

NATIONAL IMMIGRANT JUSTICE CENTER

Shoba Sivaprasad Wadhia
Officer for Civil rights and Civil Liberties
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave. SE
Washington D.C., 20528-0190

May 22, 2024

This complaint includes violations of the Rehabilitation Act of 1973. Please submit to the Section 504 division pursuant to 6 C.F.R. § 15.70.

Dear Officer Shoba Sivaprasad Wadhia and CRCL Compliance Team:

The National Immigrant Justice Center (NIJC) files this complaint on behalf of A.R., who has experienced serious abuse and negligence in the custody of U.S. Immigration and Customs Enforcement (ICE).¹ We request that CRCL investigate the reported substandard conditions and rights violations that A.R. has experienced in immigration detention and recommend her immediate release so that she can pursue her immigration case from a safe and healthy environment.

NIJC represents A.R., who has been held in custody for over a year in ICE's South Louisiana Processing Center.² A.R. has suffered sexual assault, physical attacks on her life from other people in this facility, and experienced negligent medical care and improper use of solitary confinement. Guards and ICE officials responsible for the care of people in ICE custody in South Louisiana Processing Center have permitted a climate to persist where sexual and physical assault is permitted. As a result, A.R. fears for her safety, and is suffering from rapidly-worsening anxiety and mental strain resulting from her conditions in an unsafe ICE detention facility.

A.R. has requested that ICE release her on parole or on her own recognizance. Nonetheless, ICE has failed to justify her continued detention, and continued to subject her to substandard and inhumane conditions, despite robust evidence that she does not present a danger to the

¹ NIJC is using a pseudonym for the purposes of the cover-letter of this complaint in order to protect the safety and privacy of the complainant.

² The facility is owned and operated by the GEO Group, Inc. (GEO), and operates under the Performance-Based National Detention Standards (PBNDS) 2011 (Revised 2016). See Office of Detention Oversight Follow-Up Compliance Inspection, August 2023, www.ice.gov/doclib/foia/odo-compliance-inspections/southLouisianaDetCntr_BasileLA_Aug29-31_2023.pdf.

community, is not a flight risk, and her detention is not in the public interest. ICE also unlawfully removed A.R. to her home country, where she fears persecution and torture, before a final administrative removal order was in place, further subjecting A.R. to severe and lasting trauma.³

This complaint documents violations of: (1) ICE Enforcement and Removal Operations' Performance-Based National Detention Standards 2011 ("PBNDS 2011");⁴ (2) ICE Policy Memorandum 11065.1, "Review of the Use of Segregation for [Persons in ICE Detention];"⁵ and (3) Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C. § 794 and its implementing regulations that are binding on the Department of Homeland Security ("DHS"), found at 6 C.F.R. § 15.30 et seq.

I. Violations of ICE National Standards & Directives

ICE officials and all contracting entities working with ICE in South Louisiana ICE Processing Center are obligated to follow the Performance-Based National Detention Standards PBNDS 2011 (Revised 2016).⁶ The failure of guards and ICE officials to ensure the safety and health of those in South Louisiana ICE Processing Center, however, illustrates that it is not adhering to its basic standards of care for people in this facility.

1. Supervision & protecting people from harm

The PBNDS 2011 require that each detention facility ensure that it maintains sufficient supervision of people in detention, in order to "protect detainees against sexual abuse assault, other forms of violence or harassment, and to prevent significant self-harm and suicide."⁷ In cases where a person in detention is engaged in violent acts against another person detained, the facility administrator is supposed to notify the field office director and "ensure a thorough investigation of any incidents of physical assault perpetrated on an ICE detainee."⁸ In A.R.'s case, she suffered multiple attacks and threats from other people in the facility and diligently informed ICE of the attacks and threats. ICE and officials in South Louisiana Detention Facility violated the PBNDS 2011 by failing to protect A.R. from ongoing harassment and the ensuing psychological harms A.R. endured.

³ This complaint focuses on A.R.'s treatment in ICE detention and does not address the rights violations associated with ICE's unlawful removal of A.R..

⁴ U.S. Immig. & Customs Enforcement, 2011 ICE Performance-Based National Detention Standards, Revised 2016, <https://www.ice.gov/detain/detention-management/2011> [hereinafter "ICE 2011 PBNDS"].

⁵ U.S. Dept. of Homeland Sec., U.S. Immigration and Customs Enforcement, 11065.1: Review of the Use of Segregation for [Persons Detained by ICE], (Sept. 4, 2013), https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

⁶ ICE 2011 PBNDS

⁷ ICE 2011 PBNDS (Rev. 2016) § 2.4 Facility Security and Control. V. Expected Practices. A. Detainee Supervision and Monitoring.

⁸ ICE 2011 PBNDS (Rev. 2016) § 2.4 Facility Security and Control. V. Expected Practices. G. Detainee-on-Detainee Physical Assaults.

According to A.R.:

“In May 2023, two other women detained at South LA sexually assaulted me while I was taking a shower. They groped me and touched my body. It happened again later that day while I was playing monopoly in the common area. One of them approached me from behind and grabbed my butt with both hands while she was saying vulgar things about me. I smacked her hand away but she continued to get close to my face and she said, ‘I wanted to see how you felt.’ I filed a report with the facility immediately, but this facility failed to protect me and prevent future harm. After filing my report, neither of the people who abused me faced consequences. ICE told me that they would investigate the situation, but they did nothing.”

In August 2023, another woman in ICE custody began targeting A.R. According to A.R.:

“In August 2023, a woman was released from solitary confinement and became extremely upset when she learned that I was moved into her old cell. She woke me up out of my sleep and started yelling and shouting, telling me to get out. She wanted to kick me out and move her girlfriend into my cell. She became very aggressive and started cursing at me, calling me a ‘bitch’ and ‘perra.’ The situation escalated to the point where she was pounding on the glass window with a makeshift weapon-type object in an effort to break through. The guards thought the best way to de-escalate the situation was to remove me from the cell. I got very frustrated with this because I did nothing wrong and the guards wanted to put me in isolation for a problem I did not cause. I had an anxiety attack and began to cry. I pleaded with the officers to not send me to solitary confinement. I ended up staying in my cell, but I was eventually moved to another unit away from the person threatening me. A few days later, during our meal time, I crossed paths with the same person in one of the hallways. She tried to run up and punch me in the face, but another detainee intervened and stopped her from getting close to me. She was trying to break free to get to me and she started cursing, yelling, and shouting that she was not going to stop until she could get her hands on me. She said, ‘Even if you get released and leave this place, I’ll find you and kill you.’ This was the first time she threatened to take my life. She was upset that I filed a complaint against her for trying to attack me. She will not stop until she attacks me.”

Within a couple weeks of the aforementioned incidents, the same person attempted to physically attack A.R. yet again by rushing at her when guards opened A.R.’s door to allow her into the common areas. Because the guards were already present, they were able to stop her before she could harm A.R.. A.R. filed complaints with ICE every time this person tried to attack her, but ICE officials did not respond to A.R.’s complaints until the person abusing her filed a complaint against A.R. because she was angry at A.R. for reporting her. ICE officials told A.R. that they would assign an officer to escort her attacker to and from her unit, and especially in common areas. However, the very next day, A.R. saw the same person walking around the common areas unsupervised and without a guard present.

According to A.R.:

“I am worried that one of these days she is going to attack me and no one will be around to help me. She tries to harm me every chance she gets and even told me that she would not stop until she is able to put her hands on me or worse kill me. I am nervous all the time. I am constantly looking over my shoulder because I have a fear that this woman will try to kill me or stab me. She is known to walk around with a makeshift weapon; I know this to be true because she used it to try to break the cell door window during one of the first altercations.”

2. *Medical neglect*

Under the PBNDS 2011, ICE is required to provide all individuals in their custody and care with access to mental health care, and medication based on medical need.⁹ When ICE unlawfully removed A.R. in February 2024, however, they failed to provide her with *any* of the approximately 6 different medications she must take daily to maintain her health. As a result, A.R. was forced to go without necessary medication - including medication for bipolar disorder and for high blood pressure - for 15 days. She experienced various symptoms on account of having to abruptly stop taking her medications. Moreover, when she returned to the United States and was placed back into ICE custody, she still did not receive most of her medications until seven days later.

According to the PBNDS 2011, people in detention who have received medical care, released from custody or removed shall “receive a discharge plan, a summary of medical records, any medically necessary medication and referrals to community-based providers as medically-appropriate.”¹⁰ In A.R.’s case, ICE officials failed to provide the medically necessary medication when they removed her, and failed again to provide such medication in a timely manner when she returned and was placed back in detention.

In late March 2024, A.R. suffered a severe rupture of blood vessels in her eye, called a subconjunctival hemorrhage. The emergency room doctor told her that the rupture was likely due to stress. ICE’s failure to ensure the safety in their care has had a detrimental impact on A.R.’s physical and mental health, which has been exacerbated by ICE’s failure to provide adequate access to mental health care. According to A.R.:

I spoke to the psychologist, and they told me that they were going to give me therapy in this detention center. I have been here for a year and two months now. A lot of bad things have happened to me. People in the facility have touched my body sexually, beaten me, and immigration officials sent me to my home country where my life is in danger. I feel very bad psychologically. I’m traumatized by everything that happened to me. Here I am – a person who has mental health issues. I am bi-polar and suffer from anxiety. I have pre-diabetes and suffer from high blood pressure, and I have a cyst on my right shoulder.

⁹ ICE 2011 PBNDS (Rev. 2016) § 4.3 Medical Care.

¹⁰ ICE 2011 PBNDS (Rev. 2016) § 4.3 Medical Care. II. Expected Outcomes. 5.

I want to be alive and released from here so I can be with my children and my grandson. Please help me, I should be released from here. I don't want to suffer anymore.

3. *Improper use of segregation*

Following the aforementioned incidents, on April 3, 2024, officials attempted to place A.R. in a cell with one of her known abusers who had assaulted her and threatened to beat her again. When A.R. protested this placement and expressed her fear for her safety, officials in the facility placed her into “disciplinary segregation” (ICE’s term for solitary confinement) for being non-compliant. A.R. has been held in solitary confinement ever since. Officials in the South Louisiana facility held a meeting with A.R. and told her that she could leave solitary, but the only option they gave her was to return to the same unit as her attacker. A.R. continues to tell officials in the facility she fears being held with her attacker.

According to the 2011 ICE PBNDS, persons in ICE custody “shall be placed in disciplinary segregation only after a finding by a disciplinary hearing panel that the [individual] is guilty of a prohibited act or rule violation classified at a ‘greatest,’ ‘high’ or ‘high-moderate’ level[.]”¹¹ Disciplinary segregation shall only be ordered only after a hearing in which the person has been found to have committed a prohibited act, and only when “alternative dispositions may inadequately regulate the [detained person’s] behavior.”¹² The ICE Directive on the Use of Segregation also says that “[p]lacement in segregation should occur only when necessary and in compliance with applicable detention standards.”¹³ The directive generally requires that ICE “shall take additional steps to ensure appropriate review and oversight of decisions to retain [persons in detention] in segregated housing for over 14 days[.]”¹⁴

A.R. has been in solitary confinement, now classified as “protective custody,” for more than six weeks as of the writing of this complaint, because ICE officials refuse to take any other protective measures or find alternative safe housing arrangements. Disciplinary records also indicate that an officer in the South Louisiana facility initially sent her to segregation pending a disciplinary hearing, but there is no indication that this hearing took place before her placement. A.R. reports that a disciplinary hearing took place on or around April 15, 2024 - almost two weeks after she was initially placed in disciplinary segregation. Moreover, A.R. reports that at this hearing, no independent interpreter was present, and A.R. felt that her voice was not being heard. Instead, the officer who made the initial decision to place her into disciplinary segregation was the same official who purported to act as interpreter at that meeting. Subsequent to this hearing, two other meetings took place between A.R. and detention officials, but each time,

¹¹ 2011 ICE PBNDS (Rev. 2016) § 2.12 Special Management Units. II. Expected Outcomes. 5.

¹² 2011 ICE PBNDS (Rev. 2016) § 2.12 Special Management Units. II. Expected Outcomes. 6.

¹³ U.S. Dept. of Homeland Sec., U.S. Immigration and Customs Enforcement, 11065.1: Review of the Use of Segregation for [Persons Detained by ICE], (Sept. 4, 2013), https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

¹⁴ Id.

officials told A.R. that her only options were to share a housing unit with a previous attacker or remain in solitary confinement. A.R. continues to express to officials that she fears for her physical safety. CRCL should investigate South Louisiana’s use of segregation for A.R. in the context of potential violations of ICE’s standards and directive on the use of segregation.

II. Violations of Section 504 of the Rehabilitation Act

ICE is obligated to ensure persons with disabilities are afforded appropriate care and accommodations under Section 504 of the Rehabilitation Act.¹⁵ However, officials responsible for the care of people in ICE’s South Louisiana detention facility have failed to adhere to these obligations.

Section 504 prohibits discrimination on the basis of disability in programs, services, or activities conducted by federal agencies, including DHS. Under Section 504, “[n]o qualified individual with a disability in the United States, shall, by reason of [their] disability, be excluded from the participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Department.”¹⁶ Section 504 forbids not only facial discrimination against individuals with disabilities, but also requires that executive agencies and departments, such as DHS, alter policies and practices to prevent discrimination on the basis of disability. Covered entities have an affirmative obligation under Section 504 to ensure that their benefits, programs, and services are accessible to persons with disabilities.¹⁷ Reasonable accommodations necessary to prevent disability discrimination are required unless modifications would create a “fundamental alteration” of the relevant program, service, activity, or would impose an undue hardship.¹⁸ ICE adopted binding regulations to ensure that Section 504 is implemented within the agency.¹⁹

¹⁵ Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 794 et seq.; 6 C.F.R. § 15.30(b)(1)(i).

¹⁶ 29 U.S.C. § 794(a); 6 C.F.R. § 15.30(a).

¹⁷ U.S. Dep’t of Homeland Sec., Office for Civil Rights & Civil Liberties, Component Self Evaluation and Planning Reference Guide 17–18 (Jun. 6, 2016), <https://www.dhs.gov/sites/default/files/publications/disability-guide-component-self-evaluation.pdf>; *See also* Vinson v. Thomas, 288 F.3d 1145, 1154 (9th Cir. 2002) (holding that once a government agency is alerted to the need for a reasonable accommodation, there is “a mandatory obligation to engage in an informal process ‘to clarify what the individual needs and identify the appropriate accommodation.’”) (quoting *Barnett v. U.S. Air, Inc.*, 228 F.3d 1105, 1112 (9th Cir. 2000)); *Pierce v. DC*, 128 F. Supp. 3d 250, 272 (D.D.C. 2015) (holding that “prison officials have an affirmative duty to assess the potential accommodation needs of inmates with known disabilities...and to provide the accommodations that are necessary...without regard to whether or not the disabled individual has made a specific request for accommodation[.]”).

¹⁸ 28 C.F.R. § 35.150(a)(3).

¹⁹ The Secretary of Homeland Security, through DHS Delegation Number 19003, delegated responsibility for coordinating the enforcement of the Department’s regulations issued pursuant to the requirements of Section 504 to the Officer for Civil Rights and Civil Liberties. 6 C.F.R. Part 15, et seq. For each complaint, the regulations require the Department to issue findings of fact, conclusions of law, a description of a remedy for each violation found, and a notice of the right to appeal to the Officer for Civil Rights and Civil Liberties. *See* 6 C.F.R. § 15.70(g)(1)(i)– (iii); *see also* U.S. Department of Homeland Security (DHS) Directive 065-01: Nondiscrimination for Individuals with Disabilities in DHS Conducted Programs and Activities (Non-Employment) (September 25, 2013) (establishing

Section 504 defines disability as an “impairment that substantially limits one or more of the major life activities.”²⁰ This definition includes chronic illness, as well as physical, intellectual, developmental, psychiatric, visual, and auditory disabilities.²¹ Evidence of a medical diagnosis is not required and proof from an individual’s personal experience demonstrating that the impairment is substantial is sufficient to qualify for Section 504 protections.²² Once an entity is on notice of a person’s disability, it must affirmatively engage in an inquiry as to whether a reasonable accommodation is required to ensure the individual has equal access as persons without a disability to agency programs, services, and activities.²³ Failure to do so amounts to disability discrimination.²⁴ In the context of immigration detention, there are multiple mechanisms through which ICE may receive notice when people it detains exhibit, complain of, or are diagnosed with disabilities. As a custodian, ICE is responsible for providing medical care to the people it detains²⁵ and has broad access to medical records that indicate whether patients have a diagnosis or exhibit symptoms that implicates Section 504.²⁶

According to these binding laws and regulations, the South Louisiana ICE facility should be investigated for violations of its Section 504 obligations. ICE should have been aware of A.R.’s mental health conditions, as their own records show that A.R. was being administered at least two different medications for her mental health.²⁷ Still, officials in South Louisiana placed A.R. in segregation despite awareness of this mental health condition, thereby discriminating against A.R. on the basis of her disability. This occurred within a context where “incarcerated people

policy and implementation mechanisms for ensuring nondiscrimination for individuals with disabilities served by DHS-conducted programs and activities under Section 504).

²⁰ 29 U.S.C. § 705(20)(B); 42 U.S.C. §§ 12102(1)–(2).

²¹ Margo Schlanger, Elizabeth Jordan, Roxana Moussavian, Ending the Discriminatory Pretrial Incarceration of People with Disabilities: Liability Under the Americans with Disabilities Act and the Rehabilitation Act, 17 Harv. Law & Pol. Rev. 1, 237–48 (2022).

²² *Robertson v. Las Animas County Sheriff’s Dept.*, 500 F.3d 1185, 1194 (10th Cir. 2007) (applying an analogous analysis for how to determine whether an individual has a qualifying disability protected by the American with Disabilities Act).

²³ *Id.*

²⁴ See Schlanger, et al., *supra* note 21 at 257 (explaining that under Section 504, “liability attaches for disability discrimination based not on discriminatory intent but on failure, intentional or not, to provide individuals with disabilities an opportunity equal to that afforded nondisabled people to participate in or benefit from government programs, where—as the next section explains, equality could be accomplished by a reasonable modification to the rules or practices governing the service, program, or activity.”).

²⁵ 2011 ICE PBNDS at 278 (requiring that each person processed into the facility “receive a comprehensive medical, dental and mental health intake screening within 12 hours upon arrival at each detention facility.”).

²⁶ See, e.g., *Matter of M-A-M-*, 25 I&N Dec. 474, 480 (BIA 2011) (recognizing DHS is often “in possession of relevant evidence” that implicates indicia of incompetence, including medical records it may access as the individual’s custodian).

²⁷ Internal records show that, among other medications, officials in the South Louisiana ICE facility have been giving A.R. fluoxetine, an SSRI, as well as hydroxyzine pam “as needed for anxiety.” Internal records available to CRCL upon request.

with mental illness are disproportionately assigned to extended solitary confinement, which is widely documented to cause physical and mental decompensation, and even lead to suicide.”²⁸

A.R. suffers from Post-Traumatic Stress Disorder, Bipolar Disorder I, and Generalized Anxiety Disorder with panic attacks.²⁹ As a result of being in solitary confinement for so long, A.R.’s mental health has drastically deteriorated.³⁰ She reports extreme exhaustion, avoidance of other people altogether, and she has even stopped going outside for recreation time because she is so afraid of being harmed. Her affect is noticeably altered - whereas A.R. is usually quite expressive, her affect now presents as flat and restricted. Her legal counsel is extremely concerned that ICE’s failure to release A.R. from detention will further cause irreversible physical and mental harm.

III. Conclusion

ICE has failed to meet its own minimum standards of care for people held in the South Louisiana detention center. ICE is not safely housing individuals in this facility, and failing to address deficiencies that allow these offenses to continue without accountability. CRCL should investigate the substandard conditions that A.R. is facing in ICE detention and consider the ongoing violations of ICE’s detention standards.

We request that CRCL, pursuant to its authority to immediately investigate this complaint and take prompt action to ensure accountability for these violations, recommend that ICE release A.R. so she does not face further abuse and further deterioration of her physical and mental health.

A.R. and NIJC await the CRCL’s response and look forward to working together. If you have any questions about this complaint, please direct any response or inquiries to NIJC staff listed below.

Sincerely,

Morgan Drake, NIJC Staff Attorney, modrake@immigrantjustice.org

Melissa Kehr, NIJC Litigation Project Coordinator, mkehr@immigrantjustice.org

Jesse Franzblau, NIJC Senior Policy Analyst, jfranzblau@immigrantjustice.org

²⁸ Schlanger, et al., *supra* note 21 at 245.

²⁹ See enclosed psychological assessment carried out by a behavioral health specialist.

³⁰ According to the UN Special Rapporteur on torture, prolonged solitary confinement constitutes psychological torture. See UN Office of the High Commissioner for Human Rights, “United States: Prolonged solitary confinement amounts to psychological torture, says UN expert,”

www.ohchr.org/en/press-releases/2020/02/united-states-prolonged-solitary-confinement-amounts-psychological-torture.