

These actions violate ICE’s detention standards. The NDS provide that detained people should be free of “personal abuse . . . and harassment.”¹⁸ The NDS explicitly require that “[d]isciplinary action may not be capricious or retaliatory.”¹⁹ Furthermore, the NDS state that “[s]taff will not harass, discipline, punish, disclose sensitive information about, or otherwise retaliate against a detainee lodging a complaint” through the facility’s grievance procedures.²⁰ NDS also provide that “[d]etainees may not be subjected to

¹⁶ See NDS 2019, *supra* note 4, at §§ 1.1, 4.1, 4.4, 5.1, 5.2 (setting forth standards for Environmental Health and Safety, Food Service, Personal Hygiene, Correspondence and Other Mail, and Recreation). Among other violations of these NDS requirements, ICE and OCCF have failed to “ensure appropriate temperature [and] air and water quality;” to “provide [detained people] with nutritious, attractively presented meals;” and to “provide[] clean clothing, linen, blankets, and towels...” *Id.* Disturbingly, ICE has also violatively “reduced or changed or used [food] as a disciplinary tool...” *Id.*

¹⁷ NDS 2019, *supra* note 4, at 98-99.

¹⁸ NDS 2019, *supra* note 4, at 95.

¹⁹ NDS 2019, *supra* note 4, at 91.

²⁰ NDS 2019, *supra* note 4, at 183.

reprisals, retaliation, or penalties because of a decision to seek judicial relief on any matter, including: 1. The legality of their confinement; 2. The legality of conditions or treatment while under detention; 3. An issue relating to their immigration proceedings; or 4. Any allegation that the Government is denying rights protected by law.”²¹

Moreover, the heavy reliance on isolation and lock-ins at OCCF violates the NDS as well. An individual can only be placed in administrative segregation under limited circumstances, including when “the detainee’s continued presence in the general population poses a threat to life, property, self, staff, or other detainees; for the secure and orderly operation of the facility; for medical reasons; or under other circumstances as set forth...” in the NDS.²² Furthermore, the NDS require that “[t]he facility administrator must notify ICE/ERO in writing as soon as possible, but no later than 72 hours, after the initial placement of a detainee in segregation if...[a] detainee placed in segregation for any reason has a mental illness...”²³

Ms. Q alleged her re-detention itself was retaliatory, and that guards made aggressive remarks to her upon her detention at OCCF, telling her that she shouldn’t fight her deportation and “this time you won’t get away.” She was placed in isolation in her cell for eleven days, told it was a “classification” issue even though she had previously been detained by ICE at the same facility without incident. She was denied her free 500 minutes to call family and friends for approximately two months.

In addition, Ms. Q and Ms. G report generally punitive and retaliatory conditions in the unit where they are held, alongside women in criminal custody. Both report that they have been subject to unsafe conditions in which other individuals, possibly with untreated mental health needs, have demonstrated aggression towards other women in the unit. Instead of providing these individuals with treatment or tailoring responses to their specific needs, OCCF responds by “locking in” all of the women in the unit into their cells for lengthy periods, depriving them of the few rights and privileges they might otherwise have in the facility.

In one egregious incident on or around February 13, 2023, guards entered the unit early one morning with a K-9 unit claiming that there was a report that someone had brought drugs into the facility. Without individualized reasonable suspicion, the guards proceeded to strip search everyone in the unit and toss their cells purportedly to find evidence of drugs. Ms. Q describes the humiliation and triggering effect of being strip-searched as a sexual abuse survivor. She was led to the shower, told to take off her clothes, pull down her underwear and cough, to prove that she did not have drugs on or inside her. When guards searched her cell, they took the blankets she had received to prop up her injured ankle, even though she told the guards they were given to her by the medical unit. The entire experience was punitive and violated civil detention standards. Ms. G similarly describes a humiliating experience as she too had to stand naked while officials searched her for drugs. She felt ashamed and still feels like she is traumatized by the experience. Yet multiple unit-wide strip searches have since occurred.

Regarding searches of detainees, the NDS require “[e]mploying the least intrusive method of search practicable, as indicated by the type of suspected contraband and the method of suspected introduction or concealment” and “[a]voiding unnecessary force during searches and preserving the dignity of the detainee being searched.”²⁴ According to the NDS, “[f]acilities may perform a strip search when an articulable and reasonable suspicion exists that contraband is concealed on the detainee’s person.”²⁵ In this context,

²¹ NDS 2019, *supra* note 4, at 189.

²² NDS 2019, *supra* note 4, at 53.

²³ NDS 2019, *supra* note 4, at 58.

²⁴ NDS, 2019, *supra* note 4, at 36.

²⁵ NDS 2019, *supra* note 4, at 38.

reasonable suspicion means “...the existence of specific and articulable facts that would lead a reasonable officer to believe that **a specific** detainee is in possession of contraband.”²⁶ The NDS also specify that “[c]anine units may be used for contraband detection, but the use of dogs for force, control, or intimidation of detainees is prohibited...”²⁷

Following the February 2023 search, Ms. G. also reports that officials from OCCF alleged that she violated some of their rules and she was given a disciplinary sanction of 15 days. Ms. G describes feeling terrorized and ashamed by the experience. She still feels terrible about what happened. As noted above, Ms. G was receiving some medications from OCCF but often these medications made her feel ill. In order to avoid feeling sick, she saved a few of the pills. These pills were in open view, on top of her chair in her cell next to her books (that she reads at night). Ms. G did not hide these pills because they were the very pills OCCF had given her. She was under the impression that these pills were for her headaches. On February 13, 2023, however, to Ms. G’s great surprise she was informed that some of these pills were not for headaches. OCCF officials angrily confronted Ms. G about having pills in her cell. Ms. G felt like the OCCF officer was going to physically assault her during this confrontation. The OCCF officer told Ms. G that some of the pills that were in her cell, the orange-colored pills, were not actually prescribed to her. Ms. G was in shock because all the pills that were on her chair were given to her by OCCF staff. Ms. G reports that the officers made her feel like she was worthless and like she was some sort of drug addict, when she is not.

Ms. G explains that one of the OCCF officers told her the orange-colored pills were not for headaches and in fact were for diabetes. She reports that no answer was provided when she asked why she was being misprescribed medications. Ms. G notes that one person on the medical staff questioned why Ms. G was being given the wrong medications and why OCCF was going to further punish Ms. G for having medications OCCF had prescribed her, but these statements received no consideration. Ms. G explains that she was disciplined for 15 days and locked in her cell the majority of the day; she was allowed out of her cell two or three hours a day. This lock-in limited Ms. G’s access to her attorney during a particularly key moment in her immigration case, two weeks before her final merits hearing in immigration court. Ms. G explains that during this time she felt like she was going crazy and felt extreme desperation due to being locked inside for so long.

IV. Recommendations

In light of the ongoing violations of detained individuals’ rights and liberties, we request **a response in writing within one week detailing a remedial plan of action.** We further urge CRCL, pursuant to its authority under 6 U.S.C. § 345, to immediately recommend:

1. Release of all individuals detained at OCCF to their communities;
2. Termination of ICE’s Intergovernmental Services Agreement (“IGSA”) with OCCF;
3. Pending release and termination of the IGSA, investigation of the conditions detailed herein, including medical abuse and neglect, inadequate food and nutrition, and abuse of power.

We urge your prompt attention to the issues raised in this complaint. For any questions or concerns regarding this complaint, please contact Tania Mattos, Director of Advocacy and Policy, Envision Freedom Fund at (347) 263-7563 or tmattos@envisionfreedom.org, or Cynthia Marlene Galaz, Senior Policy Associate, Freedom for Immigrants at (929) 489-8495 or cgalaz@freedomforimmigrants.org. They will be

²⁶ NDS 2019, supra note 4, at 38 (emphasis added).

²⁷ NDS 2019, supra note 4, at 27.

in touch with the attorneys for Ms. Q, Ms. G, and Mr. D to arrange interviews and/or the exchange of further records and information.

Sincerely,

Brooklyn Defender Services

Catholic Charities Community Services
Archdiocese of New York

Envision Freedom Fund

For the Many

Freedom for Immigrants

New York Lawyers for the Public Interest

NYU Law Immigrant Rights Clinic