



FREEDOM FOR IMMIGRANTS



UNLV IMMIGRATION CLINIC



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February 23, 2023

Re: Retaliatory Transfers, Verbal Abuse, and Medical Negligence in California and Nevada

Dear Officer Mina, Acting Ombudsman Gersten, Inspector General Cuffari, Assistant Field Office Director Cardoza, Field Office Director Bernacke, Field Office Director Matuszewski, Warden Rosa, and Sheriff McGill:

Arriba Las Vegas Workers Center, Detention Resistance, Faithful Friends - Amigos Fieles, Freedom for Immigrants, Progressive Leadership Alliance of Nevada, SOLACE (Souls Offering Loving And Compassionate Ears), and the UNLV Immigration Clinic submit this complaint regarding 1) retaliatory transfers, 2) verbal abuse, and 3) medical negligence on behalf of five individuals currently or previously in Immigration & Customs Enforcement ("ICE") detention at Nye County Jail ("Nye County") and Nevada Southern Detention Center ("Nevada Southern") in Pahrump, Nevada.

These five individuals include two individuals currently or previously detained at Nye County (Erik Mercado Arechiga and Hector Jose Enrique Vidal) and three individuals currently or previously detained at Nevada Southern (Lewis Abdul Kalim Sibomana, Oscar Loya Leon, and Jose Manuel Espino

Cruz). All five individuals have provided express consent to our organizations to share their information and have authorized your offices to share information with us in regards to this complaint.

ICE transferred all five of these individuals from Otay Mesa Detention Center (“Otay Mesa”) in San Diego to these two detention facilities in rural Nevada on or around November 8, 2022. These five individuals have identified these transfers to have been intentional and retaliatory in nature on the part of ICE in response to advocacy for basic medical care and improved conditions that they had been engaged in while detained at Otay Mesa. We have also received reports that detention facility staff members have been verbally abusive in ways that also appear to be retaliatory.

The medical negligence that all five individuals have experienced while detained in California and have continued to suffer after their transfer to Nevada is a direct violation of the ICE Performance-Based National Detention Standards (“PBNDS”) 2008 (with which Nevada Southern is contracted to comply), the ICE PBNDS 2011 (with which Otay Mesa is contracted to comply), and the National Detention Standards (“NDS”) 2019 (with which Nye County is contracted to comply). In addition, we have documented serious violations of the U.S. constitution, Section 504 of the Rehabilitation Act, and the Americans With Disabilities Act.

ICE, CoreCivic, and Nye County each have a constitutional obligation to provide adequate medical care to all individuals in their custody. See generally *Estelle v. Gamble*, 429 U.S. 97 (1976). By refusing to provide basic medical care for the serious medical needs of those in their custody, ICE, CoreCivic, and Nye County place them at a serious risk of harm, show deliberate indifference in violation of the Eighth Amendment, run afoul of the standard of care, and violate their rights to due process under the Fifth and Fourteenth Amendments, respectively. See, e.g., *Kingsley v. Hendrickson*, 576 U.S., 135 S. Ct. 2466 (2015).

Furthermore, we want to underline that although ICE detention standards state that transfers can be “disciplinary,” they should never be “retaliatory.” Per the 2011 PBNDS, with which Otay Mesa is contracted to comply, a “[disciplinary transfer](#)” is an approved “sanction” to be deployed by ICE against detained individuals for prohibited acts such as “insolence toward a staff member,” “participating in an unauthorized meeting or gathering,” “unauthorized contact with public,” “conduct that disrupts or interferes with the security or orderly running of the facility,” and “signing, preparing, circulating, or soliciting support for group petitions that threaten the security or orderly operation of the facility.”

An area of concern is that transfers may be identified as “disciplinary” by detention facility staff when they are in fact “retaliatory.” For example, if immigrants in detention talk with one another about unsafe conditions in a facility, it could be cast as “participating in an unauthorized meeting,” or repeat requests for medical attention could be labeled as “insolence” should a staff member wish to retaliate against an individual in detention. The timing and character of the transfers of the following individuals demonstrate that the transfers to Nevada facilities were explicitly “retaliatory,” even if they were disingenuously labeled “disciplinary” by facility staff. This concern is heavily substantiated by the [nationwide report on retaliatory transfers released by Freedom for Immigrants \(“FFI”\) on February 16, 2023](#).

Erik Mercado Arechiga (A#: [REDACTED])

Erik Mercado Arechiga has experienced retaliation from ICE employees and detention facility staff on multiple occasions. Detention Resistance, FFI, and SOLACE have been in regular communication with Mr. Mercado since August 2020 through our free and unmonitored hotline. Horrified by the conditions of detention, Mr. Mercado began working with FFI to file complaints to oversight agencies such as the Department of Homeland Security (“DHS”) Office for Civil Rights and Civil Liberties (“CRCL”) regarding abuses inside Otay Mesa, including one complaint filed in January 2021 regarding medical neglect and COVID-19 negligence and another complaint in February 2021 regarding excessive use of solitary confinement and officers destroying legal documents.

In March 2021, ICE transferred Mr. Mercado without explanation or justification from Otay Mesa to Imperial Regional Detention Facility (“Imperial”) in Calexico, California. Mr. Mercado subsequently worked with FFI to file a complaint about the inhumane conditions at Imperial, which was submitted in May 2021. ICE then transferred Mr. Mercado back to Otay Mesa from Imperial in August 2021.

In December 2021, Mr. Mercado was finally granted a \$30,000 bond by ICE, which had been approved by ICE Assistant Field Office Director Janina Estudillo. In January 2022, after Mr. Mercado’s family and community raised the funds for such a high bond amount, Jennaya Dunlap, Immigrant Detention Bond Fund Coordinator for FFI, went to post the bond for Mr. Mercado. After submitting the proper paperwork and waiting several hours, Ms. Dunlap was informed by ICE staff that she would not likely be permitted to post bond for Mr. Mercado due to him allegedly being a “person of special interest.” Neither Mr. Mercado nor his attorney Niels Frenzen had been notified of any change in his bond status by ICE prior to Ms. Dunlap attempting to post bond. This horrifying and blatantly retaliatory development was detailed in a [March 2022 complaint](#), which also received [national media coverage](#).

However, Mr. Mercado was not deterred from continuing to speak out about the abuses he and others at Otay Mesa were suffering. In a March 2022 complaint filed by 12 individuals detained at Otay Mesa regarding a CoreCivic [psychologist whose pattern of negligence and misconduct](#) traumatized and endangered those in her care, Mr. Mercado stated that Dr. Fernbach “talks to us like we’re animals.” This complaint also received [ample press attention](#). In April 2022, Mr. Mercado publicly reported on sexual harassment committed by a CoreCivic staff member, which was also [covered by the media](#).

On October 17, 2022, an [op-ed titled “Our fight for freedom is a fight for humanity,” co-authored by Mr. Mercado](#), was published in the *San Diego Union-Tribune*. Notably, the tagline of the op-ed is: “We have often wondered why ICE goes to such extreme lengths to silence advocates like us.”

Approximately three weeks after the publication of the op-ed, ICE transferred Mr. Mercado without warning or justification from Otay to Nevada, despite the fact that Mr. Mercado’s attorney, Mr.

Franzen, is based in southern California. On November 9, 2022, Mr. Mercado called the FFI hotline and reported that he and several other individuals detained at Otay had been transferred in the middle of the night. The transfer process itself had been torturous. Mr. Mercado and others were transported by bus, shackled with leg irons. Although there was a restroom on the bus, the guards did not allow them to use it. Upon arrival at Nevada Southern, individuals were put into a "holding tank" that had no beds or showers. Several individuals, including Mr. Mercado, were held in the holding tank for over sixteen hours. They were not allowed to make any phone calls to alert loved ones or attorneys that they had been transferred. When Mr. Mercado and others tried speaking up and sharing their understanding that they were being held in conditions that violated the PBNDS, facility guards threatened to put them into solitary confinement.

Mr. Mercado immediately identified the transfer to be retaliatory in nature, especially given the fact that most of the individuals transferred, including himself, had engaged in advocacy while at Otay Mesa with particular respect to medical care. The timing of the most recent transfer is especially concerning because after years of self-advocacy, Mr. Mercado had finally persuaded CoreCivic at Otay Mesa and ICE to agree to begin treating his hepatitis C. Mr. Mercado's inclination that the transfer to Nevada was retaliatory has since been reinforced by conversations with an on-site staff member of the DHS Office of the Immigration Detention Ombudsman ("OIDO") Kevin Martinez, in which Mr. Martinez told Mr. Mercado that his transfer was likely informed by the fact that the treatment for hepatitis C is "not cheap" and that medical care in Nevada is less expensive than in California.

All of the individuals transferred from Otay to Nevada had their health negatively impacted by the transfer in that their medical records were not transferred along with them. Individuals have had to proactively advocate for their medical records from Otay to be transferred to the new detention facility authorities, and in the meantime have suffered lapses in medications and critical treatments. It was not until early January 2023 that Mr. Mercado received copies of his medical records from Otay confirming that he is developing cirrhosis; no treatment for Mr. Mercado's medical condition has been approved since his transfer to Nye County.

In a horrifying recent development, on January 18, ICE Supervisory Detention and Deportation Officer Bradshaw came to Nye County and told Mr. Mercado that the local hospital will not treat people in ICE detention so ICE is now looking to potentially transfer him "to the East Coast" - yet even farther from his legal representatives and family members in southern California. It is furthermore deeply concerning that individuals in ICE detention at Nye County can not access hospital services. On February 15, Mr. Mercado reported that another individual in ICE detention at Nye County was currently suffering from a severe case of trench foot, which can lead to gangrene and amputation if left untreated. Instead of being taken to a local hospital, this individual has been left to suffer in agony in a solitary confinement unit.

Given that Mr. Mercado has spent time in multiple ICE detention facilities, it is notable how shocked he was by the unsanitary and filthy conditions at Nye County. Soon after he arrived, he reported that, as a result of overcrowding, he did not have access to a bed and was forced to sleep on the floor next to the urinal. On November 21, 2022, Mr. Mercado reported that he had only been given one

hygiene kit in the two weeks since he had arrived. He also expressed concern about the inadequacy of the law library, which has only one computer and very limited slots for individuals to be able to conduct legal research.

Perhaps most concerning, Mr. Mercado experienced severe religious discrimination from Nye County staff soon after his arrival there. On or approximately November 17, 2022, when Mr. Mercado went to receive his kosher meal, Nye County Deputy Miguel Luna verbally abused Mr. Mercado using foul language including anti-Semitic slurs and threatened to physically assault him. It is Mr. Mercado's understanding that this specific guard no longer works at Nye County and that a criminal investigation has been opened, although he has received no information about the progress of the investigation. This is unfortunately not the first time concerns regarding religious discrimination at Nye County have been raised. A June 2022 Office of the Detention Oversight (ODO) audit of Nye County found that despite requests from detained individuals, there was no rabbi to conduct Jewish services as the "staff could not find a rabbi willing to travel to Nye County." The ODO audit also found that in regards to the kosher diet offered at Nye County, they mostly consist of "tortillas with peanut butter and hot meals rarely contain protein."

Indeed, this appears to be endemic of a larger problem regarding detention facility staff in Pahrump being composed of individuals with explicitly white supremacist ideologies. In 2020, a [news outlet exposed that a captain at Nevada Southern had been a heavy contributor of racist and anti-Semitic posts on neo-Nazi websites for years](#), and aspired to establish a local white nationalist chapter. Notably, this individual had a prior history of working for CoreCivic at Otay Mesa. Senators Jacky Rosen and Catherine Cortez-Masto subsequently submitted a [letter to DHS Office of the Inspector General \("OIG"\) requesting that the OIG investigate conditions at Nevada Southern](#).

Hector Jose Enrique Vidal [REDACTED] [REDACTED]

Hector Jose Enrique Vidal began reporting to FFI that he was suffering medical negligence at Otay Mesa in October 2022, as he had two tumors in his gallbladder and bilateral kidney stones for which he was not receiving adequate treatment. He had begun advocating for CoreCivic and ICE to provide this critical life-saving care to him and asked FFI to help him write a medical advocacy letter, mailing copies of his medical records to the FFI office. These include an ultrasound report of his upper abdominal area taken in June 2022 in which medical professionals confirm that two polyps in his gallbladder, biliary sludge, bilateral renal stones, and meteorism are present.

On or around November 8, 2022, he was transferred from Otay Mesa to Nye County, away from his immigration attorney Ed Perez based in the San Diego area. Mr. Perez stated his frustrations with this development: "I gave ICE in San Diego my Notice of Appearance and then ICE transferred him out to Vegas... Because of this, I never got a chance to meet him, nor get authorization signatures for his Credible Fear interview and other processes. Now these agencies are ignoring me, because I don't have the signatures to prove I am authorized to represent him. Nobody in the government is taking responsibility and they all act like they have no idea what happened."

Mr. Vidal and his family understood this transfer to be direct retaliation for his self-advocacy for medical care. Similar to other cases, the lack of any transfer of Mr. Vidal's medical records from Otay Mesa to Nye County made the situation even worse. Mr. Vidal also was unable to figure out how to contact the FFI hotline from Nye County. Indeed, in a November 2022 ODO audit, ODO reviewed the Nye County booking procedures, facility handbook, and facility orientation video, and found no instruction regarding how to make telephone calls; this was identified as a "repeat deficiency."

In a letter to FFI dated November 24, 2022, Mr. Vidal wrote: "I find myself in Pahrump county, which is not a detention center. They moved me from Otay Mesa because I was submitting many complaints regarding medical attention to the detention facility and to ICE. I continue to experience medical problems. I continue to suffer from diarrhea. For more than three weeks, anything that I eat my stomach throws up. I continue to suffer from stomach pain. Now they have told me that my liver is damaged and my cholesterol is high... They brought me to the hospital to take X-rays to see what the issue is but this was a week ago and as of now I still do not even have my results or even a response... Truthfully, I don't know what else to do. I need the two tumors in my gallbladder to be operated on before they become cancerous, treatment for my kidneys, and now also for my liver. I am afraid that my medical conditions have worsened with the passing of days."

On or around December 18, 2022, ICE transferred Mr. Vidal from Nye County to Florence Service Processing Center in Arizona. Mr. Vidal reported that he was intimidated by ICE into signing a deportation order, and told that if he tried to appeal that ICE would block him from ever returning to the country. Shortly thereafter, ICE deported Mr. Vidal to Peru.

Lewis Abdul Kalim Sibomana [REDACTED]

Another individual who was transferred from Otay Mesa to Nevada after advocating for adequate medical care is Lewis Abdul Kalim Sibomana. Starting in February 2022, Mr. Sibomana had requested necessary surgery to remove a metal support plate that is implanted in his leg and causes severe pain. Mr. Sibomana filed multiple requests and grievances but was repeatedly told by staff that this surgery was not "necessary" and as a result neither CoreCivic nor ICE would "pay for it." Mr. Sibomana worked with FFI to file a [complaint in July 2022](#) that documents not only the medical negligence he was suffering but also a timeline of retaliatory actions that CoreCivic staff had taken in response to Mr. Sibomana's advocacy efforts, including putting him in solitary confinement and blocking his phone and mail communications.

Similar to Mr. Mercado, Mr. Sibomana immediately understood the motivations behind ICE transferring him to Nevada to include both retaliation for previous advocacy efforts as well as an effort to avoid paying for the surgery that he needs. Since his transfer to Nevada, he has repeatedly requested an appointment with an orthopedic doctor, but ICE has refused to set one up. His pain continues to worsen, preventing him from being able to sleep, and he remains concerned about the potential for

irreparable harm, including possible infection given that this metal plate was supposed to have been removed long ago according to medical professionals.

Oscar Loya Leon [REDACTED]

Oscar Loya Leon had been detained at Otay Mesa since 2020. Beginning in November 2021, he began to report to FFI his concerns regarding the unprofessional, unethical, and negligent treatment he was receiving from the sole psychologist at Otay Mesa, Dr. Fernbach, as she explicitly accused him of malingering when he sought support and told him that his “problem didn’t exist.” This is despite the fact that Mr. Loya had been identified as a class member under [Franco v. Holder](#), a class action lawsuit on behalf of individuals in California, Arizona, and Washington who suffer from severe mental disorders, in which a district court established their right to legal representation. Similar to Mr. Mercado, Mr. Loya also contributed to the [March 2022 complaint about her](#). Moreover, after becoming infected with COVID-19, Mr. Leon began experiencing severe chest and lung pain in December 2021.

Mr. Loya was transferred from Otay Mesa to Nevada Southern on or around November 8, 2022. Notably, the *Franco v. Holder* lawsuit does not cover individuals in Nevada, a fact that Mr. Loya was not informed of by ICE as he continued to seek a new *Franco* attorney. Mr. Loya also did not know if he could call the FFI hotline from Nevada Southern or how to do so, a common problem experienced by all of those transferred. In a letter to FFI dated January 3, 2023, Mr. Loya wrote: "I am sick... and here it is even more difficult to meet with a doctor to give you medication."

After receiving a letter from FFI confirming that Mr. Loya could call the FFI hotline from Nevada Southern, Mr. Loya called the FFI hotline on January 19, and shared that he only has access to the phone once a week for 30 minutes. He furthermore affirmed that he had submitted multiple requests for medical care for several weeks. He also shared that due to the lack of any separating barriers, “if one person gets sick, everyone gets sick, and they don’t give any medications to help.” When asked about his concerns regarding further retaliation if he were to contribute to this complaint, Mr. Loya stated, “What more can they do to us, if we can’t even get the medical care we need?”

Jose Manuel Espino Cruz [REDACTED]

Jose Manuel Espino Cruz had been detained at Otay Mesa since 2021. In April 2022, he reported to FFI that an urologist had prescribed him a specific medication for lower urinary tract symptoms and voiding dysfunction, but that the medication that CoreCivic provided him was different from the one prescribed. In June 2022, he reported that he had to urinate very frequently (every 10 to 15 minutes) and that the urologist had recently told him that he needed surgery. At his October 19 appointment with the urologist, Dr. Michael Albo at the University of California San Diego Medical Center, Dr. Albo requested that Mr. Espino come back to the medical center on October 27 for a “review of his urodynamics.” Unfortunately, this appointment never took place.

On or around November 8, 2022, ICE transferred Mr. Espino from Otay Mesa to Nevada Southern. After being transferred, he reported to FFI that since he did not have access to any free calls at Nevada Southern, it was more difficult to try to remain in contact with advocates and family. He was also horrified by the fact that the phones often seemed to go down for days at a time and that there was no law library at Nevada Southern.

On November 24, 2022, Mr. Espino expressed concern that the transfer had delayed his medical treatment, as his medical records had not been transferred. He also reported that the doctor at Nevada Southern had told him that they would try to find a nearby hospital to treat him but that if they could not, that he would be transferred yet again. It was not until late December that Mr. Espino's medical records were finally transferred to Nevada Southern.

On January 16, 2023, Mr. Espino reported to FFI that since ICE recently came to test him for COVID-19, he believed that he would be deported soon, despite the fact that he has a pending Motion to Reopen in front of the Board of Immigration Appeals. He stated that he believed he was being deported because the surgery he needs is "too expensive for ICE." On or around January 17, ICE deported Mr. Espino to Mexico. On January 25, Mr. Espino declared to FFI: "The medical exams they did on me... are why they moved me from California to Nevada. They never took care of my problem... That's why they deported me, so as not to do anything about my problem."

Concluding Demands

Given the serious medical conditions of the remaining three individuals detained at Nye County (Mr. Mercado) and Nevada Southern (Mr. Sibomana and Mr. Loya) as well as the ongoing negligence and retaliation demonstrated by ICE, CoreCivic, and Nye County, we demand the following:

1. That Mr. Mercado, Mr. Sibomana, and Mr. Loya immediately receive proper medical care for their serious medical conditions;
2. That Mr. Mercado, Mr. Sibomana, and Mr. Loya be considered for immediate medical release given the serious medical conditions and refusal and/or inability for ICE, CoreCivic, and Nye County to treat them;
3. That the Office for Civil Rights and Civil Liberties, Office of the Inspector General, and the Office of the Immigration Detention Ombudsman investigate the retaliatory transfers, verbal abuse, and medical negligence described above; and
4. That the ICE detention contracts at Otay Mesa, Nevada Southern, and Nye County be terminated because it is dangerous and inhumane for individuals to live in prolonged and indefinite detention in the conditions at these facilities, and continue to be denied life-saving medical attention.

We request a response in writing by March 9, 2023. Thank you in advance for your prompt attention to this urgent matter.

Sincerely,



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