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VIA ELECTRONIC AND PRIORITY MAIL

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**RE: Racist and Retaliatory Abuse, Violence, and Medical Neglect
Endured by Individuals Detained at Orange County Correctional Facility**

Officer for Civil Rights and Civil Liberties Culliton-González, Inspector General Cuffari, and Ombudsman Gersten:

Catholic Charities Community Services – Archdiocese of New York, Envision Freedom Fund, For the Many, Freedom for Immigrants, New York Lawyers for the Public Interest (“NYLPI”), and NYU Law Immigrant Rights Clinic submit this complaint seeking redress for the racist and retaliatory abuse, violence, and medical neglect of individuals detained at Orange County Correctional Facility (“OCCF”). This complaint is supported by the statements of ten individuals detained at OCCF who wish to remain anonymous due to fear of retaliation.¹ **We request a response in writing within one week** detailing the plan of action to remedy the conditions described herein.

¹ The real names and any identifying information of detained people have been anonymized to protect them from potential retaliation.

People in immigration detention have the right to freedom from racial and religious discrimination, freedom from First Amendment retaliation, adequate medical care, and nonpunitive and safe conditions.² Additionally, OCCF is subject to ICE’s National Detention Standards (“NDS”), which prohibit discrimination, excessive use of force, improper use of solitary confinement, and medical neglect, and also mandate sanitary and safe conditions.³

As outlined below and in the attached declarations, ICE and OCCF have repeatedly violated the rights of detained people. These latest examples appear to be part of a longer trend. Over the last several years, OCCF’s appalling conditions have been the subject of multiple complaints, lawsuits, and media reports.⁴ Indeed, the Office for Civil Rights and Civil Liberties (“CRCL”) itself has previously investigated the facility in response to “numerous allegations of civil rights and civil liberties violations” and, most disturbingly, the 2016 death of an individual in ICE custody at OCCF.⁵ Yet people detained at OCCF continue to report that jail officials individually and collectively engage in a culture of racist and retaliatory abuse, violence, and medical neglect.

These brazen violations of detained individuals’ rights and dignity—which are emblematic of the abuses and neglect endemic to the immigration detention system—demand swift action. We urge CRCL, pursuant to its authority under 6 U.S.C. § 345, to immediately recommend:

1. Release of all individuals detained at OCCF to their communities;
2. Termination of ICE’s Intergovernmental Services Agreement (“IGSA”) with OCCF;
3. Pending release and termination of the IGSA:
 - a. Investigation of the conditions detailed herein, including racist and retaliatory physical violence, use of solitary confinement, abuse of power, and medical neglect; and
 - b. Removal of the following officers from any position where they exercise power over and interact with detained people: Officer Richard A. Bloise (Badge No. 366); Officer Ricardo

² See *Zadvydas v. Davis*, 533 U.S. 678, 694 (2001) (asserting that “punitive measures could not be imposed upon [noncitizens] ordered removed because ‘all persons within the territory of the United States are entitled to the protection’ of the Constitution” (quoting *Wong Wing v. United States*, 163 U.S. 228, 238 (1896)); *Charles v. Orange Cty.*, 925 F.3d 73, 85 (2d Cir. 2019) (holding that plaintiffs plausibly alleged that mental health discharge planning was part of constitutionally-required in-custody medical care); see also *Cruz v. Beto*, 405 U.S. 319, 321 (1972) (establishing that people in prison, “like other individuals, have the right to petition the Government for redress of grievances”); *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244 (1983) (extending constitutional protections available to imprisoned people to civilly-detained people).

³ See U.S. Immigration and Customs Enforcement, 2019 National Detention Standards for Non-Dedicated Facilities §§ 1.1, 2.8, 2.9, 3.1, 4.3 (2019), <https://www.ice.gov/detain/detention-oversight/2019> [hereinafter NDS 2019] (setting forth standards for environmental health and safety, use of force and restraints, special management units, disciplinary system, medical care, and religious practice).

⁴ See, e.g., Ex. P (CRCL complaint filed by L.G.C., an individual who has been subjected to retaliation, abuse, and violations of his substantive due process rights at OCCF) [hereinafter L.G.C. Compl.]; see also CRCL complaint filed in relation to assault of detained individual on January 1, 2022, at OCCF [hereinafter 1/1/2022 Assault Compl.] (on file with complainant); *Charles*, 925 F.3d at 73 (litigation related to mental health discharge planning at OCCF); Matthew Nanci, *Protest Denounces Orange County Jail Agreement with ICE*, REC. ONLINE (July 8, 2019, 10:50 P.M.), <https://www.recordonline.com/story/news/crime/2019/07/09/protest-denounces-orange-county-jail/4735489007/> (describing reports from community members that individuals detained at OCCF were told, “Go back to your country, you aren’t worth anything”); Annamarya Scaccia, *When Suicide Happens at Immigration Detention Centers, Who Is to Blame?*, VICE (May 26, 2017, 10:58 A.M.), <https://www.vice.com/en/article/nejxwk/when-suicide-happens-at-immigration-detention-centers-who-is-to-blame> (reporting on mismanagement of an individual’s diagnosed mental illness at OCCF); Mazin Sidahmed, *Assembly Members Slam Orange County Jail Over Immigrant Detention Conditions*, DOCUMENTED (Nov. 29, 2018), <https://documentedny.com/2018/11/29/assembly-members-slam-orange-county-jail-over-immigrant-detention-conditions/>.

⁵ Memorandum from Office for Civil Rights and Civil Liberties to Matthew Albence, Exec. Assoc. Dir., Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement 1 (Apr. 27, 2018), <https://www.dhs.gov/sites/default/files/publications/orange-county-expert-memo-04-27-18.pdf>.

Carde (Badge No. 523); Sergeant Daniel Figueroa; Sergeant Keith Conroy (Badge No. 117); Officer Michael P. Lattimer; Officer R. Laudato (Badge No. 551), and Sergeant Murphy.⁶

I. Racism and Religious Discrimination

“I feel like Officer Carde harasses me because I am [REDACTED]. He picks on others who are also [REDACTED] and orders us back in our cells.”
–“Andres”⁷

Based on the reports of detained people, racism and religious discrimination are entrenched in the culture of OCCF—a facility where the surrounding town is 81% white⁸ and the corrections officers are “mostly white”⁹ The Sheriff’s Office, which operates the facility, has publicly acknowledged former ties to the Oath Keepers, a group “known to be violent in carrying out extremist beliefs”¹⁰ Undersheriff Kenneth Jones, for example, has reportedly recognized that he was a member of the Oath Keepers in 2013 and 2014, but claims that he cut ties with the organization several years ago because it became extremist.¹¹ However, when Undersheriff Jones joined the Oath Keepers, it expressly espoused anti-immigrant views—describing immigrants as “[f]oreign invaders” and “illegal[s]” and calling for the impeachment of then-President Barack Obama for his support of immigrant rights.¹²

People detained at OCCF, who are disproportionately people of color,¹³ report pervasive racist abuse, as well as anti-Muslim discrimination. Although detained people have organized to challenge this abuse, they report that it continues unabated.¹⁴ Indeed, detained individuals’ accounts make clear that not only have particular officials engaged in egregious racist acts, but also that they have been backed by the

⁶ As established by the exhibits herein, these officers have been identified as violating detained individuals’ civil rights and liberties. See Ex. E, “Agustin” Decl. ¶ 3 (Officer Bloise); Ex. F, “Andres” Decl. ¶¶ 6, 8 (Officer Carde, Officer Bloise); Ex. H, “Cristian” Decl. ¶¶ 4–5 (Officer Bloise, Officer Carde, Officer Laudato, Sergeant Figueroa); Ex. I, “Dario” Decl. ¶¶ 5, 12 (Sergeant Murphy, Officer Bloise, Officer Lattimer); Ex. J, “Ernesto” Decl. ¶ 4 (Sergeant Figueroa, Officer Carde); Ex. M, “Heriberto” Decl. ¶¶ 4, 12 (Officer Carde, Officer Bloise); Ex. B, Complaint of L.G.C. to Orange County Sheriff’s Office 2 (Sergeant Conroy). In addition to these officials, detained people have identified other officials whose names and/or badge numbers they do not know, further necessitating a broader investigation.

⁷ Ex. F, “Andres” Decl. ¶ 6.

⁸ *QuickFacts: Goshen Town, Orange County, New York*, U.S. CENSUS BUREAU (July 1, 2021), <https://www.census.gov/quickfacts/goshentownorangecountynyork>.

⁹ Ex. I, “Dario” Decl. ¶ 3.

¹⁰ Becca Tucker, *Orange County Oath Keepers Had Roots in Sheriff’s Office*, W. MILFORD MESSENGER (Feb. 15, 2021), <http://www.westmildordmessenger.com/news/local-news/orange-county-oath-keepers-had-roots-in-sheriff-s-office-FK1518654> (reporting that the undersheriff of Orange County, New York, was a member of the Oath Keepers in 2013 and 2014); see also Heather Yakin & Chris McKenna, *Oath Keepers Militia Group at Center of Capitol Riot Cases Had Big NY Following Until Rift Emerged*, REC. ONLINE (Apr. 18, 2021, 11:44 P.M.), <https://www.recordonline.com/in-depth/news/2021/04/18/militia-oath-keepers-capitol-riot-cases-large-ny-presence/7187192002/>.

¹¹ Tucker, *supra* note 10.

¹² *Barack Obama Must Be Impeached and Removed from Office to Stop His ‘Amnesty’ of Illegal Aliens*, OATH KEEPERS (Feb. 13, 2014), <https://oathkeepersny.wordpress.com/2014/11/21/barack-obama-must-be-impeached-and-removed-from-office-to-stop-his-amnesty-of-illegal-aliens/>; *Oath Keepers Are Ready to Stand with You to Defend Your Constitutional Rights – Will You Stand with Us?*, OATH KEEPERS (Feb. 13, 2014), <https://oathkeepersny.wordpress.com/2014/02/13/the-oathkeepers-are-ready-to-stand-with-you-to-defend-your-constitutional-rights-will-you-stand-with-us/>.

¹³ In July 2019, 94% of people detained at OCCF were Black or Latinx. See *Immigration and Customs Enforcement Detention*, TRACIMMIGRATION (July 2019), <https://trac.syr.edu/phptools/immigration/detention/>. This figure indicates extreme overrepresentation of Black and Latinx people at OCCF: 44% of immigrants in the United States are Latinx, and 10% are Black. See Jeanne Batalova, Mary Hanna, & Christopher Levesque, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, MIGRATION POL’Y INST. (Feb. 11, 2021), <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states-2020>.

¹⁴ See, e.g., Ex. O, Letter from detained individuals to OCCF (Feb. 8, 2022) (in letter signed by dozens of detained people, identifying concern “that this facility and the ICE department allows racist correctional officers to work” at the jail).

chain of command.¹⁵ Additionally, and disturbingly, although the Orange County Sheriff’s Office claims that it screens its employees for extremist views,¹⁶ public databases appear to connect Officer Bloise—a named defendant in an action filed pursuant to 42 U.S.C. § 1983¹⁷—to email accounts with the handle “nazikommando.”¹⁸ Publicly available records also tie Sergeant Figueroa to racist, anti-immigrant, and otherwise disturbing social media content.¹⁹

Racism. The NDS provide that detained people are entitled to “the right to protection from personal abuse . . . and harassment.”²⁰ Additionally, detained people have “the right to freedom from discrimination based on race.”²¹ OCCF officials’ comments and actions constitute racist harassment in clear violation of ICE’s own standards. Reports from people detained at OCCF indicate a pattern of abuse and harassment intended to cause distress by referencing race, national origin, and the possibility of violence.

Anti-Black racist hostilities are reportedly common at OCCF, with Black immigrants described as being especially targeted by guards. Officers reportedly call some detained people the N-word.²² An officer “talks about how dark people’s skin is and whether that means they’re African or not,” and “says that Africans have a certain kind of smell.”²³

Spanish-speaking immigrants at OCCF report insults and harassment simply for speaking in Spanish.²⁴ “Felix” described being reprimanded by a guard for speaking in Spanish to a Spanish-speaking nurse.²⁵ “Agustin” recounted how a guard told a group of men speaking in Spanish that “he didn’t want to hear [them],” and then proceeded to turn the television—playing an English-language program—up to full volume.²⁶

The mere fact of being an immigrant is reported to be a source of racist, cruel harassment from OCCF staff. Multiple individuals described instances in which they were told to “go back to your fucking country”; that if an officer were at the border, he “would kill all the immigrants”; that officers were “tired of all you immigrants”; and other xenophobic remarks.²⁷ Such incidents were described as widespread,

¹⁵ See, e.g., note 27, *infra* (describing officials at multiple levels of seniority engaging in racist abuse); see also Section VI, *infra* (describing the culture of impunity at OCCF).

¹⁶ See Yakin & McKenna, *supra* note 10 (reporting that “[t]he Orange County Sheriff’s Office performs thorough background checks on job applicants . . . including examining social media accounts and body tattoos ‘to make sure they’re not affiliated with groups that express hatred’”).

¹⁷ See *Kenlock v. Orange Cty.*, No. 20-CV-3693 (NSR), 2021 WL 4267309 (S.D.N.Y. Sept. 20, 2021).

¹⁸ See Ex. A, Index and Public Records Related to Orange County Sheriff’s Office Correctional Officers.

¹⁹ *Id.* (including multiple posts that suggest immigrants carry disease, a depiction of the Statue of Liberty with overlaid text that reads, ‘Where does it say bring me hostile, free loading assholes, waving their own flags?’, and xenophobic allegations about the Somali American community, among many other posts).

²⁰ NDS 2019, *supra* note 3, at 95 (Standard 3.1, Disciplinary System; II. Standards and Procedures; M. Notice to Detainees).

²¹ *Id.*

²² See Ex. M, “Heriberto” Decl. ¶ 3.

²³ Ex. H, “Cristian” Decl. ¶ 4.

²⁴ Ex. G, “Benjamin” Decl. ¶ 3 (“[The guards] don’t like when we speak in Spanish.”); see also Ex. I, “Dario” Decl. ¶ 4 (“The officers are very racist with the people who speak only Spanish.”).

²⁵ Ex. K, “Felix” Decl. ¶ 4.

²⁶ Ex. E, “Agustin” Decl. ¶ 5; see also Ex. N, “Moises” Decl. ¶ 7.

²⁷ Ex. I, “Dario” Decl. ¶ 5 (reporting Sergeant Murphy pointed a finger and yelled, “Why don’t you go back to your fucking country?”); Ex. J, “Ernesto” Decl. ¶ 8 (describing hearing a captain say, “This is my damn jail, and if you don’t like my rules, go back to your countries,” and having heard a sergeant express similar sentiments); Ex. K, “Felix” Decl. ¶ 5 (reporting hearing a sergeant say, “Why don’t you all go back to your country?”); Ex. N, “Moises” Decl. ¶ 5 (reporting that “[officers] say that we are immigrants, that we don’t deserve respect”); Ex. P, L.G.C. Compl. at 2 (describing how an officer told L.G.C. he was “tired of all you immigrants,” that “immigrants cause so many problems,” and “if [he] were at the border, [he] would kill all of the immigrants”).

spanning multiple officials, levels of the chain of command, and contexts—belying any suggestion that racist abuse at OCCF is isolated to a particular officer or unit.²⁸

Reports of anti-Black racist harassment at OCCF are consistent with a pattern and practice of documented anti-Black racism in ICE detention facilities. There have been multiple civil rights complaints calling for investigation of ICE officers’ and private prison guards’ illegal use of threats, verbal harassment, coercion, and direct force against Black immigrants in detention centers.²⁹ Moreover, in *Persecuted in U.S. Immigration Detention: A National Report on Abuse Motivated by Hate*, Freedom for Immigrants found that hateful and racist language is accompanied by physical abuse, sexual harassment, or denial of access to resources.³⁰ We are gravely concerned for the safety and wellbeing of people detained at OCCF given that, historically, discriminatory comments have resulted in abuse and denial of care.³¹

Religious Discrimination. The NDS state that detained people are entitled to the “right of freedom from discrimination based on race, religion, national origin, gender, sexual orientation, physical or mental ability, or political beliefs.”³² Further, the standards specify that “ICE/ERO requires all facilities to provide detainees requesting a religious diet reasonable and equitable opportunity to observe their religious dietary practice within the constraints of the secure and orderly running of the facility.”³³

Detained peoples’ experiences of religious discrimination clearly violate ICE’s standards. Muslim immigrants at OCCF have reportedly been denied appropriate meals and prayer space. People who are supposed to receive Kosher or halal meals “get spoiled, stinking food constantly.”³⁴ The officers also “make it hard to pray”: if the legal call room is unavailable for prayer, “[s]ome officers don’t let Muslim immigrants pray” in the common area, “even though there is space.”³⁵ Immigrants also reported being denied access to private space for religious services and harassment for adhering to their religious practices.³⁶

²⁸ See note 27, *supra*.

²⁹ See, e.g., ‘Takes the human out of a person’: Black Immigrants in Detention Describe Anti-Blackness, Egregious Abuses in New Civil Rights Complaint, FREEDOM FOR IMMIGRANTS (Oct. 6, 2021), <https://www.freedomforimmigrants.org/news/2021/10/6/takes-the-human-out-of-a-person-black-immigrants-in-detention-describe-anti-blackness-egregious-abuses-in-new-civil-rights-complaint>; see also ‘Unchecked Culture of Abuse’: Groups Demand Federal Intervention amid Anti-Black and Life-Endangering Harms Under ICE Field ICE Office, S. POVERTY L. CENTER (Dec. 17, 2021), <https://www.splcenter.org/presscenter/unchecked-culture-abuse-groups-demand-federal-intervention-amid-anti-black-and-life>.

³⁰ See Freedom for Immigrants, *Persecuted in U.S. Immigration Detention: A National Report on Abuse Motivated by Hate*, https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/5b3174e46d2a73f2d1f56aab/1529967847644/FFI_NatReportAbuse_062518.pdf.

³¹ See Section IV, *infra*.

³² NDS 2019, *supra* note 3, at 95 (Standard 3.1, Disciplinary System; II. Standards and Procedures; M. Notice to Detainees).

³³ *Id.* at 155 (Standard 5.3, Religious Practices); see also *id.* at 100–01 (Standard 4.1, Food Service).

³⁴ Ex. I, “Dario” Decl. ¶ 24.

³⁵ *Id.* ¶ 25.

³⁶ Ex. N, “Moises” Decl. ¶ 11; Ex. F, “Andres” Decl. ¶ 11.

II. Retaliatory Physical Violence and Use of Force

“It was six officers against one unarmed man. The officers jumped on him, hitting him. One of them was holding him down and another had his knee on the man’s neck. They pepper sprayed him and wouldn’t let him move. He was yelling for help. But we couldn’t do anything. We thought that if we said anything more, they would torture us as well. . . We didn’t feel safe before, but we knew we weren’t safe after that. The officers have so much control over us. I am fearful of my life.”
–“Andres,” describing the January 1, 2022, attack of a detained person³⁷

At least twice in just the past few months, large groups of OCCF officers and sergeants have reportedly used excessive force:³⁸ pepper spraying, kicking, punching, dragging, and/or handcuffing non-resistant people for non-violent acts and for exercising their First Amendment rights.³⁹ Witnesses recounted how on February 5, 2022, L.G.C., who has mental and cognitive disabilities and suffers chronic suicidality, was thrown to the ground, kicked, beaten, and handcuffed by at least seven officers after an interaction with Officer Bloise.⁴⁰ This violent attack marked what people in detention described as the culmination of months of targeted harassment by the guards, seemingly in response to L.G.C.’s filing of grievances and other litigation against the jail.⁴¹

On January 1, 2022, when a group attempted to exercise their First Amendment rights by speaking to a sergeant about Officer Bloise’s racist abuse, individuals described how as many as twenty officers responded with violence.⁴² The officers yelled insults at the men, shoving them towards their cells.⁴³ Several officers then attacked one of the men even though he was not resisting.⁴⁴ They tackled him to the ground, pepper spraying, kicking, punching, handcuffing, and dragging him away while he cried for help.⁴⁵ Multiple people described the man’s red, swollen, and injured face after this beating.⁴⁶ In another unit that same day, officers reportedly grew violent when an officer miscounted the tablets he had collected from the people in the unit.⁴⁷ He amassed around thirty officers, who aggressively pushed people into their cells, locking them in early as retaliation for one of their own mistakes while yelling xenophobic vitriol like, “if [you] don’t like being treated this way, [you] should go back to [your] countries.”⁴⁸

Accounts indicate that multiple guards were involved in each of these ugly attacks, emblematic of a culture of violence at OCCF.⁴⁹ Excessive force and the threat of violence pervade detained people’s daily

³⁷ Ex. F, “Andres” Decl. ¶¶ 9–10.

³⁸ Per the NDS 2019, “using force against a detainee offering no resistance” is “prohibited.” The use of force may only involve “to gain control of an apparently dangerous detainee only under specified conditions.” NDS 2019, *supra* note 3, at 44, 46 (addressing use of force, restraints, and prohibited use of force acts and techniques).

³⁹ 1/1/2022 Assault Compl. at 2; Ex. G, “Benjamin” Decl. ¶¶ 4–7; Ex. J, “Ernesto” Decl. ¶¶ 9–11; Ex. F, “Andres” Decl. ¶¶ 6–10; Ex. K, “Felix” Decl. ¶¶ 6–9; Ex. I, “Dario” Decl. ¶¶ 15–17.

⁴⁰ Ex. K, “Felix” Decl. ¶¶ 6–8; Ex. I, “Dario” Decl. ¶¶ 13–19. “Dario” describes how, despite L.G.C.’s lack of resistance, the sergeant beating L.G.C. drew his pepper spray but did not use it since the other officers beating L.G.C. were too close by and would be affected by the spray as well.

⁴¹ Ex. I, “Dario” Decl. ¶ 12; Ex. J, “Ernesto” Decl. ¶ 13.

⁴² 1/1/2022 Assault Compl. at 2; Ex. G, “Benjamin” Decl. ¶¶ 4–7.

⁴³ Ex. G, “Benjamin” Decl. ¶ 6.

⁴⁴ 1/1/2022 Assault Compl. at 4–5; *see also* Ex. E, “Agustin” Decl. ¶¶ 13, 15.

⁴⁵ Ex. F, “Andres” Decl. ¶ 9; 1/1/2022 Assault Compl. at 2–8.

⁴⁶ Ex. H, “Cristian” Decl. ¶ 8; Ex. K, “Felix” Decl. ¶ 9.

⁴⁷ Ex. J, “Ernesto” Decl. ¶¶ 9–11.

⁴⁸ *Id.* ¶ 10.

⁴⁹ “Dario” describes how the officers “all watch each other’s back,” even telling detained people that the officers “won’t go anywhere,” that no matter what they do, “they won’t ever get in trouble for their actions.” Ex. I, “Dario” Decl. ¶ 11.

lives and deeply impact their psyches.⁵⁰ “Agustin,” who “suffered in [his] childhood; [he] saw people lose their lives,” described how the January 1st attack triggered him: “I started having nightmares after what happened that day, when I saw how the officers behaved. I didn’t feel safe in this place.”⁵¹

Anyone detained or imprisoned by the government is guaranteed certain liberty interests such as reasonably safe conditions of confinement, freedom from unreasonable bodily restraint, and the right to food, clothing, medical care, and shelter.⁵² The Due Process Clause of the Fifth Amendment guarantees that anyone detained by the government be free of gross physical abuse.⁵³ According to the NDS, “using force against a detainee offering no resistance” is “prohibited.”⁵⁴ The use of force may only be deployed “to gain control of an apparently dangerous detainee only under specified conditions.”⁵⁵ The uses of force described in this section by officials at OCCF clearly demonstrate repeated protocol violations. OCCF officers beat, dragged, pepper sprayed, and handcuffed people simply for pointing at the patterns of abuse at the facility or for merely being present on the scene.

III. Solitary Confinement, Particularly for Punitive Purposes and/or as A Form of First Amendment Retaliation

“After the [January 1st] incident, I was locked-in for five days as a punishment, just because they didn’t want to pay attention to our grievances. . . . On the fourth day of my punishment, they took me to something like a court in the jail, where they read charges against me. . . . I said I was not guilty, but the jail found me guilty anyway. They told me not to tell anyone about what happened, not even my lawyer. I don’t know why they told me that. Maybe because they already have a lot of complaints against the jail.”
–“Benjamin”⁵⁶

It is well established that solitary confinement is torture.⁵⁷ At OCCF, detained people have reported that officers have repeatedly wielded solitary confinement—and its threat—to silence those attempting to exercise their First Amendment rights by collectively expressing their grievances.⁵⁸ In response to the January 1, 2022 events described in section II, *supra*, when people simply requested to speak to the sergeant, the group—including its most brutalized member⁵⁹—was punished with solitary.⁶⁰ The group was subjected to a five-day lock-in, and everyone in the unit, regardless of their participation, was locked up for the rest of the day.⁶¹ In the aftermath of the tablet incident described in section II, *supra*, after verbally and

⁵⁰ Ex. I, “Dario” Decl. ¶ 20; Ex. E, “Agustin” Decl. ¶ 15.

⁵¹ Ex. E, “Agustin” Decl. ¶ 15.

⁵² See *Youngberg v. Romeo*, 457 U.S. 307, 315–16 (1982).

⁵³ See *Lynch v. Cannatella*, 810 F.2d 1363, 1374 (5th Cir. 1987).

⁵⁴ See NDS 2019, *supra* note 3, at 44 (Section 2.8 Use of Force and Restraints).

⁵⁵ *Id.*

⁵⁶ Ex. G, “Benjamin” Decl. ¶¶ 8–9.

⁵⁷ Tracy Hreski, *In the Cellars of the Hollow Men: Use of Solitary Confinement in U.S. Prisons and Its Implications Under International Laws against Torture*, 18 PACE INT. LAW REV. 1, 4–5, 8, 10, 13, 16–19, 21–24, 27 (2006) (“Solitary confinement use in the United States contravenes international law because it fulfills all four elements of torture.”); see generally Grassian, Stuart, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J.L. & POL’Y 325 (2006); *Solitary Confinement Should Be Banned in Most Cases, UN Expert Says*, UNITED NATIONS: UN NEWS (Oct. 18, 2022) <https://news.un.org/en/story/2011/10/392012-solitary-confinement-should-be-banned-most-cases-un-expert-says>.

⁵⁸ Ex. G, “Benjamin” Decl. ¶¶ 4–8; Ex. F, “Andres” Decl. ¶¶ 6–7; Ex. E, “Agustin” Decl. ¶ 14; Ex. H, “Cristian” Decl. ¶¶ 7–8; Ex. N, “Moises” Decl. ¶¶ 9–10.

⁵⁹ 1/1/2022 Assault Compl. at 3 (describing assaulted individual being denied a medical workup “because he was ‘going to the box’—a solitary confinement cell”).

⁶⁰ Ex. N, “Moises” Decl. ¶¶ 8–10.

⁶¹ *Id.* Even those who did not participate in the peaceful protest for fear of retaliation and abuse from the guards—including the very consequence of solitary—were confined to their cells. “Moises” said, “[t]hey asked me to participate, but I decided not to. I

physically abusing the protestors, officers locked in the entire unit early, wresting them of recreation as punishment for a guard's own mistake.⁶² On February 5, 2022, after L.G.C. endured the beating described in section II, *supra*, officers again reportedly locked an entire unit in early.⁶³

People in detention report that OCCF officers and sergeants abuse lock-ins as cruel and retaliatory punishment against individuals for personal and unknown reasons.⁶⁴ Numerous people discussed officers locking them in “for any little thing. If you have a cup of water in the common area and an officer doesn't like it, they'll make you go lock into your room.”⁶⁵ Detained people report being locked-in for hours just for getting water,⁶⁶ using the vending machines,⁶⁷ making complaints,⁶⁸ being in their cells with the door unlocked,⁶⁹ having objects on the tables in their cells,⁷⁰ requesting to charge a tablet to call one's family,⁷¹ and without any explanation.⁷² “Andres” described being assaulted before being locked in for seven days—for the offense of getting a drink of water and thus being a few moments late to return to his cell.⁷³ “Agustin” described being locked in for a full night and day for sharing food from his dinner tray as a “personal punishment, not recorded formally in a disciplinary log.”⁷⁴ As “Heriberto” describes, the threat of the next retaliatory lock-in riddles daily life at OCCF: “[e]veryone here is panicked; everyone here is terrified of being locked in. Nobody speaks up out of fear.”⁷⁵ Fear of additional time spent locked-in can be especially profound because isolation is the norm at OCCF: people detained at the facility report spending over fourteen hours locked up alone in their cells per each twenty-four-hour day.⁷⁶

The NDS, with which ICE and OCCF are obligated to comply, states that “[a] detainee may be placed in disciplinary segregation only by order of the Institutional Disciplinary Panel (IDP), or its equivalent, after a hearing in which the detainee has been found to have committed a prohibited act and only when alternative dispositions would inadequately regulate the detainee's behavior.”⁷⁷ Based on the standards, getting water, making complaints, or using services are not prohibited acts that would merit an individual to be placed in disciplinary segregation. In further violation of the NDS, OCCF guards failed to

was afraid. Any step out of line and there were consequences. They punish you for any disobedience It didn't matter that we weren't involved. They lock us in when they want.” *Id.* ¶¶ 9–10.

⁶² Ex. J, “Ernesto” Decl. ¶¶ 9–11.

⁶³ Ex. I, “Dario” Decl. ¶¶ 13–19.

⁶⁴ “They lock us up in our cell all the time without any reason. . . . They harass us and put us in segregation.” Ex. F, “Andres” Decl. ¶ 4; *see also* Ex. I, “Dario” Decl. ¶ 12 (describing how Officer Bloise is infamously known as “always looking for an excuse to lock someone in”).

⁶⁵ “They are racist: they will scream at us when they tell us to lock in, calling us ‘immigrants,’ and, in some cases, the N-word.” Ex. M, “Heriberto” Decl. ¶ 3.

⁶⁶ Ex. J, “Ernesto” Decl. ¶ 6.

⁶⁷ *Id.*

⁶⁸ Ex. I, “Dario” Decl. ¶ 12; *see also* Ex. D, Rosa Santana Decl. ¶¶ 6–7 (“If detainees request . . . [toiletries] or complain about their lack, they are often locked in the ‘box’ for days. . . . They are being punished for everything and anything, and often their punishment is to lock them in their cells without food for the rest of the day.”).

⁶⁹ Ex. J, “Ernesto” Decl. ¶ 16.

⁷⁰ Ex. H, “Cristian” Decl. ¶ 5.

⁷¹ *Id.*

⁷² Ex. G, “Benjamin” Decl. ¶ 3 (“[The guards] will lock us into our cells without any cause”); *see also* Ex. J, “Ernesto” Decl. ¶ 13 (“There's one person in particular here—a man named ██████████ who is Mexican—who has made a lot of complaints, and the guards treat him really bad. They lock him in for nothing.”).

⁷³ Ex. F, “Andres” Decl. ¶¶ 6–7.

⁷⁴ Ex. E, “Agustin” Decl. ¶¶ 6–9.

⁷⁵ Ex. M, “Heriberto” Decl. ¶ 10.

⁷⁶ *Id.* ¶ 6 (“Heriberto” describes that spending much of each day alone in their cells makes them feel “suffocated.”); *see also* Ex. I, “Dario” Decl. ¶ 21 (describing the daily schedule and noting that detained individuals are given only five hours and forty-five minutes of recreation time each day); *see also* Ex. D, Rosa Santana Decl. ¶ 5 (“People detained at OCCF have reported being locked in their cells for most of the day, with nothing to do but sleep day and night as there are no other ways to occupy their time. No services or educational courses are offered.”).

⁷⁷ *See* NDS 2019, *supra* note 3, at 56–57 (Section 2.9 Special Management Units).

consistently provide detained individuals with hearings before the IDP, utilize alternative dispositions, and obtain and provide detained people with “signed written order[s] [from] the chair of the IDP . . . before detainee[s] [are] placed into disciplinary segregation.”⁷⁸

IV. Medical Neglect, Abuse, and Retaliatory Withholding of Care

“The medical care here is very, very bad. I was never seriously sick before I got here; I played soccer, I was healthy. I had never been to the hospital. But since I’ve gotten here, I’ve been sick. I feel bad all the time. . . . I don’t know what’s wrong with me. The doctors don’t explain anything to me. . . . I worry I will die here, and the jail will be happy.”
–“Heriberto”⁷⁹

ICE and OCCF are constitutionally obligated to provide adequate medical care to all people in their custody.⁸⁰ The NDS states that detained people should receive “medically necessary and appropriate medical, dental and mental health care and pharmaceutical services,” as well as “timely responses to medical complaints.”⁸¹ Yet multiple accounts indicate that OCCF treats the lives of detained people as disposable.⁸² Dr. Kate Sugarman of NYLPI’s Medical Providers Network (“MPN”) describes a facility that is systematically indifferent to the health care needs of individuals in detention.⁸³ ICE and OCCF’s failure to provide basic medical care and willful ignorance towards chronic conditions and mental health illustrates a pattern of medical racism—a sense that Black, Latinx, and people of color are more resistant to pain, less believable, and therefore less deserving of medical care.⁸⁴ OCCF’s reckless practices leave detained people at heightened risk of premature death.⁸⁵

⁷⁸ *Id.*

⁷⁹ Ex. M, “Heriberto” Decl. ¶ 11.

⁸⁰ See generally *Estelle v. Gamble*, 429 U.S. 97 (1976).

⁸¹ See NDS 2019, *supra* note 3, at 112 (Standard 4.3, Medical Care).

⁸² Ex. K, “Felix” Decl. ¶ 14 (“They don’t care about our lives here. It’s really very ugly.”).

⁸³ NYLPI’s MPN has been referred fifteen cases of individuals detained at OCCF from legal providers. Dr. Kate Sugarman, one of the MPN, took on five of the fifteen referrals and reviewed those individuals’ medical history and medical records at OCCF. Through these case referrals, Dr. Sugarman has observed patterns of inadequate medical care at OCCF. See Ex. C (Declaration of Dr. Kate Sugarman, Medical Provider Network, New York Lawyers for the Public Interest) [hereinafter Dr. Sugarman Decl.].

⁸⁴ See Alexie Cintron and R. Sean Morrison, *Pain and Ethnicity in the United States: A Systematic Review*, 9 J. PALLIATIVE MED. 6, <https://www.liebertpub.com/doi/10.1089/jpm.2006.9.1454> (last visited Feb. 7, 2022); Janice A. Sabin, *How we fail black patients in pain*, ASSOC. AM. MEDICAL COLLEGES (Jan. 6, 2020), <https://www.aamc.org/news-insights/how-we-fail-black-patients-pain>; see also Haider J. Warraich, *Racial disparities seen in how doctors treat pain, even among children*, WASH. POST (July 11, 2020), https://www.washingtonpost.com/health/racial-disparities-seen-in-how-doctors-treat-pain-even-among-children/2020/07/10/265e77d6-b626-11ea-aca5-ebb63d27e1ff_story.html.

⁸⁵ See Ex. C, Dr. Sugarman Decl. ¶ 13; see Harlan M. Krumholz, Daisy S. Massey, Karen B. Dorsey, *Racism as leading cause of death in United States*, BMJ 2022;376:0213 (2022) (describing how “the political construct of race—and anti-Black racism in particular—continue to determine who lives and who dies in the United States”); Keith Churchwell, et al., *Call to Action: Structural Racism as a Fundamental Driver of Health Disparities: A Presidential Advisory From the American Heart Association*, CIRCULATION (2020), doi: 10.1161/CIR.0000000000000936 (asserting that “[s]tructural racism has been and remains a fundamental cause of persistent health disparities in the United States”).

Medical care at OCCF is described as “poor,”⁸⁶ “bad,”⁸⁷ and “slow.”⁸⁸ Detained people are regularly “ignored.”⁸⁹ Medical staff often take days, at times weeks, to respond to requests for medical attention.⁹⁰ People have to submit “four or five sick calls” to get the attention of staff,⁹¹ and “go without medication for two or three weeks” due to gaps in prescription refills.⁹² Not only do sick calls and medication requests generally go unanswered, but OCCF also fails to give detained people copies of their requests, making it harder for them to keep a record of the number of times they have asked for help.⁹³

Evidence shows that even when provided, medical treatment at OCCF is negligent and dehumanizing.⁹⁴ Critical medical information is not communicated in the individual’s preferred language,⁹⁵ and interpreters are reportedly not used during appointments.⁹⁶ Painkillers regularly substitute for actual care, even when medically inappropriate or inadequate.⁹⁷ One person’s medical records revealed that despite measurements of elevated liver enzymes indicative of liver disease, OCCF failed to conduct any additional testing, leaving the individual at risk of chronic liver damage.⁹⁸ Care at OCCF is especially

⁸⁶ Ex. F, “Andres” Decl. ¶ 12 (“poor”).

⁸⁷ See, e.g., Ex. G, “Benjamin” Decl. ¶ 11 (“bad”); Ex. M, “Heriberto” Decl. ¶ 11 (“very, very bad”); Ex. H, “Cristian” Decl. ¶ 14 (“not good”); Ex. J, “Ernesto” Decl. ¶ 19 (“not good”).

⁸⁸ See, e.g., Ex. I, “Dario” Decl. ¶ 28; Ex. M, “Heriberto” Decl. ¶ 14; Ex. K, “Felix” Decl. ¶ 17; Ex. H, “Cristian” Decl. ¶ 14; Ex. F, “Andres” Decl. ¶ 14; Ex. L, “Gabriel” Decl. ¶ 13; Ex. N, “Moises” Decl. ¶ 19.

⁸⁹ See Ex. N, “Moises” Decl. ¶ 19 (“People leave forms with the officers, but they are neither ignoring the requests or ripping them up. There was one guy whose eyes were totally red. He couldn’t see very well. He asked several times to see the doctor, but they ignored him.”); Ex. J, “Ernesto” Decl. ¶ 20 (describing one person with kidney problems and high blood pressure who was told by a nurse that there was “no problem”); Ex. G, “Benjamin” Decl. ¶ 11 (“I have been asking for help for over a week and haven’t heard anything. I feel really bad.”).

⁹⁰ Ex. C, Dr. Sugarman Decl. ¶ 12.c.; Ex. K, “Felix” Decl. ¶¶ 17–18 (“I sent a sick call last week. . . I didn’t hear back for almost two weeks. What if it was an emergency?”); Ex. H, “Cristian” Decl. ¶ 14 (“There is a person in my unit with a swollen ankle who put in a sick call to see a nurse four days ago and still has not heard back”); Ex. N, “Moises” Decl. ¶ 19 (“Another person was experiencing pain in his foot and he still hasn’t seen a doctor in two or three months.”); Ex. G, “Benjamin” Decl. ¶ 12; Ex. M, “Heriberto” Decl. ¶ 14.

⁹¹ Ex. I, “Dario” Decl. ¶ 28; Ex. E, “Agustin” Decl. ¶¶ 16–17;

⁹² Ex. H, “Cristian” Decl. ¶ 14; see Ex. E, “Agustin” Decl. ¶ 16 (“I have to take medication [for my condition], but they cut off that medication.”); Ex. N, “Moises” Decl. ¶ 19; see also Ex. L, “Gabriel” Decl. ¶ 12 (“Many people [who have gotten the COVID vaccine] will ask for Tylenol to help treat [] fever—but they don’t get it until three days later, when it’s no longer useful”).

⁹³ Ex. K, “Felix” Decl. ¶ 15 (describing how “it seems like the jail does not want us to have a record”).

⁹⁴ Ex. C, Dr. Sugarman Decl. ¶ 12.c.; Ex. I, “Dario” Decl. ¶ 30 (“When you actually get to see a doctor, they don’t treat us well. They just want to move on to the next person. It seems to me that they don’t care; they don’t take time to really analyze what’s happening with my medical problems.”); Ex. M, “Heriberto” Decl. ¶ 13 (“It seems like the doctors just want us to take the medicine but don’t care if we are not getting better.”); Ex. K, “Felix” Decl. ¶¶ 20–21 (“With the medical staff here, it’s like they just go through the motions of taking care of you, but they don’t really care about you. They don’t take the time to do a real exam. . . . We are worthy, we are human beings! We deserve respect and dignity. We should not be treated this way.”).

⁹⁵ Ex. P, L.G.C. Compl. at 21 (“For example, when L.G.C. learned about the COVID vaccine, he wanted to ask questions about receiving one but was not provided access to a medical provider who could answer those questions and who spoke Spanish.”); Ex. C, Dr. Sugarman Decl. ¶ 12.b.

⁹⁶ Ex. P, L.G.C. Compl. at 21 (“When [OCCF medical staff] have abruptly changed L.G.C.’s medication, L.G.C. has been left without necessary language access in order to understand the changes and ask questions. Moreover, [OCCF medical staff] have relied impermissibly on people detained with L.G.C. for interpretation.”); Ex. C, Dr. Sugarman Decl. ¶ 12.b.

⁹⁷ Ex. F, “Andres” Decl. ¶ 11 (“All they do is take your blood pressure, temperature, and then give you pills. The pills are always the same. . . . It doesn’t matter what you are suffering from. . . . They don’t care about your health.”); Ex. I, “Dario” Decl. ¶¶ 28–29 (“They give me Motrin, but I already get Motrin for another pain that I have, and I’m worried about taking too much.”); Ex. K, “Felix” Decl. ¶ 20 (“But there are people here who have chronic illnesses, who need real medical care, and they are not getting care. They’ll just get a Tylenol, and that’s it.”); Ex. M, “Heriberto” Decl. ¶ 13 (“The doctors here think they can solve everything with a pill; they just want to give you a pill so that you will leave. Nothing is important to them. They talk to us like we are children: “Are you going to take the pill or not?””); Ex. C, Dr. Sugarman Decl. ¶ 12.e. (describing an individual with chronic pain whose prescribed medication was discontinued and substituted with Tylenol PM).

⁹⁸ Ex. C, Dr. Sugarman Decl. ¶ 12.c.

woeful for people with chronic conditions, such as diabetes, hypertension, and obesity.⁹⁹ Individuals with chronic illness are medically recommended to modify their lifestyles through diet, exercise and weight loss.¹⁰⁰ Yet OCCF fails to provide for these needed modifications.¹⁰¹ One individual with type II diabetes mellitus was also not receiving the finger sticks required to monitor his condition.¹⁰²

Reports indicate that OCCF also deprives detained people of access to critical treatment such as outpatient care.¹⁰³ This includes one individual referred to MPN with chronic tonsillar masses and swollen lymph nodes who had yet to receive a diagnosis, biopsy, or treatment prior to MPN intervention.¹⁰⁴ OCCF at last provided an ultrasound, yet even after the scan revealed a mass, medical staff continued to ignore the need for urgent follow-up treatment and evaluation.¹⁰⁵ Records further indicate that OCCF has failed to provide one individual with the recommend blood pressure checks to monitor hypertension;¹⁰⁶ another individual has not received the outpatient operation recommended for his chronic pain;¹⁰⁷ another person showing abnormal lung scans has yet to be seen for further testing and imaging.¹⁰⁸ OCCF's failure to render critical care has put individuals at risk of fatal harm.¹⁰⁹

Dental care is similarly reported to be lacking.¹¹⁰ Numerous detained people have needed urgent dental care while at OCCF. Yet records indicate that individuals are not even provided appropriate dental hygiene, such as mouthwash or antibiotic therapy.¹¹¹ When rendered, dental work is described as deeply inhumane. On one occasion, an individual had a tooth extracted without any anesthesia to numb the pain.¹¹²

Withholding medical treatment has been described as a disciplinary and retaliatory tool. After pepper-spraying, pinning to the ground, and assaulting a detained person on January 1, 2022, officers "told medical staff that no medical workup, including even a blood pressure measurement, was necessary because he was "going to the box.""¹¹³ Such practices "substantially and detrimentally" impact the physical and mental well-being of people in detention.¹¹⁴

People experiencing psychological distress also report regularly experiencing medical neglect and abuse at OCCF.¹¹⁵ People in immigration detention are already at heightened risk of developing symptoms of psychological distress, including anxiety, sleep disorders, and depression.¹¹⁶ Yet many individuals with

⁹⁹ See *id.* ¶ 12.d.; Ex. N, "Moises" Decl. ¶ 20 ("The guards ignore people who have heart troubles because of the pressure of this place—they don't care about the injustice.").

¹⁰⁰ Ex. C, Dr. Sugarman Decl. ¶ 12.d.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Ex. F, "Andres" Decl. ¶ 12 (describing the discontinuation of prior treatments for chronic condition resulting in "three life-threatening emergencies because I am not getting the treatment I need for my condition"); Ex. C, Dr. Sugarman Decl. ¶ 12.e.

¹⁰⁴ Ex. C, Dr. Sugarman Decl. ¶ 14.d.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* ¶ 15.b.

¹⁰⁷ *Id.* ¶ 12.e.

¹⁰⁸ *Id.* ¶ 12 f.

¹⁰⁹ *Id.* ¶ 13.

¹¹⁰ *Id.* ¶ 12 h.

¹¹¹ *Id.*

¹¹² *Id.* (describing the failure to provide anesthesia during a tooth extraction as "an alarming and unethical medical practice").

¹¹³ 1/1/2022 Assault Compl. at 2–3.

¹¹⁴ Ex. P, L.G.C. Compl. at 28.

¹¹⁵ See Scaccia, *supra* note 4.

¹¹⁶ New York Lawyers for the Public Interest, Still Detained and Denied: The Health Crisis in Immigration Detention Continues, <https://nylpi.org/wp-content/uploads/2020/04/NYLPI-report-Detained-Denied.pdf> (last visited Feb. 7, 2022) (citing M. von Werthern, K. Robjant, Z. Chui, R. Schon, L. Ottisova, C. Mason & C. Katona, *The impact of immigration detention on mental health: a systematic review*, 18 BMC PSYCHIATRY 382 (2018)).

symptoms of decompensation are reportedly left untreated.¹¹⁷ For many others, mental health care takes on more sinister forms. For nearly a year, “Luke R.” was “given unnecessary medications and put in isolation for behaviors related to hallucinations and other symptoms of schizophrenia.”¹¹⁸ L.G.C., who has mental and cognitive disabilities, was treated with disbelief, placed in medical isolation, and threatened and punished for seeking help.¹¹⁹

Individuals detained at OCCF further describe how OCCF medical staff and officers treat them like animals¹²⁰ and children.¹²¹ Immigration detention is known to cause psychological harm,¹²² and degrading, racist treatment further exacerbates this risk of decompensation and distress.¹²³ “Dario” describes OCCF as a “racist and inhumane facility,” where the lack of medical care is feeding into his feelings of misery.¹²⁴ “Moises” says he “wouldn’t wish this experience on anyone. It’s very stressful.”¹²⁵

By refusing to provide appropriate and timely care of “serious medical needs,” ICE and OCCF has placed detained people at a serious risk of harm, ran afoul of the standards of care, and inflicted cruel and unusual punishment.¹²⁶

V. Egregious Mismanagement of the COVID-19 Public Health Crisis

“They don’t care about our lives here. It’s really very ugly. People in the unit have COVID, and we’re all mixing together. You get one mask when you arrive at the jail, and that’s it. It’s not even a high-quality mask, like an N95—it’s a surgical mask. If they are only going to give us one mask, you’d think we’d at least get one of the more effective ones. There is no reason here. They don’t care about us.”
—“Felix”¹²⁷

ICE’s refusal to release people detained at OCCF during the COVID-19 pandemic is life-threatening.¹²⁸ Detained people reported significant lapses in medical care at OCCF prior to the pandemic.¹²⁹ But “things seem to have gotten even worse now that COVID is spreading through the jail again.”¹³⁰ At the time of this filing, OCCF is reporting no currently active cases of COVID-19; however, multiple detained people have reported being exposed to and infected with COVID-19 in recent weeks.¹³¹

¹¹⁷ Ex. C, Dr. Sugarman Decl. 12.g. (noting that it is unclear whether individuals have been comprehensively evaluated for their mental health conditions or offered treatment).

¹¹⁸ See Scaccia, *supra* note 4.

¹¹⁹ Ex. P, L.G.C. Compl. at 2.

¹²⁰ Ex. M, “Heriberto” Decl. ¶ 12; Ex. P, L.G.C. Compl. at 25.

¹²¹ *Id.* ¶ 13.

¹²² See note 126, *infra*.

¹²³ Irina L.G. Todorova, et al., *Perceived racial discrimination, psychological distress and health*, 32 SOCIOLOGICAL HEALTH ILLNESS 843–61 (2010) (describing findings of empirical study finding that “experiences of discrimination were associated with increased levels of depressive symptoms and perceived stress”).

David A. Williams and Selina A. Mohammed, *Discrimination and Racial Disparities in health: evidence and needed research*, J. BEHAV. MED. 32, 20–47 (2009), <https://doi.org/10.1007/s10865-008-9185-0>.

¹²⁴ Ex. I, “Dario” Decl. ¶ 31.

¹²⁵ Ex. N, “Moises” Decl. ¶ 4.

¹²⁶ See *Estelle v. Gamble*, 429 U.S. 97 (1976).

¹²⁷ Ex. K, “Felix” Decl. ¶ 14.

¹²⁸ Ex. C, Dr. Sugarman Decl. ¶¶ 13–16.

¹²⁹ See *Charles v. Orange Cty.*, 925 F.3d 73 (2d Cir. 2019) (litigation related to mental health discharge planning at OCCF).

¹³⁰ Ex. H, “Cristian” Decl. ¶ 14; see also Ex. C, Dr. Sugarman Decl. ¶ 9 (The ongoing COVID-19 public health crisis brings to the surface what we already know about immigration detention facilities: they are overcrowded, have inadequate medical care, and can be fatally dangerous to the people who are confined.”); NEWS 12 STAFF, *Orange County Jail experiences outbreak of COVID-19 cases*, NEWS 12 (Jan. 5, 2022), <https://bronx.news12.com/orange-county-jail-experiences-outbreak-of-covid-19-cases>.

¹³¹ Ex. I, “Dario” Decl. ¶ 26; Ex. F, “Andres” Decl. ¶ 13; Ex. N, “Moises” Decl. ¶ 22.

People in immigration detention—overwhelmingly Black, Latinx, and other people of color—remain at heightened risk of contracting COVID-19 due to overcrowding and the prevalence of people with untreated comorbidities, chronic medical risk factors, and psychiatric risk factors.¹³²

OCCF’s COVID-19 practices reflect a cruel indifference to protecting detained people from COVID-19, in violation of ICE’s COVID-19 Pandemic Response Requirements¹³³ and the Centers for Disease Control and Prevention’s Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities.¹³⁴ Basic sanitation supplies, such as hand sanitizer and disinfectant spray, are reportedly denied.¹³⁵ Detained people are not provided appropriate masks,¹³⁶ and are even harassed by guards for wearing masks in common areas.¹³⁷ Upon entering the facility, detained people are quarantined—which at OCCF means subjected to solitary confinement in squalid cells for fourteen days.¹³⁸ Once at OCCF, there does not appear to be a testing protocol. When “Felix” approached a nurse to ask why they aren’t testing people and isolating people based on the test results, he was told, “[T]hey don’t want the numbers to go up.”¹³⁹ Without any testing protocol, detained people describe being arbitrarily placed in medical isolation simply for being sick.¹⁴⁰ The fourteen-day quarantine is a source of fear and psychological distress.¹⁴¹

Multiple detained people share that the quarantine restrictions fail to protect people from viral exposure. Instead of being released where they can self-quarantine or placed in a separate area of the jail, several detained people reported that they had been locked in their cells in the same unit with people who do not have COVID in the past several weeks. “Andres” recounts, “Even when someone is sick with COVID, we are all mixed together. We share the same space and the same air. We rely on the help of God to stay alive.”¹⁴² When those who do have COVID leave their cells to make legal calls, everyone else in their unit is forced to lock-in.¹⁴³ “Dario” describes the illogic of such restrictions:

[I]f someone with COVID takes a legal call, they use the same headset that we all use. We don’t have disinfectant to wipe it down after, just paper towels. The people with COVID

¹³² Ex. C, Dr. Sugarman Decl. ¶¶ 13–16 (noting that detained people at OCCF are at higher risk of contracting COVID-19 because serious health conditions are left untreated, and many people meet the Center for Disease Control’s high-risk criteria for complications from COVID-19).

¹³³ See U.S. Immigration and Customs Enforcement, COVID-19 Pandemic Response Requirements (Oct. 2021), <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>.

¹³⁴ See *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, CENTER FOR DISEASE CONTROL (Feb. 10, 2022), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

¹³⁵ Ex. C, Dr. Sugarman Decl. ¶ 12.i. (“The facilities at OCCF are unhygienic, without adequate access to soap, water, or hand sanitizers.”); Ex. I, “Dario” Decl. ¶¶ 26–27 (describing a lack of disinfectant spray, cleaning spray, as well as hand sanitizer that “won’t be refilled for days at a time.”); Ex. D, Rosa Santana Decl. ¶ 6.

¹³⁶ Ex. K, “Felix” Decl. ¶ 12.

¹³⁷ Ex. F, “Andres” Decl. ¶ 15 (“When we wear masks, they treat us badly. . . . They don’t accept it. They say we don’t need masks because no one is sick here. But a lot of people are sick.”).

¹³⁸ L.G.C. “was provided no clothes, no shoes, no socks, and no access to a shower or to drinking water besides the toilet. The food he received was awful, like food ‘fit only for animals.’ The cells in which L.G.C. has been subjected to solitary confinement have been infested with spiders.” Ex. P, L.G.C. Compl. at 25.

¹³⁹ Ex. K, “Felix” Decl. ¶ 12.

¹⁴⁰ Ex. M, “Heriberto” Decl. ¶ 15.

¹⁴¹ *Id.* Decl. ¶ 15 (““People here are afraid to say if they feel sick, because with COVID, if you’re not feeling well, you can get locked in for fourteen days. Everything here is quarantine.”); Ex. L, “Gabriel” Decl. ¶ 11 (“Right now, many people at OCCF have COVID, but they don’t want to tell the guards because they will get sent to quarantine. The conditions in quarantine are very bad. You don’t get to go outside to get water. It’s better to stay quiet”); Ex. N, “Moises” Decl. ¶ 21 (alleging that “[d]uring the 14-day period of medical solitary, the guards did not let us talk to anyone. I experienced anxiety and depression during this time”).

¹⁴² Ex. F, “Andres” Decl. ¶ 13; *see also* Ex. I, “Dario” Decl. ¶ 26 (“The people with COVID also shower where we take showers, and we’re all breathing the same air because the cells are connected with vents.”); Ex. G, “Benjamin” Decl. ¶ 10;

¹⁴³ Ex. I, “Dario” Decl. ¶ 18.

also shower where we take showers, and we're all breathing the same air because the cells are connected with vents. So, what's the sense of locking us in while the people with COVID take calls? It doesn't make any sense whatsoever.¹⁴⁴

ICE's failure to release individuals from detention amid a pandemic needlessly puts the lives of detained people at risk.¹⁴⁵

VI. Abuse of Power and Culture of Impunity

"If we say we have a complaint, the jail staff tells us there is no point in pursuing it. . . . [T]he sergeants will say it's their word against ours, so there's no point—if we complain about anything, they'll find a way to make problems look like our fault."
—*"Ernesto"*¹⁴⁶

Detained people describe a terrorizing, humiliating environment at OCCF, where guards' arbitrary rules and punishments are frequently applied in racist¹⁴⁷ and retaliatory¹⁴⁸ ways. Spanish-speaking individuals report feeling especially targeted by the guards' punitive whims. "Agustin" recounted an incident in which an officer threatened him with three days of lock-in—and ultimately subjected him to two days of unofficial lock-in as a "personal punishment"—for taking two trays of food to his room.¹⁴⁹ "I didn't know there was a rule," he explained, "and the officer didn't try to explain it to me in a way I could understand."¹⁵⁰ "Dario," who speaks English, similarly observed that officers "get mad at [Spanish-speaking detained people] for not understanding English . . . but it's not the guys' fault they don't understand English."¹⁵¹

OCCF's dehumanizing rules seem to vary from officer to officer, often leading to arbitrary and excessive punishments. During room inspections, some officers reportedly do not allow detained individuals to keep anything on their tables, while others will permit multiple items.¹⁵² These differences matter: at least one officer will "lock [detained individuals] up for the rest of the day if he sees something on [their] table[s]."¹⁵³ Individuals also described how officers arbitrarily withhold access to tablets, which function as detained individuals' sole form of communication with loved ones.¹⁵⁴ As "Cristian" summarized the situation, "[The guards] seem to always want to provoke people."¹⁵⁵ "Ernesto" affirmed this characterization, noting that, when officers are "in a bad mood[,] they will send you to your room and lock you in for no reason—for little things like getting water or using the vending machine."¹⁵⁶

¹⁴⁴ *Id.*

¹⁴⁵ See Ex. C, Dr. Sugarman Decl. ¶ 15 h.

¹⁴⁶ Ex. J, "Ernesto" Decl. ¶ 14.

¹⁴⁷ See notes 150, 151, *infra*.

¹⁴⁸ See notes 161, 162, *infra*.

¹⁴⁹ Ex. E, "Agustin" Decl. ¶ 6–9.

¹⁵⁰ *Id.* ¶ 8; see also Ex. F, "Andres" Decl. ¶ 5 (describing an incident in which Officer Carde, in English, asked "Andres" to do something, and, when "Andres" did not understand the request, "[i]nstead of trying to explain, he wrote ['Andres'] up").

¹⁵¹ Ex. I, "Dario" Decl. ¶ 4; see also Ex. H, "Cristian" Decl. ¶ 5 (noting that he has seen an officer "try to intimidate Spanish people in particular").

¹⁵² Ex. I, "Dario" Decl. ¶ 6; see also Ex. H, "Cristian" Decl. ¶ 5.

¹⁵³ Ex. H, "Cristian" Decl. ¶ 5.

¹⁵⁴ Ex. M, "Heriberto" Decl. ¶ 8.

¹⁵⁵ Ex. H, "Cristian" Decl. ¶ 5.

¹⁵⁶ Ex. J, "Ernesto" Decl. ¶ 6.

OCCF officials seemingly do not face consequences for their abuses of power, creating a culture of impunity. Detained people report that guards withhold grievance slips;¹⁵⁷ some appear to obscure their names and badge numbers to further frustrate the possibility of reporting.¹⁵⁸ Following the above-described January 1, 2022 assault of a detained individual,¹⁵⁹ OCCF officials advised one of the witnesses “not to tell anyone about what happened, not even [his] lawyer.”¹⁶⁰ Those who do speak out are reportedly subjected to retaliation: individuals described how someone who has made several complaints against the jail has been targeted and harassed by the guards,¹⁶¹ and even violently assaulted.¹⁶² This corrosive environment can foment fear. “Felix” explained that he does not even like to look at officers’ name tags:

The guards are very tight with each other—nothing is hidden here. . . . We are all vulnerable here; we are in the guards’ hands. They can do anything they want to us. Many people here have bad experiences, but don’t speak up out of fear.¹⁶³

VII. Deplorable Conditions

“They are feeding us like animals. . . . The shower water is so hot that it makes our hair fall out and dries up our skin. The scalding hot water causes illnesses, including fungal diseases in our feet. . . . We hardly see the outside. We need the sun to touch us.”
—“Moises”¹⁶⁴

Individuals at OCCF describe deplorable living conditions. Nearly a dozen testimonials spoke of inedible food,¹⁶⁵ freezing temperatures,¹⁶⁶ scarce toiletries and cleaning products,¹⁶⁷ dirty laundry and insufficient clothing,¹⁶⁸ extreme mail delays and inconsistent phone access,¹⁶⁹ and prohibitively expensive communication, information, and entertainment services.¹⁷⁰ The unsanitary and unsafe conditions outlined in this section represent ICE’s egregious failures to meet its minimum facility requirements¹⁷¹ while exacerbating the continued spread of COVID-19.¹⁷²

- **Unsanitary Food:** Detained people describe being fed the same inedible food meal after meal, day after day, and relying on processed, overpriced snacks from the commissary to survive,¹⁷³ aggravating underlying health issues described in Section IV, *supra*.¹⁷⁴

¹⁵⁷ Ex. H, “Cristian” Decl. ¶ 6.

¹⁵⁸ Ex. F, “Andres” Decl. ¶ 18; Ex. J, “Ernesto” Decl. ¶ 8.

¹⁵⁹ See Section II, *supra*.

¹⁶⁰ Ex. G, “Benjamin” Decl. ¶ 9.

¹⁶¹ Ex. I, “Dario” Decl. ¶ 12; Ex. J, “Ernesto” Decl. ¶ 13; *see also* Ex. P, L.G.C. Compl. at 29–30 (describing incidents of retaliation).

¹⁶² Ex. I, “Dario” Decl. ¶¶ 13–20; Ex. K, “Felix” Decl. ¶¶ 6–9; *see also* Section II, *supra*.

¹⁶³ Ex. K, “Felix” Decl. ¶ 11.

¹⁶⁴ Ex. N, “Moises” Decl. ¶¶ 12, 14, 18.

¹⁶⁵ Ex. F, “Andres” Decl. ¶ 20; Ex. J, “Ernesto” Decl. ¶ 21; Ex. N, “Moises” Decl. ¶¶ 12–13; Ex. M, “Heriberto” ¶ 16.

¹⁶⁶ Ex. I, “Dario” Decl. ¶ 8; Ex. N, “Moises” Decl. ¶ 16; Ex. H, “Cristian” Decl. ¶ 13.

¹⁶⁷ Ex. D, Rosa Santana Decl. ¶ 6; Ex. H, “Cristian” Decl. ¶¶ 11, 12.

¹⁶⁸ *Id.*

¹⁶⁹ Ex. H, “Cristian” Decl. ¶ 13; Ex. I, “Dario” Decl. ¶ 10; Ex. J, “Ernesto” Decl. ¶ 22.

¹⁷⁰ Ex. D, Rosa Santana Decl. ¶ 5; Ex. K, “Felix” Decl. ¶ 23; Ex. M, “Heriberto” Decl. ¶ 17.

¹⁷¹ NDS 2019, *supra* note 3, at 6–7 (I. General Environmental Health Guidelines), 97 (4.1 Food Service), 127 (Section 4.4 Personal Hygiene), 147 (5.1 Correspondence and Other Mail), 152 (5.2 Recreation).

¹⁷² Ex. I, “Dario” Decl. ¶¶ 26–27; Ex. H, “Cristian” Decl. ¶¶ 11–12; *see also* *Orange County Jail Experiences Outbreak of COVID-19 Cases*, NEWS 12 (Jan. 5, 2022), <https://bronx.news12.com/orange-county-jail-experiences-outbreak-of-covid-19-cases>.

¹⁷³ Detained individuals also share use of a single microwave to heat their cold food. Ex. N, “Moises” Decl. ¶ 13. They are also reportedly given a mere five minutes to eat. Ex. D, Rosa Santana Decl. ¶ 7.

¹⁷⁴ See Ex. F, “Andres” Decl. ¶ 19 (“The food at OCCF is disgusting and unsafe to eat. I have been suffering from a lack of food here. . . . The food has been used and reused so often that it’s softened and disintegrated.”); Ex. J, “Ernesto” Decl. ¶ 21 (“I don’t

- **Freezing temperatures:** People detained at OCCF spoke of the freezing temperatures and the single shirt and jumpsuit each was given upon arrival—as well as the guards’ arbitrary, cruel rule that detained people are not allowed to wear their sweaters outside of their cells.¹⁷⁵
- **Insufficient personal care and hygiene items:** Detained people reportedly lack not only sufficient clothing, but also bedding and linens, toiletries and bathroom necessities, and cleaning products.¹⁷⁶
- **Delayed and surveilled communications:** Multiple individuals discussed egregiously long mail delays¹⁷⁷ and surveilled telephone¹⁷⁸ and mail communications, even with attorneys.¹⁷⁹
- **Lack of services and difficulties accessing tablets:** As described in section III, *supra*, people detained at OCCF described being locked in their cells for most of each day with nothing to occupy their time.¹⁸⁰ The facility has tablets with mail, media, and visitation capabilities, but each feature has a steep associated fee.¹⁸¹ Individuals reported that officers often do not charge the tablets so as to render them unusable,¹⁸² and fail to act when security breaches occur and peoples’ funds are stolen.¹⁸³

think even an animal would eat this food. It’s liquefied, like it’s been in a blender.”); Ex. N, “Moises” Decl. ¶¶ 12–13 (“They give us pasta every single day for lunch and dinner. We are given food that has already expired. . . . I have stomach pain and constipation. . . . The only way we can heat our food is by microwave, which can cause illnesses. It is not recommended to use the microwave all the time. There are forty of us and we are only given one microwave for all of us to heat up our food. It is not enough.”); Ex. F, “Andres” Decl. ¶ 20 (“The hot water in the kitchen is also full of metal particles. . . . They are feeding us poison, and no one cares.”); Ex. M, “Heriberto” Decl. ¶ 7 (“The guards treat us like animals. If we are using the microwave, they will sometimes disconnect it so we can’t use it. I have heard guards say things like, ‘You don’t have a microwave in your own house. You should be thanking us that you even get a microwave here.’”).

¹⁷⁵ Ex. I, “Dario” Decl. ¶ 8; *see also* Ex. N, “Moises” Decl. ¶ 16 (“Some of the people here are over the age of 60. They are so cold they’re just shivering. When we arrived here, we were only given a single set of clothing. We repeatedly ask for another set.”); Ex. H, “Cristian” Decl. ¶ 13 (“Every time we complain they seem to either turn the AC up or turn off the heat. . . . [I]t’s freezing in here. . . . Some people thought they had COVID because they were shivering so much.”).

¹⁷⁶ “Essential hygiene products, such as toilet tissue and toothpaste, are often denied. If people request such essentials or complain about their lack, they are often locked in ‘the box’ for days.” Ex. D, Rosa Santana Decl. ¶ 6; Ex. H, “Cristian” Decl. ¶¶ 12, 11 (“We were missing toilet paper for two days, and laundry soap for a day or two—it’s been like that, someone has to bring it up to the sergeant, and then they’ll supply it, but there are these gaps and it’s not healthy. We’ve only gotten fresh bedding twice in the last four months, and it takes three to four weeks to get clean clothing. Some of the guards don’t let you wash your bedding or clothes in between. . . . The jail isn’t giving us disinfectant. They used to give a spray bottle and some bleach. We don’t have that now. . . . Everything is getting dirtier.”).

¹⁷⁷ “Cristian” described that it can take up to a month for the warm layers that families send in response to OCCF’s freezing temperatures to be given to people inside the facility to whom the packages were addressed. Ex. H, “Cristian” Decl. ¶ 13.

¹⁷⁸ “They monitor the phone calls, legal calls are the only private calls you can get. And legal calls aren’t always easy to get—there are a lot of people here, and only one computer to connect with your lawyer. It’s overcrowded, and some people have had to wait a long time for an opportunity to connect with their lawyer.” Ex. I, “Dario” Decl. ¶ 10.

¹⁷⁹ Ex. J, “Ernesto” Decl. ¶ 22. (“We are also very concerned about the mail here. Jail staff don’t give us the originals of our mail; instead, we get photocopies. . . . [T]his has even happened with a big packet mailed to me by my lawyer. . . . [O]ur mail is very delayed in arriving. . . . [M]y family sends me ██████████ and they pay for them to arrive quickly, but it will still take eight, nine, even ten days to get to me. I wonder if officers read the mail we send, too. My family has gotten letters I sent, and the envelopes appeared to have been opened.”).

¹⁸⁰ Ex. D, Rosa Santana Decl. ¶ 5.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ “They see us like a business here. . . . The games and movies on the tablets are expensive. . . . Yet, the tablets have bad security. We each have a pin to use on the tablets and make purchases, but our pins get stolen and our funds will disappear. Then, if we ask the guards to change our pin codes to protect our funds, they don’t do it—and that’s our money that’s getting stolen!” Ex. K, “Felix” Decl. ¶ 23; *see also* Ex. M, “Heriberto” Decl. ¶ 17 (“We have to pay for everything here—stamps, phone calls, text messages. It’s really difficult. Some of my family members have put down their cards for me and been charged hundreds of dollars because the rates are so high. The pin for my tablet has gotten robbed ██████████ and I lost all of my commissary money and minutes each time. If we ask the guards to change the pin, they won’t do it right away—they take their time.”).

Living in such deplorable conditions prompted detained people to conclude that, “I have been treated like a dog here[;] [t]he life here is not a life for a human being,”¹⁸⁴ and that “[t]he people who run this jail have dark hearts.”¹⁸⁵

VIII. Recommendations

In light of the ongoing racist and retaliatory abuse, violence, and medical neglect at OCCF—even after a CRCL investigation and multiple complaints, media reports, and lawsuits—we **request a response in writing within one week** detailing a remedial plan of action. We urge CRCL, pursuant to its authority under 6 U.S.C. § 345, to immediately recommend:

1. Release of all individuals detained at OCCF to their communities;
2. Termination of ICE’s IGSA with OCCF;
3. Pending release and termination of the IGSA:
 - a. Investigation of the deplorable conditions detailed herein, including racist and retaliatory physical violence, use of solitary confinement, abuse of power, and medical neglect; and
 - b. Removal of the following officers from any position in which they exercise power over detained people: Officer Richard A. Bloise (Badge No. 366); Officer Ricardo Carde (Badge No. 523); Sergeant Daniel Figueroa; Sergeant Keith Conroy (Badge No. 117); Officer Michael P. Lattimer; Officer R. Laudato (Badge No. 551), and Sergeant Murphy.

We urge your prompt attention to the issues raised in this complaint. For any questions or concerns regarding this complaint, please contact Tania Mattos, Director of Advocacy and Policy, Envision Freedom Fund at (347) 263-7563 or tmattos@envisionfreedom.org, or Cynthia Marlene Galaz, Senior Policy Associate, Freedom for Immigrants at (929) 489-8495 or cgalaz@freedomforimmigrants.org.

Sincerely,

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¹⁸⁴ *Id.* ¶ 18.

¹⁸⁵ Ex. K, “Felix” Decl. ¶ 24.

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List of Exhibits

Tab	Description	Pages
A	Index and Public Records Related to Orange County Sheriff's Office Correctional Officers	1–89
B	Excerpt of Complaint of L.G.C. to Orange County Sheriff's Office	90–94
C	Declaration of Dr. Kate Sugarman, Medical Provider Network, New York Lawyers for the Public Interest	95–103
D	Declaration of Rosa Santana, Bond Director, Envision Freedom Fund	104–06
E	Declaration of “Agustin”	107–11
F	Declaration of “Andres”	112–17
G	Declaration of “Benjamin”	118–21
H	Declaration of “Cristian”	122–25
I	Declaration of “Dario”	126–31
J	Declaration of “Ernesto”	132–36
K	Declaration of “Felix”	137–40
L	Declaration of “Gabriel”	141–43
M	Declaration of “Heriberto”	144–47
N	Declaration of “Moises”	148–52
O	Letter from Detained Individuals to Orange County Correctional Facility (Feb. 8, 2022)	153–55
P	Excerpt of Complaint of L.G.C. to the U.S. Department of Homeland Security Office for Civil Rights and Liberties	156–200