AVID’s Call to Close the Otero County Processing Center Immediately, End ICE Detention, and Enforce Congressionally Mandated Release of Facility Inspections

By Nathan Craig, Ph.D. and Margaret Brown Vega, Ph.D.

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avid.chihuahuan.org
This document outlines AVID’s requests to Congress regarding immigration detention. We outline international and national standards of humane treatment, and identify violations of those standards as reasons to immediately close the Otero County Processing Center (OCPC) Immigration and Customs Enforcement (ICE) detention facility. We argue for ending detention entirely, and highlight viable alternatives to detention. In order to better hold ICE accountable for harm and torture, we request that ICE be made to comply with Congressionally-mandated reporting requirements and provide complete facility inspections to the public.

Requests

1. Apply pressure to the administration of President Biden and Department of Homeland Security (DHS) Secretary Alejandro Mayorkas to immediately close the Otero County Processing Center because it has a history of violating the Secretary’s foundational principle of not tolerating the mistreatment of individuals in civil immigration detention.

2. Cut funding for detention in the current appropriations negotiations, and draft and/or co-sponsor a bill to end immigration detention because the practice represents an indefinite, arbitrary, and discriminatory deprivation of liberty that rises to the level of ill-treatment and torture as defined by international laws and treaties to which the US is signatory.

3. Divest from detention and instead invest in case management systems.

4. Ensure ICE complies with requirements set by Congress to publicly post complete facility inspections.

Standards of Humane Treatment

International Law Regarding Immigration Detention, Ill-Treatment, and Torture

In 2018, the United Nations Special Rapporteur on Torture Nils Melzer noted that inflicting severe pain and suffering, for any reason, based on discrimination of any kind, including based on migration status, “by definition amounts to torture, regardless of whether it is inflicted by or at the instigation of State officials themselves, or merely with their consent or acquiescence.”¹ He observed that criminal or administrative detention based solely on migration status exceeds the legitimate interests of States in protecting their territory and regulating irregular migration, and immigration based detention should be regarded as arbitrary.² Furthermore he wrote, factors that "may not necessarily amount to ill-treatment when applied as an isolated measure and for a very limited period of time — such as unjustified detention, delayed access to procedural rights or moderate physical discomfort — can cross the relevant threshold [of torture and ill-treatment] if applied cumulatively and/or for a prolonged or open-ended period of time."³ He stated that "[d]etention based solely on migration status, as such, can even amount to torture, particularly where it is intentionally imposed or

¹ Melzer, “Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Nils Melzer,” 2018, 5.

² Melzer, 8.

³ Melzer, 9.
perpetuated for such purposes as deterring, intimidating or punishing irregular migrants or their families." 4 Special Rapporteur Melzer also expressed concern over the use of prolonged solitary confinement in immigration detention.5

US Standards of What Constitutes Torture

The US is a signatory to the Convention against Torture. Additionally, 18 USC § 2340 defines torture as “an act committed by a person acting under color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;” and that “‘severe mental pain or suffering’ means the prolonged mental harm caused by or resulting from” either “intentional infliction or threatened infliction of severe physical pain or suffering” and includes “other procedures calculated to disrupt profoundly the senses or personality.” The Attorney General’s Office of Legal Council (OLC) states that “‘severe’ pain or suffering is not only limited to ‘excruciating or agonizing’ pain and suffering” and that mental suffering is clear to have occurred when individuals suffer mental harm after the events in question. The list of conditions cited by OLC includes anxiety, flashbacks, nightmares, difficulty sleeping, and depression.6

Executive Order 14006

On January 26, 2021 within a week of inauguration, President Biden signed Executive Order 14006 instructing the Department of Justice (DOJ) to discontinue renewal of contracts for “privately operated criminal detention facilities.”7 The rationale was clearly stated: mass incarceration “disproportionately impacts people of color”, it “imposes significant costs and hardships on our society,” it “does not make us safer,” the government “has a responsibility to ensure safe and humane treatment” of incarcerated persons, and that the DOJ Office of Inspector General (OIG) found that private facilities “do not maintain the same levels of safety and security” for either incarcerated persons or facility staff.8 This reasoning to end privatized correctional incarceration is sound and empirically grounded.

As a matter of law, civil ICE detention is supposed to be non-punitive. No one in ICE custody is being punished for a crime, and in fact no one being held by ICE is incarcerated for being charged with a crime. “ICE detains people for no purpose other than to secure their presence both for immigration proceedings and their removal.”9 Given these facts, ICE detention is supposed to be guided by the principle of being “least restrictive.”10 Yet, according to both the

4 Melzer, 9.
5 Melzer, 6.
7 The White House, “Executive Order on Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities”; Biden, “Executive Order 14006: Reforming Our Incarceration System To Eliminate the Use of Privately Operated Criminal Detention Facilities.”
8 Biden, “Executive Order 14006: Reforming Our Incarceration System To Eliminate the Use of Privately Operated Criminal Detention Facilities:” §1.
9 ICE, “Performance Based National Detention Standards 2011:” i.
US Commission on Civil Rights and even DHS’s OIG, ICE detention is punishing, often constitutes conditions akin to torture, and specifically involves restrictions that are consistent with internationally recognized definitions of torture. Moreover, these problems are particularly acute at privately owned or managed detention centers, which now constitute the majority of ICE detention beds.

If through EO 14006 the government recognizes that mass incarceration impacts people of color, damages communities, does not make us safer, and that private prisons are particularly problematic, then this same logic applies to immigration detention which is objectively a facet of mass incarceration. Immigration detention does not make us safer, it almost exclusively impacts people of color, and it significantly damages communities. For the same reasons EO 14006 applies to corrections settings, the Biden administration must move to end federal contracting for private immigration detention. If private prison companies are inappropriate for use in corrections settings, they are even more acutely inappropriate for civil, non-punitive, least restrictive settings.

DHS Secretary Mayorkas’ Rationale for Closing Two Facilities

In the context of a memo to ICE Acting Director Tae Johnson regarding two facility closures, Secretary Mayorkas wrote “[a]llow me to state one foundational principle: we will not tolerate the mistreatment of individuals in civil immigration detention or substandard conditions of detention.” Secretary Mayorkas further commented that closing two problematic facilities “marks an important first step” and that ICE detention “facilities will be held to our health and safety standards.”

On May 20, 2021 DHS Secretary Mayorkas directed ICE to discontinue use of both the Irwin County Detention Center, GA, and the C. Carlos Carreiro Immigration Detention Center, MA as well as to terminate the Intergovernmental Services Agreement with the Bristol County Sheriff’s Office.

Irwin County Detention Center

The Irwin County Detention Center, owned and managed by LaSalle Corrections, is where a series of nonconsensual hysterectomies were carried out on women detained by ICE. A formal complaint letter detailing these and other allegations of wrongdoing was sent to DHS OIG on September 14, 2020. Just over a week later, between September 22-25, 2020 The Nakamoto Group, under contract with ICE, inspected the Irwin County Detention Center.

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11 ICE, “ICE to Close Two Detention Centers.”
12 ICE.
13 Project South et al. to Cuffari et al., “Lack of Medical Care, Unsafe Work Practices, and Absence of Adequate Protection Against COVID-19 for Detained Immigrants and Employees Alike at the Irwin County Detention Center,” September 14, 2020, 2, 18–20.
14 Project South et al. to Cuffari et al., “Lack of Medical Care, Unsafe Work Practices, and Absence of Adequate Protection Against COVID-19 for Detained Immigrants and Employees Alike at the Irwin County Detention Center,” September 14, 2020.
15 ICE and The Nakamoto Group, “Irwin County Detention Center (GA) Inspection, September 22-25, 2020.”
The Nakamoto Group’s inspection made no mention nor gave consideration of the whistle blower report complaint regarding the non-consensual hysterectomies that surfaced two weeks prior. Instead, Nakamoto Group passed the facility with no deficiencies, not even regarding medical standards or inappropriate use of force despite the inspection noting substantiated instances of each of these issues.

Advocates have been calling for the closure of Irwin for over a decade. That it took this long to close the facility, and such extreme misconduct and abuse to do so, signals the government’s problematic dismissal of independently documented violations and willingness to accept the superficial findings of rote inspections that regularly mask such violations.

C. Carlos Carreiro Immigration Detention Center/Bristol County House of Correction

On May 2, 2020, six months prior to a regularly scheduled ICE facility inspection, Massachusetts news outlets reported on a major use of force incident that occurred at the Bristol County House of Correction when detained persons expressed concern about the potential for COVID-19 infection from the facility’s medical wing. The Bristol County Sheriff claimed that people refused to go to the medical unit for testing, and those detained reported being attacked with pepper spray and dogs. The Massachusetts Attorney General’s Office undertook an investigation and found a “planned and deliberate—use of force against the ICE B detainees that was disproportionate to the security needs at that time and unnecessarily caused, or risked causing, harm to all involved.”

Between November 16-18, 2020, contracted by ICE, The Nakamoto Group, inspected Bristol County’s immigration detention facility. The inspectors found the facility met all 39 standards and had only three deficient components, and the facility had also passed its 2019 inspection. Inspectors claimed that only eleven detained people were interested in speaking with them, and that “the detainees felt safe in the facility and registered no substantive complaints about any aspect of their detention except for their exposure to the COVID-19 risk in the facility.” The inspectors found “no areas of concern or significant observations.”

The disproportionate use of force incident came to light through public reporting prior to inspection. Yet the Nakamoto Group found the facility free of deficiencies, despite the fact that there was a significant and noteworthy spike in the use of solitary confinement in May (Figure 1). From the Significant Incident Summary form given to them by ICE at the start of the inspection, The Nakamoto Group inspectors should have recognized and inquired about a significant event in May.

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16 DWN, “Expose and Close: Irwin County Detention Center, Georgia.”
17 Dooling, “ICE Detainees Hospitalized, Sheriff Reports ‘Extensive Damage’ After Coronavirus-Based Incident in Bristol County Jail.”
18 MA AG, “Investigation into the Events of May 1, 2020 at the C. Carlos Carreiro Immigration Detention Center, Unit B, Bristol County Sheriff’s Office,” ii.
19 ICE and The Nakamoto Group, “Bristol County Jail and House of Correction (MA) Inspection, May 18, 2020.”
20 ICE and The Nakamoto Group, Cover Letter pg 2.
21 ICE and The Nakamoto Group, Cover Letter pg 2-4.
22 ICE and The Nakamoto Group, Cover Letter pg 3.
Facility Closures

We applaud the closure of the Irwin County Detention Center and the C. Carlos Carreiro Immigration Detention Center, but we argue, based on Secretary Mayorkas’ stated principle, that other facilities need to be closed immediately. This includes the Otero County Processing Center (OCPC). In three major reports, and dozens of letters to congressional offices, we and other colleagues and advocates have documented a litany of significant and long standing problems at OCPC.23

Reasons to Close OCPC

In their request to the Biden administration, Detention Watch Network identified OCPC as one of 10 priority sites for closure. The American Civil Liberties Union identified OCPC as one of 39 facilities that must be prioritized for closure. OCPC violates the principle of humane treatment, and must be closed immediately based on the following reasons:

- Deaths and Medical Neglect
- Hunger Strikes Due to Poor Conditions that Leads to Force Feeding

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23 Brown Vega et al., “The Pains and Profits of Immigrant Imprisonment: Migrant Testimonies from ICE Detention Centers in the El Paso ICE Field Office”; Craig and Brown Vega, “‘Why Doesn't Anyone Investigate This Place?’: Complaints Made by Migrants Detained at the Otero County Processing Center, Chaparral, NM Compared to Department of Homeland Security Inspections and Reports”; Craig et al., “Process by Torment: Immigration Experiences of Persons Detained at the Otero County Processing Center.”
• Sexual Harassment and Abuse
• Abusive Solitary Confinement
• Retaliation Against Peaceful Protests
• Administrative Neglect Resulting in Frustration that Leads to Self-Harm
• Poor Hygiene and Sanitation
• COVID-19 Failures
• Lack of Meaningful Language Access
• Conditions that applied cumulatively and for indefinite periods rise to the level of torture

Deaths and Medical Neglect

Since 2019, two deaths occurred at OCPC, each the direct and unnecessary result of medical neglect: Johana Medina León and Samuelino Pitchout Mavinga.24 Each of these individuals was hastily transferred from the facility in an extremely compromised condition shortly before their death. We raised concerns about the ailing health of Ms. Medina León for weeks. In part because of our concerns, on the very same day that ICE and MTC transferred and “released” her from custody to the hospital where she died, staffers from Senator Tom Udall’s and Martin Heinrich’s offices were at OCPC speaking with ICE leadership and Warden Dora Orozco, specifically inquiring about the health and conditions of transgender women detained at the facility.25 An official statement from the congressional offices states, “At no point during the visit did the OCPC or ICE officials inform our staffs that a transgender individual who had been in U.S. custody had fallen ill, and was admitted to the hospital for treatment for serious medical issues. We believe that ICE should be fully transparent and publicly disclose all relevant information regarding this tragic and disturbing situation, and we continue to push for humane treatment for asylum seekers.” Ms. Medina León died the following day.

Mr. Pitchout Mavinga had been suffering for weeks from a painful digestive tract issue that should have been diagnosed and treated. Reports from persons detained at OCPC that we spoke with related instances of staff mistreating Mr. Pitchout Mavinga and a general disregard for his failing health. ICE’s death report clearly seeks to place blame on Mr. Pitchout Mavinga for what appears to be severe mental health issues.26 While ICE employs nonconsensual medical procedures in other contexts, like forced application of psychotropics, removal of reproductive organs,27 and force feeding,28 ICE attempted to use Mr. Pitchout Mavinga’s denial

24 ICE, “ICE Detainee Passes Away in Albuquerque Hospital.”
27 ICE and The Nakamoto Group, “Irwin County Detention Center (GA) Inspection, September 22-25, 2020.”
of medical care in a clear state of degraded mental health and general distress as an excuse for his death.

Among three samples of conversations with 221 persons detained at OCPC (2015 n=43, 2017-18 n=25, and 2020 n=153), poor quality medical care is consistently the highest rated concern (Figure 2). In at least two instances we know of, that poor quality care resulted in loss of life.

Among all 23 of the OCPC hunger strikers we spoke with common complaints and causes for their protests included: no meaningful means to seek and obtain release, abusive staff treatment, poor language access, and lack of appropriate religious materials. Force feeding is considered torture and so too is the indefinite and arbitrary deprivation of liberty in poor

Hunger Strikes Due to Poor Conditions That Leads to Force Feeding

Beginning in 2018, there were a large number of hunger strikes at OCPC. We spoke directly with 23 individuals detained at the facility who waged hunger strikes. Eighteen of these individuals engaged in long term (> 2 weeks) hunger strikes, 10 of whom were eventually force fed. All of these individuals were seeking humanitarian relief in the form of asylum, and none of them was classified as a high priority for detention. Still, all of them were subjected to prolonged incarceration.

Among all 23 of the OCPC hunger strikers we spoke with common complaints and causes for their protests included: no meaningful means to seek and obtain release, abusive staff treatment, poor language access, and lack of appropriate religious materials. Force feeding is considered torture and so too is the indefinite and arbitrary deprivation of liberty in poor
As Ajay Kumar put it to us during a conversation at OCPC after he began a hunger strike that eventually lasted 76 days, “we can’t live like this.” Fortunately, Mr. Kumar’s peaceful protest resulted in his freedom. However, the torture inflicted on him in the form of prolonged detention in an abusive environment, repeated exposure to solitary, and force feeding, has lasting impacts.

**Sexual Harassment and Abuse**

Sexual harassment and abuse are chronic problems at OCPC. Our 2018 report details the experiences of a young gay man who was so badly harassed by MTC facility staff and others detained at the facility, that he sought to be transferred. This individual eventually won his asylum claim, which hinged on his past persecution related to his gender identity. The fact that he was retraumatized by sexual, psychological and verbal harassment by MTC staff and others while detained by ICE at OCPC is criminal.

In 2018 a large number of Cameroonian asylum seekers were detained at OCPC. AVID volunteers who visited these men received many reports of sexual harassment involving female guards soliciting men for sex, leering at them in the shower, and making inappropriate remarks regarding their genitals. When one individual filed a formal complaint, facility staff accused this individual of sexual harassment and placed him in solitary confinement. When inspectors came to follow up on the incident, they spoke to a single individual, the most timid and least well-spoken individual of the group, about the incident, ignoring the numerous other men who openly and articulately expressed concern regarding their treatment.

In 2019, a large number of LGBTI individuals were detained at OCPC and it became apparent that sexual harassment among staff and others detained at the facility was rampant. Persons were solicited for sex, intruded upon when showering, berated for their mannerisms, and generally degraded regarding their gender identity. Attorneys issued a formal letter of complaint regarding the matter. The “solution” in many cases involved placing persons in administrative segregation, a euphemism for solitary confinement.

**Abusive Solitary Confinement**

In 2014, in its report on human rights conditions in the US, the UN Committee Against Torture expressed concern regarding “reports of substandard conditions of detention in immigration facilities and the use of solitary confinement.” Notably, the Committee also expressed concern regarding reports of sexual violence by staff and other detainees held in US

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32 Santa Fe Dreamers Project, Las Americas Immigrant Advocacy Center, and ACLU-NM to Wayne Cox et al., “Detention Conditions Impacting the Safety and Well-Being of LGBTQ Immigrants in the Otero County Processing Center,” March 25, 2019.

immigration detention facilities. At OCPC, sexual violence and prolonged administrative solitary are inexorably linked.

According to multiple Special Rapporteurs on Torture, prolonged solitary confinement defined by a period in excess of 15 days constitutes torture because this is the point at which research indicates that the “harmful psychological effects of isolation can become irreversible.”34 Special Rapporteur on Torture Melzer specifically expressed concern over the use of prolonged solitary confinement in immigration detention and among migrants seeking humanitarian relief because the psychological harms are particularly acute for persons who experienced past persecution.35 It is important to note, then, that the Performance Based National Detention Standards (PBNDS 2011 re. 2016) permit indefinite administrative solitary and continuous disciplinary solitary for 60 days,36 well beyond that threshold of irreversible mental harm. **ICE’s maximum continuous period of disciplinary solitary confinement, in a purportedly non-punitive custodial setting, is four times the amount recognized as torture.**

In 2017, stimulated by a large number of calls to their hotline originating from OCPC, DHS OIG performed an unannounced inspection of the facility. Among their significant findings was inappropriate use of solitary and lock-down at OCPC.37 DHS OIG wrote that “[s]taff did not always tell detainees why they were being segregated, nor did they always communicate detainees’ rights in writing or provide appeal forms for those put in punitive lock-down or placed in segregation. In multiple instances, detainees were disciplined, including being segregated or locked down in their cells, without adequate documentation in the detainee’s file to justify the disciplinary action.”

Highlighting the fact that both practices are violations of PBNDS and detained persons’ civil rights, other DHS OIG inspections have noted that 1) many facilities place persons in solitary before a disciplinary hearing, and 2) some facilities place persons in restraints when outside of their disciplinary solitary cells.38 AVID is in possession of documents demonstrating that OCPC places persons in disciplinary solitary prior to disciplinary hearings, and that persons are placed in restraints when taken to disciplinary hearings (see Appendix A). Multiple AVID volunteers have seen individuals at OCPC brought to visitation chained at the legs and wrists. As DHS OIG notes, these are violations of both detention standards and individuals’ civil rights.

In 2019, a review by the International Consortium of Investigative Journalists of more than 8,400 instances of solitary confinement in ICE detention found that more than half involved solitary in excess of 15 days.39 Several of the case studies in their *Solitary Voices* series involved individuals detained at OCPC. For example, Karandeep Singh was held in solitary at OCPC and

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34 Méndez, “Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment,” 9, 17, 22, 23.
37 DHS OIG, “Concerns about ICE Detainee Treatment and Care at Detention Facilities.”
38 DHS OIG, “Concerns about ICE Detainee Treatment and Care at Four Detention Facilities,” 5.
reported prolonged mental trauma as a result of that experience. At one point in solitary, due to the harms of isolation, Mr. Singh beat his head against the wall, seriously injuring himself. Long after he was deported, Mr. Singh experienced mental trauma both from his lengthy detention at OCPC and from the prolonged periods of solitary he endured.

Jesus Lorenzo Ávila was also a case study in the *Solitary Voices* reporting. Mr. Ávila was subjected to repeated use of prolonged solitary at OCPC in retaliation for asserting his rights, including speaking to the media—a protected First Amendment right. At one point, MTC accused Mr. Ávila of organizing a hunger strike among a group of Indian men detained at OCPC, claiming he used religious services as a place to engage in this alleged organizing effort. Mr. Ávila was held in solitary prior to the hearing. MTC staff refused to identify Mr. Ávila’s accusers, presented no evidence of guilt, afforded him no opportunity to rebut the claims, and arbitrarily punished him with 25 days of solitary confinement over this matter. Mr. Ávila could not have organized a hunger strike among Indian men during religious services because he did not attend religious services and does not speak Hindi. But even if he had, as with speaking to the media, hunger strike is a form of speech protected under the First Amendment. Therefore, MTC’s treatment of Mr. Ávila represents a violation of civil rights on multiple fronts.

AVID’s analysis of the *Solitary Voices* data set shows that OCPC (n=33) exhibited an average of 23 days (S.D. = 13) in solitary; nearly twice the level constituting torture. Based on DHS OIG’s findings that OCPC violated solitary confinement record keeping requirements, information on OCPC is likely underrepresented. For example, the 2020 OCPC Significant Incident Summary form indicates that for the 12 month period of review there were 770 instances of solitary (n administrative = 562, n disciplinary = 207). Based on this, the monthly average number of administrative segregation instances alone (M = 47, SD=27) is higher than the total number of segregation incidents reported in the entire four year period covered by the *Solitary Voices* data set. In 2020, there were more than six times the number of disciplinary solitary incidents than all cases of solitary reported for OCPC in the four-year period represented by the *Solitary Voices* data. This represents either a dramatic increase in the use of solitary or significant under reporting in the past. Based on DHS OIG’s findings, significant under reporting seems likely.

Unfortunately, Mr. Singh’s and Mr. Ávila’s experiences are not isolated incidents. AVID has spoken to dozens of men arbitrarily subjected to lengthy and repeated exposure to solitary confinement. In one instance, a detained individual conveyed to us that they were punished

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41 Calzadilla, “‘Conmigo se han ensañado’”; Calzadilla, “Esta Es La Historia Del Mexicano Que Permanece Castigado En Una Celda De Confinamiento De ICE.”
43 DHS OIG, “Concerns about ICE Detainee Treatment and Care at Detention Facilities,” 6.
with solitary confinement for adding chili to spice up the food while on work duty as a cook in the kitchen. As Mr. Ávila noted, if one does not keep their head down, and be completely obedient to facility staff even when they are abusing their authority, one will face retaliation by being placed in solitary confinement. The facility is, by design, set up for it. Consider the fact that ICE detention is purportedly non-punitive administrative confinement to hold people while they navigate their immigration proceedings. Yet the facility, built to house specifically people held in ICE custody which is purportedly non-punitive, is equipped with only four computers in the law library but has the capacity to hold nearly a hundred individuals in solitary confinement. The architecture is designed for punishment, not for supporting people navigating their immigration proceedings.

Retaliation Against Peaceful Protests

In 2019, a group detained at OCPC consisting largely of Cubans, frustrated by their lack of options for release and the inaccessibility of their Deportation Officers (DOs), employed peaceful protest tactics engaging in work stoppages, hunger strikes, and sit-ins.45

In early October 2019, 20 individuals entered the recreation yard and refused to leave until they met with their DOs. One of the protestors was incarcerated at OCPC for four months without speaking to his DO. The peaceful protestors were threatened with firearms and officers were verbally abusive. Inside the facility, staff undertook aggressive searches, upturning the facility and seizing items belonging to detained persons that included official grievances, court documents, and personal correspondence. Eighteen individuals were sent to solitary confinement. The next day, individuals targeted as “leaders” of the protests were charged with “engaging in or inciting a group demonstration” and “interfering with a staff member in the performance of duties”. They were held in pre-hearing solitary confinement and were ordered to be escorted in restraints (see Appendix A). Though they all pleaded innocent, they were found guilty and sentenced to 29 days of disciplinary solitary confinement.

Administrative Neglect Resulting in Frustration that Leads to Self-Harm

Following these October protests and the subsequent staff retaliation against the protestors, several detained persons became extremely depressed and despondent feeling that they had no remedy to alleviate their situation. Some of these individuals used their ID cards to hack at their wrists in an attempt at suicide. Several other individuals indicated that they were going to organize an attempted mass suicide to raise attention to their situation. When large numbers of people feel that the only recourse available is self-harm and suicide, something is profoundly wrong.

These incidents are also not isolated to this group of protestors. AVID volunteers spoke with two other individuals, both from India, who on separate occasions were taken to solitary confinement for alleged behavioral issues. In both cases, the individuals protested to no avail. Once inside their solitary cells, they removed thread from their blanket, tied one end to the bed

45 Craig et al., “Process by Torment: Immigration Experiences of Persons Detained at the Otero County Processing Center.”
and used it to saw a cut on their wrists. In both cases, alarmed by the self-harm, the guards agreed to remove these individuals from solitary confinement and return them to their pods. The conditions at OCPC drive individuals to harm themselves just to be heard.

**Poor Hygiene and Sanitation**

Poor standards of hygiene and sanitation are chronic problems at OCPC. In 2008, the facility failed its first inspection over sanitation issues.\(^{46}\) In 2017, nearly a decade later, DHS OIG inspectors still noted problems with hygiene and sanitation at the facility.\(^{47}\) Persons detained at OCPC who raised concerns about conditions in the facility were retaliated against by being given dirty clothes like soiled underwear, or underwear that is several sizes too large to be able to wear. Poor sanitation was among the most frequent complaints during the early months of the COVID-19 pandemic.\(^{48}\)

**COVID-19 Failures**

OCPC is miserably failing during the COVID-19 pandemic. MTC was slow to implement testing, and slow to create conditions permitting social distancing. In the early months of the pandemic, pods remained full or largely full, with between 30-50 individuals in a single enclosed dormitory. Beds were less than 6 feet apart.

Laundry was hastily washed still in the bags in which those in detention are directed to send their items to be washed. It was often delivered back to them by being thrown on the floor, still damp. Centers for Disease Control (CDC) guidelines on the management of COVID-19 in detention facilities states, “dry items completely.”\(^{49}\) During the early months of the pandemic, because it was not clear how the virus spread, appropriate laundering practices were important to maintain. In addition, soap and masks were not initially provided which is clearly inconsistent with CDC guidelines. Individuals who reported feeling feverish or sick were ignored, yelled at, or simply told they didn’t have COVID-19. This is not only inconsistent with guidelines but fundamentally bad public health practice. Ignoring a communicable disease during a pandemic does not make it go away. It was no surprise, then, when a major outbreak occurred at the facility.

AVID spoke to the first person to test positive for COVID-19 at OCPC, and to numerous individuals who, over the course of several months, also tested positive for the disease.\(^{50}\) In every single instance, those individuals who tested positive were immediately placed in solitary confinement for 14 to 18 days. Individuals with few to no symptoms were given no medication and left in solitary. Only the severely sick were taken to medical. Several individuals reported

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\(^{46}\) ERO, “Detention Facility Review, Otero County Processing Center, Chaparral, NM, Sept 16-18, 2008.”  
\(^{47}\) DHS OIG, “Concerns about ICE Detainee Treatment and Care at Detention Facilities.”  
\(^{50}\) Brown Vega et al., “The Pains and Profits of Immigrant Imprisonment: Migrant Testimonies from ICE Detention Centers in the El Paso ICE Field Office.”
that the solitary cells were filthy when they were placed into them, and that they went days
without being able to bathe. Occasionally, they missed meals because guards failed to deliver
food to them. The poor sanitation and failure to deliver food are violations of PBNDS.
Individuals reported severe understaffing on several occasions, which resulted in worse than
normal levels of negligence towards those incarcerated at the facility.

Despite guidelines from the CDC regarding COVID-19 prevention protocols for detention
settings, as well as multiple iterations of pandemic response requirements from the
Enforcement and Removal Office, neither common-sense nor required measures were taken
to protect individuals detained at OCPC from the spread of COVID-19 until it was too late. When
the New Mexico Department of Health was notified by AVID of the conditions inside, prompting
them to reach out to both ICE and MTC, ICE refused their assistance, including the provision of
testing kits.

Lack of Meaningful Language Access

In *Lau v Nichols*, 414 US 563 (1974) the Supreme Court ruled that failure to provide meaningful
opportunity to participate in federally funded programs constitutes national origin
discrimination in violation of Title IV of the Civil Rights Act of 1964. ICE developed a Language
Access Plan, and the requirement to provide translation is mentioned on 64 pages of
PBNDS. Yet, lack of meaningful language access is an ongoing problem at OCPC. The facility
regularly gives Spanish speakers forms only in English. Spanish translation of English forms is
often incomplete and inaccurate (see Appendix A). Though many of the staff speak Spanish
fluently, they routinely fail to explain basic forms or provide information in Spanish. The
situation is even worse for non-Spanish speakers. On several occasions we spoke with
individuals whose principal language is English, like the large number of Anglophone
Cameroonian detained at OCPC, who indicated they are only spoken to in Spanish by facility
staff. This highlights the overt intent by some facility staff to create a hostile and discriminatory
environment where those detained cannot understand what is going on around them, or even
what they are being directed to do.

There have been large numbers of persons who speak languages other than Spanish held at the
facility. In 2018-2019 hundreds of men from India who spoke only dialects of Hindi, Urdu, or
Punjabi were severely isolated at OCPC due to inadequate interpretation and translation of
information. In April of 2019 the Sikh Coalition noted that the facility staff and ICE failed to
provide meaningful access to information regarding detained individual’s rights, the

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51 CDC, “Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention
Facilities.”
Pandemic Response Requirements (Version 5.0, October 27, 2020).”
53 Michaels and Morel, “‘We Sent 500 Tests. They Don’t Answer Calls.’”
54 ICE, “Language Access Plan.”
55 ICE, “Performance Based National Detention Standards 2011,” 1, 20, 36, 50, 56, 61, 63, 77, 81, 90, 111, 119, 128,
immigration process, and to facility rules and procedures.\footnote{For relevant case law on language access as a civil right in federally funded facilities see: Kaur and Nesbit, “Letter of Complaint Re Sikh Detainees,” April 1, 2019.} These failures resulted in severe due process issues, including individuals being ordered removed. AVID volunteers spoke with several men from India who were placed in disciplinary solitary for reasons they did not understand due to language issues.

Two years later, the situation has not improved. Presently, there is a large population of Haitian Creole speakers at OCPC. In speaking to attorneys and colleagues we understand that these individuals face the same lack of meaningful access to language accommodations that the Sikh Coalition highlighted two years ago. These infractions represent real and chronic civil rights violations involving national origin discrimination that cannot be ignored.

**Summary Regarding Immediate Need to Close OCPC**

The Special Rapporteur on Torture notes that factors like unjust detention or moderate physical discomfort, when applied cumulatively and for a prolonged, open-ended period of time, can cross the threshold of ill-treatment and torture.\footnote{Melzer, “Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Nils Melzer,” 2018, 9.} 18 USC § 2340 indicates that torture includes “severe mental pain and suffering,” that it need not involve “excruciating or agonizing” pain and suffering but that mental suffering is clear to have occurred when persons suffer mental harm like anxiety, flashbacks or nightmares after the events in question.\footnote{Levin, “Definition of Torture Under 18 U.S.C. §§ 2340–2340A.”} President Biden’s EO 14006 observes that mass incarceration disproportionately impacts communities of color, imposes significant hardships on society, and does not make us safer while private prisons do not maintain the same levels of safety.\footnote{The White House, “Executive Order on Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities”; Biden, “Executive Order 14006: Reforming Our Incarceration System To Eliminate the Use of Privately Operated Criminal Detention Facilities.”} Secretary Mayorkas established one foundational principle to “not tolerate the mistreatment of individuals in civil immigration detention or substandard conditions of detention.” \footnote{ICE, “ICE to Close Two Detention Centers.”}

Consistent with EO 14006, the private contractor MTC holds much though not all the culpability for the poor standards and ill treatment. Conditions at OCPC clearly entail the mistreatment of individuals in civil immigration detention: fatal medical neglect, conditions that lead to hunger strikes and self-harm, abusive use of prolonged and retaliatory solitary, retaliation against peaceful protest, poor sanitation, COVID-19 failures, and inadequate language access. At OCPC, the use of solitary confinement alone regularly crosses the threshold of torture, and individuals exhibit conditions like anxiety, flashbacks, and nightmares long after deportation. However, at this facility we have also documented a constellation of negative factors that are applied cumulatively, for prolonged, open-ended periods of time. Based on international treaty obligations, these factors create conditions that rise to the level of torture and are experienced by virtually everyone incarcerated at OCPC.
When, as has occurred at OCPC, large groups people feel like they have no other option to protest for their freedom than to risk their lives through prolonged hunger strikes or acts of self-harm, these are clear indications of inhuman detention conditions. AVID volunteers have spoken to dozens of individuals detained at OCPC who describe the experience as “mental torture.” Migrants booked into OCPC have told us that facility staff smirkingly told them “welcome to the mental torture center.” Unfortunately, accumulated evidence shows OCPC is in fact a torture center.

- We call on legislators to apply pressure to the administration to immediately close OCPC.
- We call on the Biden administration, and DHS Secretary Mayorkas specifically, to close OCPC.

US Immigration Detention Is Designed to Discourage Migration

The Special Rapporteur on Torture noted that 1) incarceration based on migration status exceeds the legitimate interests of states to protect their territory making immigration based detention arbitrary; and that detention based solely on migration status, particularly when intentionally imposed or perpetuated as a deterrence, intimidation, or punishment can amount to torture.

ICE detention documentation claims to be non-punitive, but that is neither its origins nor its repeatedly stated function. The current form of immigration detention was established in 1980, and then Attorney General William French Smith, the man responsible for crafting the system, was clear that "detention of aliens seeking asylum was necessary to discourage people like the Haitians from setting sail in the first place." The use of incarceration to deter migration, including discouraging the lawful pursuit of humanitarian relief, is baked into the system of US immigration detention. In fact, detention is part of a larger strategy that in 1994 formally took the name of “prevention through deterrence” and in 2011 morphed into a “consequence delivery system” that entails escalating criminalization of migration.

In 2002, the Immigration and Naturalization Service submitted a memorandum issued by the US State Department supporting detention of migrants “in order to prevent further mass migrations” of individuals seeking humanitarian relief, and argued that release of individuals on

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61 Melzer, “Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Nils Melzer,” 2018, 8.
62 Melzer, 9.
64 Taylor Jr, “Smith Sees Immigration Plan as a Means to Avert Boatlifts.”
66 Fisher, "Written Testimony of CBP for a House Homeland Security Subcommittee on Border and Maritime Security Hearing Titled "Does Administrative Amnesty Harm Our Efforts to Gain and Maintain Operational Control of the Border?"
bond “would stimulate further surges” of individuals seeking asylum. On these grounds, Attorney General Ashcroft ruled to deny bond to these individuals.67 That grim and overreaching precedent holds.68 Seeking asylum is a legal right.

In 2014, DHS moved to systematically deny bond to arriving individuals, to imprison people longer, and sought to expand detention capacity in order to "deter others from taking the dangerous journey" to seek humanitarian relief.69 Those deterrent efforts included the detention of adults, families, and unaccompanied minors.

The punishing and deterrent role of immigration detention is clear and explicit, coming directly from those who established and oversee the system. This deterrent character is exactly what Special Rapporteur Melzer is referring to when observing that detention based on immigration status can amount to torture when intentionally imposed or perpetuated for deterring, intimidating, or punishing migrants.70 The denial of bond and use of indefinite prolonged detention in abject conditions in the US rises to the level of torture throughout the system as a whole. When one considers the pervasive role of solitary confinement in immigration detention, the issue becomes even more stark.

- **We call on legislators to cut funding for detention in the current appropriations deliberations, and to draft and sponsor bills to end immigration detention in the US.**

The Alternative: Case Management

Detention isn’t just inhumane, it is unnecessary. Longitudinal research of Executive Office of Immigration Review (EOIR) data from 2008-2018 shows that “88% of all immigrants in immigration court with completed or pending removal cases over the past eleven years attended all of their court hearings.”71 According to EOIR data, during FY 2019 “among non-detained asylum seekers, 99 out of 100 (98.7%) attended all their court hearings.” 72

The Vera Institute of Justice found that 98% of migrant clients released from ICE detention continued to appear for scheduled court hearings; regardless of representation status, asylum seekers almost always continue to appear in court; nearly all released family units appear in court; orientation programs increase the rate at which individuals appear in court; and many of the cases where individuals are ordered removed in absentia are due to flaws or errors in the court system.73

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67 BIA, In Re. D-J-, 23 &N Dec at 573, 578.
68 Amorosa, “Dissecting In Re D-J-.”
69 DHS, “Fact Sheet.”
71 Eagly and Shafer, “Measuring in Absentia Removal in Immigration Court.”
72 TRAC, “News from TRAC: Record Number of Asylum Cases in FY 2019”; TRAC, “Record Number of Asylum Cases in FY 2019.”
73 Siulc and Smart, “Evidence Shows That Most Immigrants Appear for Immigration Court Hearings.”
The US’s immigration court’s own data shows that detention is unnecessary for its stated purpose of ensuring individuals are present for their immigration proceedings. DHS OIG found ICE’s Intensive Supervision Appearance Program (ISAP) effective because absconding rates were low. However, historically ISAP has involved contracting with The GEO Group, a private prison company that operates many problematic immigration detention facilities, and the ISAP program relies on electronic monitoring by GPS or telephone. This kind of monitoring raises civil rights concerns, represents an expansion of the surveillance state, and entails unnecessary tracking. Alternative To Detention (ATD’s) based on electronic monitoring are not alternatives to detention but are instead alternate forms of detention.

There are several successful ATD programs that do not rely on electronic monitoring. Notable among these is ICE’s Family Case Management Program (FCMP) wherein families received caseworker support without use of GPS monitoring. FCMP achieved 99% compliance rate with ICE appointments and court hearings. This program cost $36 per day. Inexplicably, despite the low cost and exceptionally high rate of success, FCMP was terminated during the Trump administration in favor of family separation and prolonged detention. FCMP however is not alone as there are several other successful community-based case management ATD’s.

1) The Vera Institute of Justice’s Appearance Assistance Program (AAP), did not rely on electronic monitoring, and achieved success rates in high 90% across all programs; in each case, AAP participants complied at much higher rates than the control group.
2) Lutheran Immigration Refugee Service’s (LIRS) family placement program, did not use electronic monitoring, cost $24 per day, and achieved a success rate of 97%.
3) The US Conference of Catholic Bishops, partnering with ICE, implemented a community support alternative to detention that did not rely on electronic monitoring and achieved a success rate of 97%.

Generally, the American Immigration Lawyers Association (AILA) found that access to counsel increased success rates and clear information supports compliance.

- We call on legislators and the Biden administration to support community-based alternatives to detention which are 1) effective at compliance, 2) cost less than detention, and 3) avoid the harms associated with immigration incarceration.

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74 DHS OIG, “U.S. Immigration and Customs Enforcement’s Alternatives To Detention.”
75 Panjwani, “ICE Digital Prisons: The Expansion of Mass Surveillance as ICE’s Alternative to Detention.”
76 DHS OIG, “U.S. Immigration and Customs Enforcement’s Award of the Family Case Management Program Contract (Redacted).”
79 LIRS, “Family Placement Alternatives: Promoting Compliance with Compassion and Stability through Case Management Services.”
80 AILA, “The Real Alternatives to Detention.”
Releasing The Public Record

In 2018 Congressional appropriations stipulated that “ICE is directed to make public all final detention facility inspection reports within 60 days of inspection.” To date, ICE is not complying with this standing directive from Congress. ICE inspections are of notoriously poor quality. For example, despite significant incidents coming to light at both Irwin and Bristol prior to the date of inspections, ICE’s contract inspectors passed the facilities. Irrespective of the superficial check-box culture of inspections, the lack of transparency in releasing complete inspection reports as directed by Congress inhibits pursuing accountability of ICE for the harm they have done.

In 2018, ICE established a “Facilities Inspection” web page and began releasing documents back to May of that year. The website states that “ICE is posting all facility inspection reports submitted by the third-party contractor. The reports are posted below in chronological order within 60 days of inspection.” For each “inspection report” ICE supplies two documents:

- a G-324A form known as a Significant Incident Summary (SIS) and,
- a cover letter by the contractor The Nakamoto Group.

Both versions of the G-324A form state that “the following information must be completed prior to the scheduled review dates” (underline in original) and that “[t]his form should be filled out by the facility prior to the start of any inspection.”

Congress directed ICE to release “all final detention facility inspection reports.” ICE claims to post “all facility inspection reports,” but instead ICE is posting SIS forms that must be filled out before inspectors even arrive at the facility. Facility inspection reports regularly run in excess of 150 pages. Examples obtained by FOIA are posted by the National Immigrant Justice Center (NIJC). However, outside of those earlier FOIA requests, which required lengthy litigation by the NIJC to force compliance, ICE has released no inspection reports and is not complying with a Congressional mandate.

- **ICE must release all complete inspection reports from 2018 to the present.**

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82 Devereaux, “Theater of Compliance.”
84 https://www.ice.gov/detain/facility-inspections
85 The SIS form G-324 is 4-9 pages long, depending on the version. On the new longer forms, one page is always completely redacted, and two pages are boilerplate definitions. Therefore, both forms contain fewer than 5 pages of information.
References


BIA. In Re. D-J-, 23 I&N Dec 572 (AG 2003).


———. “‘Why Doesn’t Anyone Investigate This Place?’: Complaints Made by Migrants Detained at the Otero County Processing Center, Chaparral, NM Compared to Department of Homeland Security


AVID’s Call to Close OCPC, End Detention, and Release Inspections


APPENDIX A

Solitary Confinement and Disciplinary Review Forms
RHU Cell #: [Redacted]  
Medical Cell #: [Redacted]

To: Detainee  
From: Garza, J  
Detainee #: [Redacted]  
Title: Sergeant

You are being admitted to Administrative Segregation for the following reason(s):

X (A) for Pre-Hearing Detention - a disciplinary hearing is pending  
(B) for medical observation  
(C) you are pending a transfer or release within 24 hours  
(D) you are a security risk to yourself, others, or the orderly operation of the facility  
(E) you are being placed in Protective Custody as determined by staff  
(F) you are requesting placement in Protective Custody.  (Detainee signs below)

I hereby request placement in the Administrative Segregation Unit for my own protection.  
I do ( ) do not ( ) request a hearing concerning my segregation.

Detainee Signature  
Detainee A number  
Date  

Detainee [Redacted] A [Redacted] is currently in Restrictive Housing Unit pending investigation for charges

213-Engaging in or inciting a group demonstration

298-Interfering with a staff member in the performance of duties

Medical Staff Signature  
Shift Lieutenant Signature

Detainee (will) (will not) be escorted in restraints

This use of restraints violates PBNDS

**** Signature required from staff providing orders for escort with/without restraints

Admitted by: Moreno, J  
Detainee Sign: [Redacted]  
Admitted Date: 10/29/2019  
Released by:  
Released Date: 

Title: Lieutenant  
Time: 0.05 hrs  
Time: 11:45hrs

Terms of this form violate PBNDS as per DHS OIG-19-47, see page 5.
OCPC Orden de Segregacion Administrativa

RHU Celda #:  
Medical Celda #:  

Para: Detenido:  Detenido #:  
De Parte: Garza, J  Titulo: Sergeant  

Usted esta siendo admitido a Segregacion Administrativa por el siguiente motivo(s):

x (A) Detencion preliminar--(tiene una audencia disciplinaria pendiente)

(B) Observacion medica

(C) Esta bajo el proceso de ser transferido o liberado dentro las siguientes 24 horas.

(D) Usted es un riesgo hacia su propia persona, para su proximo, o para la operacion de la institucion.

(E) Usted esta siendo admitido bajo custodia protectiva por determinacion del personal.

(F) Usted esta pidiendo admission para custodia protectiva. (Detenido firma)

Aquí por medio de la presente solicito admission a segregacion administrativa para mi propia proteccion.

Yo Si( ) Yo No( ) solicito una audencia en relacion a mi segregacion.

Firma de Detenido  Detenido Numero A  Fecha

Detained: ___________________________ is currently in Restrictive Housing Unit pending investigation for charges

213-Engaging in or inciting a group demonstration

298-Interfering with a staff member in the performance of duties

Detenido (Sera) (No Sera) escollado esposado

/  

Firma de Personal Medico/ Firma de Supervisor

Medical staff and Shift Lieutenant signature is required*

<table>
<thead>
<tr>
<th>Admitido Por: Moreno, J</th>
<th>Titulo: Lieutenant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Firma de D核ideo:</td>
<td>Hora:</td>
</tr>
<tr>
<td>Dia de Admission: 10/29/2019</td>
<td>Hora: 11:45hrs</td>
</tr>
<tr>
<td>Liberado Por:</td>
<td>Título:</td>
</tr>
<tr>
<td>Fecha Liberacion:</td>
<td>Hora:</td>
</tr>
</tbody>
</table>
Disciplinary Review

On November 4, 2019 conducted a formal review in the Special Housing Unit

On the status of:  who is presently in Disciplinary Segregation.

Disciplinary start date: 11-1-19
Disciplinary end date: 11-27-19
Total days imposed: 29

Detainee has been in Disciplinary Segregation for 4 day(s), Charge 213.259

The following factors were reviewed with the results as indicated:

1. Does the reason for initial placement remain valid?
   YES [X] NO [ ]
2. Does the detainee pose a threat to others?
   YES [X] NO [ ]
3. Does the detainee pose a threat to property?
   YES [ ] NO [X]
4. Does the detainee pose a threat to security?
   YES [ ] NO [X]
5. Is the detainee defiant towards authority?
   YES [X] NO [ ]
6. Is the detainee unwilling or unable to live in the general population?
   YES [ ] NO [X]
7. Is the detainee's habitual conduct, language, or behavior of a type which may provoke or instigate stressful/violent situations amongst the general population?
   YES [X] NO [ ]

If any of the above factors are marked "YES", the detainee must continue his/her existing status, unless the Warden determines otherwise. If all factors are marked "NO," the detainee may be released.

DOCUMENT REVIEW

1. Is the detainee being offered three showers/week and taken showers?
   YES [X] NO [ ]
2. Is the detainee exercising at least one hour daily, 5 days a week?
   YES [X] NO [ ]
3. Is the detainee being offered three meals daily and consuming at least one meal daily?
   YES [X] NO [ ]
4. Is the detainee receiving daily visits from medical staff?
   YES [X] NO [ ]
5. Are the special housing officers signing and properly filling out the Special Housing Unit cell record?
   YES [X] NO [ ]

Interview Comments:

A "NO" answer to any of the above questions will require notification of the Captain.

For the reasons above, [X] I recommend removal from Disciplinary status.

[X] I do not recommend

Captain signature: ___________________________ Date/Time 11-04-19 / 11:15

[ ] Concur with Recommendation
[ ] Release
[X] Continue Status

[ ]  Concur with Recommendation

Associate Warden

Date: 11/4/19