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**RE: First Amendment Retaliation and Unlawful Use of Force Against [REDACTED] (A# [REDACTED]) at the Buffalo Federal Detention Facility in Batavia, New York**

*“Every day it is like a war here with the officers. Everyday people get attacked, detainees are not taken care of, people get cuffed and put in the hole for nothing.”<sup>1</sup>*

Dear Officer for Civil Rights and Civil Liberties Wadhia, Inspector General Cuffari, and Ombudsman Gersten:

Robert F. Kennedy Human Rights (“RFK Human Rights”) submits this complaint on behalf of [REDACTED] (“Mr. [REDACTED]” an asylum seeker from Mali who is currently detained in the custody of the Department of Homeland Security (“DHS”), Immigration and Customs Enforcement (“ICE”) at the Buffalo Federal Detention Facility (“BFDF”) in Batavia, New York. This complaint details civil rights and human rights violations against Mr. [REDACTED] including excessive use of force, violation of his First Amendment rights, use of solitary confinement, and retaliation. On February 15, 2024, Mr. [REDACTED] was severely beaten and punished with solitary

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<sup>1</sup> Robert F. Kennedy Human Rights Interview with Mr. [REDACTED] (October 9, 2024).

confinement by officers at BFDF after exercising his free speech right to not sign immigration-related documents.

This incident is part of a larger pattern of systemic human rights violations, including the unlawful use of force and punitive solitary confinement, by officials at BFDF against detained people. For example, most recently, on June 7, 2024, approximately 40 people detained at BFDF were met with the unlawful and retaliatory use of force and placement in solitary confinement after engaging in their First Amendment-protected right to hunger strike in protest of their conditions of confinement.<sup>2</sup> Further, this office, the office of Civil Rights and Civil Liberties (“CRCL”) is currently investigating BFDF following a broad range of allegations including unhygienic living conditions, inadequate language access, and problematic grievance processes, among others.<sup>3</sup> We urge your offices to immediately investigate this complaint and this wider practice of cruel and retaliatory punishment and use of force by officials at BFDF.

**A. BFDF Officers Used Unlawful Excessive Force to Retaliate Against Mr. [REDACTED] for Refusing to Sign Immigration Documents.**

Mr. [REDACTED] was first detained by ICE on June 13, 2022 in California after he sought asylum at a port of entry.<sup>4</sup> He detained at various immigration detention facilities in Mississippi and Louisiana before ICE transferred him to BFDF on October 17, 2022. He has remained detained at BFDF since that date—a period of over two years.

On February 15, 2024, Mr. [REDACTED] was approached by an officer at BFDF and was instructed that he had a required meeting with his ICE deportation officer. He was brought to a room outside the housing unit where he was instructed by an ICE officer to sign immigration documents that were described as “deportation papers.” The papers were presented in English, despite the fact that Mr. [REDACTED] is a French speaker and does not speak or read English. The officials called a French interpreter to facilitate communication with Mr. [REDACTED] but the interpreter did not translate the documents Mr. [REDACTED] was instructed to sign. Mr. [REDACTED] continued to ask questions but the interpreter did not understand him and asked him repeatedly to speak louder. The ICE officer continued to instruct Mr. [REDACTED] to sign the immigration papers, but since he did not understand the interpreter or the contents of the documents, he refused to sign them.

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<sup>2</sup> Robert F. Kennedy Human Rights, Center for Constitutional Rights, New York Civil Liberties Union, Prisoners’ Legal Services of New York, Justice for Migrant Families, *RE: Violation of First Amendment Rights of People Engaged in a Hunger Strike at the Buffalo Federal Detention Facility* (July 9, 2024) <https://rfkhumanrights.org/wp-content/uploads/2024/07/CRCL-Complaint-7.9.2024-FINAL-PDF-1.pdf>.

<sup>3</sup> Retention Memo: Buffalo (Batavia) Service Processing Center Onsite (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](https://www.dhs.gov/sites/default/files/2023-08/2023.06.07_CRCL%20Retention%20Memo%20to%20ICE_Buffalo%20Service%20Processing%20Center_Redacted_508.pdf).

<sup>4</sup> Mr. [REDACTED] was placed in expedited removal proceedings after entering the U.S. and had a credible fear interview on August 4, 2022, where he appeared *pro se*, resulting in a negative determination and the issuance of a final order of removal.

After Mr. █████ refused to sign the documents, the ICE officer escorted him to a small holding cell. Mr. █████ complied with all of the officer's orders and instructions. The officer then called in six other officers. Unprovoked, the six officers surrounded Mr. █████ lifted him, holding him by his neck and threw him to the ground, using their bodyweight to press him to the floor of the cell. Mr. █████ struggled to breathe. The officers then began to repeatedly kick his back and abdomen. Fearing for his life, Mr. █████ attempted to resist. Mr. █████ was left with severe injuries to his back, abdomen, hands and knees. As Mr. █████ described:

*"Seven officers put me to the ground, some of them holding me, they held my hands and my neck, while the others, kicked my back and my sides. They tried to handcuff me and they broke my fingers, my knees cut and bleeding."*<sup>5</sup>

The officers then handcuffed Mr. █████ pushed his chest and arms downward, and dragged him into a solitary confinement cell. As the officers dragged him out of the holding cell, Mr. █████ saw another officer approach him and fearing for his life, he reflexively struggled against the officers, resulting in a collision with the approaching officer. When he was placed in solitary confinement, he was told that he can contact his attorney but that by doing so, he would be "admitting his guilt."

During this incident, BFDF officers violated ICE's Performance Based National Detention Standards ("PBNDS"), specifically, the Use of Force Policy, which prohibits officers from using force except when necessary in order to protect people from harm, prevent property damage, and maintain security and order.<sup>6</sup> According to the Use of Force Policy, due to the danger of strangulation and death, officials are prohibited from restraining detained people by the neck.<sup>7</sup> Officials are also prohibited from using force as punishment.<sup>8</sup>

By physically attacking Mr. █████ in response to his refusal to sign immigration related documents, the officers also violated the First Amendment of the U.S. Constitution. Courts have held that refusing to sign documents is a First Amendment protected activity when one believes the document may have misleading information.<sup>9</sup> In order to prevail in a First Amendment Retaliation claim, a plaintiff must demonstrate that: 1) the plaintiff has a First Amendment protected right; 2) the defendant's actions were motivated or substantially caused by the plaintiff's

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<sup>5</sup> Robert F. Kennedy Human Rights Interview with Mr. █████ October 9, 2024.

<sup>6</sup> See 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> ("An 'immediate-use-of-force' situation is created 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.").

<sup>7</sup> *Id.* at 204.

<sup>8</sup> *Id.* at 200.

<sup>9</sup> *Whipper v. Green*, No. 3:23-CV-27 (SVN), 6 (D. Conn. July 1, 2024) ("The Court finds that Plaintiff's refusal to sign his name to a form he believed conveyed misleading information for the purpose of inducing him to forfeit his rights is protected expressive conduct.").

exercise of that right; and 3) the defendant's actions caused the plaintiff injury.<sup>10</sup> Mr. [REDACTED] did not fully understand the interpreter, leading him to believe the documents may have misleading information. This would make his refusal to sign immigration documents a First Amendment protected right. Given Mr. [REDACTED] testimony, it is clear that the forced restraint and the officers' excessive use of force was motivated by Mr. [REDACTED] exercising his First Amendment right. This is supported by the fact the excessive force took place immediately after Mr. [REDACTED] refusal to sign.

The attack Mr. [REDACTED] endured was also assault under New York State Law, which is defined as intentionally causing serious physical injury to another.<sup>11</sup> The elements of assault under New York State Law are: 1) strike another; 2) with an intent to injure; and 3) resulting in bodily injury.<sup>12</sup> Multiple ICE officers struck Mr. [REDACTED] by kicking his back and sides, and restrained him by choking him by the neck and handcuffing his arms. The facts support that the officers had an intent to injure Mr. [REDACTED] because they continued to kick him while on the ground and after he had been handcuffed. Finally, the attack resulted in several injuries to his back, abdomen, hands, and fingers, satisfying the bodily injury requirement. This conduct may also be considered assault under federal law 18 U.S. Code § 113.<sup>13</sup>

This abuse is also in violation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"). The CAT has been violated when a government official acting in an official capacity intends to cause pain or suffering motivated by a specific purpose which results in severe pain or suffering.<sup>14</sup> The officers who participated in the attack are U.S. government officials who were acting in their official capacity and intended to harm Mr. [REDACTED]. The abuse Mr. [REDACTED] suffered clearly constitutes as severe pain, given how egregious his injuries were, that resulted him in seeking medical treatment several times. The fact this occurred after the Mr. [REDACTED] exercised his First Amendment right not to sign immigration documents in which he did not understand, satisfies the "motivated by a specific purpose element."

Further, after the attack, BFD officials denied Mr. [REDACTED] adequate medical care for his injuries. Mr. [REDACTED] did not receive any medical treatment until two hours after the incident. When a doctor finally came, Mr. [REDACTED] described the pain he was suffering, specifically his injuries in his fingers and knees. The doctor told him that he just needed to put medication gel substance on his fingers, but the doctor failed to do an x-ray to see if any of his fingers were broken. Mr. [REDACTED] complied, putting the medication on his fingers as instructed, despite seeing no improvements. Finally, the doctor did an x-ray on March 20, 2024, more than a month after he was injured by the ICE officials. The doctor said Mr. [REDACTED] finger wasn't broken, but seriously inflamed. The significant delay in treating and diagnosing Mr. [REDACTED] injuries violates the PBNDS, which

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<sup>10</sup> *Lozada v Weilminster*, 92 F.Supp.3d 97 (EDNY 2015), "To prevail on a First Amendment retaliation claim, a plaintiff must show: (1) she has a right protected by the First Amendment; (2) the defendant's actions were motivated or substantially caused by her exercise of that right; and (3) the defendant's actions caused her injury."

<sup>11</sup> See: NY CLS Penal, Pt. THREE, Title H, Art. 120

<sup>12</sup> *Id.*

<sup>13</sup> See: 18 U.S. Code § 113

<sup>14</sup> See: USCS Convention Torture



mandates that all detained people are provided access to a continuum of medical services, including timely follow up in the provision of diagnostic care.<sup>15</sup>

**B. BFDF Officers Retaliated Against Mr. [REDACTED] by Subjecting him to Prolonged Solitary Confinement.**

After this incident, Mr. [REDACTED] was placed in disciplinary segregation for a period of two months. Mr. [REDACTED] is a French speaker and the PBNDS requires that ICE and its contractors provide him with interpretation during the provision of any ICE document, including disciplinary charges.<sup>16</sup> In disciplinary segregation, Mr. [REDACTED] was denied access to interpretation and was not able to read or understand the disciplinary process, the charges against him, or his right to contest them. ICE only provided Mr. [REDACTED] with a sheet of paper containing descriptions of his alleged misconduct in English. Mr. [REDACTED] was then denied access to a disciplinary panel hearing, in violation of the PBNDS and his due process rights.<sup>17</sup> Following the February 15, 2024 incident, Mr. [REDACTED] was erroneously charged with codes 298 and 307, which are “interfering with a staff member in the performance of duties” and “refusing to obey the order of a staff member or officer,” respectively.<sup>18</sup>

After two months, upon being discharged from disciplinary segregation, Mr. [REDACTED] was told that his classification would be changed to “high” to reflect his disciplinary history. Mr. [REDACTED] requested that he be placed in his prior housing unit and expressed to the officers that he did not feel safe in the higher classification unit. The officers refused and Mr. [REDACTED] was returned to the disciplinary segregation cell where he was subjected to two more weeks in solitary confinement. Officers then once again instructed Mr. [REDACTED] that he would be placed in the higher security housing unit. Mr. [REDACTED] again expressed his desire to return to his previous housing unit. Fearing for his safety, he requested placement in protective custody, where he has been held in solitary confinement ever since—a period of over ten consecutive months.

During his placement in solitary confinement, Mr. [REDACTED] mental and physical health have deteriorated. He has experienced chronic headaches, and has developed debilitating anxiety and depression. According to Mr. [REDACTED] *“When a mental health doctor came to see me I told them*

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<sup>15</sup> See U.S. Immigration and Customs Enforcement, 4.3 Medical Care, Performance-Based National Detention Standards, 257 (Dec. 2016), <https://www.ice.gov/doclib/detention-standards/2011/4-3.pdf> “Detainees shall have access to a continuum of health care services, including screening, prevention, health education, diagnosis and treatment... Detainees shall be able to request health services on a daily basis and shall receive timely follow up.”

<sup>16</sup> See: U.S. Immigration and Customs Enforcement, 6.1 Detainee Handbook, Performance-Based National Detention Standards, 410 (Dec. 2016), <https://www.ice.gov/doclib/detention-standards/2011/6-1.pdf> “Oral interpretation or assistance shall be provided to any detainee who speaks another language in which written material has not been translated or who is illiterate.”

<sup>17</sup> *Id.* at 215

<sup>18</sup> See: U.S. Immigration and Customs Enforcement, 3.1 Disciplinary System, Performance-Based National Detention Standards, 225 (Dec. 2016), <https://www.ice.gov/doclib/detention-standards/2011/3-1.pdf>

*you cannot put me in this situation and ask me if I am okay.*"<sup>19</sup> His placement in protective custody has also been periodically impermissibly punitive because he has been denied continuous access to laundry services and recreational materials.<sup>20</sup> Mr. [REDACTED] said:

*"They give you access to things, but they make it difficult, if you want to do laundry, they say busy now, want to use the microwave, but busy now, you have access, but it is really difficult to actually use. If they say no there is nothing you can do. You are at their total mercy."*<sup>21</sup>

Further, by placing Mr. [REDACTED] in over ten months of continuous solitary confinement following his invocation of his First Amendment rights, ICE and BFDF's conduct violates the Mandela rules of international law. The Mandela rules state that subjecting an individual to solitary confinement for more than 15 consecutive days constitutes torture under international law.<sup>22</sup>

## Conclusion

The violations described in this complaint are just the latest example of BFDF's well documented practice of retaliation in response to detained individuals exercising their First Amendment protected rights. This complaint warrants an immediate investigation into the February 15, 2024 incident and abuses described herein. We urge your offices to investigate Mr. [REDACTED] mistreatment by ICE officials and contractors at BFDF and include a wider analysis of BFDF's systemic unlawful use of force practices in your ongoing investigation of violations at the facility.

Respectfully submitted,



Sarah Decker  
Staff Attorney  
Robert F. Kennedy Human Rights

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<sup>19</sup> Robert F. Kennedy Human Rights Interview with Mr. [REDACTED] (October 23, 2024).

<sup>20</sup> See U.S. Immigration and Customs Enforcement, 2.12 Special Management Units, Performance-Based National Detention Standards, 171-172 (Dec. 2016), <https://www.ice.gov/doclib/detention-standards/2011/2-12.pdf>

<sup>21</sup> Robert F. Kennedy Human Rights Interview with Mr. [REDACTED] (October 23, 2024).

<sup>22</sup> See United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 43-44, 16-17 (Jan. 2016), <https://documents.un.org/doc/undoc/gen/n15/443/41/pdf/n1544341.pdf> ("Rule 43 In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited: (b) Prolonged solitary confinement..., Rule 44 For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.").

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