

March 13, 2020

humanitarian parole so that he may receive appropriate medical and mental health care in an external, community-based setting.

We further request that the Department of Homeland Security Office of Civil Rights and Civil Liberties (CRCL) conduct a comprehensive investigation of conditions at Richwood and LaSalle in order to ensure that no other people with disabilities are subjected to the discrimination and harm that Mr. Gutierrez has suffered while detained at those facilities.

II. Factual Background

Mr. Gutierrez is an asylum seeker from Guatemala who fled to the United States to protect himself and his two minor nieces, of whom he has custody. His immigration case is currently pending before the Board of Immigration Appeals. Mr. Gutierrez is a Spanish speaker. He is a qualified person with a disability under Section 504 of the Rehabilitation Act and DHS/ICE regulations governing non-discriminatory treatment of people with disabilities on account of his mental health and physical disabilities. Mr. Gutierrez has mental health diagnoses of post-traumatic stress disorder and major depressive disorder with psychotic features. He also has a physical disability which interferes with his ability to breathe easily, causing him to breathe loudly while awake and snore while sleeping.

Mr. Gutierrez has been detained for over a year and has spent approximately eight months in segregation. From June 2019 until February 26, 2020, he was detained at Richwood Correctional Facility and was then transferred to the LaSalle

Richwood and LaSalle are located in remote and rural towns in Louisiana in Monroe and in Jena respectively. The facilities are far from trained medical and mental health providers as well as immigration attorneys and interpreters. Medical providers who come to the facilities lack language skills to meaningfully communicate with detained individuals.

to view

incident in which five guards woke him in the middle of the night when he was sleeping naked, threw him against the wall and beat him, leaving him spitting up blood.

mental health. He has felt disoriented, lost track of time and place, lost memory, had severe panic attacks involving difficulty breathing and vomiting, and had verbal and visual hallucinations. He has experienced heightened anxiety, difficulty sleeping, and fear that he would die if he has to endure more confinement in isolation. He has also suffered from suicidal ideation.

, his immigration attorney, arranged for independent psychological assessments. Dr. Kristin Velasquez Kenefick evaluated Mr. Gutierrez on September 6, 2019 and again on November 21, 2019. Dr Kenefick determined that Mr. Gutierrez met the criteria for post-traumatic stress disorder (PTSD); major depressive disorder, severe, with psyc

cell that he requested. Because Mr. Gutierrez physical disability subjects him to a risk of harm and violence, sharing a cell is not an adequate accommodation.

At both Richwood and LaSalle, Mr. Gutierrez has also been denied adequate mental health care notwithstanding his acute needs. While in Richwood, he had only sporadic video and teleconference therapy visits with a provider who did not speak Spanish. Adequate care continued to be denied even following his suicide attempt. At LaSalle, Mr. Gutierrez continues to be denied access to adequate mental health care or access to a provider who can communicate with him in Spanish.

III. ICE and Its Contractors Have Violated Mr. Gu Standards

Both ICE and its contractors at Richwood and LaSalle are obligated to follow Based National Standards 2011 (PBNDS 2011). Yet, ICE and conduct toward Mr. Gutierrez is in direct violation of the standards governing segregation² and those governing the housing and care of people with mental health disabilities.³

Contrary to its own standards, ICE and the facilities

⁶ In contravention of this directive, Mr. Gutierrez was placed in administrative segregation, for months at a time, when other viable housing options were available.

IV. _____ by
Subjecting Him to Prolonged Segregation and Denying Him Access to Necessary Mental Health Care

The Constitution forbids government officials and their contractors from subjecting incarcerated individuals including people in immigration prisons to conditions exposing them to a substantial risk of serious harm.⁷ Numerous courts have recognized that placement in prolonged segregation not only exacerbates pre-existing mental illness but can actually contribute to mental illness, thereby exposing imprisoned persons to a constitutionally intolerable risk of harm.⁸ Further, ICE is aware that such prolonged segregation can cause mental deterioration even leading to suicide.⁹

Despite these well-known harms stemming from prolonged segregation, ICE and its contractors subjected Mr. Gutierrez who they know has severe mental health disabilities to segregation for approximately eight rapidly, ultimately leading him to slit his wrist in an attempt to die by suicide. Remarkably, after his release from the hospital where he received stitches for his wounds, ICE immediately returned him to Richwood where he was placed in the same segregation unit that caused his deterioration and suicidality in the first place. Mr. Gutierrez was not transported to a psychiatric hospital to care for his mental health needs despite recommendations by a medical professional,¹⁰ nor was he provided any additional mental health care after his suicide attempt to ensure that he did not further deteriorate and attempt suicide once again. He was not even moved to a slightly less restrictive setting despite multiple requests by his immigration attorney explaining the continued risk of harm if segregation continued. Although Mr. Gutierrez has a continued need for mental health care since his transfer, he continues to be denied necessary care at LaSalle.

⁶ Directive 11065.1 Review of the Use of Segregation for ICE Detainees, September 4, 2013.

See, e.g., *Farmer v. Brennan*, 511 U.S. 825, 838 (1994)

See *Disability Rts. Mont. Inc. v. Batista*, 930 F.3d 1090, 1098 (9th Cir. 2019) (holding that plaintiffs sufficiently pled factual allegations of deliberate indifference by describing that defendants: denied inmates adequate mental health treatment; had a pattern of placing mentally ill inmates in solitary confinement without significant mental health care; and their improper responses increased the risk of suicide); see also *Braggs v. Dunn*, 257 F.Supp. 3d 1171, 1192 (M.D. Ala. 2017) (citations omitted); see also *Finley v. Huss*, 723 Fed.Appx. 294, 298 (6th Cir. 2016).

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and their improper placement of him in prolonged segregation follows the recent suicide of Roylan Hernández Díaz at Richwood. Mr. Hernández Diaz had likewise been placed in segregation prior to his suicide and hung himself in his cell six days after being placed in isolation. ICE and its contractors are therefore well aware of the risk of suicide and mental health deterioration for those who are subjected to segregation. These incidents represent a troubling pattern of ignoring the detrimental and tragically fatal consequences of subjecting people to segregation.

- V. ICE and Its Contractors Have Discriminated Against Mr. Gutierrez Based On His Physical and Mental Health Disabilities by Denying Him Proper Treatment and Reasonable Accommodations

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an inadequate accommodation by sharing a cell despite the fact that he has been threatened and harassed in the past for his loud breathing and his specific request for a single-occupant cell.

ICE and its contractors continued to segregate Mr. Gutierrez due to his mental health disabilities, even as his mental health deteriorated to the point of attempting suicide after five months in segregation. After returning from the community hospital that treated Mr. Gutierrez for his suicide attempt, ICE and its contractors, once more, placed him in segregation. Placing someone with mental health disabilities in segregation because of his disability also constitutes a violation of Section 504 and its implementing regulations, as well as Supreme Court law.¹⁴

While Mr. Gutierrez was placed in segregation, he did not receive mental healthcare in the least and most integrated setting possible. In fact, ICE and its contractors placed Mr. Gutierrez in segregation despite medical recommendations for Mr. Gutierrez to receive on-going treatment at a community psychiatric hospital.¹⁵ This constitutes a violation of the Supreme Court decision in *Olmstead* treatment professionals have determined that is appropriate to do so.

As a person with physical and mental health disabilities, Mr. Gutierrez has a right to access and is discriminatory and a violation of federal law and

VII. Requested Responses to ICE and its Contractor's Unlawful and Inhumane Treatment of Mr. Gutierrez and Others at Richwood

As described herein, Mr. Gutierrez has been subjected to brutal and discriminatory conditions of confinement including prolonged segregation while imprisoned at Richwood and LaSalle. Specifically, the conditions at Richwood deteriorate but also ultimately led to his suicide attempt. The recent death by suicide of Roylan

anomalous. Rather, it is part of a troubling pattern of oversight failures and misconduct by ICE and its contractors. Absent swift and meaningful intervention by CRCL, Mr. Gutierrez and other people with disabilities face a substantial likelihood of serious harm and disability discrimination while imprisoned at Richwood and LaSalle. For that reason, we request the following:

- 1) In light of his mental health and physical disabilities, and the failure of ICE and its contractors to reasonably accommodate them, Mr. Gutierrez should immediately be released on humanitarian grounds to his family in California pending adjudication of his immigration case, as his immigration attorney has repeatedly requested from ICE;
 - 2) If ICE refuses to exercise its discretion to release Mr. Gutierrez, then Mr. Gutierrez should be removed from LaSalle, and transferred to a facility in the Houston area near his immigration lawyer or the Los Angeles area near his family;
 - 3) While Mr. Gutierrez remains detained, at LaSalle or any other facility, he must receive appropriate mental health and medical care; accommodations for his disability needs; and not be subjected to segregation;
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