



July 9, 2024

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RE: Violation of First Amendment Rights of People Engaged in a Hunger Strike at the Buffalo Federal Detention Facility

I want people to understand that without the free calls we are not able to communicate with our families because many of us are poor. We do not have money to pay and we went on a hunger strike to protest the lack of free calls and lock-in and I and others were punished for exercising our right to hunger strike.¹

One of the people who was engaged in the hunger strike was forcibly removed from our unit in a device that looked like a straitjacket. He did not do anything when officers used force against him. He was just trying to verbally explain why we went on a hunger strike and in response he was physically removed from the unit. We have not seen him since June 7, 2024.²

Dear Officer for Civil Rights and Civil Liberties Wadhia, Inspector General Cuffari, Ombudsman Gersten, and Field Office Director Brophy:

Robert F. Kennedy Human Rights (“RFK Human Rights”), Prisoners’ Legal Services of New York (“PLS”), the New York Civil Liberties Union (“NYCLU”), the Center for Constitutional Rights (“CCR”), and Justice for Migrant Families (“JFMF”) submit this complaint to the Office for Civil Rights and Civil Liberties (“CRCL”) on behalf of people detained at the Buffalo Federal Detention Facility (“BFDF”) in Batavia, New York. It details civil rights and civil liberties issues related to abuse of authority/misuse of official position; conditions of detention; due process; excessive or inappropriate use of force; violations of the First Amendment related to free speech and the Fourth Amendment related to unreasonable seizure; and retaliation. The complaint raises important civil rights concerns, details a pattern of civil rights and civil liberties abuses at BFDF, and is an example of a particularly concerning or egregious use of retaliation against peaceful speech by detained people.

On June 7, 2024, approximately 40 people detained at BFDF engaged in their First Amendment-protected right to hunger strike in protest the discontinuance of free phone calls to family and the policy and practice of indiscriminately locking people detained in Unit A-1 in their cells for approximately 18 hours per day.

In response, ICE retaliated against hunger-striking people with threats and use of force against the strikers; placement in solitary confinement; and denial of access to their jobs, recreational activities, and the law library. As one person said:

I began to eat after the officer told me that if we do not eat for dinner, I and others would be taken to solitary, we would lose our job, and we would remain in solitary. So I began to eat because was afraid. I also speak English and Spanish, and the officer told me to tell what he told me to the people who only speak in Spanish. I

¹ Interview with Detained Person at Buffalo Federal Detention Facility (“BFDF”), June 2024. Witness statements are anonymized to protect detained people from retaliation by ICE.

² Interview with Detained Person at BFDF, June 2024.

*only do the job because I do not want to be locked in my cell for 17 to 18 to 19 hours a day. I feel like I am forced to work for a dollar a day just to be free.*³

All human beings in detention are protected by the U.S. Constitution, regardless of whether they are being held on criminal or civil grounds.⁴ Retaliation by ICE officials at BFDF for the hunger strike violated the hunger strikers' constitutional rights under the First Amendment.

BFDF has a well-documented history of retaliating against those who engage in their right to free speech through filing grievances, hunger striking, and otherwise peacefully asserting their rights. This pattern of civil rights and civil liberties abuses at BFDF was previously acknowledged by CRCL in June 2023, when it opened a multidisciplinary onsite investigation into the facility, citing concerns over:

unhygienic living conditions; lack of confidentiality with legal mail; barriers to completing legal paperwork; inadequate language access (particularly for legal access); unsafe volunteer work program practices; dental delays; inadequate telephone services; and *problematic grievance processes*. Other complaints raise concerns about the food served at [BFDF], as well as inadequate and delayed medical care conditions. In addition, other complaints alleged problems with commissary and phone pricing. Finally, CRCL received allegations [sic] issues related to *retaliation from [BFDF] personnel, the use of segregation exacerbating mental health issues*, and failure to provide religious accommodations.⁵

The improper use and overuse of solitary confinement at BFDF is also well documented.⁶ Here, as in the past, ICE responded in an abusive and punitive manner when people sought to engage in their right to peacefully hunger strike at BFDF. This pattern of abuse leaves no doubt that punitive confinement at BFDF is the norm, not the exception.

Individuals in immigration detention have the right to freedom from First Amendment retaliation and non-punitive and safe living conditions.⁷ Therefore, RFK, PLS, NYCLU, CCR and

³ Interview with Detained Person at BFDF, June 2024.

⁴ See *Bell v. Wolfish*, 441 U.S. 520, 535 (1979); *Lynch v. Cannatella*, 810 F.2d 1363, 1374 (5th Cir. 1987) (“[W]hatever due process rights excludable [noncitizens] may be denied by virtue of their status, they are entitled under the due process clauses of the Fifth and Fourteenth Amendments to be free of gross physical abuse at the hands of state or federal officials.”).

⁵ Memorandum from Dana Salvano-Dunn, Dir., Compliance Branch, Office for Civil Rights and Civil Liberties Memorandum from Office, *Retention Memo: Buffalo (Batavia) Service Processing Center Onsite 2* (June 7, 2023), https://www.dhs.gov/sites/default/files/2023-08/2023.06.07_CRCL%20Retention%20Memo%20to%20ICE_Buffalo%20Service%20Processing%20Center_Redacted_508.pdf (emphasis added).

⁶ See e.g. Physicians for Human Rights et al., “*Endless Nightmare*”: *Torture and Inhuman Treatment in Solitary Confinement in U.S. Immigration Detention* 14, 31 (Feb. 2024), <https://phr.org/wp-content/uploads/2024/02/PHR-REPORT-ICE-Solitary-Confinement-2024.pdf> (documenting instances of solitary confinement of people for over a year and a half and cruel and degrading treatment of LGBTQ+ individuals while in solitary).

⁷ 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)); see also *Cruz v. Beto*, 405 U.S. 319, 321 (1972) (establishing that people in prison, “like other individuals, have the right to petition

JFMF request that your office, pursuant to its authority under 6 U.S.C. § 345, immediately open a complaint for investigation and at the conclusion of the investigation issue a Recommendation Memo to formally recommend that ICE/BFDF:

- 1) Immediately cease the policy and practice of blanket lock-ins for 18 hours;
- 2) Immediately reinstate provision of free phone calls to family;
- 3) Immediately cease the threat or use of force and threat or use of solitary confinement in retaliation for peaceful hunger strikes by individuals at BFDF.

We respectfully request a response in writing by July 18, 2024, detailing your agencies' plan of action to remedy the civil and human rights violations described herein.

I. Factual Background

A. BFDF's Harmful Blanket Lock-In Policy

For months, people detained in Unit A-1 at BFDF have reported that BFDF has a harmful policy of locking people in their cells for approximately 18 hours per day without giving any individualized reason for their prolonged confinement. Unit A-1 is a general population housing unit with two-person cells. People detained in the unit are typically allowed out of their cells for only about six hours per day, which includes the time allotted for meals and showers. Under the lock-in policy and practice, people are only able to avoid 18-hour cell confinement by taking a job in the “voluntary work program.”⁸ The “voluntary work program” pays people who are detained a BFDF only a \$1.00 a day and so in one week the maximum amount of money that can be earned is \$5.00.⁹

The near-constant confinement in Unit A-1 at BFDF is dangerously close to solitary confinement. The well-documented harms of solitary confinement include post-traumatic stress disorder, increased risks of self-harm and suicide, hallucinations, confusion, disrupted sleep, reduced cognitive function, lasting brain damage, and heart palpitations. People can begin to experience the harms of solitary confinement within hours of isolation.

Moreover, the practice of double-celling at BFDF does not ameliorate the harmful effects of isolation. Dr. Craig Haney, a widely regarded expert on solitary confinement, has explained that people isolated in double cells

in some ways . . . have the worst of both worlds: they are ‘crowded’ in and confined with another person inside a small cell but—and this is the crux of their ‘isolation’—simultaneously isolated from the rest of the mainstream prisoner population, deprived of even minimal freedom of movement, prohibited from

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).

⁸ Interview with Detained Person at BFDF, June 2024

⁹ *Id.*

access to meaningful prison programs, and denied opportunities for any semblance of ‘normal’ social interaction.¹⁰

B. ICE Discontinues Access to Free Phone Calls to Family, a Critical and Necessary Line of Communication for People Detained at BFDF

In the beginning of June 2024, people detained at BFDF received notice from ICE that the program that provided free phone calls to family would end. This program permitted detained people, the majority of whom are indigent, to be able to call their family. Contact with family provided a critical and necessary lifeline for people detained at BFDF because it enabled regular communication. Upon information and belief, the discontinuance of the free phone call program by ICE was a decision that was made by ICE headquarters and implemented by BFDF.

One of the people who engaged in the hunger strike explained:

The only way to contact is through free phones. It is hard for people to contact family. The phone calls are expensive and the free phone calls allowed contact with family. I am subject to a lock-in policy at BFDF and the only way I can't be locked in is to work for a \$1.00 a day, and I only am allowed to work two days so I make two dollars and that would allow me to only have two to three minutes to talk.¹¹

C. June 2024 Hunger Strike and Retaliation in Response¹²

To protest the lock-in policy and discontinuation of free phone calls to family, on June 7, 2024, approximately 40 people detained at BFDF in Unit A-1 engaged in a hunger strike. That morning, several people in Unit A-1 peacefully decided to not take their breakfast. After breakfast, Lieutenant Ireland, a Batavia Officer, came to the unit and threatened the hunger strikers with solitary confinement and loss of their “jobs” if they continued with the hunger strike. At lunch time, several people continued the hunger strike and declined their lunch.

Following lunch time, Lieutenant Ireland and people who identified themselves as “ICE Officials” came to Unit A-1 together with a group of about six Officers. The ICE Officials advised that they would “look into” the discontinuance of free phone calls and that they could not do anything about the lock-in policy. The ICE Officials made clear that people engaged in a hunger strike should cease to do so because ICE had now responded. At dinner time, some people in Unit A-1 continued to hunger strike and declined their meal.

Following dinner time, approximately 20 officers came into Unit A-1 and yelled that everyone needed to lock in their cells. The officers then went to the cells housing people who declined their dinner. About six or seven officers surrounded the hunger strikers and took them out of their cells. Officers also locked some of the hunger strikers into their cells by themselves as punitive solitary confinement. One of those hunger strikers explained:

¹⁰ *Braggs v. Dunn*, 257 F. Supp. 3d 1171, 1239 n.64 (M.D. Ala. 2017) (citation omitted).

¹¹ *Id.*

¹² All factual statements in this section came from interviews with people detained at BFDF in June 2024.

Twenty officers came to the unit and threatened me and threatened us. Six or seven officers surrounded me and took me and placed me in solitary. I was left in solitary from Friday evening until Saturday evening. I was not permitted out of the solitary cell during that entire period of time.

Other hunger strikers remained in their cells in Unit A-1 after refusing dinner on June 7, but were locked in their cells in conditions resembling solitary confinement. Some hunger strikers received a written segregation placement order stating that they were placed in segregation for medical purposes. However, these people were not seen by medical staff, casting doubt on the ostensibly non-punitive justification for the segregation.

Officers used unreasonable violence to forcibly remove one person from Unit A-1 for engaging in a hunger strike. This person, detained on the second tier of Unit A-1, was trying to speak with officers about the strike when they reacted by violently removing him from his cell. Approximately five officers—including one lieutenant—forced the person to the ground, put their knees to his neck, and affixed shackles to bind him. Officers then forced this person down the flight of stairs to the first tier while he yelled that he could not breathe. A detained person witnessed the shackled person’s head hitting against the railings as officers carried him down the stairs. Officers then placed him in what appeared to be a straitjacket. Another witness reported that he looked “like a burrito.”¹³ Officers then strapped him to a gurney and took him out of the unit. This person has not been seen by others in Unit A-1 since he was taken away on June 7, 2024.

The people who engaged in hunger striking were not engaged in any actions that would warrant disciplinary action.

II. Legal Violations

ICE’s blanket lock-in policy in Unit A-1 harms detained people and violates their rights. The conditions in Unit A-1 are so restrictive as to be unquestionably punitive. This violates the Fifth Amendment of the U.S. Constitution.¹⁴ Furthermore, BFDf is violating the 2011 Performance-Based National Detention Standards, 2016 revision (“PBNDS”) requirements for out-of-cell time in general population. PBNDS requires facilities to provide people in general population with at least four hours a day, seven days a week, of outdoor recreation. If weather prevents outdoor recreation, facilities are required to provide access to indoor recreational opportunities, preferably with natural light. Facilities are also required to provide daily indoor recreation.

Batavia provides approximately only six hours total out-of-cell time to people in Unit A-1, which includes the time allotted for showering and meals. Moreover, people at Batavia do not have access to the small indoor recreation space every day. This is particularly harmful given the extreme temperatures in Batavia, New York. When temperatures are below freezing and there is snow on the ground, the PBNDS requires that people have access to indoor recreation.

¹³ *Id.*

¹⁴ *Bell v. Wolfish*, 441 U.S. 520, 537 (1979); *Martin v. Gentile*, 849 F.2d 863, 870 (4th Cir. 1988) (“[T]he pretrial detainee, who has yet to be adjudicated guilty of any crime, may not be subjected to any form of ‘punishment.’”).

Moreover, ICE’s response to the June 2024 hunger strike violated ICE’s own policies and infringed on hunger strikers’ First Amendment rights. As one individual explained:

*The entire process was intimidating. We acted in good faith. We have a right to engage in hunger strikes to protest our conditions of confinement and in response I and others were threatened with the loss of our rights to commissary, our right to be part of a work program, and our right to be free from solitary confinement.*¹⁵

First, under ICE’s Use of Force Policy (the “Force Policy”), issued as part of the PBNDS, immediate use of force is only permitted when “a detainee’s behavior constitutes a serious and immediate threat to self, staff, another detainee, property, or the security and orderly operation of the facility.”¹⁶ Based upon the facts and circumstances of the events that occurred on June 7, 2024—the peaceful hunger strike by a number of individuals in Unit A-1—there can be no dispute that ICE’s actions were a violation of this policy. Officers deployed the threat of force and the use of force to retaliate against those individuals in Unit A-1 who were peacefully engaging in a hunger strike. In one case, a man was forcibly removed from the dorm and restrained. This retaliation had its desired effect, causing the hunger strikers to stop the hunger strike out of fear they would be physically harmed, kept in solitary confinement, and lose their \$1.00-a-day jobs.

Next, under the PBNDS, punitive solitary confinement in response to a hunger strike is not permissible.¹⁷ ICE’s threats or use of solitary confinement in response to hunger striking was punitive in nature. ICE administers several types of solitary confinement including (1) disciplinary segregation¹⁸ and (2) administrative segregation.¹⁹ The Special Management Unit Policy (the “SMU Policy”), issued as part of the PBNDS, governs ICE’s use of solitary confinement. The

¹⁵ Interview with Detained Person at BDFD, June 2024.

¹⁶ U.S. Immigr. and Customs Enf’t, 2.15 *Use of Force and Restraints*, Performance-Based National Detention Standards, 206 (Dec. 2016), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

¹⁷ Detained individuals participating in hunger strikes may be “isolated for close supervision,” and in the event of such isolation, “medical personnel shall monitor the detainee in a single-occupancy observation room, when medically advisable and taking into consideration the detainee’s mental health needs.” Further, “[m]edical personnel shall document the reasons for placing a detainee in a single occupancy observation room. This decision shall be reviewed every 72 hours.” In addition, “the ICE/ERO Field Office Director shall be immediately notified when a detainee is on a hunger strike.” PBNDS Standard 4.2, Hunger Strikes, <https://www.ice.gov/doclib/detention-standards/2011/4-2.pdf>.

¹⁸ See ICE Directive No. 11065.1, Review of the Use of Segregation for ICE Detainees (2013), 3.2, https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf (“Disciplinary segregation is a punitive form of separation from the general population for disciplinary reasons. Disciplinary segregation is authorized only pursuant to the order of a facility disciplinary panel, following a hearing in which the detainee is determined to have committed serious misconduct in violation of a facility rule, and only consistent with the Disciplinary Severity Scale from the applicable ICE detention standards, and only when alternative dispositions would inadequately regulate detainee behavior.”).

¹⁹ See ICE Directive No. 11065.1, Review of the Use of Segregation for ICE Detainees (2013), 3.1, https://www.ice.gov/doclib/detention-reform/pdf/segregation_directive.pdf (“Administrative segregation is a non-punitive form of separation from the general population for administrative reasons. Administrative segregation is authorized only as necessary to ensure the safety of the detainee, facility staff, and other detainees; the protection of property; or the security or good order of the facility, and therefore should be for the briefest term and under the least restrictive conditions practicable, consistent with the rationale for placement. Generally, detainees in administrative segregation shall receive the same privileges as detainees housed in the general population, consistent with safety and security concerns.”).

SMU Policy prohibits the use of punitive solitary confinement except where a detained person has been found at a disciplinary hearing to have committed a serious violation of a facility rule.²⁰

Finally, the First Amendment protects people engaging in hunger strikes. “[T]he filing of prison grievances is a constitutionally protected activity.”²¹ So, too, are “[t]he rights to complain to public officials and to seek administrative and judicial relief.”²² Courts have held that hunger strikes intended to convey a particularized message are protected activity.²³ The recent hunger strike at BFDf was intended to convey a particularized message: a protest of BFDf’s lock-in policy and the termination of free phone calls. Moreover, ICE’s unlawful conduct in response to the June 2024 hunger strike would have chilled any person of ordinary firmness, and did, in fact, chill the protestors’ speech.²⁴

Conclusion

This complaint is just the latest example of BFDf’s well-documented pattern and practice of retaliation in response to detained individuals exercising their right to hunger strike, file grievances and otherwise assert violations of their rights. Put simply, BFDf makes it clear that if anyone who is detained there “complains,”²⁵ consequences will be suffered. And in this case, BFDf effectively used retaliation to quell protected actions by the people detained there.

This complaint, in addition to the other complaints and unrefuted evidence, warrants an immediate investigation into the June 7, 2024, incident and abuses described herein. Without an investigation, BFDf will have succeeded in effectively silencing detained people exercising their rights.

The undersigned organizations look forward to your response in writing regarding the status of this matter by July 18, 2024

Respectfully submitted,

²⁰ See U.S. Immigration and Customs Enforcement, 2.12 Special Management Units, Performance-Based National Detention Standards, 177 (Dec. 2016), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>

²¹ *Davis v. Goord*, 320 F.3d 346, 352–53 (2d Cir. 2003).

²² *Gagliardi v. Vill. of Pawling*, 18 F.3d 188, 194 (2d Cir. 1994).

²³ See *Brown v. McGinnis*, No. 05-CV-758S, 2012 WL 267638, at *3–4 (W.D.N.Y. Jan. 29, 2012); *Stefanoff v. Hays Cnty.*, 154 F.3d 523, 527 (5th Cir. 1998) (per curiam).

²⁴ *Gill v. Pidlypchak*, 389 F.3d 379 (2d Cir. 2004).

²⁵ Interview with Detained Person at BFDf, June 2024.

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