Comments on the report are welcome and can be sent to:

AVID
P.O. Box 214
Las Cruces, NM 88004
avid@chihuahuan.org

Innovation Law Lab
PO Box 3218
El Paso, Texas 79923
info@innovationlawlab.org

Advocate Visitors with Immigrants in Detention (AVID) is an all-volunteer immigration detention visitation organization dedicated to abolishing the system of detaining migrants and immigrants. avid.chihuahuan.org

Innovation Law Lab (Law Lab) is a team of lawyers, organizers, and software engineers fighting to dismantle the deportation regime, immigrant prisons, and racist immigration policies. innovationlawlab.org

El Paso Immigration Collaborative (EPIC) is a legal project aimed at increasing access to legal representation for persons detained in the El Paso ICE/ERO field office area of responsibility. elpasojuntos.org

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Acknowledgements

This report was ultimately created by and for people detained in Otero. That is who this work is dependent upon and accountable to. Every single person and their loved ones who shared their experiences with the authors made this report happen.

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Authors

Nathan Craig,1 AnaKaren Ortiz Varela,2 Marissa C. Núñez,3 Margaret Brown Vega,4 Ian Philabaum,5 and PJ Podesta.6

Author Contributions

Nathan Craig (AVID) advised on data structuring, constructed graphs, performed analyses, wrote, and edited sections of the report. AnaKaren Ortiz Varela (Law Lab) and Marissa C. Núñez (Law Lab) coded and assembled the dataset, constructed the categories and groups, performed analyses, and contributed writing and editing to the report. Margaret Brown Vega (AVID) provided input on the focus and organization of the report, and contributed to its writing and editing. Ian Philabaum (Law Lab) provided coordination and creative input and contributed writing to the report. PJ Podesta (Law Lab) provided editing and creative input.

Design

AnaKaren Ortiz Varela, Marissa C. Núñez

Photography

Marissa C. Núñez

Suggested Citation


1 Nathan Craig co-coordinates AVID and is a College Assistant Professor of Anthropology at New Mexico State University.
2 AnaKaren Ortiz Varela develops advocacy support and data analysis systems for EPIC and other collaboratives.
3 Marissa C. Núñez coordinates pro bono legal services and advocacy for detained persons in the El Paso region through EPIC.
4 Margaret Brown Vega is the primary coordinator of AVID and a College Assistant Professor of Anthropology at New Mexico State University.
5 Ian Philabaum facilitates pro bono legal services and advocacy for detained persons through coalition work with EPIC and other collaboratives.
6 PJ Podesta coordinates pro bono legal services and advocacy for detained persons through EPIC and other collaboratives.
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<tr>
<td>References</td>
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</tr>
</tbody>
</table>
This report is about concerns and complaints expressed by people detained by Immigration and Customs Enforcement (ICE) at the Otero County Processing Center (OCPC) located in Chaparral, New Mexico, an immigration detention facility managed by private prison contractor Management and Training Corporation (MTC).

Between August 2019 and June 2020, attorneys and volunteers with the El Paso Immigration Collaborative (EPIC) spoke to 232 individuals detained at OCPC. The primary purpose of the conversations was legal advocacy for unrepresented individuals. Out of the conversations with 232 persons, 153 raised concerns or troubling information about some aspect of their experience with the immigration process. When complaints were raised, EPIC staff and volunteers recorded this information. This report is an analysis of those records.

The 153 individuals who raised concerns come from 16 countries and speak eight different languages. This sample of individuals registered 259 concerns, complaints, or troubling issues. These are organized into 14 categories. The categories are merged into three procedural groups that pertain to different aspects of the immigration process these individuals experienced: conditions in pre-ICE Detention (19%), conditions in ICE Detention (57%), and Legal issues while in ICE Detention (24%).

Out of the total number of complaints, the most common categories of concern were Medical issues while in ICE Detention (37%), Due Process matters experienced while detained (17%), and CBP (U.S. Customs and Border Protection) detention Conditions (14%) experienced prior to ICE Detention (“Pre-ICE Detention”). Notably, these top three areas of complaint pertain to the three major components of immigrant incarceration discussed in this report: detaining migrants upon arrival, imprisoning migrants at greater length, and deciding on their potential release or asylum cases.

In the current sample, 66% of the individuals spoken to raised a concern of some kind. This is substantially higher than the complaint rate obtained by ICE inspectors (4-8%) at the same facility. This discrepancy corroborates earlier criticism of the ICE inspections regime. We argue that ICE inspections constitute performative compliance that gives the illusion that entities are conforming to the “agreed” rules of contract delivery. This reform-oriented approach to systemic problems ends up justifying and sustaining the troubling situations that evoke the need for reforms in the first place.

Among the concerns raised in the Pre-ICE Detention group, perhaps the most significant result is the increasingly long periods of time that individuals are held in “temporary” CBP custody, inside the so-called hieleras or “ice boxes”. The current sample shows that in 2019 people were being held in hieleras on average (M=14, SD=15) seven times as long as they were between 2011-2015. The conditions in hielera holding cells are consistent with definitions of torture and constitute a form of “clean torture” that causes physical harm but may produce no immediately-visible physical marks.
Among the concerns raised in the ICE Detention group, Medical issues dominate and are varied in nature. Both mental and physical ailments go untreated. Moreover, mental ailments can be so acute that individuals turn to self harm and suicide attempts. The mental harms resulting from detention are consistent with categories of mental suffering resulting from torture. Medical neglect is responsible for two recent deaths at OCP, and the present sample demonstrates that the problems with medical care are ongoing. ICE’s response to the COVID-19 pandemic, discussed in multiple sections below, further underscores the profound harm the agency causes to the health of those detained.

Among the ICE Detention Legal issues, Due Process violations top the list. Advocates and individuals in immigration custody and proceedings widely observe Due Process violations and concerns across various agencies including ICE, CBP, United States Citizenship and Immigration Services (USCIS) and the Executive Office of Immigration Review (EOIR).

Focusing largely on the issues raised by individuals with whom EPIC spoke, we affirm and underscore the conclusion that ICE detention is inherently abusive, the ICE inspections regime occludes and facilitates systematic abuse, and that detention presents severe legal obstacles that are designed to make it as hard as possible for individuals to succeed in their immigration cases. Certain facets of ICE detention, prolonged use of solitary confinement, and ongoing inhuman or degrading treatment by facility staff are consistent with definitions of torture.

Drawing on larger conversations, we further conclude that ICE detention is impervious to reform. In fact, prior reform attempts made the situation worse. Immigration detention does not make communities safe, it is costly, and it is unnecessary for its stated purpose of ensuring that individuals attend their immigration proceedings. Importantly, the many instances of violence against and abuse of detained individuals reported here represent a pattern of behavior — not an aberration — that aligns with what is documented by detained and formerly detained individuals, and by our colleagues who support them across the United States and beyond. Simply put, the violence and abuse cannot be explained away by “a few bad apples;” it is systemic. On these grounds, we argue that ICE detention, the use of CBP temporary holding facilities, and the practice of returning immigrants to Mexico to await a hearing should be abolished.
Introduction

Immigration and Customs Enforcement (ICE) detains hundreds of thousands of persons each year. Yet — despite a body of literature that highlights the long history of the problems with ICE detention, and the billions spent each year detaining hundreds of thousands of individuals — there is still insufficient accounting of the experiences of persons detained by ICE. This report seeks to remedy, in part, this gap in knowledge and, based on that knowledge, argues that immigration detention must end.

Since ICE’s establishment in 2002, numerous government reports both in and outside DHS describe a myriad of significant and persistent problems with ICE detention that range from the highly egregious, such as widespread use of prolonged solitary confinement and sexual harassment, to the seemingly mundane, such as lack of sanitation and poor-quality food. In 2016, the chairman of the U.S. Commission on Civil Rights (USCCR) declared that migrants detained by ICE are subjected to “torture-like” conditions. This would be deeply concerning in any case, yet we note the purportedly non-punitive civil nature of immigration detention: “as a matter of law, immigration detention is unlike criminal incarceration” in that “immigration detention is not punishment.” ICE’s detention standards begin by stating that “ICE detains people for no purpose other than to secure their presence for both immigration proceedings and their removal.”

Individuals detained by ICE and those who regularly interact with such persons quickly become aware of the many problems in detention. Detained people are often direct with their concerns, when fear of retaliation or other barriers to communication are not overwhelming. While both government and advocacy reports describe concerns expressed by detained people, few documents quantify concerns from a large sample of individuals. This report, based on legal visits by members of the El Paso Immigration Collaborative (EPIC), quantifies concerns among a sample of 232 individuals detained at the Otero County Processing Center (OCPC) in Chaparral, New Mexico.

Given USCCR’s assertion that ICE detention is “torture-like” it is useful to explore definitions of torture as a basis for considering the accounts of detained persons that follow. Article 1 of the Convention Against Torture defines torture as “any act by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed […] which such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

7 DHS OIG, “Concerns about ICE Detainee Treatment and Care at Four Detention Facilities”; DHS OIG, “Concerns about ICE Detainee Treatment and Care at Detention Facilities.”
10 ICE, “Performance Based National Detention Standards 2011,” i.
12 UN, “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.”
18 USC § 2340 (United States Code) 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 and agonizing’ pain and suffering” and that “‘severe physical suffering’ may constitute torture even if it does not involve ‘severe physical pain.’” For example, according to the OLC multiple months in a hot, cramped cell, as well as extended periods of solitary confinement both constitute torture. OLC found that mental suffering is clear to have occurred when individuals suffer mental harm after the events in question. The list of conditions cited by the OLC includes: anxiety, flashbacks, nightmares, difficulty sleeping, depression, reclusiveness, and difficulty trusting others.

The experiences of detained individuals that are summarized in this report affirm the conclusion that immigration detention is inherently torturous.

16 Levin, 313.
Background

OCPC is a dedicated ICE facility with capacity to incarcerate more than 1000 individuals. In 2008, Otero County, New Mexico established a dedicated Intergovernmental Service Agreement (IGSA) with ICE to detain migrants at OCPC. Otero County subcontracts the management of OCPC to the private, profit-driven prison company, Management and Training Corporation (MTC).

In August of 2019, EPIC began conducting legal visits to individuals detained at OCPC. As of mid-March 2020, due to the COVID-19 pandemic, EPIC legal intakes are conducted exclusively by phone. Because EPIC’s main purpose is legal advocacy, the primary intention of visits or calls is collection of basic demographic and legal case posture data. However, the intake process incorporates a few standardized questions that aim to capture complaints, concerns, issues or problems regarding an individual’s experience both in detention and with the immigration process. Complaints that surface regarding individuals’ experiences with the immigration system, and detention generally, are the focus of this report.

Methods

EPIC’s primary data collection tools are referral and intake forms. Referral forms collect basic demographic information and limited details regarding legal case posture. Intake forms collect more comprehensive information and emphasize legal case details. Approximately 90% of referrals received by EPIC are submitted by partners who manage the legal orientation program (LOP) at the regional detention facilities. Persons interested in EPIC legal services fill out a one-page referral form, which is collected by LOP providers and sent to the EPIC project coordinator, who prepares a queue for legal visitation. Community organizations, specifically AVID, are responsible for the other 10% of referrals, including a notable group of Cuban individuals described in detail below (plantados).

18 Diocesan Migrant and Refugee Services (DMRS) manages the LOP program in OCPC, El Paso Service Processing Center (El Paso, TX), and West Texas Detention Facility (Sierra Blanca, TX), and is the source for the majority of referrals. ICE indefinitely discontinued using West Texas to detain persons in their custody in October 2019. Other referrals come from: New Mexico Immigrant Law Center (NMLC), the LOP program manager for Torrance County Detention Facility (Estancia, NM) and Cibola County Detention Center (Milan, NM), Catholic Charities of Southern New Mexico, Las Americas Immigrant Advocacy Center (LAIAC), Advocate Visitors with Immigrants in Detention (AVID), self-referrals to EPIC’s legal hotline, existing clients, among other sources.
Sample Construction

The dataset for this report is drawn from 403 individuals who were initially detained at, or eventually transferred to, OCPC. All individuals were voluntarily referred to the project from August 2019 - June 2020. EPIC legal visitors conducted intakes with 58% (n=232) of the 403 individuals. Of those 232 individuals with whom EPIC conducted an intake, 66% (n=153) registered a concern, complaint, issue, or problem with some aspect of their experience with the U.S. immigration system. Due to one of five recorded reasons (see Table 1), EPIC was unable to conduct an intake with the remaining 42% (n=171) of the individuals.

<table>
<thead>
<tr>
<th>Reasons for unsuccessful visit and intake completion</th>
<th># from all people referred to EPIC</th>
<th>% within all people referred to EPIC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual refused a legal visit or terminated EPIC services</td>
<td>7</td>
<td>1.7 %</td>
</tr>
<tr>
<td>Transferred out of EPIC scope before visitation became available</td>
<td>10</td>
<td>2.5 %</td>
</tr>
<tr>
<td>EPIC terminated engagement before visitation due to ineligibility for services</td>
<td>49</td>
<td>12.2 %</td>
</tr>
<tr>
<td>Individual already had legal representation</td>
<td>51</td>
<td>12.7 %</td>
</tr>
<tr>
<td>Unable to contact/locate individual</td>
<td>54</td>
<td>13.4 %</td>
</tr>
</tbody>
</table>

Table 1. Reasons why EPIC was unable to complete a visit or intake for an individual referred to the project.

Only A Partial Picture

Despite the striking numbers and accounts included in this report, they represent only the tip of the iceberg. First, as noted in places below, fear of retaliation by detention authorities represents a pervasive and often overwhelming barrier to hearing or receiving the accounts of individuals detained regarding the violence and abuse they face. In addition, the legal consultation rooms at OCPC are not sound proof. Persons outside of the consultation rooms can overhear conversations that occur in the legal consultation rooms, and MTC guards often stand outside the doorways. The legal consultations rooms do not afford meaningful privacy or attorney-client confidentiality. People in detention are well aware of this lack of privacy.
Meanwhile, several limitations inherent to providing legal services to individuals in DHS custody make data collection on non-legal issues challenging for the EPIC project. The project was initially designed to provide limited legal services to individuals for the purpose of requesting release from detention through either bond or parole. In May of 2020, the scope of the project was expanded to individuals who qualify for other forms of relief from removal. This means the data set in this report focuses on a fragment of the population within ICE detention, which nationwide reached a total of 55,000 people in July 2019 as EPIC began work.\textsuperscript{19} The five detention centers of the El Paso region comprise a single, albeit massive, component of the larger ICE detention system. This report focuses merely on one of these detention centers, yet reflects and relates to broader, systemic matters.

Additionally, the LOP is typically provided in Spanish. This creates a significant structural barrier to EPIC's ability to provide services to and collect data from individuals of non-Spanish speaking backgrounds who have limited English proficiency. Also, due to the legal nature of the project, EPIC legal visitors are unable to conduct an intake with individuals who have already acquired representation. If an individual states that they have legal representation, EPIC visitors must end the visit and no further information is collected from this individual, including information related to their experiences in detention or with the immigration system generally.

Reasons why EPIC attorneys did not record a concern include, but are not limited to: the individual already had an attorney, prompting the conversation to end quickly; the case posture rendered the person ineligible for EPIC services;\textsuperscript{20} the project was unable to locate and/or make contact with the individual;\textsuperscript{21} or the individual was transferred, released, or deported before EPIC visitors were able to meet with them (see Table 1).

\textsuperscript{19} ICE, “Immigration Enforcement Detention Management”; TRAC Immigration, “Immigration and Customs Enforcement Detention: ICE Data Snapshots, up to July 2019.”
\textsuperscript{20} Reasons EPIC would find someone ineligible for legal representation are found through the EOIR hotline and/or the referral, they consist of: outstanding removal order, negative CFI, merits hearing too soon from date of referral, no sponsor, and complex criminal record.
\textsuperscript{21} EPIC defines a person as unable to locate if: returned mail with ‘departed facility’ notice arrives for them, visitors are informed that they are no longer at OCPC when requesting visitation, or person is not found in the ICE Online Detainee Locator System after multiple search attempts.
Results

Results are presented first in terms of the countries of origin and languages spoken by individuals that EPIC interviewed. Following this, two distinct sub-groups of individuals are identified and described: those placed in the Migrant Protection Protocols (MPP) and plantados. Then, a quantitative account of the categories of concerns are detailed based on three groups: Pre-ICE Detention, ICE Detention Conditions, and ICE Detention Legal Matters.

Language and Country of Origin of Individuals Who Issued Complaints or Concerns

In the full EPIC sample of individuals detained at OCPC between August 2019 and June 2020 (n=403), persons hailed from 16 different countries and spoke eight different languages. Among those who expressed concerns (n=153), individuals arrived from 14 countries and spoke seven different languages. While 38% (n=153) of the total number of individuals referred to EPIC (n=403) expressed a concern, they represent 93% of the countries and 88% of the languages. This indicates that concerns were expressed by a diverse group of individuals.

Out of the total number of complaints or concerns expressed (n=259), 44% (n=115) were issued by 66 Cubans who comprised 43% of the total number of individuals who issued complaints.

Cubans formed the largest group of individuals who issued complaints, but did not appear to register complaints at a higher rate than their proportion of the sample. However, Cubans topped the list of individuals who submitted multiple complaints. For example, six of the nine individuals who submitted more than four complaints were Cuban.

The next largest group to voice complaints were Hondurans, who issued 14% (n=36) of the total number of complaints and comprised 12% (n=18) of the total number of individuals who issued a complaint. As with Cubans, the number of individuals who expressed complaints is proportional to their representation in the overall group.

<table>
<thead>
<tr>
<th>First Language</th>
<th>Number of Individuals</th>
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</thead>
<tbody>
<tr>
<td>Spanish</td>
<td>358</td>
</tr>
<tr>
<td>Unknown</td>
<td>16</td>
</tr>
<tr>
<td>Portuguese</td>
<td>12</td>
</tr>
<tr>
<td>English</td>
<td>10</td>
</tr>
<tr>
<td>Haitian Creole</td>
<td>2</td>
</tr>
<tr>
<td>Quechua</td>
<td>1</td>
</tr>
<tr>
<td>Acateco</td>
<td>1</td>
</tr>
<tr>
<td>Quiche</td>
<td>1</td>
</tr>
<tr>
<td>Amharic</td>
<td>1</td>
</tr>
<tr>
<td>Ixil</td>
<td>1</td>
</tr>
</tbody>
</table>

Table 2. First languages spoken by individuals detained at OCPC and known to EPIC August 2019 - June 2020
## Language and Country of Origin of Individuals Who Issued Complaints or Concerns

<table>
<thead>
<tr>
<th>Country of Birth</th>
<th>Number of Individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cuba</td>
<td>151</td>
</tr>
<tr>
<td>Mexico</td>
<td>76</td>
</tr>
<tr>
<td>Honduras</td>
<td>50</td>
</tr>
<tr>
<td>El Salvador</td>
<td>43</td>
</tr>
<tr>
<td>Guatemala</td>
<td>26</td>
</tr>
<tr>
<td>Nicaragua</td>
<td>15</td>
</tr>
<tr>
<td>Ecuador</td>
<td>15</td>
</tr>
<tr>
<td>Brazil</td>
<td>14</td>
</tr>
<tr>
<td>Uganda</td>
<td>4</td>
</tr>
<tr>
<td>Haiti</td>
<td>2</td>
</tr>
<tr>
<td>Dominican Republic</td>
<td>1</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>1</td>
</tr>
<tr>
<td>Panama</td>
<td>1</td>
</tr>
<tr>
<td>Unknown</td>
<td>1</td>
</tr>
<tr>
<td>Ghana</td>
<td>1</td>
</tr>
<tr>
<td>Cameroon</td>
<td>1</td>
</tr>
<tr>
<td>Venezuela</td>
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<table>
<thead>
<tr>
<th>First Language</th>
<th>Number of Individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spanish</td>
<td>234</td>
</tr>
<tr>
<td>Unknown</td>
<td>11</td>
</tr>
<tr>
<td>English</td>
<td>8</td>
</tr>
<tr>
<td>Portuguese</td>
<td>5</td>
</tr>
<tr>
<td>Haitian Creole</td>
<td>2</td>
</tr>
<tr>
<td>Amharic</td>
<td>1</td>
</tr>
<tr>
<td>Quechua</td>
<td>1</td>
</tr>
<tr>
<td>Acateco</td>
<td>1</td>
</tr>
<tr>
<td>Ixil</td>
<td>1</td>
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<table>
<thead>
<tr>
<th>Country of Birth</th>
<th>Number of Individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cuba</td>
<td>115</td>
</tr>
<tr>
<td>Honduras</td>
<td>36</td>
</tr>
<tr>
<td>El Salvador</td>
<td>31</td>
</tr>
<tr>
<td>Mexico</td>
<td>28</td>
</tr>
<tr>
<td>Guatemala</td>
<td>17</td>
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<tr>
<td>Ecuador</td>
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<td>Dominican Republic</td>
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<td>Ghana</td>
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<td>Ethiopia</td>
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</tbody>
</table>

Table 3. Country of birth for individuals detained at OCPC and known to EPIC August 2019 - June 2020

Table 4. First languages and number of individuals among persons detained at OCPC who expressed a concern or complaint to EPIC staff or volunteers August 2019 - June 2020

Table 5. Country of birth and number of individuals among persons detained at OCPC who expressed a concern or complaint to EPIC staff or volunteers August 2019 - June 2020
**Distinct Subgroups**

It is important to note that there are two distinct sub-groups of individuals in this sample that warrant brief review. One is the group placed in the so-called MPP. The other is those who participated in a series of *plantado* protests while detained at OCPC.

“Migrant Protection Protocols” (MPP)

EPIC staff and volunteers met with five individuals who were placed in MPP, also known as the “Remain in Mexico” policy. DHS Secretary Kirstjen Nielsen announced MPP on December 20, 2018, and began implementation on January 25, 2019.

MPP operates in conjunction with “metering” at ports of entry, but the two policies apply to individuals in different ways. Metering is applied by Customs and Border Protection (CBP) to arriving individuals who are turned away from the port of entry before inspection and told to return to Mexico to wait on a list until their number is called. MPP is applied to persons seeking asylum who are already inspected by CBP for entry into the U.S.; the latter individuals are placed in removal proceedings, and told to wait in Mexico while those proceedings unfold. Advocates are challenging both policies in federal court.

El Paso, Texas was among the first places where both metering and MPP were introduced. By February 6, 2019 the American Immigration Council, the American Immigration Lawyers Association and the Catholic Legal Immigration Network expressed “grave concern” regarding “substantial evidence demonstrating catastrophic harms that will befall” migrants returned to Mexico under MPP. Additional reports that emerged from El Paso underscored those concerns articulated by these national groups.

Of the five individuals in this sample who were placed in MPP, four persons described their experience during EPIC interviews. After being placed in MPP, one individual’s wife was raped while he was held at gunpoint. Another individual was assaulted and received death threats. Another individual, after being allowed to enter the United States, was held in a CBP temporary facility known as a *hielera* for 14 days, then transferred to a second temporary facility for another 9 days. The fourth individual developed high blood pressure and health complications due to stress induced by MPP and ICE detention.

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22 DHS, “Secretary Nielsen Announces Historic Action to Confront Illegal Immigration.”
26 Bello et al., “Violations of Human Rights Occurring in Mexico as a Result of the Remain in Mexico Program.”
To date, roughly 60,000 individuals have been subjected to MPP. Numerous individuals affected by the policy and advocacy groups have decried the violence and danger endemic to the program.27

Protections for migrants in MPP, which the Trump administration claimed were negotiated and established with the Mexican government, largely never materialized. Discussion below further describes relevant concerns.

■ 2019 OCPC *Plantados*

AVID received the names of 24 individuals who were part of a much larger group of individuals detained at OCPC. They engaged in protests against their prolonged detention and lack of access to mechanisms of release. Coordinating with EPIC, advocates did intakes with the aim of speaking directly to these individuals, documenting complaints, the protests, and acts of self-harm, and assessing legal needs toward pushing for releases. EPIC spoke with 25 persons in total who were organizing and carrying out protests at the facility. While these actions were not conducted exclusively by Cuban asylum seekers, all of the protestors EPIC spoke with were Cuban. The OCPC protestors described a general tactic of becoming *plantado*, or unmoving. This term comes from the *plantados*,28 a group of political prisoners in Cuba in the 1960’s who refused to participate in government political education classes or engage in manual labor.

The 2019 OCPC *plantados’* primary points of protest were 1) a lack of options for release and 2) that their deportation officers (DOs) would not meet with them to discuss release options.

Many of the 2019 OCPC *plantados* turned to protest after being held at the facility for months and never meeting with or speaking to their DO. For example, within this sample, more than three detained persons each independently named two DOs that they never met with, even after months of detention at OCPC. In an effort to create leverage to have meetings with their DOs, individuals engaged in hunger strikes and sit-ins. One of the largest and most-organized protests by *plantados* at OCPC took place in early October of 2019. During this action, more than 20 individuals entered the recreation yard and refused to leave until they met with their DOs. They were met instead with the use of force, including but not limited to chemical suppressants. One individual who was detained at OCPC for four months said that prior to the early October *plantado* he never met with his DO. This same individual indicated that for two consecutive days after the protests, his DO met with him. However, this individual reported that these were the only times that he ever met with his DO. Several of the accounts of staff mistreatment detailed below are made by 2019 OCPC *plantados*.

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27 HRF, “Delivered to Danger: Trump Administration Sending Asylum Seekers and Migrants to Danger.”
AVID documented additional details about abusive treatment toward the *plantados*. These provide additional insight into the conditions in ICE detention for these vocal individuals. AVID volunteers received calls on October 11 and 12 of 2019 in which individuals reported that there were *plantados* in the recreation area protesting prolonged detention and lack of access to mechanisms of release, and additional individuals protesting inside. Individuals described systematic searches of the protestors’ dorms that left the dorms a mess. Individuals reported that during these searches items were seized, including official grievances filed against MTC facility staff, court documents, and personal correspondence. ICE’s Performance Based National Detention Standards (PBNDS) stipulate that searches of housing, “shall be conducted without unnecessary force and in ways that preserve the dignity of detainees.”

In a letter, AVID reported these unnecessarily forceful and retaliatory searches to members of the New Mexico congressional delegation.

More than 20 individuals entered the recreation yard and refused to leave until they met with their DOs.

They were met instead with the use of force including, but not limited to, chemical suppressants.

[In retaliatory searches] items were seized, including official grievances filed against MTC facility staff, court documents, and personal correspondence.

The following is a complaint letter sent on 18 October 2019 by Cuban asylum seekers protesting at the Otero County Processing Center (OCPC). A scan of the original Spanish letter is provided first followed by an English translation. By the week before publication, at least three individuals had engaged in serious self-harm by lacerating their wrists using their identification badges. Large numbers of persons detained in multiple “pods,” dormitories composed of 50 individuals, were chanting “*Libertad!*” on a daily basis. One other individual was on hunger strike at the time of publication. OCPC staff retaliated against the protests by placing many individuals in disciplinary solitary.

30 Lujan Grisham to McAleenan, “Extreme Concern about Persistent Reports of Inhumane Treatment of Individuals in the Custody of ICE at Detention Facilities in My State,” October 25, 2019; Lujan Grisham to Cuffari, “Extreme Concern about Persistent Reports of Inhumane Treatment of Individuals in the Custody of ICE in My State,” October 25, 2019; jgould@sfnewmexican.com, “Lujan Grisham Asks for Probe of Treatment at Detention Centers”; Heinrich and Udall to Wolf, “Letter Expressing Deep Concern About Reports of Inhumane Treatment at ICE Detention Facilities, Such as the Otero County Processing Center, in Chaparral, New Mexico,” November 15, 2019.
A quien pueda interesar: 18 de octubre del 2019

Yo [Redactado] con A# [Redactado] en conjunto con [Redactado] y demás compañeros cubanos en el centro de detención Otero County Processing Center mediante esta carta estamos denunciando el centro y su forma de procedimiento con los detenidos cubanos los cuales provenimos de un régimen dictador por más de 60 años y ahora nos encontramos en privación de nuestra libertad entre 6 y 9 meses ya sobrepasado el límite de tiempo del proceso violando así con la detención prolongada obligatoria la constitución de los Estados Unidos en este centro debido a los jueces de emigración que nos atienden en el centro nuestros casos tanto de Fianza como de Asilo Político en la mayoría de los casos los jueces nos han negado por razones y pretextos ilógicos y sin fundamentos como por ejemplo casos en cual los jueces nos han negado la Fianza con el pretexto y la justificación de que somos riesgo de fuga lo cual no se pone de manifiesto debido a que nuestros patrocinadores han proporcionado cartas de apoyo incondicional y cartas de recomendaciones con sus correspondientes direcciones donde serán nuestras residencias y han entregado información confidencial como sus ingresos personales y sus números de teléfonos por demostrar ante los jueces que vamos a tener apoyo incondicional durante nuestro proceso de asilo en libertad lo cual demuestra que no vamos a hacer una carga publica ni representamos riesgo para la comunidad. La mayoría de nosotros somos profesionales con alto nivel de estudio y queremos con nuestros conocimientos servir a la comunidad y contribuir con el país, nosotros denunciamos a la vez los múltiples casos en los que hemos sido negados el asilo político por los jueces con la justificación de que Cuba a cambiado lo cual no existe quien pueda comprobar dicha justificación. Nosotros denunciamos en este centro la constante amenaza de los oficiales del centro con castigarnos en celdas individuales de castigo con el fin de reprimirnos y torturarnos psicológicamente con el objetivo de que tengamos miedo y nos deportemos a nuestro país de origen del cual huimos por el peligro que corrien nuestras vidas, nosotros denunciamos la discriminación racial en cuanto a nosotros solo porque somos latinos. Nosotros hemos buscado ayuda con los oficiales del ICE y ellos no resuelven nuestros problemas por el contrario, se manifiestan racistas, xenófobos y prepotentes al igual que los oficiales del centro. Por favor necesitamos ayuda en cuanto antes a quien pueda interesarle estamos desesperados ya hemos hecho barías manifestaciones como Huelgas de hambre, algunos hemos intentado asta quitarnos la vida y existen pruebas legítimas de los hechos por favor ayúdenos a que salga esto a la luz la retención o detención prolongada obligatoria de este centro lo cual viola los fundamentos en la constitución de los Estados Unidos. Nosotros pedimos justicia y que alguien investigue nuestras causas y ponga fin a esta injusticia en este centro, estamos dispuesto a testificar a la prensa libre o a cualquier medio de noticias la verdad de los maltratos y las amenazas constantes a la que somos sometidos por favor, pedimos ayuda y pedimos como medida de alivio que se nos otorgue una fianza para terminar nuestro proceso de asilo en libertad y con un tribunal que respeta las leyes constitucionales de los Estados Unidos, un tribunal donde exista la imparcialidad y sea justo no como los tribunales de Otero de los que pensamos y somos testigos que están en complot con los dueños de la detención con fines lucrativos debido a que están enriqueciéndose a través de la detención por tiempo indefinido de los detenidos o emigrantes Cubanos. Gracias por su atención y su dedicación a nosotros gracias.
To whom it may concern: 18 October 2019

I [name redacted] with A# [redacted] together with [name redacted] A# [redacted] and other Cuban comrades in the Otero County Processing Center detention center through this letter are denouncing the center and their procedure with the detained Cubans all of which come from a dictatorial regime for more than 60 years and now we find ourselves deprived of our liberty between 6 and 9 months already exceeding the time limit of the process in this way violating with the obligatory prolonged detention the constitution of the United States[,] in this center due to the immigration judges that attend to us in the center our cases as much for bond as for political asylum in the majority of the cases the judges have denied us for illogical reasons and pretexts without basis like for example cases in which the judges have denied us bond with the pretext and the justification that we are flight risks which is not made manifest since our sponsors have provided letters of unconditional support and recommendation letters with their corresponding addresses where our residences will be and they have submitted confidential information such as their personal earnings and telephone numbers to demonstrate to the judges that we will have unconditional support during our asylum process in freedom which demonstrates that we will not be a public charge nor do we represent a risk for the community. The majority of us are professionals with a high level of study and we want with our knowledge to serve the community and contribute to the country, we denounce at the same time the multiple cases in which we have been denied political asylum by the judges with the justification that Cuba has changed for which there exists no one who can confirm said justification. We denounce in this center the constant threat by the officials of the center to punish us in individual cells of punishment with the goal of repressing us and psychologically torturing us with the objective of making us have fear and making us deport ourselves to our country of origin from which we fled for the danger our lives were in, we denounce the racial discrimination as regards us only because we are latinos. We have looked for help with the ICE officials and they do not resolve our problems on the contrary, they reveal themselves as racist, xenophobic and bullies just like the officials of this center. Please we need help as soon as possible to whom it may concern we are desperate and we have already held various protests such as hunger strikes, some of us have even attempted to take our own lives and there exist s legitimate proof of these facts please help us so that this comes to light the retention or obligatory prolonged detention of this center that violates the foundations of the United States constitution. We ask for justice and that someone investigate our causes and put an end to this injustice in this center, we are willing to testify to the free press or to whatever news medium the truth about the mistreatment and the constant threats to which we are subjected please, we ask for help and we ask as a measure of relief that we be granted a bond to finish our asylum process in freedom and with a court that respects the constitutional laws of the United States, a court where impartiality exists and will be just not like the Otero courts of which we believe and are witnesses that they are plotting with the owners of the detention for profit due to the fact that they are enriching themselves through the detention for indefinite time of the detained or Cuban migrants. Thank you for your attention and your dedication to us [.] thank you.

[name and signature redacted]
The above context frames this section, which is a quantitative account of the concerns reported by individuals in this sample. From the 232 people detained at OCPC that EPIC contacted, either in person or by phone, 153 (66%) individuals expressed to EPIC staff and volunteers a total of 259 complaints or concerns. These were assigned to 14 categories (Table 2, Figure 1) and organized into three broad groups (Table 3, Figure 2).

### Groups and Categories of Complaints

<table>
<thead>
<tr>
<th>Group</th>
<th>Category</th>
<th>Count</th>
<th>% Total All Categories</th>
<th>% Group of Categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-ICE Detention</td>
<td>CBP Conditions</td>
<td>36</td>
<td>13.9</td>
<td>73.47</td>
</tr>
<tr>
<td>Pre-ICE Detention</td>
<td>Family Separation</td>
<td>10</td>
<td>3.86</td>
<td>20.41</td>
</tr>
<tr>
<td>Pre-ICE Detention</td>
<td>Internal Apprehension</td>
<td>3</td>
<td>1.16</td>
<td>6.12</td>
</tr>
<tr>
<td>ICE Detention</td>
<td>Personal Belongings</td>
<td>1</td>
<td>0.39</td>
<td>0.68</td>
</tr>
<tr>
<td>ICE Detention</td>
<td>Prolonged Detention</td>
<td>1</td>
<td>0.39</td>
<td>0.68</td>
</tr>
<tr>
<td>ICE Detention</td>
<td>Solitary</td>
<td>6</td>
<td>2.32</td>
<td>4.05</td>
</tr>
<tr>
<td>ICE Detention</td>
<td>Staff Mistreatment</td>
<td>14</td>
<td>5.41</td>
<td>9.46</td>
</tr>
<tr>
<td>ICE Detention</td>
<td>Unsanitary Conditions</td>
<td>2</td>
<td>0.77</td>
<td>1.35</td>
</tr>
<tr>
<td>ICE Detention</td>
<td>Work Conditions</td>
<td>1</td>
<td>0.39</td>
<td>0.68</td>
</tr>
<tr>
<td>ICE Detention</td>
<td>Discrimination</td>
<td>17</td>
<td>6.56</td>
<td>11.49</td>
</tr>
<tr>
<td>ICE Detention</td>
<td>Language Access</td>
<td>10</td>
<td>3.86</td>
<td>6.76</td>
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<tr>
<td>ICE Detention</td>
<td>Medical</td>
<td>96</td>
<td>37.07</td>
<td>64.86</td>
</tr>
<tr>
<td>ICE Detention Legal</td>
<td>Legal Access</td>
<td>17</td>
<td>6.56</td>
<td>27.42</td>
</tr>
<tr>
<td>ICE Detention Legal</td>
<td>Due Process</td>
<td>45</td>
<td>17.37</td>
<td>72.58</td>
</tr>
</tbody>
</table>

Table 6. Category counts of concerns expressed by individuals detained at OCPC to EPIC staff and volunteers August 2019 - June 2020
For each of the 14 categories, there were an average of 19 (SD=26) and a median of 10 concerns expressed. The large standard deviation and mean, nearly double the median, indicates that the distribution of concerns is skewed by a small number of categories that represent a large number of complaints. A bar graph of counts by category (Figure 1) indicates that Medical issues were expressed significantly more (> 2 SD) than all other categories of concerns.

For each of the three category groups, there was an average of 86 (SD=53.8) and a median of 62 concerns expressed. A bar graph of category group counts (Figure 2) indicates that ICE Detention Conditions were the primary area of concern followed by ICE Detention Legal issues, and Pre-ICE Detention conditions.

<table>
<thead>
<tr>
<th>Groups</th>
<th>Count of Concerns with Group</th>
<th>% Total of Concerns Across All Categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-ICE Detention</td>
<td>49</td>
<td>18.92</td>
</tr>
<tr>
<td>ICE Detention Conditions</td>
<td>148</td>
<td>57.14</td>
</tr>
<tr>
<td>ICE Detention Legal</td>
<td>62</td>
<td>23.94</td>
</tr>
</tbody>
</table>

Table 7. Category group counts of concerns expressed by individuals detained at OCPC to EPIC staff and volunteers August 2019 - June 2020.
Results

Concerns Plotted by Category and Colored by Group

![Bar graph showing category group counts of concerns expressed by individuals detained at OCPC to EPIC staff and volunteers August 2019 to June 2020.](image)

Figure 1. Bar graph showing select category counts of concerns expressed by individuals detained at OCPC to EPIC staff and volunteers August 2019 to June 2020. Note the graph only shows the 11 categories with counts greater than one rather than the full list of 14 categories of concern.

Concerns Plotted by Group

![Bar graph showing category group counts of concerns expressed by individuals detained at OCPC to EPIC staff and volunteers August 2019 - June 2020.](image)

Figure 2. Bar graph showing category group counts of concerns expressed by individuals detained at OCPC to EPIC staff and volunteers August 2019 - June 2020.
Pre-ICE Detention

There were 49 concerns registered regarding some aspect of Pre-ICE Detention. This group comprises 19% of all complaints, and includes three categories of complaint or concern: Enforcement, Family Separation, and CBP Conditions.

■ Interior Enforcement

Three individuals issued concerns about interior enforcement raids. All three individuals reported being apprehended during ICE raids that took place in February of 2020 in Albuquerque, New Mexico.

■ Family Separation

Family separations occur at various points within the larger immigration enforcement apparatus, are enforced by different agencies, and are caused by many independent factors. Although some individuals were separated from their minor children, not all the family separation grievances fall under the same circumstances as the mass separations under the 'zero tolerance' policy enacted in the summer of 2018, during which U.S. officials separated at least 2,654 minor children from their biological parents or legal guardians. These data reflect any family separations as expressed by the individuals detained at OCPC with whom EPIC met.

→ Someone felt tricked into signing a document that gave up some of his rights as a parent. His DO told him that if he continued to fight his case rather than accept deportation, his wife and child would be detained.

→ Someone was told he and his brother would be interviewed separately. They never saw one another after the interview.

31 DHS-enforced family separations of what they define as a ‘family unit’ (one biological parent or legal guardian with children under 18 years old) for having entered without inspections reached an all-time high during the months of April through June of 2018. “The Trump Administration has admitted to separating hundreds of additional children since the zero tolerance policy was halted by a federal court, and government watchdogs have indicated that the Administration may have separated thousands of additional children before the zero tolerance policy was announced.” Staff Report. “Child Separations by the Trump Administration,” 9.
There were 10 complaints regarding family separation at the hands of U.S. officials. For all of the individuals who described being separated from their family, the separation incident occurred upon their arrival to the U.S.-Mexico border, while in CBP custody. One individual was separated from his wife who was raped while they were subjected to MPP. One individual was separated from two sons, one two years of age and the other four months old. Another man was separated from his partner and a four-year-old son.

One man separated from his wife and son said he felt he was tricked into signing a document that gave up some of his rights as a parent. He was told that signing the document would allow the three of them to remain together, but he was separated from them by CBP immediately upon signing the document. He also said that his DO told him that if he continued to fight his case rather than accept deportation, his wife and child would be detained. One man was separated from his brother and a nephew who was 12 years old. The man reported that officers told the brothers that they would be interviewed separately. They never saw one another after the interview.

### CBP Conditions

Nearly three quarters of the Pre-ICE Detention complaints (n=36) had to do with the purportedly temporary CPB holding cells widely known as *hieleras* or “freezers.” These temporary holding cells are not designed for overnight custody, are not equipped with sleeping accommodations, and are notorious for their cold temperatures.

Of the 36 individuals who complained about being held in *hieleras*, 31 reported the length of their detention. The average reported length of detention in a *hielera* was 14 days (SD= 15), the median duration was 10 days, and the maximum duration was 52 days. One individual reported being held in a *hielera* for 15 days and then being held in tents at the West Texas Detention Facility in Sierra Blanca, Texas for three months after being transferred to ICE detention.

All individuals held in *hieleras* complained about the cold temperatures. A common expression was that it was “*demasiado frio*” (“too cold”) in the facilities. One individual specifically stated that the *hieleras* were colder than ICE detention. Most individuals reported sleeping on the floor with nothing but a thin plastic (Mylar) blanket. Two individuals reported having to sleep standing up due to extreme overcrowding. One individual reported that due to overcrowding, the group organized to sleep in shifts.

At least three individuals specifically mentioned the degree of overcrowding. One individual, held in a *hielera* for 26 days reported being held with 127 individuals in a space with a capacity for 44. Two other individuals reported being held with 100 other individuals.
ICE detention amounts to torture. The mental harms resulting from detention are consistent with categories of mental suffering resulting from torture.

The conditions in *hielera* holding cells are consistent with definitions of torture and constitute a form of “clean torture” that causes physical harm but may produce no immediately-visible physical marks.

The current sample shows that in 2019 people were being held in *hieleras* on average (M=14, SD=15) seven times as long as they were between 2011-2015.

There were seven specific complaints about insufficient food and going hungry in the *hieleras*. Some individuals reported having insufficient water. One individual held for 26 days in a *hielera* in Brownsville, Texas who complained about insufficient food reported that he and the others were given one cookie for breakfast and a single sandwich to last through lunch and dinner. One individual held for an extended period of time at a *hielera* in La Grulla, Texas reported getting food poisoning and vomiting repeatedly. This individual reported that they were never allowed to shower during their entire time in the *hielera*.

There were six complaints about lack of access to hygiene. One individual held in three different *hieleras* for a total of 45 days reported that in addition to insufficient food, he was only able to bathe and brush his teeth once during the month and a half he was incarcerated in CBP’s “temporary” facilities. Various individuals held in *hieleras* for 18, 17, and 16 days reported that they were never allowed to bathe or brush their teeth while being detained in these “temporary” holding facilities.

Multiple individuals reported not being able to go outside, or only for very limited periods of time. One individual reported being able to go outside once a week for ten minutes. Another individual held for nearly a month reported not knowing if it was day or night. Someone held for 15 days in a crowded *hielera* reported that they were never let outside.
ICE Detention

There were 148 concerns raised about some aspect of ICE Detention Conditions, and this forms over half (57%) of the concerns expressed in this sample. More than two thirds of concerns about ICE Detention Conditions involved Medical issues. The next-highest ranked categories of ICE Detention Conditions involved Discrimination and Staff Mistreatment.

Medical

There were 96 Medical concerns expressed by 74 individuals comprising 37% of the total complaints, 65% of the ICE Detention Condition concerns, and 48% of the individuals who registered complaints. Out of the Medical concerns, more than half (56%, n=54) regarded physical health, a quarter (25%, n=24) regarded mental health, and the remaining (19%, n=18) regarded medical access.

Detained individuals expressed several areas of concern regarding physical health. Four individuals reported being denied medical services to treat injuries inflicted during physical assaults suffered prior to ICE detention. All four of these individuals were seeking asylum, and the assaults either related to incidents of past persecution which they had fled, or physical attacks they suffered while being held in Mexico under MPP. Multiple individuals described being denied access to prescribed medications to treat pain and heart conditions. An HIV-positive individual reported not being given proper medication for their health condition. Multiple individuals reported receiving insufficient blood pressure medication. One individual detained by ICE for two years reported being denied access to a dentist to address chronic tooth pain. The attorney who spoke with this individual noted a strong odor emanating from the person’s mouth, which could have indicated that his dental damage was severe. Some individuals reported injuries like a sprained ankle that went untreated. One individual reported being denied glasses.

Individuals reported a number of untreated mental health conditions including panic attacks, anxiety, and depression. Multiple individuals, all seeking asylum, were suffering from untreated post-traumatic stress disorder (PTSD) that arose from prior physical attacks and sexual assaults that either occurred in their home country and were related to their asylum claim, or were attacks that occurred while waiting in Mexico under MPP. Several individuals indicated that they were deeply depressed due to being separated from their families, and from prolonged detention. Several individuals diagnosed with hypertension reported that their condition was exacerbated by the mental stress of incarceration.

Among those who expressed concerns about medical care, three individuals attempted suicide. A fourth individual indicated they were seriously considering suicide. All four of these individuals were seeking asylum. One of the individuals who attempted suicide was held in a hielera for nearly three weeks prior to being detained at OCPC. While held in the hielera they reported sleeping on the ground with only a plastic blanket and indicated that they were not allowed to bathe or brush their teeth. Another individual attempted suicide while in solitary confinement. This individual had visible head trauma as a result of a beating in their home country, and they complained of constant headaches that went untreated.
A third individual reported severe depression and mental illness due to detention. Those who attempted suicide or were considering it expressed additional detention-related concerns regarding non-medical issues.

Individuals made 14 complaints related to COVID-19. Most of these complaints related to lack of access to masks, inability to engage in social distancing, or lack of information from MTC. One individual stated, “Todos comemos de cuatro por mesa y dormimos uno arriba y uno abajo. No tenemos aislamiento de distancia.” (“We eat four people per table and sleep one above and one below [referring to bunk beds]. There is no social distancing.”) Some individuals indicated that when they reported feeling feverish, they were yelled at by MTC staff and told to wait to be seen by medical personnel. One individual reported that guards told everyone in his barracks that they all tested positive for COVID-19, but they never received the test results nor other medical documents they requested. EPIC spoke to five individuals detained at OCPC who tested positive for COVID-19. Individuals who tested positive for COVID-19 reported being placed in solitary confinement. One individual who tested positive suffered from asthma.

Despite knowledge of the contagious nature of COVID-19, ICE continues the practice of transferring individuals from other regional facilities to OCPC. Individuals who were subjected to mass outbreaks in El Paso Service Processing Center were quarantined and eventually transferred to OCPC. In one case, an individual reported to EPIC that he was forced to continue quarantining while at OCPC for the duration of his incarceration despite no known renewed exposure to individuals diagnosed with COVID-19.

Detained individuals relayed troubling accounts of the nature of medical care. Numerous individuals reported long delays to see medical staff and long waits for approval to receive medication. In a violation of patient privacy, medical staff required some detained persons to discuss their medical condition in front of others. Several individuals reported being yelled at or belittled by medical staff.

- Medical Access
- Mental Health
- Physical Health
Discrimination

There were 17 complaints of discrimination, 16 of which pertained to racial discrimination, forming 7% of the total number of complaints and 11% of the ICE Detention-related complaints. Discrimination ranked as the second-largest category among concerns with ICE Detention conditions. Complaints regarding discrimination were of two kinds: racism and homophobia.

Racism

All but two of the concerns regarding racial discrimination came from the 2019 OCPC plantados who were Cubans. These individuals felt that they were being targeted for prolonged detention because of their nationality and race. Many, though not all of those individuals, are Afro-Cubans.

One of the individuals who was not Cuban who reported racial discrimination described two incidents of race-based harassment. In the first encounter, the individual was lying on his bed and a guard yelled vulgar racial slurs at him. The second encounter occurred during breakfast in the meal room, where the individual reported that the guard treated him and others like “animals.”

Homophobia

Of the 153 detained persons who registered complaints, 10% (n=15) of the individuals self-identified as LGBTQ. All of these individuals except one expressed concerns about some other aspect of detention. The one LGBTQ person who only expressed concerns about homophobic treatment indicated that he had filed a formal complaint against an MTC corrections officer (CO). This individual reported that, among other homophobic slurs, the CO would call him “niña” (“girl”) in front of other detained persons.

Staff Mistreatment

In this sample, there were 14 complaints regarding mistreatment by either MTC staff or ICE officers. Staff Mistreatment forms 10% of the detention related group of categories, and is the third-highest-ranked category within the group. Accounts of Staff Mistreatment included physical assault, frequent verbal assaults, multiple reports of psychological torment, threats of use of force, and threats of solitary.
One individual detained at OCPC reported being assaulted by MTC staff. This individual said that an MTC staff member hurt his wrist, which became very swollen, and he was not allowed to see medical staff to treat the injury. When EPIC asked who the guard was, the individual indicated that MTC guards conceal their name tags so he was not able to get a name. This same individual reported that MTC staff mistreated him in the meal room and that he was threatened with solitary confinement multiple times. At least three other individuals also reported that MTC staff concealed their name tags making it difficult for detained individuals to determine the identity of MTC guards.

Several individuals in this sample were involved in the protests described above as the 2019 OCPC plantados. A common complaint among these protestors was that they had been detained at OCPC for months and never spoke to their DO. Repeated denials of relief or bond by immigration judges, combined with hostile treatment by MTC staff, sparked the protests. Several of the 2019 OCPC plantados reported additional Staff Mistreatment during and after the protests.

Describing one of the early October plantados, an individual reported that MTC staff swore at and pepper sprayed the protestors. This individual reported that at one point there were 50-60 MTC guards present at the protest, and he indicated someone identified as Officer #7 was the most abusive. This same individual also reported that during this protest the facility staff threatened the plantados with firearms. Other individuals also described MTC using threats of physical force to break up the peaceful protests.

One of the 2019 OCPC plantados reported that during the protest an ICE officer told them they would put him in irons. Another of the plantados reported that ICE officers warned them that if they did not stop “things would get much worse.” This individual reported to EPIC that he was frustrated by his detention because he was not a criminal and that he felt he was being held for the profit of the private prison company.

Out of the 14 complaints regarding Staff Mistreatment, there were eight specific mentions that MTC staff verbally assaulted or verbally abused detained individuals. Individuals reported that MTC staff called them names, yelled, threatened, and were verbally aggressive toward them. These individuals indicated that MTC staff’s verbal hostilities were not just directed at themselves but also at others detained at the facility.

Numerous individuals reported that MTC issued threats of physical harm, and threatened placement in solitary confinement. One individual characterized MTC staff’s threats to take away certain provisions as “constant.”

Two individuals contracted COVID-19 and reported being put into solitary confinement for at least 13 days.

Another individual who suffered from asthma reported being put into solitary confinement for preventative measures.
Multiple individuals reported that MTC staff would deny them food if they did not sit exactly where they were told to in the lunchroom. One individual mentioned having missed “many” meals because of this treatment.

One individual reported that “we were treated like animals” and another described “terrible dog-like treatment” by MTC staff, while another said the treatment was “terrible.” Multiple individuals described MTC’s treatment of themselves and others as “psychological abuse.”

The hostile nature of MTC staff conduct seems to have had a particularly chilling effect on some individuals. One individual who self-identified as female and gay wanted to request being placed in a dedicated facility for LGBTQ individuals but was afraid of retaliation by MTC staff. Another individual who was diagnosed with PTSD reported being afraid to mention his condition to MTC staff because he feared he would be put into solitary confinement.

Multiple individuals reported that, after the start of the COVID-19 pandemic, many MTC staff did not wear masks. As described above, multiple individuals who expressed concern about COVID-19 were yelled at by MTC staff. Another individual, who tested positive for COVID-19 and was placed in solitary confinement for 14 days, indicated that he was treated like someone being disciplined for having done something wrong rather than treated as someone with a life-threatening illness. This individual reported not being allowed to bathe for extended periods of time while in solitary confinement.

### Language Access

There were 10 complaints about language access which constituted 7% of the ICE Detention group of complaints. On two different occasions, one detained Spanish speaker with no English proficiency was put before a non-Spanish-speaking immigration judge without a translator present. This lack of language access caused the person’s case to be postponed each time, prolonging this person’s detention.

One individual who is illiterate was not able to understand procedures, dates, or processes and reported that he did not receive reasonable accommodations to help him understand the documents he was presented. This individual also suffered from a brain injury, and it was unclear to what extent this injury further impaired his ability to understand the processes and documents pertaining to his immigration case.

One individual reported that he did not understand the parole process, and that the documents he was given were in English, a language that he does not understand. Most of the individuals who experienced language access issues were Spanish speakers. However, two such individuals spoke Haitian Creole and three individuals spoke Indigenous languages of the Americas (Quechua, Ixil, and Acateco).
There were six complaints about solitary confinement. One of the individuals was among the leaders of the 2019 OCPC *plantados*. Upon being put into solitary confinement after an action, this individual slit his wrists. Another individual, also among the 2019 OCPC *plantados*, participated in both a sit-in and a five-day hunger strike, during which he was placed in solitary confinement. Officials told him that he would be force-fed by the seventh day of this hunger strike. He reported suffering from severe depression and indicated that he was afraid to say anything for fear of being put into solitary confinement again. Another of the *plantados* was led to believe that they would be placed in solitary confinement for 22 days but was let out after eight days.

After the onset of the pandemic, several individuals reported being put into solitary confinement for reasons relating to COVID-19. Two individuals contracted COVID-19 and reported being put into solitary confinement for at least 13 days. Another individual who suffered from asthma reported being put into solitary confinement for preventative measures. (This person did not indicate how long they were segregated in isolation.)
Within the sample, individuals registered 62 concerns regarding some aspect of legal processes experienced while in ICE detention, making up roughly a quarter (24%) of the total number of complaints (n=259). Of the 62 concerns regarding legal matters, nearly three quarters (71%, n=44) related to Due Process and the remaining (27%, n=17) related to Legal Access.

**Due Process**

The 44 Due Process concerns were distributed across four culpable agencies: ICE (n=34), EOIR (n=7), USCIS (n=3), and CBP (n=1). ICE, CBP, and USCIS are under DHS while EOIR is under the Department of Justice.

DHS due process violations included coercion to sign deportation paperwork, delays in issuance of Notice to Appear (NTA) documents, unreasonable parole denials, and delays in parole adjudication.

There were multiple reports of unidentified DHS officials coercing individuals to sign deportation orders prior to them speaking to a DO or an immigration judge about eligibility for release from detention and/or eligibility of relief in their immigration case. An individual described that in one instance, 50 Ecuadorian individuals were taken in groups of four into a separate room and coerced by unidentified ICE officers to sign English-language deportation documents that were neither translated nor interpreted. Individuals did not know what they were being told to sign. In other cases, individuals reported that entire dorms of persons were told to sign deportation paperwork *en masse*, similarly without having the documents properly explained.

Unreasonable delays in parole adjudication were a common due process violation by ICE. According to ICE policy, parole requests are to be adjudicated with an individualized answer provided to an individual within seven days of applying.\(^\text{34}\) Delays in parole adjudications result in prolonged detention of persons eligible for release. Additionally, the majority of the parole adjudication delays were reported after COVID-19 outbreaks became widespread in OCPC. The delays caused significant increases in pandemic-related health vulnerabilities, and increases in mental and psychological health problems stemming from fear and anxiety about contracting COVID-19.

There were 14 complaints regarding parole request adjudication delays of more than seven days by ICE. EPIC identified 11 individuals who waited more than two weeks, several individuals waited more than twenty days, and one individual waited three months for a parole decision that, by official guidelines, should have been adjudicated within seven days.

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In several instances ICE denied parole on unreasonable grounds. For example, in one instance ICE denied parole on the grounds that the applicant’s sponsor (the person who would host the individual upon release from detention) was not a family member. Under the current governing parole policy, sponsors are not required to be family members.

EOIR was the source of seven due process violation complaints. Several individuals reported long delays in the scheduling of their hearing dates. For example, more than one individual waited more than two and a half months for the date of their bond hearing to be set. In these cases, getting the hearing dates set required demand letters submitted by attorneys.

Other individuals reported issues that arose during their hearings. One individual reported that the immigration judge was demeaning to them and partial to the ICE attorney during the proceedings. According to the EOIR’s guidelines for immigration judges regarding ethical and professional conduct, they “shall act impartially.” Immigration judges “should be patient, dignified, and courteous” and a judge “who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the immigration process into disrepute.” One detained individual reported being denied the opportunity to represent themself during a bond hearing, and complained that the immigration judge would not look them in the eye. Another bond applicant reported that during the bond hearing the immigration judge refused to look at the applicant, and would not let the individual file documents before denying them bond.

Another individual reported that the immigration judge was unwilling to listen. This individual was previously assaulted by gang members and had physical signs of those facts. These details were not included in their credible fear interview transcript, which might have been intentionally omitted by the interviewing officer. The individual was deported prior to his next meeting with EPIC legal advocates. Shortly after deportation, they were identified by the same gang who had shot them, and were forced to flee again. During a telephonic hearing, when the individual sought to recount the details of his persecution, the immigration judge told the individual to hurry up and that he had more cases to hear.

36 EOIR, 3.
37 Washington, “Bad Information.”
Legal Access

Problems with Legal Access accounted for 27% (n=17) of all complaints involving legal processes. These complaints primarily focused on the inability of detained individuals to effectively communicate with attorneys and legal representatives. The impediments to communication with legal representatives include ICE and/or MTC staff not facilitating scheduled legal phone calls, respondents being forced to pay for scheduled phone calls with legal representatives, having legal phone calls cut short or interrupted, and lacking privacy and confidentiality during phone calls with legal representatives.

Detained individuals also complained about delays in having a fear interview with an asylum officer, receiving results from a fear interview, and receiving responses from ICE when detained individuals requested a status update about their legal proceedings. Such delays contribute to longer detention, possibly missing critical deadlines, and an overall uncertainty for individuals in detention about their fate.

TAKEAWAYS

- Abuse in immigration detention is systemic and part of a pattern across DHS facilities.

- This report focuses merely on one of these detention centers, yet reflects and relates to broader, systemic matters.

- ICE detention, the use of CBP temporary holding facilities, and the practice of returning immigrants to Mexico to await a hearing should be abolished.
This discussion addresses the overall number of complaints or concerns, the two sub-groups of detained persons (MPP and plantados), and each of the specific categories of concerns for which results are reported above. The results of the sample are articulated to the larger context of each issue in turn, and related to relevant existing reports and documents.

**Number of Complaints: Government Contractors Underrepresent the Magnitude of Concerns**

In discussing the meaning of the results, it is useful to begin by looking at the relationship between the sample of individuals spoken to and the number of complaints they registered. ICE facility inspections serve as an interesting point of comparison. As part of earlier reforms aiming to improve detention conditions, ICE is required to perform annual detention facility inspections. Nearly all of these inspections are performed by one ICE contractor, the Nakamoto Group. Interviews with detained individuals are part of the routine annual inspection process, presumably to allow inspectors to hear from detained persons and possibly identify areas of concern.

In its January 2020 inspection report on OCPC, Nakamoto indicates that "[n]o less than 100 detainee interviews were conducted" and that "[w]ithout exception, detainees stated that they felt safe at the facility." From Nakamoto's 2020 OCPC sample, inspectors mention four complaints resulting in a complaint rate no higher than 4%. In its January 2019 OCPC inspection report Nakamoto indicates that "[n]o less than 125 detainee interviews were conducted" and that "[w]ithout exception, detainees stated that they felt safe at the facility."

From Nakamoto's 2019 OCPC sample, inspectors mention eight complaints resulting in a complaint rate no higher than 8%. In discussing either the 2020 or 2019 OCPC interview complaints, Nakamoto inspectors focused nearly exclusively on explaining away those concerns as unfounded. Notably, in light of the results of this report wherein medical concerns are by far the largest category of concern, Nakamoto inspectors make no mention of medical concerns arising during either the 2020 or 2019 inspection interviews.

In 2018, Craig and Brown Vega reviewed complaints arising from unstructured conversations with individuals detained at OCPC. In one sample of 24 individuals from 2015, 19 individuals (79%) expressed complaints. In another similar sample of 25 individuals from 2017-2018, 19 individuals (76%) expressed complaints. Merging these two samples, 78% of the individuals expressed a complaint or concern, and medical issues were the highest area of concern.

In August 2016, ICE’s Office of Detention Oversight (ODO) “interviewed 23 detainees” at OCPC, writing that “[n]one of the detainees made allegations of mistreatment, abuse or discrimination,” and the majority “reported being satisfied with facility services.” Among this sample, ODO reported seven complaints for a complaint rate of 30%. Four of the complaints pertained to medical issues, one to phone services, and two regarded access to a facility handbook. As with the EPIC sample, medical issues were the most frequent kind of complaint in the ODO sample.

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40 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.”
41 ODO, “Compliance Inspection, Otero County Processing Center, Chaparral, NM, August 9-11, 2016,” 4.
The rate of individuals’ complaints in the EPIC sample (66% n=153) is strikingly distinct from those found by Nakamoto Group inspectors (4-8%). The Nakamoto interviews are also anomalous in that they make no mention of medical concerns, which is the most frequent category found by EPIC, ODO, as well as Craig and Brown Vega. Again, it should be noted that EPIC is confident that the number of complaints received are underrepresented in this dataset because the primary aim was providing legal services.

Comparing the incongruencies in these results calls into question the integrity of Nakamoto Group inspections, interviews, investigations, and reporting of findings generally. In Nakamoto Group’s own discussion of the few concerns they do report from interviews, they actively delegitimize those concerns rather than address them. This undermines the stated purpose of the inspections process, though it serves their employers — namely ICE. The ICE inspections regime and the inspections interviews are demonstrable failures on many levels, and have been recognized as such by DHS Office of Inspector General (OIG) reports and addressed by advocacy groups.

There is a larger concern beyond just failing to document problems — the inspections process actively legitimizes the detention system and conceals its inherent problems, which upholds a profitable industry for incarcerating immigrants.

In other custodial settings, scholars have documented how public-private sector partnerships can produce an arrangement where “regulation is not driven by an identifiable effort to actually scrutinize caring but might instead be termed performative compliance, where different organizational forces seek to give the illusion that they are conforming to the ‘agreed’ rules of delivery.”

The theater of compliance via regulation that arises in these public-private partnerships guarantees that any outcomes that could affect the profitability of the partnership are concealed. The mutually beneficial arrangement between ICE and private prison contractors (MTC, Geo Group, and CoreCivic) as well as contracted prison inspectors (Nakamoto Group) have produced this same kind of perverse bureaucratic simulacra wherein reform-oriented regulation intended to be probing instead functions as self-justifying, validating, and sustaining to the very troubling situations that evoked the need for reform-oriented regulation in the first place. ICE’s entire detention regulation guidelines, PBNDS, which might be better termed the Performative Based National Detention Standards, functions in much the same way.

44 Greener, “Performative Compliance and the State–Corporate Structuring of Neglect in a Residential Care Home for Older People,” 2.
Migrant "Protection" Protocols: A Massive and Planned Human Rights Tragedy

Though the sample in this report is small, the results overwhelmingly show that MPP endangers individuals. Objectively, the policy subjects persons to assaults, rape, death threats, and health problems. All of the individuals that EPIC spoke to who were subjected to MPP and were willing to speak about it reported surviving violent assaults or developing a medical condition due to stress.

MPP creates large congregations of vulnerable and easily-identifiable people who are often left camping on the streets in border towns in Mexico. While MPP has been implemented along the southern border with disastrous effects in all cases, the outcome in Ciudad Juárez is both acute and predictable. Despite its vibrancy and complexity as a city of over one million people, Ciudad Juárez has a long and well-documented history of organized crime, high rates of homicide, and frequent kidnappings. Notwithstanding a tendency to sensationalize and overemphasize the violence of Latino borderlands gangs, by 2010, with more than 3000 homicides, Ciudad Juárez was the most violent city in the world. Levels of violence waned slightly after 2010, but remained nearly as high through 2019.

Between 2011 and 2018, research showed that individuals returned by the U.S. government to Ciudad Juárez and other southern border cities were particularly vulnerable and frequently became the victims of murder or kidnapping. By 2017, Mexican scholars from El Colegio de la Frontera Norte in Ciudad Juárez were beginning to ask generally “[c]an we speak of migranticide?” With the onset of MPP, existing and longstanding criminal elements in Ciudad Juárez seized on new, vulnerable, and easily-identifiable populations of migrants.

The principle of non-refoulement, which forbids returning an individual to a country that poses danger of persecution based on one of five protected grounds (race, religion, nationality, membership in a particular social group, or political opinion), is the cornerstone of international refugee law. Although MPP is not the first U.S. policy to blatantly violate the principle of non-refoulement, it is perhaps the most systematic and egregious example of it in recent memory.

45 On December 18, 2019 Law Lab joined EPIC partners Las Americas Immigrant Advocacy Center and Santa Fe Dreamers Project along with the Asylum Seeker Advocacy Project, Catholic Legal Immigration Network, and the Southern Poverty Law Center to sue President Trump, Attorney General Barr, Department of Justice, Executive Office for Immigration Review (EOIR), and EOIR Director James McHenry over the Migrant Protection Protocols and other cruel and inhumane immigration policies.

https://www.splcenter.org/sites/default/files/documents/ecf_1_las_americas_v._trump_no._19-cv-02051-sb_d_.or.pdf

46 Bowden and Cardona, Murder City; Campbell, Drug War Zone.
47 Durán, The Gang Paradox.
48 Puig, “Crime and No Punishment.”
49 Tapia, Gangs of the El Paso-Juárez Borderland.
51 Misael Hernández, “¿Podemos hablar de migranticidio?”
52 Nathan, “Trump’s ‘Remain in Mexico’ Policy Exposes Migrants to Rape, Kidnapping, and Murder in Dangerous Border Cities.”
53 Lauterpacht and Bethlehem, “The Scope and Content of the Principle of Non-Refoulement.”
54 Arenilla, “Violations to the Principle of Non-Refoulement Under the Asylum Policy of the United States.”
When individuals held in temporary CBP custody, discussed further below, are placed into MPP they may affirmatively request a non-refoulement interview if they fear being returned to Mexico. Officials do not ask detained individuals if they fear return. Rather, detained persons must know, most without ever having consulted an attorney, that they are entitled to a non-refoulement interview. Moreover, during the interview, they must demonstrate not simply that they have a credible fear of returning to Mexico, but that they are “more likely than not” to suffer additional harms if they do. Human Rights Watch (HRW) found that 13.5% of individuals placed in MPP had a non-refoulement interview even though nearly everyone HRW spoke to expressed a fear of return. Additionally, only 13% of those referred for non-refoulement interviews prevailed.\(^5\) Many of those who did prevail and were removed from MPP were then placed in ICE detention.

### Deceptive Denials of Release

EPIC attorneys received strong and legally dubious pushback from DHS officials regarding eligibility for release from detention for individuals formerly in MPP, extending the unnecessary and inhumane prolonged detention of these individuals. Persons originally placed in MPP who were subsequently detained by ICE in the U.S. (generally following a non-refoulement interview in which officials determined that they would more likely than not be harmed if returned to Mexico) were regularly denied release due to a still-disputed legal interpretation by DHS officials. Such individuals originally entered the U.S. without inspection, turned themselves into DHS officials to request asylum, and were subsequently placed in MPP and returned to Mexico to await their hearings in immigration court.

In order to arrive at their court hearing, the individual is required to enter through a port of entry, processed by DHS officials, at which point DHS updates their immigration record to indicate that the individual is now an “arriving alien” (as opposed to their initial entrance without inspection). This consequential maneuver removes jurisdiction over custody determinations from an immigration judge and places that power solely with ICE. The result is that the immigration court will not accept jurisdiction to hear a bond argument because the person is no longer classified as having “entered without inspection,” a decision ICE has argued heavily in favor of.

However, when parole requests were submitted to ICE for these same individuals, ICE routinely denied that they could not adjudicate parole on the grounds that the individual originally entered without inspection, plainly revealing ICE’s position as hypocritical. This position is also legally incorrect as ICE has the authority to consider conditional parole at any time for all persons in its custody. In addition, on several occasions DOs refused to adjudicate parole requests simply citing the fact that a person had previously been in the MPP program. All of these issues compound in ever-prolonged detention and a cumulative deterioration of the well-being of individuals in ICE custody.

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2019 OCPC *Plantados*: Protests Punished

As described above, the 2019 OCPC *plantados* engaged in protests because their detention was prolonged and they lacked meaningful access to existing mechanisms of release. ICE officials and MTC staff first responded to the protests with harassment and physical force.

Only after threats, pepper spray, and disruptive searches in which detained individuals’ personal belongings, including court documents, were taken did DOs agree to meet with the *plantados*. When they did finally meet, ICE brought in additional armed personnel who wore tactical gear and stood menacingly near the detained protestors.

The 2019 OCPC *plantados* were part of a broader wave of protests inside ICE detention occurring across the country. Many of those protests were not reported in the media. However, two incidents that did receive media attention were highly significant for the 2019 OCPC *plantados*.

First, in August 2019, reports surfaced of a hunger strike of more than 100 individuals in ICE custody at the GEO Group – managed Pine Prairie ICE Processing Center in Louisiana. Guards retaliated against these protests with force including pepper spray, rubber bullets, and punishment with solitary confinement. ICE spokesperson Bryan Cox asserted that the allegations of excessive use of force were false and that people were spreading misinformation about ICE.

Similarly, a GEO Group spokesperson also claimed that rubber bullets and other projectiles were not used. In spite of these denials by ICE and GEO Group, photographs emerged of protestors detained at Pine Prairie showing bruises and injuries suffered as a result of being shot with rubber bullets. Many of the individuals involved in the Pine Prairie protests were Cubans seeking asylum. AVID volunteers spoke with Cubans seeking asylum detained at OCPC who were aware of and impacted by the Pine Prairie protests.

Second, in early October, Roylan Hernández Diáz a 43-year-old Cuban seeking asylum detained at the LaSalle-managed Richwood Correctional Center, also in Louisiana, died of an apparent suicide after nearly half a year in detention. He had previously participated in a hunger strike waged in protest of his prolonged detention. The death of Mr. Hernández Diáz significantly impacted members of the 2019 OCPC *plantados* with whom AVID volunteers spoke. Mr. Hernández Diáz had asked for asylum at El Paso, Texas, and for the 2019 OCPC *plantados* his experience resonated with their own.

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56 Da Silva, “More Than 100 Immigrants on Hunger Strike at ICE Facility Allegedly Pepper-Sprayed, Shot at With Rubber Bullets and Blocked From Contacting Families,” 100.
57 Alaeziz and Flores, “A Cuban Asylum-Seeker Died Of An Apparent Suicide After Spending Months In ICE Detention”; Montoya-Galvez, “Cuban Immigrant Dies by Apparent Suicide in ICE Custody in Louisiana.”
Notably, on December 3, 2019, when the House Committee on Homeland Security visited OCPC, committee staffers spoke to several individuals detained at the facility who reported that they had never spoken to a DO. The problem of non-responsive DOs persists at OCPC. Precedent suggests that unless this changes, there will be future collective protests.

As of the writing of this report, Brown Vega remains in contact with some of the Cuban men involved in these protests and reports that several have only recently been released. A few are still held in ICE detention, suffering prolonged detention and the threat of COVID-19.

Many of the plantados were long denied any form of release from detention or relief from deportation, and were or are being held months past the six-month “presumptively reasonable period of detention” identified in Zadvydas v. Davis. Despite the fact that Cuba is not currently accepting individuals deported by ICE, the U.S. government continues to detain these individuals.

59 Zadvydas v. Davis, 533 U.S. at 701.
The reason for segregation is listed as participating in a group demonstration, demonstrating that segregation was retaliation. Notably this document, which was given to a Spanish speaker, is in English and was not translated into Spanish, in violation of ICE's LEP guidelines as well as PBNDS. The second page notes a "hearing." During these hearings, which are nothing short of "kangaroo courts," the accused has no access to legal representation, and judgment is carried out by MTC facility staff — the same entity that is issuing the accusation.
Discussion: Protests Punished

CELL#: A-2

To: RESTRICTIVE HOUSING UNIT  Date/Time of 10-29-19 / 1145
From: 
Detainee:  A #.

A hearing before the Disciplinary Lieutenant was conducted on 11-1-19 / 1015
The above named detainee was found to have committed the specified prohibited act(s) listed below.

PROHIBITED ACT(S) 213- engaging in or instigating a group demonstration. 299- conduct that disrupts or interferes with the security or orderly operation of the facility.

Below is a brief outline of special instructions and/or information:

29 Days Disciplinary Segregation, no commissary and no property. Detainee will be given credit for pre hearing time in the RHU so the sentence is reduced to 26 days. Started at 11-1-19 ending 11-27-2019

Admitted date 11-1-19
Release by ________________  Time: 1025
(Officer & Title)

Time: __________

Released date ________________

Comments. ________________________________________________________________

Documentation of punitive use of segregation for member of the 2019 OCPC Plantados
Pre-ICE Detention: Community Intimidation, Family Fracturing, and Cold Room Torture

### Interior Enforcement: Outright Deception

Three individuals in the sample expressed concerns about having been apprehended during ICE raids that took place in Albuquerque, New Mexico during February of 2020. These raids took place after the Trump administration announced an increase in the presence of immigration officials in sanctuary cities such as Albuquerque.

During these operations, reports surfaced that to enter people's homes ICE agents used self-issued administrative warrants rather than judicial warrants. ICE agents also targeted schools, hospitals, and churches. Amidst those raids, U.S. Senators Tom Udall and Martin Heinrich wrote to Matthew T. Albence, ICE Acting Director, expressing concern that “ICE officers are gaining access into homes under false pretenses by using fear and lies.” The Senators described “ICE officers identifying themselves as police and wearing deceptive uniforms to appear as local police.” Outright deception and intimidation resulted in individuals being funneled to ICE detention.

### Family Separation: The Harm Continues

Presidential Executive Order 13841, signed on June 22, 2018, ended family separation as a stated policy. The instances of family separation described in this report were logged after August 2019, when EPIC began making legal visits to OCPC. While we note that family separation may occur at various stages of the immigration process, all 10 of the individuals who expressed concern about family separation were arrived at the southern border.

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60 Lewin, “A False Sense of Security.”
61 Udall and Heinrich to Albence, “Concerns about Detrimental Impact the Trump Administration’s Policies on Deportation and Enforcement Operations Are Having in Communities across New Mexico.,” February 27, 2020, 1.
In the ten instances of family separation noted in this report, either individuals were separated from their families and detained for more than a year, or they were detained for shorter periods of time but separated from their family members — all after the policy of separation officially ended. In at least two cases, individuals were separated from family members after June 22, 2018. One individual described being separated in December of 2018, six months after family separation ended. Another individual described being separated in 2019, which would at minimum represent seven months after the alleged end of family separation.

As per international human rights law, “the family is recognized as the fundamental group unit of society and is entitled to protection and assistance” under Article 16(3) of the 1948 Universal Declaration of Human Rights, Article 23(1) of the 1966 International Covenant on Civil and Political Rights, and Article 10(1) of the 1966 International Covenant on Economic, Social and Cultural Rights.63

Further, according to the Congressional Research Service, “[f]amily reunification has historically been a key principle underlying U.S. immigration policy.”64 The promotion of family reunification has roots in U.S. immigration law dating to the 1920s. A commitment to and emphasis on family reunification was further codified in the Immigration and Nationality Act of 1952.

Physicians for Human Rights (PHR) performed psychological evaluations of 17 adults and nine children who survived family separation. Among both adults and children, PHR found pervasive indicators of trauma; most individuals had at least one mental health condition; and these conditions were likely linked to family separation and detention. In some cases detention and family separation exacerbated pre-existing conditions arising from trauma caused by incidents in an individual’s home country.

PHR found that “the U.S. government’s treatment of asylum seekers through its policy of family separation constitutes cruel, inhuman, and degrading treatment and, in all cases evaluated by PHR experts, rises to the level of torture.”65

PHR also concluded that “family separation constitutes enforced disappearance, which occurs when state agents conceal the fate or whereabouts of a person who is deprived of liberty.”66 Family separation, which began under the Obama administration, and was continued and amplified by the Trump Administration, runs counter to the vast majority of immigration law; violates several international treaties to which the U.S. is signatory; constitutes torture, which violates both the Convention Against Torture and U.S. federal law (18 USC § 2340); and is a form of enforced disappearance.

63 Nicholson, “The Right to Family Life and Family Unity of Refugees and Others in Need of International Protection and Family Definition Applied.”
64 Kandel, “U.S. Family-Based Immigration Policy,” 1.
66 Habbach, Hampton, and Mishori, 5.
CBP Conditions: Clean Torture

It is unclear when CBP and Border Patrol (BP) began employing cold temperatures in their hold room or short-term custody facilities. Between fall 2008 to spring 2011, recently deported individuals who were interviewed by No More Deaths reported that the most frequent forms of inhumane conditions in temporary BP facilities were overcrowding, unsanitary conditions, and extreme temperatures. The report does not use the word *hielera*, and indicates the deployment of both extreme hot and cold holding cell temperatures. Just under 80% of the individuals interviewed for that report were held in a temporary facility for one to two days.

In March 2013, the term *hielera* started appearing in media reports in a lawsuit by the American Immigration Council (AIC) regarding abusive conditions in CBP temporary detention facilities. These early accounts indicate that the term *hielera* came from BP agents rather than migrants. Attorney Joseph Anderson “asked his clients why they called it the ‘hielera,’ he said they all heard that phrase from Border Patrol agents themselves.” Later that same year Anderson said again, “[m]ost tellingly, this term hieleras … it’s used by the CBP officers themselves. Our clients didn’t come up with this.”

A CBP internal memo from 2008 defined a set of standards for “Hold Room and Short Term Custody” that stated that “a detainee should not be held for more than 12 hours” and should be moved “promptly.” However, other portions of these standards establish provisions for when individuals are held for more than 72 hours.

CBP’s 2015 National Standards on Transport, Escort, Detention, and Search (TEDS) state that individuals “should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities” and notes that “[e]very effort must be made” to hold individuals “for the least amount of time required.”

Though No More Deaths reported that between 2008 and 2011 more than 3600 individuals were held for more than 24 hours, by 2013 Americans for Immigrant Justice spoke with individuals detained for as long as 13 days. A pair of 2015 reports by the AIC determined that CBP was not in compliance with its own TEDS standards. AIC evaluated CBP records obtained through a Freedom of Information Act request and found that among 1173 individuals, the average length of stay in temporary CBP custody, a *hielera*, was 41.1 hours and, depending on the time period examined, anywhere from 2.3 to 42.5% of individuals detained were held for more than 72 hours.

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68 No More Deaths, 16 Table 3.
69 Gomez, “Lawsuits Allege Abuse by Border Patrol Agents.”
70 Carcamo and Simon, “Immigrant Groups Complain of ‘Icebox’ Detention Cells.”
Though the present sample of accounts regarding *hieleras* is comparatively small, the lengths of *hielera* detention reported in general are shocking. Prior reports of inhumane treatment in *hieleras* from the years 2011 to 2015 indicate an average length of incarceration in a *hielera* of roughly two days. The longest period of *hielera* detention in any of these previous reports is 13 days. The average length of stay in this sample is 14 days which is a day longer than the prior period’s maximum. In this sample, the maximum duration of *hielera* incarceration is 52 days which is more than 3.5 times the current average and prior maximum.

Earlier reports on *hieleras* document cold temperatures; lack of adequate sleeping conditions; overcrowding; lack of access to soap, toothpaste, and toothbrushes; and insufficient food and water. In 2011, No More Deaths accurately described this constellation of *hielera* conditions as plainly meeting the definition of torture under international law. To an item, these are exactly the same conditions described by individuals in the current sample.

Cold cells are used by the Central Intelligence Agency, and in 2005 cold cells were listed as among the six authorized “enhanced interrogation techniques.” *Hieleras* are purposefully kept cold and their use constitutes torture.

In the U.S., the use of cold cells as a form of “clean torture,” which causes physical harm but leaves no immediately-visible, physical mark, traces back to Parchman Farm in Mississippi where segregationist jailers used the method to surreptitiously torture civil rights activists.

Cold cells are used by the Central Intelligence Agency, and in 2005 cold cells were listed as among the six authorized “enhanced interrogation techniques.” *Hieleras* are purposefully kept cold and their use constitutes torture.

Subjecting individuals to *hielera* conditions for a couple of days under the pretext of “national security” is bad enough. Now the egregiously-prolonged periods of time people are forced to suffer this hidden form of state-enforced “clean” torture is even more alarming than in previous instances. Adding to this horror, the majority of individuals being subjected to *hielera* cold room torture are people in need of recovery from trauma, who are seeking asylum and fleeing past persecution. After having had to endure weeks and months of overcrowded, cold-cell torture, without adequate food, hygiene, or a place to sleep, the victims of this treatment are sent to ICE facilities like OCPC. The government’s own documents describe ICE detention as “torture-like conditions.” DHS transferred many of the individuals in this sample from one set of torturous detention conditions to another.

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76 Rejali, Torture and Democracy, 352.
77 Rejali, 287, 352.
Medical Issues: Neglecting Needs Before and During the COVID-19 Pandemic

In the current sample of individuals detained at OCPC, medical issues are by far the leading group of concerns, comprising more than a third (37%) of the overall number of complaints and two thirds (65%) of the ICE detention-related complaints. Concerns regarding physical health (n=54) were reported about twice as often as mental health concerns (n=24). Discussion will first address some key mental health issues, then turn to medical conditions generally, physical health matters, and return to mental health issues that can have dire consequences.

For a variety of reasons, it is highly likely the full scope of mental health issues, particularly depression and PTSD, was not fully captured during EPIC’s relatively brief intake interviews. Individuals suffering from depression or PTSD may not be aware of their condition and would not know to articulate mental illness as an area of concern. Additionally, mental health issues may not be a detail that emerges during a relatively brief intake primarily focused on legal case posture. Moreover, EPIC visitors, attorneys, and legal assistants are not mental health experts. While the current sample almost certainly underrepresents some health-related concerns, the overall pattern is consistent with Craig and Brown Vega’s 2018 report that also found medical issues to be the overall highest-ranked area of concern among detained individuals. But it is important to note that community advocates are not the only ones who find serious failings with ICE medical services.

Government reports document significant flaws in ICE-detention medical care. The USCCR 2015 report on ICE detention lists as its first finding, “[c]ertain ICE facilities are not fully complying with PBNDS 2011 medical care standards” and in its second finding identified six contract facilities that “have failed to comply with DHS standards for medical care.” The report laments that the standard for providing medical care is to keep detained persons healthy enough to deport.

Among the specific failures listed in the report are ignoring serious medical conditions, failing to administer proper medical protocols, and delaying transfer to a hospital. To that existing list, USCCR’s 2019 report on ICE detention added confiscation and denial of necessary daily medication. The 2019 report also notes that “[m]ental health services are severely lacking in detention facilities, despite the fact that the inherent traumatic nature of detention causes many detainees to suffer in their mental health.”

79 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,” 16, Table 2.
81 USCCR, 149.
83 USCCR, 85.
It bears mention that studies show that for individuals who have experienced prior trauma, detention results in high levels of anxiety, depression, PTSD, self-harm, and suicidal ideation. Moreover for those who have experienced past trauma, research indicates that mental illnesses that manifest during the period of incarceration often persist for years afterward, leaving durable psychological injuries.

A December 3, 2018 internal email from an ICE supervisor to then-ICE Acting Deputy Director Matthew Albence stated that ICE Health Service Corps (IHSC) was “severely dysfunctional and [that] unfortunately preventable harm and death to detainees has occurred.” The whistleblower states that they repeatedly provided “IHSC Senior Leadership numerous early warnings” regarding at-risk individuals and goes on to describe how “[m]any detainees have encountered preventable harm and death.” The email lists at least 20 incidents of health care failures by IHSC, including untreated mental illness that resulted in one suicide, two instances of unaddressed suicide risks, six instances of unaddressed physical ailments, and two cases of untreated prior injuries.

On March 20, 2019 the DHS Office of Civil Rights and Civil Liberties sent a memorandum to ICE leadership with information from DHS OIG regarding 17 incidents of medical and procedural misconduct that indicate IHSC “has systematically provided inadequate medical and mental health care and oversight to immigration detainees in facilities throughout the U.S.” Key points of neglect reflect USCCR’s findings and include: lack of psychiatric monitoring leading to mental health deterioration, misdiagnosis of medicinal and mental health conditions, and inadequate care involved in four in-custody fatalities.

<table>
<thead>
<tr>
<th>OVERLAPPING VIOLATIONS</th>
<th>Hielera Detention (Days)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2011 - 2015</strong></td>
<td></td>
</tr>
<tr>
<td>→ average length: 2</td>
<td></td>
</tr>
<tr>
<td>→ longest period: 13</td>
<td></td>
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<tr>
<td><strong>Present Sample</strong></td>
<td></td>
</tr>
<tr>
<td>→ average length: 14</td>
<td>a day longer than the prior period’s maximum</td>
</tr>
<tr>
<td>→ longest period: 52</td>
<td>more than 3.5 times the current average and prior maximum</td>
</tr>
</tbody>
</table>


85 Klippenstein, “ICE Detainee Deaths Were Preventable.”

In September 2020, the House Committee on Oversight and Reform released the results of a yearlong study into the use of for-profit ICE detention contractors. This study identified at least four deaths due to inadequately medical care. The report also noted that “[s]ince 2018, Congress has required ICE to publicly release all in-custody death investigation reports within 90 days of any death, but ICE has not complied with that requirement for any deaths that have occurred since that time.” This noncompliance includes three deaths, discussed below, in which OCPC staff is directly implicated. The committee’s study found widespread failures in medical care, deficient sanitation, mismanagement of infectious disease, and that ICE rewarded poor contractor performance with billions of dollars in private detention contracts.

Also in September 2020, the House Committee on Homeland Security issued a Majority Staff Report that reviewed eight ICE detention facilities, one of which included OCPC. The report covered a range of themes but included medical issues. The report found that the medical care provided was deficient, that staff exhibited indifference to the health needs of the detained population, that facilities were not in compliance with ICE detention standards, that there was limited dental care, and facilities failed to protect detained persons from the spread of COVID-19.

It is noteworthy that the specific areas of concern raised in the 2016 and 2019 USCCR reports, the two ICE memos, and the two recent congressional oversight reports are among those very same concerns expressed by individuals detained at OCPC in this sample. For example, we identified four individuals detained at OCPC who reported being denied medical services to treat injuries. Significantly, one of the individual’s injuries occurred as a direct result of being placed in MPP, and another was caused by MTC staff at OCPC.

Results indicate that mental health conditions went largely untreated, including incidents of PTSD resulting from assaults suffered while in MPP. Additionally, denial of access to prescribed medications was a common complaint among individuals in our sample. Individuals with severe dental problems went untreated. Individuals in the present sample raised concerns about lack of access to PPE, an inability to practice social distancing, and the facility’s use of solitary to quarantine sick individuals. Notably, OCPC experienced a major outbreak of COVID-19 in the spring of 2020.

Furthermore, ICE’s arbitrary transfer of individuals between detention centers has been particularly problematic during the COVID-19 pandemic. The agency has intentionally transferred individuals between facilities, sometimes across the U.S., with the knowledge of spreading the virus. Detention centers in the El Paso ICE Field Office area of responsibility have seen several mass COVID-19 outbreaks since March 2020. As of the first week of December 2020, the El Paso Service Processing Center has the highest number of active COVID-19 cases of any ICE facility in the country.

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87 Staff Report, “The Trump Administration’s Mistreatment of Detained Immigrants: Deaths and Deficient Medical Care by For-Profit Detention Contractors,” 3.
89 FFI, “COVID-19 in ICE Jails & Prisons.”
ICE continues transfers between El Paso Service Processing Center and OCPC despite knowledge of outbreaks. Of note, one individual reported to EPIC that, upon being transferred to OCPC, he was made to throw away the free mask he had been given at the El Paso Service Processing Center and purchase a mask at OCPC using commissary funds. Not only has ICE shown blatant disregard for the health of individuals detained in its custody, but it also has shown a lack of concern for the surrounding community. One EPIC partner reported that ICE released a client who had tested positive for COVID-19 without notifying the attorney of record, exposing both staff and community members to infection. ICE’s callousness to the harms of COVID-19 in detention with respect to legal matters and due process are discussed further below.

Even apart from the COVID-19 pandemic, medical neglect is a significant problem in ICE detention. Multiple non-governmental reports by human rights organizations determined that medical neglect is the leading cause of death in ICE detention.90 This is significant to the current report because medical neglect is implicated in the deaths of three persons detained at OCPC. In 2016, Rafael Bracenas-Padilla died after MTC staff failed to transfer him to a hospital despite dangerously-low oxygen levels.91 In 2019, Johana Medina Leon died after weeks of pleading to ICE and MTC for medical care.92 Both ICE and MTC attempted to conceal this fatal mistake from Congressional inquiry.93 In December 2019, Samuelino Pitchout Mavinga died after MTC failed to transfer him to a hospital in a timely manner despite his having suffered for weeks from sigmoid volvulus, an extremely painful, readily-detectable, and treatable disorder.94 ICE and MTC instead transferred him to another facility.

As of the first week of December 2020, the El Paso Service Processing Center has the highest number of active COVID-19 cases of any ICE facility in the country.

Upon being transferred to OCPC, someone was made to throw away the free mask he had been given at the El Paso Service Processing Center and purchase a mask at OCPC using commissary funds.
ICE’s death report, deficient as per the House Committee on Oversight and Reform,95 focused its effort on trying to place the blame on Mr. Mavinga while ignoring MTC negligence.96 In light of three fatalities at OCPC due to medical neglect, reports from detained persons regarding denials of medical services for significant injuries and existing conditions as well as confiscation of prescribed medications for disorders like heart and blood pressure conditions raise serious concerns about the well-being of people detained at OCPC.

The presence of untreated and widespread depression and PTSD among the detained population creates elevated risks for potentially fatal outcomes like significant self-harm and suicide attempts. In fact, within our sample at least three individuals attempted suicide. This constitutes 1.3% of the individuals EPIC contacted (n=232). All of those individuals were seeking asylum, and one was held in a hielera for nearly a month prior to being detained at OCPC. Being subjected to a month-long exposure to “cold cell” torture would contribute significantly to mental health complications. Another person with significant head trauma from a prior assault attempted suicide while in solitary confinement.

The third reported severe depression and mental illness from being detained. Based on this sample, for a facility holding 1000 individuals one can expect at least around 13 individuals with suicidal ideation. In fact, the 2020 ICE inspection shows that during 2019 there were 54 individuals placed on suicide watch at OCPC, averaging nearly five persons a month (M=4.5, SD=3.12).97 At OCPC, “suicide watch” entails placement in solitary confinement, which is a documented form of torture. During the period covered by the 2020 inspection, there were only 11 referrals to hospitals for mental health reasons (M=0.92, SD=0.9). Most individuals with mental health concerns are simply placed in solitary confinement, exacerbating their situation.

The House Committee on Homeland Security’s 2020 report found that migrants detained at OCPC expressed concern that “they could be placed on suicide watch for raising mental health concerns” and the report notes that at OCPC, “any staff member, whether or not that individual was medically trained, could place a detainee on suicide watch.”98 Moreover, committee staffers found that ICE officials at OCPC “dismissed suicide attempts as ‘superficial’ and attention seeking ‘gestures’ to get special treatment or a send a political message.” 99 It is a matter of time before someone else detained at OCPC dies due to either medical neglect or an otherwise-treatable physical or mental health condition.

93 Moore, “NEW: Staffers for @MartinHeinrich and @tomudall Met with ICE Officials and Warden of Otero County Processing Center on Friday to Discuss Treatment of Transgender Detainees. Officials Never Mentioned Johana, Trans Woman Who Fell Ill 3 Days Earlier and Died on Saturday. Pic.Twitter.Com/T4UA4gsU0.”
94 ICE, “ICE Detainee Passes Away in Albuquerque Hospital”; Aleaziz, “A French Man Has Died While At A Hospital In ICE Custody.”
95 Staff Report, “The Trump Administration’s Mistreatment of Detained Immigrants: Deaths and Deficient Medical Care by For-Profit Detention Contractors,” 3.
97 ERO, “Facility Significant Incident Summary, Otero County Processing Center, Chaparral, NM, January 28-January 30, 2020.”
99 Majority Staff Report, 14.
**Discrimination: Racist and Homophobic Treatment**

Discrimination was the second-largest category of ICE Detention – related concerns and took the form of racism and homophobia. All but one of the 17 complaints was regarding racism, while homophobia characterized the other complaint.

Fourteen of the 17 concerns regarding racial discrimination came from Cubans who were among the 2019 OCPC *plantados*. A common complaint was that they were being targeted because of their nationality and race. Several of these individuals are Afro-Cubans. Through numerous official statements, operating procedures, and on their websites, ICE and MTC each deny the occurrence of discrimination. Discrimination can be difficult to prove outside of detention, and it is even more difficult for detained persons.

Attorneys and historians were able to demonstrate that in the 1980’s racial discrimination against Afro-Cuban and Haitian individuals, black migrants, was pervasive in the establishment of the processing center system that was implemented in the context of an increase in arrivals of Caribbean asylum seekers. Thus racial discrimination was a key feature of the genesis of the modern immigration detention apparatus, and it remains so today.

AVID volunteers are aware of numerous instances of subtle and blatant incidents of racism perpetrated by MTC staff against detained persons. In 2018, there were a large number of asylum seekers from African countries detained at OCPC.

Given the history of concerns over verbal harassment of LGBTQ individuals at OCPC, it is surprising that there were not more complaints raised about homophobia. In March 2019, four legal service providers penned a letter of concern regarding the safety and well-being of LGBTQ individuals detained at OCPC. The letter describes rampant sexual harassment, discrimination, and abuse, as well as inadequate medical care of both transgender women and gay men. OCPC medical staff told individuals “this isn’t your home.” Guards verbally harassed individuals saying “walk like a man” and “you better sit like a man.”

Transgender women were given the option of dangerously being placed with heterosexual men or in solitary confinement. These women, housed in general population at an all-male facility, were sexually harassed in the showers and propositioned for sex while sleeping. Individuals who complained about the abuse and harassment were retaliated against with solitary confinement. Additionally, MTC guards threatened others with solitary confinement if they complained. MTC staff mistreatment may be particularly intensely focused on LGBTQ individuals, but it is not limited to them alone.

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101 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; Moore, “Gay, Transgender Detainees Alleged Abuse at ICE Facility in New Mexico.”
... those who participated in the October 2019 plantado recounted being pepper sprayed, cursed at, and threatened with firearms by MTC staff. Other individuals involved in this protest described ICE officers threatening to put the plantados in irons.

■ Staff Mistreatment: Assaults and Threats

With 14 complaints comprising 20% of the ICE Detention issues, Staff Mistreatment was a significant area of concern to individuals detained at OCPC. Accounts of mistreatment included an assault by MTC staff on a detained person coupled with denial of medical services to treat the injury, followed by MTC staff retaliating against this person during meal times, and threats of solitary confinement. Multiple individuals described how MTC staff concealed their name tags so that individuals could not identify abusive staff in formal complaints.

Many individuals complained of having been detained for months and never meeting with their DO. This non-responsiveness by ICE was cited as the primary reason for the protests mounted by the 2019 OCPC plantados. This same issue of absentee DOs was documented by staffers from the House Committee on Homeland Security who visited OCPC in 2019.102

While the protests were ultimately what stimulated meetings with delinquent DOs, those who participated in the October 2019 plantado recounted being pepper sprayed, cursed at, and threatened with firearms by MTC staff. Other individuals involved in this protest described ICE officers threatening to put the plantados in irons. Apart from the verbal assaults experienced by the plantados there were eight complaints about verbal assaults by MTC staff. Some of those complaints involved MTC staff verbally assaulting groups of detained persons.

For OCPC and three other contract ICE facilities, DHS OIG described a situation of “poor treatment, which contributed to an overall negative climate” and “misuse of segregation.”103 When conducting legal visits, numerous EPIC volunteers experienced poor treatment by MTC staff. In 2019, multiple AVID volunteers experienced unprofessional conduct by MTC staff, including by individuals in leadership positions, that involved intimidation, belligerence, and yelling.

103 DHS OIG, “Concerns about ICE Detainee Treatment and Care at Detention Facilities,” 6.
On October 25, Governor Lujan Grisham wrote to Former Acting DHS Secretary McAleenan and DHS Inspector General Cuffari expressing “extreme concern about persistent reports of inhumane treatment of individuals” detained by ICE at OCPC and called for immediately opening investigations of the matter.\(^{104}\) Her letter expressed concern about three Cuban asylum seekers who attempted suicide, and that one was in solitary confinement. On November 15, 2019 Senators Martin Heinrich and Tom Udall wrote to Acting DHS Secretary Chad Wolf expressing deep concern about “reports of inhumane treatment” at ICE detention facilities like OCPC and calling for a “full accounting surrounding the treatment of individuals in ICE custody.”\(^{105}\) To date, having corresponded with both congressional staffers and individuals from the Governor’s office, the authors of this report are not aware of any investigations into these matters by DHS or its OIG. What we do know is that January 28 to 30, 2020, just months after the planta\(\text{do}\) protests and letters of concern from government officials, Nakamoto inspectors under contract by ICE were at OCPC to conduct an annual inspection of the facility.\(^{106}\) Nakamoto inspectors found that the facility met all standards and had only two deficient components: one in the area of food service and one in the area of interviews and tours. They interviewed more than 100 individuals and asserted that all reported feeling safe at the facility, and indicated that “staff were professional in appearance and demeanor.”

Nakamoto inspectors did affirm ICE’s report of 301 disciplinary infractions made by detained persons that were recorded by facility staff, averaging 25 per month (SD=13), or nearly one a day. All infractions by detained persons were deemed “Guilty.” This same inspection reports a total of 257 grievances filed by detained persons including 158 for either staff misconduct (n=106) or to contest disciplinary measures (n=52), averaging 24 of these two kinds of complaints per month (SD=15) coming out to nearly one a day. As of the completion of the inspection, no cases of staff misconduct were substantiated and only 5 were substantiated regarding disciplinary matters; a mere 11 of all 257 grievances by detained persons were substantiated in any way. Data supplied by ICE provides no indication of the number of grievances that remained unresolved, which is a significant shortcoming of the data.

Given that there were widespread protests, multiple incidents of significant self-harm, numerous complaints, some to the media, and letters of concern from New Mexico politicians, these numbers conjured by MTC and ICE, and validated by Nakamoto Group, are an obvious facade of performative compliance to protect ICE and MTC rather than a genuine effort to inspect and investigate conditions at OCPC.

\(^{104}\) Lujan Grisham to McAleenan, “Extreme Concern about Persistent Reports of Inhumane Treatment of Individuals in the Custody of ICE at Detention Facilities in My State,” October 25, 2019; Lujan Grisham to Cuffari, “Extreme Concern about Persistent Reports of Inhumane Treatment of Individuals in the Custody of ICE in My State,” October 25, 2019.

\(^{105}\) Heinrich and Udall to Wolf, “Letter Expressing Deep Concern About Reports of Inhumane Treatment at ICE Detention Facilities, Such as the Otero County Processing Center, in Chaparral, New Mexico,” November 15, 2019.

\(^{106}\) ERO, “Facility Significant Incident Summary, Otero County Processing Center, Chaparral, NM, January 28-January 30, 2020.”
Language Access: Guaranteed but Not Delivered

The present sample revealed several concerns regarding language access at OCPC and the Otero immigration court.

Numerous individuals with limited English proficiency (LEP) were not provided reasonable language accommodations, which rendered them unable to understand the legal process they are required to matriculate. Given AVID’s experience at OCPC, it is highly likely that the present sample underrepresents the frequency of language access issues.

As a matter of law, ICE is required to provide language access services to individuals the agency incarcerates. In a recent complaint letter sent to the Acting DHS Inspector general, the Sikh Coalition’s legal staff points out that providing these services is squarely a civil rights issue:

The Supreme Court, in *Lau v. Nichols*, 414 U.S. 563 (1974), found that the failure to provide a meaningful opportunity to participate in federally-funded programs is a form of national origin discrimination in violation of Title VI of the Civil Rights Act of 1964. See also *Sandoval v. Hagan*, 197 F.3d 484, 510-11 (11th Cir. 1999) (holding that English-only policy for driver’s license applications constituted national origin discrimination under Title VI), rev’d on other grounds, 532 U.S. 275 (2001); *Almendares v. Palmer*, 284 F.Supp.2d 799, 808 (N.D. Ohio 2003) (holding that allegations of failure to ensure bilingual services in a food stamp program could constitute a violation of Title VI). Title VI protections were extended to federal agencies under Executive Order 13166 and the accompanying guidance provided by the Department of Justice.

As both statute and supporting case law make clear, for federally funded programs like immigration detention, language access for individuals with LEP is a civil right. To comply with these civil rights requirements, in 2012, DHS issued a Language Access Plan (LAP); in 2015, ICE developed an agency-specific LAP stating that, “[e]nsuring external LEP stakeholders are provided access to language services is vital to the success of ICE’s operations.” ICE’s LAP entails, but is not limited to, “identifying and translating vital documents into the most frequently encountered languages.” No fewer than 64 different pages of the PBNDS specifically mention providing translation and interpretation services for detained persons with LEP.

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110 ICE, 3.
Lack of meaningful language accommodation is a chronic and quotidian problem at OCPC. AVID has reviewed dozens of parole and bond decisions, disciplinary records, medical diagnoses, and a range of other documents given to detained persons and rarely seen these documents translated into the detained person’s native language. In fact, translating those very materials, supplied by ICE or its contractors through federally funded programs, has been a regular activity of AVID volunteers. Without translations by advocates, detained individuals often have no mechanism to understand key conditions regarding their detention.

AVID has also reviewed dozens of complaints against the facility, most written in Spanish, for which responses from ICE or MTC staff were issued in English, with no translation or interpretation services offered or provided. Other categories of detention paperwork that ICE issues in English to non-English-speaking detained migrants include notices of continued detention and segregation orders related to solitary confinement. These notices are documents that a detained person has a clear and distinct civil right to understand. Non-English speakers faced similar obstacles in immigration court, as many appeared before an immigration judge without an interpreter, resulting in multiple hearing postponements and prolonged detention.

Language access for Spanish speakers is grossly inadequate. However, language access for speakers of Portuguese, French, Hindi, Punjabi, Amharic and less common Indigenous languages of the Americas like Quechua, Quiche, Ixil, and Acateco, the latter all represented in the present sample, are significantly worse. In many cases individuals either are not given detention facility rules in a language they can understand, or the translation of the rules is so poor that the document is meaningless or nonsensical. Though many detained individuals have no copy of the facility rules that they can understand, facility staff are quick to inflict retaliatory punishment for even the smallest of perceived transgressions. The lack of adequate and reasonable language access accommodations has significant negative consequences on an individual’s immigration case, parole and bond requests, navigation of the detention system, and access to medical services.

In clear, chronic, and unambiguous violation of this well-established civil rights framework for federally funded programs, migrants detained within the El Paso ICE Field Office’s jurisdiction, including OCPC, routinely are not afforded reasonable language accommodations in virtually any facet of detention. While the words “translation” (n=104) and “interpretation” (n=119) are mentioned over 200 times in the PBNDS, for the period of time represented by this study there are likely far fewer than 200 documents for those detained in OCPC that were translated by ICE or MTC. Clearly LAP guidelines are not being followed at OCPC. Those guidelines serve as a cover for ICE to feign compliance, and meaningful language access for non-English speakers is virtually absent.

The lack of adequate and reasonable language access accommodations has significant negative consequences on an individual’s immigration case, parole and bond requests, navigation of the detention system, and access to medical services.
Solitary Confinement: Cruel and Inhuman Treatment

Several individuals from the present sample of detained persons reported being placed in solitary following a sit-in or as part of a hunger strike, or for reasons related to COVID-19. The EPIC sample likely underrepresents concerns about solitary confinement at OCPC.

The former United Nations Special Rapporteur of the Human Rights Council on Torture and other Cruel, Inhuman or Degrading Treatment expressed particular concern regarding “prolonged solitary confinement, which is defined as any period of solitary confinement in excess of 15 days.”\textsuperscript{112} The Special Rapporteur asserted that “[c]onsidering the severe mental pain or suffering solitary confinement may cause, it can amount to torture or cruel, inhuman or degrading treatment or punishment.”\textsuperscript{113} and that solitary in excess of 15 days “should be subject to an absolute prohibition.”\textsuperscript{114} ICE’s current detention standards, which were part of a larger set of reforms intended to create what former ICE director John Morton called “a truly civil detention system,”\textsuperscript{115} permits the use of disciplinary solitary for up to 60 continuous days,\textsuperscript{116} and administrative solitary can stretch beyond a year.\textsuperscript{117} Torture and cruel, inhuman treatment and punishment is sanctioned in ICE detention standards.

In 2015, USCCR expressed concerns regarding the use of solitary confinement in immigration detention.\textsuperscript{118} The report notes that when individuals go on hunger strike to protest conditions, they are put in solitary confinement observing that this is “an unacceptable and mean-spirited response that could lead to mental issues.”\textsuperscript{119} The 2019 USCCR report identifies repeated misuse of solitary, placement of mentally ill adults in solitary, and specifically identifies problematic use of solitary at OCPC.\textsuperscript{120}

\textsuperscript{112} Méndez, “Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment,” 9, 15, 17, 22.
\textsuperscript{113} “Solitary Confinement Should Be Banned in Most Cases, UN Expert Says.”
\textsuperscript{114} Méndez, “Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment,” 23.
\textsuperscript{116} ICE, “Performance Based National Detention Standards 2011,” 224.
\textsuperscript{117} Calzadilla, “Immigrant Dulce Rivera Was Driven to Suicide While in Solitary Confinement.”
\textsuperscript{118} USCCR, “With Liberty and Justice for All: The State of Civil Rights at Immigration Detention Facilities,” 81–82, 124.
\textsuperscript{119} USCCR, 250.
\textsuperscript{120} USCCR, “Trauma at the Border: The Human Cost of Inhumane Immigration Policies,” 85–86, 95–96.
In 2017, DHS OIG issued a report expressing concern about placing individuals with mental health conditions in solitary confinement.\textsuperscript{121} The same report indicated that OCPC staff misused segregation and lockdown,\textsuperscript{122} staff did not adequately document the reasons why solitary was used, and that it was used inappropriately. Cruelty is even demonstrated in how mundane behavior is used for issuing solitary — OIG cites that one individual was placed in solitary for several days for sharing a cup of coffee.

The 2020 House Committee on Homeland Security’s Majority Staff Report on ICE detention found that MTC staff frequently used threats of solitary to gain compliance, that individuals who participated in hunger strikes were placed in solitary for as long as 28 days, and that, to hide this treatment, some individuals held in solitary were returned to the general population immediately prior to the committee’s arrival.\textsuperscript{123}

The 2019 ICE inspection of OCPC indicates that 770 individuals were held in solitary during the year, with 563 for disciplinary reasons and 207 for administrative reasons.\textsuperscript{124} For disciplinary purposes there was an average of 47 individuals per month (SD=27) and for administrative reasons 17 individuals a month (SD=10). Month to month the number of individuals in disciplinary segregation was strongly positively correlated with the number of individuals in administrative segregation, $r(23) = 0.9$, $p < 0.001$. For disciplinary purposes there was an average of 47 individuals per month (SD=27) and for administrative reasons 17 individuals a month (SD=10). Month to month the number of individuals in disciplinary segregation was strongly positively correlated with the number of individuals in administrative segregation, $r(23) = 0.9$, $p < 0.001$. Why the number of people in solitary for disciplinary reasons would strongly predict the number of people in solitary for administrative reasons is not clear. However, given that the facility has a history of misusing solitary, it is a matter of significant concern. Notably, four individuals were held in administrative segregation for more than 60 days. As described above, the UN recognizes that 15 days in solitary is tantamount to torture, and 60 days is four times as long.

In May of 2019, three months before EPIC began making legal visits to OCPC, the International Consortium of Investigative Journalists and \textit{The Intercept} released a major project entitled “Solitary Voices” about the use of solitary confinement in ICE detention. The project included information from a high-level whistleblower from the office of Civil Rights and Civil Liberties who felt “helpless and finally went public,”\textsuperscript{125} quantitative information on patterns of solitary in ICE detention,\textsuperscript{126} and accounts of individuals held in solitary. The project found that more than 40% of individuals held in solitary by ICE suffered from mental illness.\textsuperscript{127} The project featured accounts of individuals held in prolonged solitary at OCPC.

\textsuperscript{121} DHS OIG, “ICE Field Offices Need to Improve Compliance with Oversight Requirements for Segregation of Detainees with Mental Health Conditions.”
\textsuperscript{122} DHS OIG, “Concerns about ICE Detainee Treatment and Care at Detention Facilities,” 6.
\textsuperscript{123} Majority Staff Report, “ICE Detention Facilities: Failing to Meet Basic Standards of Care,” 5, 20.
\textsuperscript{124} ERO, “Facility Significant Incident Summary, Otero County Processing Center, Chaparral, NM, January 28-January 30, 2020,” 5.
\textsuperscript{126} Cucho and Kehoe, “How US Immigration Authorities Use Solitary Confinement.”
\textsuperscript{127} Woodman and Saleh, “40 Percent of ICE Detainees Held in Solitary Confinement Have a Mental Illness, New Report Finds.”
Two individuals from India seeking asylum, one at OCPC and the other at the El Paso Service Processing Center — both facilities being under the El Paso ICE Field Office area of responsibility — described developing lasting mental illness as a result of being held in prolonged solitary; aspects of mental illness that persisted after release from ICE detention included flashbacks and insomnia.¹²⁸

One of the men attempted suicide while held in solitary. A third account describes a transgender woman held in solitary at El Paso Service Processing Center for 15 months straight. She too attempted suicide during this long stretch of solitary confinement.¹²⁹ A fourth account describes a gay man with mental illness who was assaulted at El Paso Service Processing Center, held in prolonged solitary there, transferred to OCPC, again held in prolonged solitary, attempted to speak to the press, and was punished with yet more solitary confinement for speaking out.¹³⁰ A fifth person, an 18 year old, spoke out about how at OCPC solitary was handed out for the most minor infractions.¹³¹

→ Two individuals described developing lasting mental illness as a result of being held in prolonged solitary.

→ Two individuals reported attempting suicide while held in solitary confinement, one after being held in solitary for 15 months straight.

→ One individual described being held in prolonged solitary confinement while in one detention center and placed into solitary again once transferred to OCPC. The same individual described being punished with more time in solitary for speaking out about the treatment he was receiving.

¹²⁸ Woodman et al., “Solitary Voices.”
¹²⁹ Calzadilla, “Immigrant Dulce Rivera Was Driven to Suicide While in Solitary Confinement.”
¹³⁰ Calzadilla, “They’re taking it out on me”; Calzadilla, “Conmigo se han ensañado”; Calzadilla, “Esta Es La Historia Del Mexicano Que Permanece Castigado En Una Celda De Confinamiento De ICE”; Calzadilla, “They’re taking it out on me.”
¹³¹ Calzadilla, “Abusan de ese castigo que es tan horrible.”
ICE Detention Legal Matters: Undue Process and Legal Barriers

While complaints related to violations of legal rights from individuals in ICE custody at OCPC in this sample make up 24% of the total complaints, it is plain that barriers to legal rights of individuals in ICE custody are the norm. As identified in the complaints, violations of legal rights of individuals in ICE custody are pervasive across and between multiple institutions of the U.S. government, including CBP, ICE, and USCIS (all under DHS), and EOIR (under the Department of Justice). Each violation results in delays in due process, barriers to access to counsel, and unnecessarily-prolonged detention. Where multiple violations occur, the result is a compounding effect with deleterious results in both the legal matters of a detained individual's immigration case as well as their physical and psychological well-being.

Where immigration detention purports to (1) ensure that individuals appear in their immigration court hearings and (2) facilitate removal of individuals who have been ordered removed by an immigration judge and for whom subsequent legal remedies have been exhausted or declined, the government institutions responsible for these goals fail in both regards. Complaints highlighting delays in the issuance of NTAs are but one example of poor coordination and the opaque systems that exist between DHS functionaries and EOIR, which result in growing inefficiencies and a skyrocketing backlog in immigration court matters.

Immigration detention, specifically, fails in most aspects to provide individuals in ICE custody with efficient and legally sound access to the immigration court system. Examples of these shortcomings, although not exhaustive, are lack of access to counsel, lack of access to legal libraries, poor quality of legal library materials, inadequate access to LOPs, limitations placed on LOP service providers, antiquated communications mechanisms, lack of access to communication with family and friends supporting case development, lack of access to legal materials and orientation in one’s own language, poor training of ICE officers on immigration policies and law, inadequate communication of immigration officials with individuals in their custody, lack of accountability in immigration officials’ handling of immigration matters for individuals in their custody, insufficient access to legal documents regarding one’s immigration matter, lack of translation and interpretation of legal documents and conversations, and a general disdain from ICE officers when individuals attempt to advocate for themselves.

For these reasons, and contrary to its stated purpose, the true nature of immigration detention as it relates to legal matters effectively (1) impedes access to counsel, (2) imposes barriers to available legal remedy, and (3) prioritizes deportation over due process.
The nature of immigration detention as it relates to legal matters is to:

→ impede access to counsel
→ impose barriers to available legal remedy
→ prioritize deportation over due process

■ Due Process: Coercive Tactics and Unchecked Authority

There were 44 individuals in the present sample for whom there is a documented due process concern. Of the due process concerns, many related to ICE were documented in the course of EPIC’s provision of legal services. Several individuals noted attempts by ICE officials to coerce them to sign their deportation papers. Coercion is pervasive in the sense that persons in ICE custody are forced en masse through an immigration legal system that affords respondents zero semblance of the nuanced and individualized attention required to produce a legally sound adjudication. Despite EPIC attorneys and paralegals’ repeated efforts to gain ICE’s fulfillment of its obligation to facilitate access to due process rights for all individuals in its custody, ICE consistently refuses to meet this basic standard. ICE regularly cites its own written policy (NDS 2000, 2019 and PBNDS 2008, 2011) while simultaneously violating the very terms to which it claims to adhere.

In a most sinister among many such constructs, ICE is positioned as the sole adjudicator of requests for release from detention for persons not eligible for custody determinations by immigration judges. In these cases, ICE effectively becomes the judge, jury, and executioner regarding eligibility for release from detention for asylum seekers who arrive at ports of entry. Where parole is denied for an individual who clearly meets the standards for a grant of parole as delineated by ICE’s current governing parole policy, the cited justification of “flight risk” receives no scrutiny and has no review function outside of ICE, save for presenting a laborious and logistically challenging argument in federal court. Where ICE fails to adjudicate a parole request in a timely manner — again, a policy determined by their own guidelines and as addressed in 8 C.F.R. § 212.5(b) — there is no official accountability mechanism, resulting in prolonged detention.

The complaints about access to counsel are of particular concern as they relate to the access challenges exacerbated by COVID-19, where, for public health and safety concerns, non-profit legal service providers have indefinitely suspended all non-essential in-person legal visits and shifted protocols to communicating with detained individuals via telephone and postal mail.

As presented in this sample, ICE routinely fails to facilitate legal calls for individuals, or when the call is successfully connected, it may cut off at any second. This has a two-fold result of disrupting communication with legal representatives and forcing individuals to pay for access to counsel. The routine obstruction to legal calls and lack of consistent and quality access are a violation of ICE’s own detention standards.

ICE’s arbitrary transfer of individuals between detention facilities presents an additional disruption or barrier to legal services and non-legal support. This is the case even when transfers occur within the same ICE field office. Transfers have been particularly problematic during the COVID-19 pandemic, as ICE has intentionally transferred individuals between facilities with the knowledge that such transfers contribute to spreading the virus, as discussed above. One EPIC partner reported that ICE released a client who had tested positive for COVID-19 without notifying the attorney of record, exposing both staff and community members to infection. Not only has ICE blatantly disregarded concern for individuals detained in its custody, but it has shown a lack of concern for the surrounding community.

Legal Access: Routine Obstructions

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As stated at the outset, the U.S. government claims “immigration detention is not punishment” and that “ICE detains people for no purpose other than to secure their presence for both immigration court proceedings and their removal.” As shown here, these claims are plainly invalid: immigration detention is defined by punishment, and it is not only unnecessary for immigration court proceedings, it renders those proceedings even less legitimate.

In FY 2019, more than half a million people were held in immigration detention. Beyond the community and individual impact of the violence inherent to immigration detention, the system costs taxpayers billions of public dollars each year, and nearly all of those funds are paid out to private contractors like MTC.

A longitudinal study of EOIR records from 2008 to 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.” The Vera Institute of Justice found that 98% of clients released from custody 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. According to EOIR data, during FY 2019 “among non-detained asylum seekers, 99 out of 100 (98.7%) attended all their court hearings.” By the court’s own records, immigration detention is an unnecessary institution because nearly everyone attends their hearings. Irrespective of poor conditions, given lack of necessity, exorbitant cost, and massive transfer of public funds to the private sector, ICE detention should be terminated. When inhumane, punishing conditions are added to the institution’s objective needlessness and exorbitant expense, it is clear that abolishing immigration detention is urgent.

In addition to being costly, and unnecessary according to EOIR’s own data, the USCCR described ICE detention as “torture-like conditions.” This study does not simply corroborate government reports finding ICE detention conditions torturous, but the accounts in this report expand on and amplify the concerns articulated in those official government documents.

134 ICE, “Performance Based National Detention Standards 2011,” i.
135 Lowey, Consolidated Appropriations Act, 2019, secs. 2, A, Title I, pg 8.
137 Eagly and Shafer, “Measuring in Absentia Removal in Immigration Court.”
138 Siulc and Smart, “Evidence Shows That Most Immigrants Appear for Immigration Court Hearings,” 818.
139 TRAC, “Record Number of Asylum Cases in FY 2019.”

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We find that most government reports underestimate both the intensity and interconnectedness of the problems.

Before ever entering ICE detention, many individuals in this sample experienced CBP temporary holding cells, dubbed *hieleras* by CBP officers, which are defined by extremely cramped and cold conditions. Their use, like ICE detention, is part of a larger program of "prevention through deterrence" that employs suffering, torture, and death to deter immigration.

As observed by others, the conditions in CPB *hieleras* are consistent with definitions of torture. We identify *hieleras* as a form of "clean torture" that leaves no immediately-visible physical marks but results in prolonged physical and mental suffering. Between 2011 and 2018, the average length of incarceration in CBP temporary holding cells was two days and the maximum 13 days. In our 2019 sample, the average length of stay was 14 days and the maximum 52 days. We conclude that *hieleras* must be closed, and the use of cold-cell “clean torture” must end. The government's use of *hieleras* must be investigated as a prolonged act of torture spanning multiple administrations. Individuals and entities responsible for the use of these facilities must be held accountable, and victims deserve redress.

Prior to arriving to ICE detention, several individuals in the sample were subjected to MPP, which amounts to a massive and systematic campaign of human rights violations, leading in many cases to migranticide. We find that individuals released from MPP and later incarcerated by ICE suffer physical and acute mental trauma.

For thousands, MPP clearly violates the principle of non-refoulement. We conclude that MPP should be ended as soon as possible by executive order, those subjected to MPP should be paroled into the U.S. to safely reach their intended communities without detention or delay, and those already denied relief by immigration court should be afforded every possible remedy. Individuals and entities responsible for planning and implementing MPP should be held accountable for the grave harm they have caused.

Before entering ICE detention, ten individuals in the sample were subjected to family separation. All instances involved separating parents from their children, and all occurred at least a year after the family separation policy was supposed to have ended. In some cases of family separation, vulnerable family members were assaulted.

140 Carcamo and Simon, “Immigrant Groups Complain of ‘Icebox’ Detention Cells.”
143 Rejali, Torture and Democracy, 2.
Family unification was a guiding principle of U.S. immigration law for over a century. Family separation began during the Obama administration, expanded under the Trump administration, and then extended past when the policy supposedly ended. Article 16(3), of the UN Declaration of Human Rights recognizes the family as “the natural and fundamental group unit of society and is entitled to protection by society and the State.” Separating children from their parents violates these human rights, results in trauma, runs counter to extant immigration policies, and should never be used as a deterrent to migration. We agree with PHR’s assessment that family separation constitutes torture and enforced disappearance.

Inspectors create the illusion that both their employers, ICE, as well as facility contractors, like MTC, adhere to the agreed rules and standards. The ICE inspections regime is a reform that was designed and implemented to identify problems and improve conditions for detained individuals. Yet, inspections constitute performative compliance that not only fails to identify and expose problems, but forms part of a system that conceals those problems.

We also share their view that agents of the U.S. government who crafted and carried out these policies violated the law and should be held accountable, and that the U.S. government has an obligation to provide redress to these victims of torture through reunification and rehabilitative services.

Now we turn to conditions in ICE facilities. Compared to the present study, and the few others like it, ICE inspectors at OCPC find an unusually low number of complaints. We conclude that contract inspectors create the illusion that both their employers, ICE, as well as facility contractors, like MTC, adhere to the agreed rules and standards. The ICE inspections regime is a reform that was designed and implemented to identify problems and improve conditions for detained individuals. Yet, inspections constitute performative compliance that not only fails to identify and expose problems, but forms part of a system that conceals those problems. We conclude that the inspections system is a large expenditure that serves purposes diametrically opposed to its purported ones. The solution is not additional toothless, complicit, and expensive announced self inspections that transfer funds to deceptive private contractors. The solution to the systemic violence that is detention entails ending the unnecessary and expensive system of detention.

From our sample, all individuals detained due to interior enforcement were picked up in ICE raids launched by the Trump administration in retaliation against sanctuary cities. During these raids ICE officers used administrative warrants to gain entry into residences and wore uniforms intended to resemble local law enforcement. These deceptive tactics on the part of ICE do not contribute to “homeland security” but instead create confusion and terrorize communities of color.
Within ICE detention, medical issues were the dominant area of concern. Most medical issues pertained to physical health, and most of these concerns stemmed from denial of necessary procedures or medications. Denial of medical care unnecessarily increases and prolongs pain and suffering. Medical neglect at OCPC has repeatedly resulted in death. Mental health concerns, which we believe are significantly underrepresented in the complaints reviewed here, formed one quarter of the concerns. Individuals suffering from PTSD, which was exacerbated by detention, were not afforded mental health treatment. Pervasive mental harm and frequent suicide attempts reveal conditions of prolonged mental suffering that are consistent with the U.S. Attorney General’s OLC interpretation of torture.

During the COVID-19 pandemic individuals were concerned about an inability to socially distance and lack of access to personal protective equipment. Persons who contracted COVID-19 were placed in solitary for 14 days. Placement in solitary for this period of time borders on the UN’s definition of torture. Needless to say, “treatment” of individuals sick with a potentially lethal disease using tortuous periods of solitary confinement is deeply troubling, and we understand that this practice is not limited to OCPC but is widespread in ICE detention. We urge USCCR and other organizations to investigate the use of solitary among COVID-19 infected individuals.

Discrimination, particularly racial discrimination, was the second most common complaint about ICE Detention conditions. Individuals recounted how staff yelled insulting racial slurs at them. One individual expressed concern about homophobia. Given the history of sexual harassment at the facility, we suspect this issue is underrepresented in the sample. The frequent discriminatory comments made by staff to detained persons are cruel, inhuman, and degrading treatment.

ICE and MTC retaliated against non-violent protesters with physical force, threats of bodily harm, verbal assaults, and retaliation that included solitary confinement and aggressive searches. After months in the facility, the protesters demanded to meet with their DO and were met with violence. We find deeply troubling ICE and MTC’s disproportionate response to a wholly reasonable demand.

Various forms of Staff Mistreatment ranged from a physical assault to frequent verbal assaults, psychological torment, threats of use of force, physical harm, and solitary confinement. Verbal threats by MTC staff were described as "constant" and the treatment was characterized as "psychological abuse." We conclude that together, these are consistent with OLC’s definition of torture and are unambiguously degrading treatment.
One individual was physically assaulted by staff, and this individual’s experience is indicative of the complex interconnectedness of various kinds of problems. In this instance, a physical assault by facility staff led to a medical condition. He was then denied treatment and the injury went untreated. Then the individual was prevented from filing a detailed grievance because of additional staff misconduct. In the end the individual was subjected to further harassment. The broad spectrum of abuses this individual experienced in nearly every aspect of their life, for an extended period of time, is consistent with “other procedures calculated to disrupt profoundly the senses or personality” and thus under 18 USC § 2340(2)(D) constitutes torture.

Language access was a chronic problem, and poor language access is a clear violation of the Civil Rights Act. In some cases lack of language access led to postponed hearings, lengthening the period of detention. In other instances ranging from parole or bond requests and deportation orders to grievance forms and medical requests, individuals did not understand documents they were presented with and in many cases asked or compelled to sign.

Use of solitary confinement was a common complaint. Some individuals attempted suicide while in solitary as punishment for participation in non-violent protests. Several persons were placed in solitary for participation in hunger strikes, and those individuals were threatened with force feeding. A hunger strike is a protected First Amendment right. Force feeding is consistent with OLC’s definition of torture.

Legal issues in ICE detention comprised roughly a quarter of concerns overall, and Due Process issues were the largest category of concern within this group. Four agencies are culpable: ICE, CBP, EOIR, and USCIS. Concerns involved ICE officers coercing individuals to sign papers they did not understand, prolonged delays in NTA processing or parole adjudication, bond denials on unreasonable grounds, long delays in hearing dates, and aggressive or partial immigration judges. Individuals also expressed concerns regarding access to legal counsel. Many of these concerns entailed impediments to communicating with legal representatives.

In summary, based on an analysis of accounts by detained persons we identify multiple situations and domains, at many levels of the U.S. immigration system, that are consistent with torture or result in exposure to persecution. Many of the problems identified have been ongoing for more than a decade, but like the use of CBP hieleras and family separation, were expanded and intensified under the Trump administration. That these wrongs are perpetrated upon persons seeking protection is deeply troubling.

No one should be treated in the ways that are described by individuals in this report. It is our duty to end these costly, unnecessary, and torturous forms of detention.

It is our duty to end these costly, unnecessary, and torturous forms of detention.


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