

VIA EMAIL ONLY

February 10, 2023

Acting Ombudsman David Gersten
Office of the Immigration Detention Ombudsman,
U.S. Department of Homeland Security
Washington, D.C.
oido_outreach@hq.dhs.gov

RE: Recommendations From Immigration Detention Legal Service Providers and Advocacy Organizations on Current OIDO Policies and Procedures

Dear Acting Ombudsman Gersten,

On a daily basis, the lives and well-being of thousands of noncitizens are inextricably tied to how well or how poorly the Department of Homeland Security (DHS) preserves and protects their physical and mental health needs pending release from detention or removal. We reiterate our strong opposition to the use of custodial settings to process individuals or the use of immigration detention for enforcement purposes. The undersigned legal services and advocacy organizations write to make recommendations for changes needed to the Office of Immigration Detention Ombudsman (OIDO) complaint process based on our experiences with filing OIDO complaints and an informal survey circulated among immigrant legal service providers.

At the outset, we want to note our appreciation for the external stakeholder roundtables the OIDO External Relations team has coordinated at the local, state, and national level to keep stakeholders informed. These roundtables have been useful in hearing directly from OIDO about its priorities and processes. We also appreciate the efforts OIDO has put into its email communications, including the quarterly newsletter and website. We also applaud the work to quickly stand up a complaint process that includes the ability to file on behalf of a detained person, post-release from detention, and the availability of the complaint form in multiple languages.

I. Congressional Mandate and Functions

When Congress established OIDO via the 2020 Consolidated Appropriations Act, the text listed six functions for the new office.¹ One of these functions is a mandate to establish and administer an

¹ The Ombudsman's Office was established by Congress ([Sec. 106 of the Consolidated Appropriations Act, 2020, Public Law 116-93](#)).

independent, neutral, and confidential process to receive, investigate, resolve and provide redress, including referral for investigation to the Office of the Inspector General, referral to the U.S. Citizenship and Immigration Services for immigration relief, or any other action determined appropriate. These referrals are to occur whenever DHS officers or other personnel were found to have engaged in misconduct or violated the rights of individuals in immigration detention. Another function was to establish a process for noncitizens to lodge complaints against DHS employees and subcontractors for violations of law, standards of professional conduct, contract terms, and policy related to immigration detention. This included aiding individuals affected by misconduct or violations of law and standards by DHS personnel. Congress also authorized OIDO to conduct detention facility inspections and intended the work of OIDO to be complementary to existing work within DHS.

While we commend the existing work of case managers in trying to alleviate the physical and mental suffering of noncitizens by providing redress for things such as obtaining needed medical equipment, the ability to call their families and attorneys, and the provision of other basic needs, we urge OIDO to expand more fully into its Congressionally mandated oversight role and consider a wider range of more equitable and long-term case resolutions.

As detailed more fully below, we have several recommendations based on the following four issue areas: Reforming the Current Complaint Process (**Section A**), Communication, Role of Legal Advocates, and Case Resolutions (**Section B**), Conducting Oversight and Ensuring Accountability (**Section C**), and Implementing Special Considerations for Victims of Gender-Based Violence (**Section D**).

A. Reforming the Current Complaint Process

i. Obstacles to Initial Filing of Complaints

OIDO has stated in public forums that the OIDO case intake form is not required to file a complaint. Even so, noncitizens in detention nevertheless face challenges to filing OIDO complaints. Most detainees are not able to access the intake form and are reliant on using electronic tablets to request a meeting with OIDO or to flag down an OIDO case manager on-site. In at least one facility, noncitizens in detention stated that they had never seen an OIDO case manager or anyone wearing the OIDO logo despite the presence of an OIDO case manager on site. We also note that when noncitizens are in solitary confinement, often for extended periods, they generally have no way to file complaints on their own.

With respect to electronic tablets as vehicles to submit complaints, we have identified two problems. First, for limited English proficient (LEP) individuals, as well as those with limited reading or writing proficiency, these individuals are usually unable to use the tablets, preventing them from even

making complaints. Second, one noncitizen shared that they were told by someone with knowledge of the complaint process that the detention facility staff could see whatever message they sent to OIDO via the app on their tablet. If this is true, not only does this leave noncitizens vulnerable to retaliation, but also undercuts any trust or willingness by providers to urge noncitizens to file complaints via the tablets.

ii. Responding to Time-Sensitive Needs

Once a complaint is filed, it is vital that OIDO create systems and policies to tackle the time-sensitive nature of certain complaints. OIDO's November newsletter reported that the average response time to all complaint categories was 11 days, including an average 11-day response to medical and mental health concerns, an average nine-day response average for abuse or assault, and an average 19-day response time to special consideration for children and families.² Advocates, including some of the undersigned organizations, have expressed grave concern about OIDO's response time during roundtable meetings regarding urgent complaints such as emergency medical care and use of force. For example, reproductive healthcare for a pregnant person is extremely time sensitive, and every day matters as a pregnant person waits for urgent medical care.

Moreover, the inability to access timely medical services can have long-lasting, harmful consequences. In September 2022, the Florence Project and Freedom for Immigrants filed an OIG complaint detailing the egregious lapses in access to prescription medication for individuals with serious health and mental health conditions, including not receiving HIV and psychotropic medications for days at a time.³ For people with serious medical conditions, waiting 11 days for OIDO to respond is simply unacceptable.⁴

² OIDO, Newsletter, Issue No. 3, November 2022 (Dec. 8, 2022), available here:

https://www.dhs.gov/sites/default/files/2022-12/November%20Newsletter_508.pdf.

³ Florence Immigrant & Refugee Rights Project, Complaints Regarding Medical Neglect and Inhumane Conditions at Florence Correctional Complex and Request for Investigation (Sept. 7, 2022), available here:

https://firrp.org/wp-content/uploads/2022/09/2022-09-07_FFC-Medical-Neglect-FINAL-2.pdf.

⁴For example, discontinuation of clozapine - medication commonly used to treat schizophrenia - can cause "sudden emergence of psychotic symptoms" that can be "often more severe" and harder to treat. Graham Blackman and Ebenezer Oloyede, *Clozapine discontinuation withdrawal symptoms in schizophrenia*, National Library of Medicine (Sep. 18, 2021), available here:

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8450618/#:~:text=Persistent%20post%20withdrawal%20psychosis%20is,discontinuation%20or%20switch%20of%20antipsychotics.&text=Psychotic%20symptoms%20are%20often%20more,be%20less%20responsive%20to%20treatment> (citations omitted). See also Leonardo Tondo and Ross J. Baldessarini, *Discontinuing psychotropic drug treatment*, National Library of Medicine (Feb. 19, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7176895/> ("Interruption of ongoing treatment with various psychotropic medicines sometimes is followed by clinically significant withdrawal reactions within hours or days, as well as later increases in morbidity, relapses, or recurrences of illnesses being treated").

iii. Recommendations to Improve the Current Complaint Process

Based on the above, we submit the following recommendations:

1. Continue to message to OIDO case managers, detained people, and the general public that a case intake form is not required to begin the formal complaint process, that a complaint can be submitted in any language, and provide printed complaint forms in all detention centers.
2. Create a policy requiring case managers to regularly visit noncitizens known to be in solitary confinement in order to facilitate filing of complaints.
3. Make public, share, and improve OIDO's language access plan so that advocates can continue to make recommendations specific to language access needs.
4. Keep statistics on the languages in which complaints are submitted and compare them to the variety of languages spoken in a given facility to evaluate OIDO's efforts in reaching and responding to limited-English proficiency (LEP) individuals.
5. Ensure tablets and any other software programs used in detention centers have language services and that individuals are taught how to use them in a language they understand.
6. For reproductive healthcare emergencies and similar time-sensitive high-risk needs, OIDO must set an internal requirement to respond to such complaints to access care within a specific timeframe. For example, for a detainee requesting reproductive healthcare (pregnancy test, medication abortion, check-up with obstetrician etc.), or failure to provide prescribed medication, OIDO should set a timeframe of 48 hours for a case manager to meet and interview the detainees.

B. Communication, Role of Legal Advocates, and Case Resolutions

i. Need to Improve Communication and Provide for More Legal Advocate Participation in the Process

OIDO must also improve its communications with individuals and authorized advocates about the status and actions taken after a complaint is filed. The general inbox has proven to be insufficient for inquiries. One advocate went so far as describing OIDO as a "black hole." In one instance the Florence Project emailed the general inbox five times over the course of two months before receiving any response from the case management team.

Additionally, while OIDO has assured stakeholders that case managers will interview detained individuals after a complaint is filed, we are aware of several cases in which individuals were not interviewed before their cases were closed. This lack of follow-up has had a devastating impact on the mental health of individuals who have summoned the courage to complain about their circumstances in the face of real threats of retaliation, and erodes credibility and trust in OIDO.

We have observed case managers' unwillingness or inability to fully respond to complaints that raise multiple and overlapping issues. This problem appears to stem in part from how the OIDO complaint form is structured to require noncitizens to identify only one issue that best describes the incident. This has led to confusion with noncitizens believing they must file multiple complaints over the same incident if more than one category applies. Post-filing, advocates have also observed cases being marked as resolved when one issue is addressed but not the multiple other concerns identified in the original complaint.

Next, OIDO requires that legal advocates (attorneys and accredited representatives) and other case submitters obtain a signed form from the detained individual or formerly detained individuals to receive updates or case information.⁵ Requiring a signature to follow up on complaints is impractical given facility attorney access limitations, places a heavy burden on advocates, legal and non-legal, who are already struggling to provide services to detained immigrants in geographically isolated facilities and can result in delays in providing remedial relief. Throughout the detention system, legal service providers have documented the significant barriers that exist in accessing clients, including delays in mail and visitation access and arbitrary blocking of access to libraries to use fax and copy machines.⁶ These barriers make it nearly impossible for advocates, especially those who are not within driving distance of often isolated facilities, to assist in the OIDO complaint process in a timely manner.

ii. Lack of Clarity Around Case Resolutions

Lastly, case resolutions have proven to be one of the most challenging aspects of the OIDO complaint process. One of the underlying reasons for this confusion is that OIDO has not provided clarity around what constitutes a resolution of the complaint. From our perspective, many complaints are marked as resolved even though the underlying serious issues continued unaddressed and the recurrence of the same problem after the initial complaint.

For example, the Florence Project filed five OIDO complaints on behalf of J.A.V.C.⁷ for inhumane conditions that severely affected his health. J.A.V.C. was detained at Florence Correctional Complex

⁵ Attorneys and accredited representatives must submit signed Form G-28 and other case submitters must submit signed ICE Form 60-00, available here: <https://www.dhs.gov/requesting-assistance-oido>.

⁶ Florence Project, RAICES, Proyecto Dilley, Las Americas Immigrant Advocacy Center, RE: Procedures for Credible Fear Screening and Consideration of Asylum Withholding of Removal, and CAT Protection Claims by Asylum Officers (Oct. 19, 2021), available here: <http://democracyforward.org/wp-content/uploads/2021/10/RAICES-Comment-10.20.21.pdf>; ACLU, No Fighting Chance: ICE's Denial of Access to Counsel in U.S. Immigration Detention Facilities 19-22 (2022), available here: <https://www.aclu.org/report/no-fighting-chance-ices-denial-access-counsel-us-immigration-detention-centers>.

⁷ Initials have been used to protect the individual's identity.

(FCC) in Florence, Arizona where he was held in solitary confinement for six months, mostly naked or in a suicide smock and without personal items mandated by the detention standards and common decency like blanket or a toothbrush. J.A.V.C. lost about 30 pounds and complained regularly about dental pain. When J.A.V.C. was finally able to get his first dental appointment after six months of detention, he was placed back on the waiting list for teeth extraction rather than restoration. Florence Project staff filed several complaints in October 2022. About two months after filing the complaints and after multiple emails to OIDO's general inbox, the Florence Project was informed through a phone call that OIDO case managers visited the facility, reviewed medical records, and spoke with the medical services director to ensure J.A.V.C. was getting treatment. To date, the Florence Project has not received a written resolution to the complaints filed in October. As of January 31, 2023, J.A.V.C was still experiencing similar problems as indicated in the October complaints. For example, J.A.V.C still has not received the dental care that medical records indicate is needed. Additionally, J.A.V.C recently spoke with an OIDO case manager and reported his desire to be placed in protective custody. However, to date, he is still in the general population.

iii. Recommendations to Improve Communication, Advocate Participation in the Process, and Clarity Around Resolutions

Based on the above, we submit the following recommendations:

1. Designate a contact in OIDO headquarters for urgent, delayed, and unresolved matters.
2. Train case managers to respond to complaints with multiple overlapping or separate issues.
3. Require case managers to document that they spoke and interviewed the complainant before a case can be officially closed. If exceptions are created, the number of cases closed without interviewing an individual should be included in public reporting.
4. Require that the official closure of a case must include 1) a written resolution detailing how each specific issue in the complaint has been addressed per OIDO procedures and 2) notification to the complainant and advocates on the complaint form.
5. Waive the wet signature requirement on the privacy waiver, given the barriers to obtaining such a signature described above, and as is the practice for Enforcement & Removal Operations (ERO).⁸
6. Create a mechanism by which a noncitizen can quickly grant verbal or written consent for OIDO to share information with advocates who submitted a complaint on their behalf. For

⁸ ICE ERO does not require the wet ink signature on a G-28. Notably, since July 25, 2022, USCIS made permanent their decision to accept reproduced original signatures on all benefit forms and documents, available here:

<https://www.uscis.gov/news/alerts/uscis-announces-flexibility-in-submitting-required-signatures-during-covid-19-national-emergency>.

example, at the time of the interview, a case manager could ask if they would consent to sharing information with advocates who submitted the initial complaint or with anyone else.

C. Conducting Oversight and Ensuring Accountability

i. OIDO Should Implement Its Congressionally Mandated Accountability and Oversight Authority

Overall, OIDO has done little to implement its mandate to investigate and lodge complaints and ensure accountability for clear violations of law, standards, and rights of noncitizens. Indeed, based on information provided at OIDO's roundtables, OIDO exhibits a strong preference for dealing with problems at the case manager level, only elevating issues to the policy and standards division if they cannot be resolved by a case manager. Thus, even though remedial relief is provided, such as setting up a long-delayed medical appointment, there is no systemic recognition that the facility is likely in violation of detention standards or internal policies as a result of the delay. Such a set-up is ripe for a never-ending cycle of repeated violations and harm to people in detention without long-standing resolution.

In one example, OIDO visited R.C.M. in solitary confinement in response to a complaint detailing a lack of medically appropriate meals for an underlying medical condition and punitive reasons for the confinement. Post-OIDO visits, one to three meals would improve but would always eventually revert to the same conditions. Ultimately, only a transfer to a new facility and eventual release safeguarded this individual's life and health.

In another example, the Florence Project and Freedom for Immigrants filed a complaint on behalf of D.S. for denial of medical treatment for Hepatitis C and cirrhosis which, if left untreated, could become fatal. D.S. was moved from one facility to another in Arizona, while ICE continued to deny his access to life-saving treatment—D.S. was told that it was “too expensive.” OIDO closed the complaint after D.S. was removed, noting that, weeks prior, D.S. had informed the OIDO case manager that he would seek outside medical treatment at his own expense. There was no mention of any screening or tracking for standard violations. Florence Project staff members who spoke with D.S. after the OIDO case manager visited him noted that D.S. was more confused and unsure about how he would be able to secure the medication after the OIDO case manager visit. Experiences like these decrease confidence in OIDO's ability to successfully resolve critical issues, and raise concerns that interactions with OIDO will undermine valid claims and complaints that could be better resolved through other grievance or complaint processes, or in litigation.

Secretary Mayorkas testified at a May 26, 2021 hearing in response to questions from members of Congress about OIDO's work and stated that casework would be a vehicle to tackle the

“challenges that those complaints surface.”⁹ We are deeply concerned that the current policies in place to detect and address potential violations are insufficient to bring to light systemic challenges in immigration detention and bring accountability as Congress intended and as is desperately needed by noncitizens in detention.

ii. Recommendations to Demonstrate How OIDO is Independent & Holds DHS Accountable

Based on the above, we submit the following recommendations:

1. Case complaints should be automatically screened for potential violations of law, standards of professional conduct, contract terms, DHS policy and the individual rights of persons in detention.
2. OIDO should model the work of the Department of Justice Office of Inspector General (DOJ OIG), which shares a similar mandate, to investigate allegations of misconduct involving DOJ employees or contractors and grantees who receive DOJ funds. In a recent report, the DOJ OIG provided a figure of what allegations of misconduct were investigated and outcomes.¹⁰
3. When OIDO does refer a matter for investigation, this information should be made publicly available (similar to your inspection facility reports). It should also be noted in all case resolutions if a referral has been made or the reasons for which a referral is not triggered.
4. Create a process for advocates to submit requests for reconsideration and reopening of any case deemed closed, resolved, or unsubstantiated.

D. Implementing Special Considerations for Victims of Gender-Based Violence

i. Holding ICE Accountable to Internal Directive on Victims of Gender-Based Violence

ICE Directive 11005.3 outlines protections for victims of gender-based violence and other crimes, including the use of prosecutorial discretion by ICE officers and agents to facilitate access to justice and victim-based immigration benefits by noncitizen crime victims.¹¹ Noncitizens in ICE custody, however, face a multitude of barriers to accessing protections due to the nature of the carceral setting. First and foremost, victims must be aware of the Directive in order to invoke its protections, and this is not likely the case for people in custody without counsel. We see an important role for OIDO in assisting in identifying detainees who may qualify for victim-based relief, as further

⁹ Committee on Appropriations, Subcommittee on Homeland Security, “Hearing: Department of Homeland Security Resource Management and Operational Priorities,” May 26, 2021.

¹⁰ U.S. Dep’t of Justice, Office of Inspector General, Semiannual Report to Congress April 1, 2022–September 30, 2022, available here: <https://oig.justice.gov/node/23780>

¹¹ ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims, August 10, 2021 available at <https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf>.

detailed in the Gender & Migration Working Group’s (GMWG) January 10, 2023 letter to ICE and OIDO.¹² In addition, as you may know, a law enforcement official is required to sign a certification on behalf of a crime victim in order for them to petition for a U non-immigrant visa for victims of criminal activity. Victims who are assaulted while in ICE custody, for example, by an ICE agent or contractor, must then rely on ICE to forward the information about the assault to a law enforcement agency for this purpose.

ii. Recommendations for Supporting Gender-Based Violence Victims

Based on the above, we submit the following recommendations:

1. Provide all detained individuals with the following three items: 1) a list of contact information for no/low-cost legal service providers; 2) information about applying for victim-based immigration relief, including requesting the ICE-approved immigration designation known as “continued presence”; 3) a copy of the DHS Pamphlet on Gender-Based Violence.¹³
2. Assist in honoring victims’ requests to notify law enforcement of assaults that occur while in ICE custody so that the assault can be fully investigated, and the victim is able to request a law enforcement certification in order to petition for a U non-immigrant visa.

II. Conclusion

Thank you for your kind attention to our concerns, observations, and recommendations. We have compiled our list of recommendations as an attachment to this letter.¹⁴ While we disagree in principle that detention can be made humane, our undersigned organizations hope that you will ensure that OIDO robustly implement its Congressionally-designated mandate, and protect and preserve the safety and mental-wellbeing of noncitizens in immigration detention. We welcome a written response in addition to a meeting engagement. Should you have any additional questions or need for clarification, please contact: Jennifer Ibañez Whitlock, Policy Counsel (jwhitlock@aila.org) or Liz Casey, Social Worker, Advocacy Program (lcasey@firrp.org)

Sincerely,

American Civil Liberties Union
American Immigration Lawyers Association

¹² Gender & Migration Working Group’s (GMWG) letter to ICE and OIDO, January 10, 2023, available at <https://www.tahirih.org/wp-content/uploads/2023/01/GMWG-letter-to-OIDO-ICE-1.10.23.pdf>.

¹³ Dep’t of Homeland Sec. Blue Campaign, “Gender-Based Violence Pamphlet,” available at: <https://www.dhs.gov/blue-campaign/publication/gender-based-pamphlet>.

¹⁴ See Appendix A- Compiled List of Recommendations.

Florence Immigrant & Refugee Rights Project
Freedom for Immigrants
Freedom Network USA
Laredo Immigrant Alliance
National Immigration Project (NIPNLG)
Nationalities Service Center
Rocky Mountain Immigrant Advocacy Network
Tahirih Justice Center

Cc: Acting Deputy Director, Christopher Brundage
Director of External Relations, Allison Posner
Director of Case Management, Carla Fall
Senior Counselor, U.S. Department of Homeland Security, Royce Bernstein Murray

Appendix A
Compiled List of Recommendations

A. Reforming the Current Complaint Process

1. Continue to message to OIDO case managers, detained people, and the general public that a case intake form is not required to begin the formal complaint process, that a complaint can be submitted in any language, and provide printed complaint forms in all detention centers.
2. Create a policy requiring case managers to regularly visit noncitizens known to be in solitary confinement in order to facilitate filing of complaints.
3. Make public, share, and improve OIDO's language access plan so that advocates can continue to make recommendations specific to language access needs.
4. Keep statistics on the languages in which complaints are submitted and compare them to the variety of languages spoken in a given facility to evaluate OIDO's efforts in reaching and responding to limited-English proficiency (LEP) individuals.
5. Ensure tablets and any other software programs used in detention centers have language services and that individuals are taught how to use them in a language they understand.
6. For reproductive healthcare emergencies and similar time-sensitive high-risk needs, OIDO must set an internal requirement to respond to such complaints to access care within a specific timeframe. For example, for a detainee requesting reproductive healthcare (pregnancy test, medication abortion, check-up with obstetrician etc.), or failure to provide prescribed medication, OIDO should set a timeframe of 48 hours for a case manager to meet and interview the detainees.

B. Recommendations to Improve Communication, Advocate Participation in the Process, and Clarity Around Resolutions

7. Designate a contact in OIDO headquarters for urgent, delayed, and unresolved matters.
8. Train case managers to respond to complaints with multiple overlapping or separate issues.
9. Require case managers to document that they spoke and interviewed the complainant before a case can be officially closed. If exceptions are created, the number of cases closed without interviewing an individual should be included in public reporting.
10. Require that the official closure of a case must include 1) a written resolution detailing how each specific issue in the complaint has been addressed per OIDO procedures and 2) notification to the complainant and advocates on the complaint form.
11. Waive the wet signature requirement on the privacy waiver, given the barriers to obtaining such a signature described above, and as is the practice for Enforcement & Removal Operations (ERO).

12. Create a mechanism by which a noncitizen can quickly grant verbal or written consent for OIDO to share information with advocates who submitted a complaint on their behalf. For example, at the time of the interview, a case manager could ask if they would consent to sharing information with advocates who submitted the initial complaint or with anyone else.

C. Recommendations to Demonstrate How OIDO is Independent & Holds DHS Accountable

13. Case complaints should be automatically screened for potential violations of law, standards of professional conduct, contract terms, DHS policy and the individual rights of persons in detention.

14. OIDO should model the work of the Department of Justice Office of Inspector General (DOJ OIG), which shares a similar mandate, to investigate allegations of misconduct involving DOJ employees or contractors and grantees who receive DOJ funds. In a recent report, the DOJ OIG provided a figure of what allegations of misconduct were investigated and outcomes.

15. When OIDO does refer a matter for investigation, this information should be made publicly available (similar to your inspection facility reports). It should also be noted in all case resolutions if a referral has been made or the reasons for which a referral is not triggered.

16. Create a process for advocates to submit requests for reconsideration and reopening of any case deemed closed, resolved, or unsubstantiated.

D. Recommendations for Supporting Gender-Based Violence Victims

17. Provide all detained individuals with the following three items: 1) a list of contact information for no/low-cost legal service providers; 2) information about applying for victim-based immigration relief, including requesting the ICE-approved immigration designation known as “continued presence”; 3) a copy of the DHS Pamphlet on Gender-Based Violence.

18. Assist in honoring victims’ requests to notify law enforcement of assaults that occur while in ICE custody so that the assault can be fully investigated, and the victim is able to request a law enforcement certification in order to petition for a U visa.