

June 8, 2020

VIA EMAIL

To:

Joseph Cuffari
Office of the Inspector General
U.S. Department of Homeland Security
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Washington, D.C. 20528
JointIntake@dhs.gov

REQUEST FOR EMERGENCY ACTION:

RISK OF IMMINENT LOSS OF HEALTH AND/OR LIFE AT PORT ISABEL DETENTION
CENTER

RE: STEVEN [REDACTED]

Dear Mr. Cuffari,

We are submitting this administrative complaint to the Department of Homeland Security's Office of the Inspector General (DHS OIG) regarding the acts and omissions described below of the Immigration and Customs Enforcement agency, "ICE". Specifically, we ask for your urgent assistance in the case of Mr. Steven [REDACTED], a Pastor and asylum seeker from Uganda, who is now detained at the Port Isabel Detention Center, "PIDC". Mr. [REDACTED] is diabetic, and he has been subjected to egregiously inadequate care and treatment at the facility. This has left him near blind, with highly unstable blood sugar levels, and with frequent boils throughout his body. He is acutely vulnerable to Covid-19. At the Port Isabel facility, no reasonable measures were taken to protect the detainees from the virus, and this has resulted in an outbreak of the disease during the last week. Mr. [REDACTED] has repeatedly been denied release to a fully eligible local sponsor, who could provide the CDC- required protective conditions and help to arrange for adequate medical care. He has never committed a crime, and we note that attorney and human rights supporters have long observed clear discrimination against Africans at the facility in all release matters. Mr. [REDACTED] is now at very serious risk of permanent and devastating damage to his health, or death.

CONDITIONS AT PIDC:

Hygienic and health conditions at the Port Isabel Detention Center have long been notoriously substandard. The dormitory bunk beds are close together, making public health recommendations for social distancing impossible. Detainees are issued used and often stained underwear, clothing, and sheets, and laundry access is limited. The facility fails to provide adequate cleaning supplies, including soap. Thus, most detainees are unable to properly handwash unless they have commissary funds with which to purchase soap and other necessities. The toilets stand in the open in the dormitories, without any panels or shields for protection or privacy. They are heavily used but only cleaned in the morning and evening, allowing bacteria to spread freely throughout the day, including mealtimes. The lack of hygienic conditions is compounded by inadequate health precautions by staff, who often fail to wear masks when they bring food trays to the dormitories. Many persons who fall ill are not promptly taken to the clinic and must usually wait lengthy periods of time in the dormitories first, where they risk spreading their illness to other detained persons.

When the corona virus reached pandemic levels within the United States in March 2020, the Center for Disease Control and numerous public officials repeatedly declared that the virus was extremely dangerous and that key protective measures should be taken to prevent its spread. These included frequent hand washing, social distancing, masks and gloves, and broad testing.¹

¹ On March 11, 2020, the World Health Organization (“WHO”) declared COVID-19 a global pandemic, (See, Donald McNeil, March 11, 2020, New York Times, “Coronavirus Has Become a Pandemic” <https://www.nytimes.com/2020/03/11/health/coronavirus-pandemic-who.html>) ; CDC, “How to Protect Yourself”, March 25, 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html> , and “How to Protect Yourself and Others”, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> ;CDC “ Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities” <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>, Judy Stone, Forbes, March 24, 2020 “Immigrant Detainees are Sitting on a Covid Time Bomb- First Infection Reported; Dara Lind, ProPublica, March 23,2020,” ICE Detainee Says Migrants are Going on Hunger Strike for Soap”; DHS’s own Performance Based National Detention Standards require ICE detention centers to comply with CDC standards, PBNDS 4.3.II.10. See also, March 27, 2020 complaint by ACLU to Joseph Cuffari, “Port Isabel Detention Center (PIDC): Failure to Adequately Respond to Covid-19 Pandemic”; Lauren Carasik, Boston Review, May 19, 2020, “The Cruelty of Trump’s ICE Under Covid 19, Information for Healthcare Professionals; COVID-19 and Underlying Conditions, CENTERS FOR DISEASE CONTROL, (Mar. 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/underlying-conditions.html> (listing, among other medical diagnoses, “moderate to severe asthma,” “heart disease,” “obesity,” and “diabetes” as conditions that trigger higher risk of severe illness from COVID-19)

Despite the constant government and health officials' instructions, and the sharply rising death toll, no such protective measures were taken at the Port Isabel Detention Center.²

Conditions Unchanged:

Even when a contract staff member was confirmed to have the virus on March 31, 2020, none of the recommended health measures were implemented. Some detainees initiated a hunger strike to demand protective measures, but the leader was thrown into the "hole" and others were threatened. The detainees were not initially issued masks at all, but after March 31, 2020, masks were sporadically provided. Eventually, the detainees all received masks, but still had inadequate soap to clean them. Up until the last few days of May 2020, the guards throughout the facility were still freely passing from dormitory to dormitory, often bringing food, with no masks. When questioned by a visitor just before the outbreak, a loudly coughing guard stated that staffers were not required to wear masks or gloves, and that none of them thought such protections were necessary.

The frightening outbreak of multiple Covid-19 cases began during the first week of June 2020. Even now, no arrangements have been made for any kind of social distancing within the dorms or anywhere else. There was no testing at all until the outbreak, and now only those with clear symptoms are removed from the dormitories and tested. Certainly, everyone has been heavily and needlessly exposed, so all should be tested. Those who have escaped infection should not remain in close quarters with those who are now contagious. Meanwhile, supplies of soap and hand cleaners remain woefully inadequate. The toilets remain exposed.

Currently there are eight confirmed cases of covid-19 virus at the facility, according to ICE. A number of men were taken out of Mr. [REDACTED] dormitory last week and have not returned. We presume they have tested positive or have strong symptoms of corona, since they have not returned. The entire dorm population remains quarantined together. A second hunger strike began in protest of the utterly unsafe conditions. Detainees are also reporting a higher number of cases that PIDC officials are willing to recognize. One reports that five detainees have tested positive, and that 15 are being monitored for the covid-19 virus. A second reports that 27

² When one attorney asked the staff about protective measures, she was routinely referred to the ICE website, even though those policies were not being put into effect at PIDC.

detainees have been sent to the medical unit. The detainees further report that numerous guards are not reporting to work out of fear of the covid-19 outbreak.³

Clearly, the ICE officers responsible for conditions at Port Isabel have been fully aware of the openly dangerous conditions at their facility since March 2020. Instructions, warnings, and bulletins had long since been issued by the government and Center for Disease Control, amongst numerous others as set forth above. PIDC officers have chosen to ignore all of these. As noted above, in late March, a number of detainees engaged in a hunger strike, until the leader was thrown in the hole, and the others were threatened. A new hunger strike has begun in response to the current outbreak. However, when officials visited the detainees to hear their concerns about contagion, the officers declared that the detainees were illegally present and had no rights at all. We decry the clear and unlawful retaliation by ICE agents.

In short, the agency has knowingly subjected the detainees to cruel, degrading, and punitive conditions, as well as to the risk of grave physical harm and/or death by the Covid-19 virus.

Steven ██████ Case History:

Steven ██████ was born in Uganda on ██████ 1984. He is extremely well educated and speaks fluent English. He became a Pastor at an early age, and quickly set about establishing a number of health and education services for the community. This work was acceptable to Ugandan government. However, as official repression against the citizenry intensified, Mr. ██████ also organized human rights programs. This was not acceptable, and Mr. ██████ became the target of severe persecution. During one torture session, two fingers were amputated. His legs bear burn scars from melting plastic and other injuries. By 2018, he and many of his followers were forced to flee Uganda. The extreme level of official repression in Uganda is well documented. See: U.S. Department of State Country Reports: Uganda, <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/uganda/>

During his difficult years in Uganda, Steven ██████ developed diabetes. However, he was able to control this condition with strict diet, exercise and medication, and was careful to self-test daily.

³ One lawyer who visited PIDC after the outbreak observed that many guards were still not wearing masks.

Mr. [REDACTED] flew to Mexico City, Mexico, where he was briefly detained but well treated by Mexican immigration officials. He was granted a temporary visa and released. He then continued to the Texas-Mexico border. In December 2018, he lawfully walked across the international bridge connecting Matamoros, Mexico to Brownsville, Texas. He presented himself at the U.S. Port of Entry, proffered his identification, and stated that he was in danger and wished to apply for asylum. His belongings, including his medications and glucose testing device, were taken from him, and he was sent to the local processing center or “hielera”. There he was given half of his daily dose of medicine for his diabetes. The next day he was sent to Port Isabel Detention Center, and again received half of his daily dosage. No diabetic- appropriate food was provided. After a few days he met with the facility physician, who prescribed his new medications. However, the prescribed dosage was set at about half his normal dosage. He was not allowed to self- test. Between the incorrect medical dosage and the highly inappropriate diet, he fell seriously ill. His medical prescription was then re- adjusted, and a diabetic diet was authorized, but never provided.⁴ His testing equipment was not returned, and thereafter he was tested every three months. He began to lose weight and developed painful boils. One such boil so distended his cheek that his eye was pushed shut. He was given antibiotics, but apparently not of sufficient strength, as the boils returned again and again, a clear indication of his weakening immune system. Prior to his detention, he had never suffered from such boils.

Although Mr. [REDACTED] has never committed a crime and had an offer of full sponsorship by a Unitarian Church community in Montana, he was inexplicably denied parole. Initially denied asylum, his case is now on appeal to the Fifth Circuit. Ugandan government officials learned of the denial of asylum, and assuming he was back in hiding in Uganda, attacked and viciously beat [REDACTED], leaving her hospitalized with severe head injuries. Her children vanished for a day. Other friends have been threatened. Given these attacks, we have little doubt that the denial of asylum will be reversed. We are less certain that he will survive to see this day.

In early 2020, Mr. [REDACTED] suffered a serious health crisis due to his poorly treated diabetes. His diabetes reached dangerous levels. His glucose count on one day was well above 500, and his HBA1C soared from a 7 to 12.11. He felt numbness in part of his body, and a

⁴ Like other detainees, Mr. [REDACTED] reports that his meals arrive on a different colored plate, indicating special diet, but that the food on the plate is exactly the same as everyone else’s, such as white bread sandwiches with bologna and chips or cookie. Such malfeasance has been reported by others in the past.

strange tingling sensation in other parts. He had never experienced any of this before, and his glucose numbers had never been so high. Meanwhile, he began suffering pain in his eyes and was sent to a specialist, who diagnosed diabetic related cataracts. He is now blind in one eye and is swiftly losing the vision in his other eye. He needs immediate surgery.⁵ The boils continued to return to various parts of his body, including his private parts. For more than a month his glucose levels remained extremely unstable, as the medical staff tried to find successful treatments. He must now go to the clinic twice a day for medication and testing. He is, of course, exhausted and close to despair. He knows that his immune system is very compromised, and that in his weakened state the covid-19 virus might well kill him.

Mr. ██████ now has local attorneys working on his asylum case. He also has an offer of full sponsorship from a local citizen. Given his education and English fluency, he will assimilate easily into the local community. He is a Pastor who has never committed a crime. Despite all of this, plus his urgent medical situation, and the lack of corona protections at PIDC, he is still being denied parole. The covid-19 virus has now reached his dormitory.

Racial Discrimination

We note that the PIDC authorities are now hurrying to release a number of detainees, including some with final orders of deportation, like Steven ██████. Only two Africans, however, have been released. This conforms to what we attorneys have observed for the last many years. Single African men are harshly discriminated against, despite their good records and ample sponsorship, with regards to release on parole. Thus, many have spent needless years in punitive detention. (We hear numerous reports of discrimination in the assignment of job assignments, library privileges, and many other matters.) This same racial discrimination may well kill African detainees now.

Legal Issues Raised:

1. Right to Life and Physical Integrity: Steven ██████ now suffers from very unstable diabetes, which places him at risk of serious harm or death⁶ if he contracts the covid-19

⁵ We understand that since the PIDC outbreak, the eye clinic will not perform surgery on Mr. ██████ due to the risk of contagion. This could be swiftly cured by testing and isolating him, but no such steps have been taken.

⁶ An “[a]nalysis of close to 1,600 COVID-19 cases in China found that patients with at least one co-morbidity—including cardiovascular disease, diabetes and chronic kidney diseases—‘had a 79% greater chance of requiring

virus. Given the availability of eligible sponsors, and the lack of any dangers of flight risk or to community safety, willfully detaining him at PIDC during the covid-19 outbreak is arbitrary, irrational and capricious. When combined with the refusal to comply with CDC requirements, the situation shocks the conscience.⁷

2. Excludable asylum seekers such as Mr. ██████ cannot, of course, be subjected to physical abuse while detained by U.S. officials. *Lynch v. Canatella*, 810 F.2d 1363 (Fifth Cir. 1987); *Martinez-Aguero v. Gonzalez* 459 F/ 3d 618 (5th Cir. 2006), *Rosales-Garcia v. Holland*, 238 F. 3d 704 (6th Cir. 2001).
3. Failure to Provide Adequate and Necessary Medical Care. As the above history indicates, Mr. ██████'s physical health has been broken by the startlingly inadequate medical care he has received during his year and a half in detention. Such care did not meet professionally accepted standards, in violation of PBNDS 4.3 II. 8.
4. Unlawful Punishment and Deterrence: Intentionally subjecting asylum seekers to contagion by the dangerous covid-19 virus is in no way necessary to the proper administration of the facility. Rather, it constitutes a forbidden measure of punishment and/or deterrence. This is unlawful where, as here, the detainee had the legal right to petition for asylum. Punishment and deterrence of a lawful act is prohibited by law.
5. Arbitrary Indefinite Detention: Given Steven ██████'s clear eligibility for release on parole, especially in light of his severe medical problems and his heightened vulnerability to the covid-19 Virus, his prolonged detention without a bond hearing is arbitrary, irrational and capricious.
6. Racial Discrimination in official release decisions. As set forth above, attorneys and human rights advocates have long observed discriminatory practices by PIDC officials against African detainees. This practice is intentional and egregious.

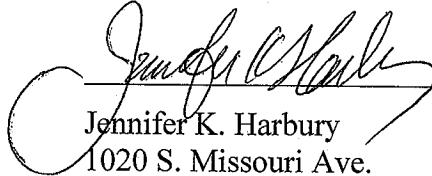
intensive care or a respirator or both, or of dying.” (quoting Sharon Begley, *Who is Getting Sick, and How Sick? A Breakdown of Coronavirus Risk by Demographic Factors*, STAT NEWS (Mar. 3, 2020)), <https://www.statnews.com/2020/03/03/who-is-getting-sick-and-how-sick-a-breakdown-of-coronavirus-risk-by-demographic-factors/>).

⁷ See, for example, *Basank v. Decker*, “Confining vulnerable individuals such as Petitioners without enforcement of appropriate social distancing and without specific measures to protect their delicate health “pose[s] an unreasonable risk of serious damage to [their] future health,” ... and demonstrates deliberate indifference.” Case 1:20-cv-02518-AT, (S.D. N.Y. 2020) Document 11 Filed 03/26/20.

We therefore ask that:

1. Mr. Steven [REDACTED] be released forthwith to his local sponsor.
2. The OIG investigate and remedy the knowing and intentional failure by PIDC to comply with CDC requirements for the use of masks, social distancing, handwashing, and other precautions.
3. The OIG investigate and remedy the racial basis against African asylum seekers in PIDC release practices.

Respectfully Submitted,



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