

November 16, 2023

Shoba Sivaprasad Wadhia
Office for Civil Rights and Civil Liberties
Department of Homeland Security
Shoba.SivaprasadWadhia@hq.dhs.gov
CRCLCompliance@hq.dhs.gov

COMPLAINT DETAILING DISCRIMINATORY AND ARBITRARY SOLITARY CONFINEMENT AT THE MOSHANNON VALLEY PROCESSING CENTER

Dear Ms. Sivaprasad Wadhia,

The National Immigration Project files this complaint on behalf of two Salvadoran men who were detained under U.S. Immigration and Customs Enforcement (“ICE”) custody at the Moshannon Valley Processing Center (“Moshannon facility” or “Moshannon”), a prison owned and operated by GEO Group Inc. (“GEO”). This complaint specifically focuses on an incident that occurred in June 2023 when the facility placed the two complainants in solitary confinement due to unsubstantiated, false, and racist allegations of gang membership solely due to their national origin.

The incident in question occurred on June 14, 2023, when Edgar and Oscar,¹ (“Complainants”) along with approximately sixteen other men, were taken out of their units and placed in solitary confinement. They were forced to remain in solitary for one week while at Moshannon, were not provided the reason for their placement in solitary, and were not provided any process for review of their placement. Both Edgar and Oscar were inexplicably transferred from Moshannon to facilities in Louisiana after spending a week in solitary confinement. Edgar remained in segregation for three additional weeks in Louisiana. It appears the only reason Edgar and Oscar were detained in solitary confinement is because the facility incorrectly characterized them as MS-13 gang members due to their national origin.

¹ Pseudonyms have been used to protect the identities of the Complainants. Complainants’ names can be provided to your office upon request.

In relation to this incident, which is described in more detail below, this complaint raises violations of the ICE Enforcement and Removal Operations' Performance-Based National Detention Standards 2011 ("PBNDS 2011");² and ICE Directive 11065.1, "Review of the Use of Segregation for [Persons in ICE Detention]" (Sep. 4, 2013).

In the less than two years since the Moshannon facility began detaining individuals under ICE custody, your office has already investigated and raised concerns about abuse, particularly around use of force and sexual assaults, at the Moshannon facility.³ Despite this, the facility and ICE have failed to follow the national detention standards designed to provide the bare minimum protection to those ICE chooses to detain. The incident highlighted in this complaint aligns with broader findings of mistreatment of people in ICE custody at Moshannon and across the country.⁴

ICE regularly places people in its custody in solitary confinement, despite engaging in civil detention, which cannot be punitive in nature.⁵ Yet, the practice has extraordinarily damaging effects. "More than a third (33%) of people held in solitary confinement become psychotic and/or suicidal within the first 15 days, and people who have been subjected to solitary confinement are 78% more likely to commit suicide within a year of being released from prison."⁶

² U.S. Immig. and Customs Enforcement, 2011 ICE Performance-Based National Detention Standards, revised 2016, <https://www.ice.gov/detain/detention-management/2011> [hereinafter "2011 ICE PBNDS"]; See U.S. Dep't of Homeland Sec., Immigration and Customs Enforcement, Office of Detention Oversight Compliance Inspection, Moshannon Valley Processing Center 4 (Feb. 2023), https://www.ice.gov/doclib/foia/odo-compliance-inspections/moshannonValleyProcCntrPhilipsburgPA_Feb28-Mar2_2023.pdf (noting that the 2011 ICE PBNDS is binding on the Moshannon facility).

³ U.S. Dept. of Homeland Sec., Office for Civil Rights and Civil Liberties, "Summary of CRCL's Recommendations and ICE's Response Moshannon Valley Processing Center," (Jun. 23, 2023), https://www.dhs.gov/sites/default/files/2023-09/23_0620_crcl-close-summary-ice-moshannon-valley-processing-center-06-20-23.pdf.

⁴ U.S. Dept. of Homeland Sec., Office of Inspector Gen., OIG-22-01 "ICE Needs to Improve Its Oversight of Segregation Use in Detention Facilities" (Oct. 13, 2021), <https://www.oig.dhs.gov/sites/default/files/assets/2021-10/OIG-22-01-Oct21.pdf>; Joseph Nwadiuko et al., *Solitary Confinement Use in Immigration Detention Before and After the Beginning of the SARS-CoV-2 Pandemic*, J. Gen. Intern. Med. (2023), <https://link.springer.com/article/10.1007/s11606-023-08055-0>.

⁵ See, e.g., *Bell v. Wolfish*, 441 U.S. 520, 538 (1979) (providing a framework for determining whether confinement constitutes punishment by first inquiring whether the intent to punish exists and if not, whether there was a reasonable government purpose for the restraint as well as if it was excessive).

⁶ *Written Submission of Robert F. Kennedy Human Rights to the International Independent Expert Mechanism to Advance Racial Justice and Equality in the context of Law Enforcement* (Feb. 24, 2023), <https://rfkhumanrights.org/written-submission-of-rfk-human-rights-to-the-international-independent->

Complainants urge your office to promptly investigate the incident reported in this complaint and the use of solitary confinement at the Moshannon facility; assess whether the facility is complying with ICE policies; and recommend systemic policy reforms on the use of segregation as well as corrective actions for facility staff and ICE.

To ensure that violations described in this complaint do not occur in immigration detention more broadly, we ask that your office recommend that ICE halt the use of solitary confinement in all facilities incarcerating people in its custody across the country. As the practice is being reduced, we ask that you recommend system-wide changes in the use of solitary confinement, including explicitly forbidding the overuse and misuse of solitary confinement, and implement stricter measures of accountability for facilities that violate their obligations.

I. FACTUAL BACKGROUND

On June 14, 2023, Edgar and Oscar, along with several others, were suddenly taken out of their cells and placed in solitary confinement in the Special Housing Unit (“SHU”) (also known as the “Special Management Unit” or “SMU”). Officers came into Oscar’s unit and demanded that he “get the fuck up” and come with them. Edgar and Oscar were provided no information about why they were being put in solitary. Oscar repeatedly asked what he had done, and guards refused to answer.

After three days, Oscar received a document consisting of his three-day security review. The box next to “threat to security” was checked and no other information was provided. While he was in the SHU, Oscar overheard one of the other men speaking with an officer in charge of the SHU in relation to this incident. Oscar overheard the officer say: **“90% of you guys from El Salvador are gang members.”**

Both Edgar and Oscar spent a week in solitary confinement at Moshannon – confined to a single cell for at least 23 hours a day. On some days, they spent all day in segregation without the ability to go outside for recreation. On June 20, the guards at Moshannon placed them on a bus to an airport and ICE transported them along with about sixteen others to Louisiana. Edgar recalls that all 18 individuals on the bus were “trying to figure out what might be happening or why we were being sent away. All of us were scared it would mean we were being deported that night. But all we were told was there

expert-mechanism-to-advance-racial-justice-and-equality-in-the-context-of-law-enforcement (citing Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 *Crime and Delinquency* 124 (2003); Lauren Brinkley-Rubinsten, Josie Sivaraman & David L. Rosen, *Association of Restrictive Housing During Incarceration with Mortality After Release*, *JAMA Network Open* (2019)).

was a security threat.” Oscar asked one of the ICE officers why he was being moved and the officer said, “I don’t know.”

Edgar was transferred to Winn Correctional Center (“Winn”) in Winnfield, Louisiana with two others from Moshannon. Oscar was sent to the Jena/LaSalle Detention Facility (“Jena”) in Jena, Louisiana. On July 12, Oscar was again moved to Batavia, New York.

At Winn, Edgar was immediately placed into solitary confinement, where he remained for over one more month, until July 24, 2023. He recounts that “When we asked the guards why we were still in the SHU, they gave no answer. The most information we ever got was ‘security threat.’ ”

Edgar recounts how the conditions in solitary confinement degraded his mental health: “the amount of time I spent in solitary was soul crushing. I was losing my mind in there and losing all sense of rationality and hope. There were days I wanted to give up entirely. I spent 23-24 hours per day in a cell alone.” He “begged to talk with the warden” at Winn so that he could be removed from the SHU. The warden told Edgar that he had no idea why Edgar and the other two men from Moshannon were in solitary confinement. According to Edgar, the warden stated that “ICE called the facility and said they were sending them three guys who needed to be kept in solitary because they were under investigation, but that he never got more information than that.” The warden assured Edgar that he would call ICE to ask if the three men could be moved to general population.

Edgar was placed in general population a few days later on July 24, 2023, on the condition that he would be separated from the other two men from Moshannon for “security reasons.”

Edgar and Oscar’s attorneys later learned that their placement in solitary was due to a report that MS-13 allegedly threatened guards at Moshannon. A memo issued by Moshannon Facility Administrator L.J. Oddo, titled “30-DAY SECURITY HOLD – SPECIAL MANAGEMENT UNIT,” apparently authorized the placement of these men in the “SMU, on administrative status, pending the results of further investigation.” According to the memo, Oddo authorized the detention of these individuals in the SMU for 30 days to investigate the incident.

Neither Edgar nor Oscar made any threats to a guard at Moshannon. Neither of them has any current ties to MS-13. Oscar has never been a member of or in any way associated with MS-13. Edgar retired from MS-13 over a decade ago and days before Edgar was taken to solitary confinement, an immigration judge wrote in a decision in Edgar’s removal case that he is not part of MS-13.

The guards apparently placed everyone they thought was associated with MS-13 into solitary confinement. However, it remains unclear why everyone was transferred to Louisiana.

To this day, Edgar and Oscar fear that ICE's baseless allegation that they are associated with MS-13 would hurt them. These baseless allegations are life threatening for Edgar and Oscar especially if they are deported to El Salvador, where the state of emergency has led to rampant human rights abuses—including indiscriminate imprisonment, torture and arbitrary deaths in custody.⁷

II. VIOLATIONS OF PERFORMANCE-BASED NATIONAL DETENTION STANDARDS 2011 AND ICE DIRECTIVE ON THE USE OF SEGREGATION

The evidence included in this complaint document violations of the 2011 ICE PBNDS, which is the set of detention standards ICE applies to the Moshannon facility, in relation to the June 2023 incident.

A. Moshannon administrators provided no reasoning for placing Complainants in administrative segregation.

According to the 2011 ICE PBNDS, before placing an individual in administrative segregation, the facility administrator is charged with “review[ing] the case to determine whether administrative segregation is in fact warranted.”⁸ An individual placed in an SMU for purportedly posing a threat to the security of the facility, as was alleged here, generally “should not be placed directly in administrative segregation as a security threat on the basis of the detainee’s misconduct at that detention facility, in the absence of any disciplinary proceedings.”⁹ Persons in ICE custody who are placed in administrative

⁷ See e.g., Amnesty International, *El Salvador: One year into state of emergency, authorities are systematically committing human rights violations* (Apr. 3, 2023), <https://www.amnesty.org/en/latest/news/2023/04/el-salvador-state-emergency-systematic-human-rights-violations/>; Human Rights Watch, *El Salvador: Evidence of Serious Abuse in State of Emergency* (May 2, 2022), <https://www.hrw.org/news/2022/05/02/el-salvador-evidence-serious-abuse-state-emergency>; Ellen Ioanes, *El Salvador's massive new prison and the strongman behind it, explained*, Vox (Mar. 5, 2023), <https://www.vox.com/world-politics/2023/3/5/23621004/el-salvador-prison-bukele-ms13-barrio-18>; Leila Miller, *They left gangs and found God. But they weren't spared in El Salvador's crackdown*, Los Angeles Times (Apr. 19, 2023), <https://www.latimes.com/world-nation/story/2023-04-19/as-el-salvador-cracks-down-on-california-born-gangs-who-still-believes-in-redemption>; Ryan Devereaux, *After Being Deported by the U.S., Walter Cruz-Zavala Disappeared in Notorious Salvadoran Crackdown*, The Intercept (Sept. 20, 2022), <https://theintercept.com/2022/09/20/walter-cruz-zavala-el-salvador-state-of-exception/>.

⁸ 2011 ICE PBNDS. at 173.

⁹ *Id.* at 174.

segregation due to a security threat “shall be immediately provided a copy of the administrative segregation order describing the reasons for the [detained person’s] placement in the SMU.”¹⁰ While this order must generally be provided prior to an individual’s placement in the SMU, in an emergency, the individual may be placed in administrative segregation as long as the facility administrator provides the administrative segregation order to the detained individual “as soon as possible.”¹¹ The ICE Directive on the Use of Segregation says that “[p]lacement in segregation should occur only when necessary and in compliance with applicable detention standards.”¹²

Here, not only was administrative segregation completely unwarranted, but both Edgar and Oscar were provided no reasoning as to why they were placed in the SMU. The most information that Edgar or Oscar ever received was that they were a “security threat.” It was only later that their attorney learned that the facility administrator had placed them in administrative segregation for 30 days because of vague allegations of “intelligence received” by the facility. Had even a cursory review of their placement taken place, neither Edgar nor Oscar would have been placed in solitary confinement because of alleged threats that others may have made.

B. Complainants were not provided any meaningful review of their status in administrative segregation.

Under the 2011 ICE PBNDS, detained individuals held in administrative segregation are entitled to regular reviews of their custody status. Specifically, “[a] supervisor shall conduct a review within 72 hours of the [detained individual’s] placement in administrative segregation to determine whether segregation is still warranted.”¹³ This review must include an interview with the detained individual and a written record justifying the decision.¹⁴ An identical review must be completed after the detained individual “has spent seven days in administrative segregation, and every week thereafter, for the first 30 days and every 10 days thereafter, at a minimum.”¹⁵ A copy of the decision and justification must be

¹⁰ *Id.* at 171.

¹¹ *Id.* at 175–76.

¹² U.S. Dept. of Homeland Sec., U.S. Immigration and Customs Enforcement, 11065.1: Review of the Use of Segregation for [Persons Detained by ICE], (Sept. 4, 2013), https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

¹³ 2011 ICE PBNDS. at 176.

¹⁴ *Id.*

¹⁵ *Id.*

provided to the detained individual and he must be given an opportunity to appeal each review decision.¹⁶

Additionally, the ICE Directive on the Use of Segregation generally requires that ICE “shall take additional steps to ensure appropriate review and oversight of decisions to retain [persons in detention] in segregated housing for over 14 days.”¹⁷ The directive specifies that ICE’s review of administrative segregation case “shall include an assessment of whether the current placement is appropriate.”¹⁸ This review must include “a) Whether the placement is based on a specified threat to the safety of the [detained person] or others, or to the secure and orderly operation of the facility. The facility must have articulated the facts behind the placement decision; b) Whether a supervisory officer completed the administrative segregation order prior to placement, with a copy immediately provided to the [detained individual]; c) Whether documented reviews by a supervisor, including an interview with the [detained individual], have occurred within the first 72 hours of placement into segregation and every week thereafter; and d) Whether, as part of the documented reviews, the facility administrator or assistant administrator has provided written approval of any decision to continue involuntary segregation of a [detained person] for protective reasons.”¹⁹

Despite these clear standards, Moshannon and ICE failed to provide any review of Edgar’s status in administrative segregation. Oscar was provided a document that apparently constituted his 72-hour security review. That document only had a box next to “threat to security” checked and no other information. Neither of them was provided any specific facts behind the placement decision. Neither was interviewed for their security review. Both remained in solitary completely clueless as to why they were there. The facility baselessly placed them in administrative segregation, flouted the detention standards requiring review of the decision, and ICE simply appeared to have rubber stamped the facility’s decision without considering the requirements of the ICE Directive.

¹⁶ *Id.* at 176–77.

¹⁷ U.S. Dept. of Homeland Sec., U.S. Immigration and Customs Enforcement, 11065.1: Review of the Use of Segregation for [Persons Detained by ICE], (Sept. 4, 2013), https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

¹⁸ *Id.*

¹⁹ *Id.*

C. Complainants were discriminated against because of their race, ethnicity, and/or national origin.

The 2011 ICE PBNDS provide that “[d]isciplinary action may not be capricious or retaliatory nor based on race, religion, national origin, gender, sexual orientation, disability or political beliefs.”²⁰ Moreover, the ICE Directive on the Use of Segregation states that a detained individual’s race “may not provide the sole basis for a decision to place the [detained individual] in involuntary segregation.”²¹

Moshannon officials’ comments and actions towards Complainants clearly constitute discrimination based on race, ethnicity and/or nationality, in clear violation of ICE’s standards. Despite having no role in the alleged threats made to Moshannon guards and no current ties to MS-13, Edgar and Oscar were both placed in solitary confinement, purportedly because they were from El Salvador. Oscar overheard a guard at Moshannon tell one of the other men placed in solitary that “90% of you guys from El Salvador are gang members.” Edgar remained in solitary for over one month and not one guard was able to directly explain to him why he was placed in solitary besides vague references to “security threats.” This disturbing incident highlights a broad trend of physical, emotional, and verbal abuse motivated by racial hate and bigotry in immigration detention facilities.²²

III. RECOMMENDATIONS

In light of the concerning incident at the Moshannon facility detailed in this letter, we urge your office to:

- (1) Investigate the specific incident reported here;
- (2) Make recommendations for appropriate corrective actions for staff involved in the June 14, 2023 incident;
- (3) Recommend the immediate release of Edgar, who remains detained at the Krome Processing Center;

²⁰ 2011 ICE PBNDS at 216.

²¹ ²¹ U.S. Dept. of Homeland Sec., U.S. Immigration and Customs Enforcement, 11065.1: Review of the Use of Segregation for [Persons Detained by ICE], (Sept. 4, 2013), https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf.

²² See Freedom for Immigrants, *Persecuted in U.S. Immigration Detention: A National Report on Abuse Motivated by Hate* (Jun. 2018),

https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/5b3174e46d2a73f2d1f56aab/1529967847644/FFI_NatReportAbuse_062518.pdf.

- (4) Issue Z-holds for the Complainants not otherwise protected from deportation as well as for anyone directly impacted by the June 14, 2023 incident who could provide additional information during the course of a broader investigation; and
- (5) Recommend systemic policy reforms including the cessation of the use of punitive, administrative, and medical segregation in ICE detention.

Respectfully submitted,

NATIONAL IMMIGRATION PROJECT