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Re: Racial Discrimination, Excessive Use of Force at the Denver Contract Detention Facility

Dear Mr. Rodriguez, Ms. Culliton-González, Mr. Cuffari, and Mr. Gersten,

We file this complaint on behalf of James^{*1} and Musa,* detained at the Denver Contract Detention Facility (“Aurora facility”) in Aurora, Colorado, regarding violations of Title VI of the Civil Rights Act prohibiting racial discrimination, The First Amendment of the Constitution, as well as ICE’s *Performance Based National Detention Standards 2011* prohibiting retaliation. James is a Black immigrant who reports being detained at the Aurora facility for over two years. Musa is a Black immigrant who reports being detained at the Aurora facility for approximately 11 months. Affidavits by James and Musa are attached.

Violations of Musa and James’s Civil Rights

Both James and Musa report that the same two guards of The GEO Group, the company contracted by ICE to operate the Aurora facility, identified as “Alvarez” and “Perry,” have engaged in egregious behavior that

¹ * denotes use of a pseudonym

has violated James's and Musa's civil rights. Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race committed by government officials or entities that receive federal funding.

Musa reports that he has been subjected to verbal abuse, racial animus, and disparate treatment because of his race. For example, he reports that officer Perry has referred to him as "zookeeper" and made a "joke" asking, "What does a white child become when he dies? An angel. What does a Black child become when he dies? A bat."

Musa reports an incident in which there was an altercation between his cellmate and a third party, and the officers who arrived only handcuffed Musa, the only Black person involved.

Musa further reports that he was held in solitary confinement longer than the disciplinary board had ordered, and that officer Perry interfered with his food by sticking his ungloved hands into Musa's food. The racial animus demonstrated by Mr. Perry's statements, combined with reported disparate treatment, indicates a violation of Musa's civil rights.

Musa has extensive documented mental health issues, including paranoia, hallucinations, post-traumatic stress disorder, and depression. The abusive treatment he has experienced in detention has significantly exacerbated the symptoms of those conditions, and this treatment affects him even more because of the intersection with his illnesses.

Excessive Use of Force

James and Musa both describe instances of excessive use of force by the same officers who have demonstrated racial animus towards them as Black noncitizens. James describes an incident in which officer Alvarez told him to "get the fuck out of his cell." When he objected to the dehumanizing language, he was pepper-sprayed multiple times and choked. This incident was witnessed by Musa, who reports that he was then handcuffed though he was not involved. The handcuffs were placed so tightly that Musa reports he lost feeling in his hands. Musa then reports having seen two other Black men handcuffed and brought into the medical unit, though they had been in their room the entire time. He states that everyone who was handcuffed was Black.

Retaliation

Musa reports that he spoke through multiple news channels about the lack of proper care related to COVID-19 vaccines (an issue we have raised to these offices previously). Afterward, officer Alvarez told him that whatever he did "would come back to him." Musa perceived this as a threat. Retaliation for filing complaints is in violation of the PBNS 2011. Retaliation and the threat of retaliation for speaking to the media is a violation of Musa's First Amendment rights.

Recommendations

James and Musa have been subjected to brutal, unlawful treatment while in ICE detention. Musa indicates that his health has been severely impacted by this treatment. ICE has the authority to release both from detention.² They should do so immediately.

An investigation into the actions of the named guards, as well as any other claims of racial discrimination at the Aurora facility should be conducted in a timely manner.

Neither James nor Musa should not be removed while the investigation is taking place.

Any staff of the Aurora facility who is found to have violated a detained person's civil or constitutional rights, or engaged in excessive use of force, should be terminated. If a pattern of such practices is found, an investigation and corrective measures with the GEO Group should be undertaken.

² While ICE argues that Musa is subject to mandatory detention under INA 236(c), his medical conditions are such that he would otherwise be eligible for release under the *Fraihat* guidance regardless.

Exhibit A: Affidavit of James

AFFIDAVIT OF [REDACTED]

I, [REDACTED], make this declaration based on my personal knowledge and declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct.

1. My name is [REDACTED]. I was born on [REDACTED], in [REDACTED]. I am a black [REDACTED] man. I am currently held in ICE custody at the Aurora Contract Detention Facility (“Aurora”), in Aurora, Colorado. I have been detained at Aurora since around July 2019.
2. During my time at Aurora, I was a victim of excessive use of force by Aurora officers, witnessed anti-black racism, and along with other detained people, was subjected to unwarranted searches and pat-downs.
3. In the summer of 2021, Officer Alvarez was promoted to Sergeant. He was in charge of Unit [REDACTED], where I was and continue to be housed. After the promotion, Aurora officers started searching detained people’s cells around four times per week. Prior to Sergeant Alvarez’s promotion, our cells were only searched once or twice each month. The searches were intrusive and burdensome. We were not informed what the reason for these searches was. In addition to searching our cells, Aurora officers subjected us to frequent pat-downs. The pat-downs happened around two or four times per week, which was also not a common practice prior to Sergeant Alvarez’s promotion. As with cell searches, we were not told of the reason for the frequent pat-downs. The excessive cell searches and pat-downs eventually stopped in the beginning of 2022.
4. Additionally, I have heard an officer make numerous racist comments. That Officer’s last name is Perry. On one occasion, I heard Officer Perry tell a racist joke to a black detained man, named [REDACTED]. Officer Perry said that when a white baby dies, he becomes

an angel, but when a black baby dies, he becomes a bat. On a different occasion, Officer Perry overheard me and [REDACTED] talking about [REDACTED]'s child. Officer Perry asked [REDACTED] if he knows the difference between an elevator and a black man. Then, Officer Perry said that an elevator can raise a child. On yet another occasion, I heard Officer Perry refer to Abdulai as a "zookeeper." I also saw officer Perry make a hand gesture that I believe is a sign used by the members of the 211 crew. The 211 crew is a white supremacist prison gang. Lastly, Officer Perry told me that I cannot make a deal. I believe he said that because a part of my finger is missing. I lost it due to a frostbite.

5. On December [REDACTED], 2021, I was physically assaulted by Sergeant Alvarez without provocation. It happened during one of the cell searches. Officer Perry ordered me to leave my cell, so he could go through it. I felt that the frequent cell searches were excessive and abusive. I said that Officer Perry searched my cell the previous day and commented that he should make a note of the searches in his records.
6. Officer Perry called Sergeant Alvarez and another officer, whose name I do not remember. Sergeant Alvarez ordered me to "get the fuck out" of my cell. I stated that Sergeant Alvarez was using disrespectful language. Sergeant Alvarez then grabbed his pepper spray and sprayed me with it. I was scared and surprised, so I swung my arm out on instinct, trying to defend myself. I did not make contact with Sergeant Alvarez. But Sergeant Alvarez pepper sprayed me again. Then the other two officers tackled me to the ground. One officer grabbed my leg. Officer Perry got my other leg. As the officers were tackling me, I felt like something tore in my right foot. I injured my right foot a while back, and I was scared that the officers grabbing me and pushing me to the floor made the injury worse.

7. Officer Perry got on top of me and started squeezing my neck and head. At some point while the officers held me down, Sergeant Alvarez lifted my dreadlock from my face and pepper sprayed me again. Officer Perry was squeezing me so hard that I could not breathe. I told the officers I could not breathe. I think one of them said something like “stop resisting.” But I was not resisting.
8. The officers handcuffed me and took me to a medical unit. I could not walk because my right foot was hurting, and it felt as though the muscles in it got torn. I had to be put in a wheel chair to get to the medical unit. There, the staff washed the pepper spray off of me and gave me some bandages for my foot.
9. The officers also brought three other black men to the medical unit. These men were nearby when the officers attacked me. However, the men did not do anything wrong. Despite of that, all four of us were placed in disciplinary segregation.
10. Aurora facility staff investigated the incident. I was charged with Code 108 (assault on staff member), Code 223 (any act that could endanger people or the safety of the facility), and Code 307 (refusing to obey direct order). Sergeant Alvarez submitted an incident report, incorrectly stating that he pepper sprayed me because I threatened him and stepped toward him aggressively. I did not do these things.
11. I was represented by Officer Gillian. I asked Officer Gillian to check the video recording of the incident to confirm that I did not threaten Sergeant Alvarez. Officer Gillian checked the CCTV footage. Afterwards, it was concluded that I did not violate Code 108 (assault on staff member).
12. I had to spent around two weeks in disciplinary segregation. Afterwards, I lost the job that I had at the detention facility. I asked Aurora staff the reason I could no longer work

and was told that a person automatically loses their job after being placed in disciplinary segregation. However, I saw that other people were permitted to continue working even after they spent time in disciplinary segregation. I wrote a grievance to the facility raising this issue. Aurora staff member spoke to me and once again stated that being placed in disciplinary segregation results in automatic dismissal from employment. The staff member did not address the fact that other people continued working even after spending time in disciplinary segregation.

13. On around March [REDACTED], 2022, I saw Sergeant Alvarez attack another black man, who did not do anything wrong. The man was in the same vicinity as a Latino man and some other detained people, who were saying that they wanted more time in the yard. This angered Sergeant Alvarez. However, he walked by the man who asked for yard time, and instead went for the black man, who, as far as I know, did not say anything. Sergeant Alvarez grabbed the man and twisted the man's hand behind his back, like he wanted to break it. He then pushed the man's face against the wall. Sergeant Alvarez ordered the man to stop resisting. The man said he was not resisting. I also did not see him resist. Another officer, I believe it was Captain Bennami (I'm not sure of the spelling), had to pull Sergeant Alvarez away from the man. This incident happened in a corridor outside of people's cells, where everyone could see it. I witnessed it, along with other detained people.
14. I believe that the treatment to which black people are subjected at Aurora is racist and unjust. I am making this affidavit to bring the behavior of Sergeant Alvarez and Officer Perry to the public and agency attention and raise awareness of these alarming issues at Aurora.

____/s/ [REDACTED] _____
[REDACTED]

March 18, 2022

Exhibit B: Affidavit of Musa

AFFIDAVIT OF [REDACTED]

I, [REDACTED], make this declaration based on my personal knowledge and declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct.

1. My name is [REDACTED]. I am currently detained at the Aurora ICE Processing Center in Aurora, Colorado. I am [REDACTED] years old and was born on [REDACTED]. I am a Black man from [REDACTED].
2. I have been in ICE custody since approximately April [REDACTED], 2021, and have been detained at the Aurora facility since approximately two or three days after that. I am seeking asylum and adjustment of status. My medical conditions include post-traumatic stress disorder; major depressive disorder, recurrent, severe; unspecified psychosis; unspecified anxiety disorder; and blackouts. During my time at the Aurora facility, I have experienced repeated anti-Black discrimination and have witnessed anti-Black discrimination against other Black people detained here.
3. Two officers, Alvarez and Perry, are best friends and work as a team to bother me. Perry is a regular officer but people call Alvarez a sergeant and he wears a white shirt as part of his uniform. When Perry starts harassing me, Alvarez backs him up. Perry calls me a "zookeeper" and regularly says other racist comments to me. I believe he calls me a "zookeeper" because I'm African and Africa is known to have wild animals. As soon as I see him, I go to my room to avoid having problems with him and getting in trouble.
4. Perry says so many racist comments that I can't keep track. Once I was talking to another detainee about my young child. The white officer told me that the difference

between a Black person and an elevator is that the elevator can raise a child. This officer also asked me if a white baby dies and grows wings, what it would be? I said an angel, and he said that's correct. He asked if a black baby dies and grows wings, what it would be? I said I don't know, and he said a bat. I have also witnessed this officer calling an Iranian detainee an "RPG." I have witnessed this officer telling others that [REDACTED], a Black [REDACTED] man, cannot make a deal. I think that he says this because [REDACTED] doesn't have some of his fingers because of frost bite so he cannot shake hands like other people. Perry makes fun of how [REDACTED] walks and calls him a penguin because he is fat.

5. I have seen people who are not Black talk back to Alvarez, and he talks them down and does not use force on them but uses force on people who are Black.
6. Approximately five months ago, two of my roommates started fighting in my room. I tried to break up the fight to protect my roommate who is old and sick. My younger roommate left the room and got at least 15 other people to come back to our room and fight me. The guards, including Alvarez, handcuffed me, the only Black person involved, even though it was not my fault.
7. On or about December [REDACTED], 2021, I saw Perry come over and say something to bother [REDACTED]. [REDACTED] told Perry to get away from him. Perry left and called Alvarez. Alvarez and another officer came over and within ten seconds of arriving, they pepper-sprayed [REDACTED]. [REDACTED]e put his hands up to protect himself from the pepper-spray. The officers pepper-sprayed him again and then pushed him onto the ground, put him in a headlock, and choked him. He complained that he could not breathe but they kept choking and pepper-spraying him. It looked like they were about to kill him. I was shocked and I

froze. The officers told me to back up. I backed up and put my hands behind my back to show that I was not a threat, even though they had not told me to do that. The officer threatened to spray me. I said I am not a threat. Alvarez told me to go into the room, thinking that it was my room, but I was in front of [REDACTED]'s room, room [REDACTED]. My room is [REDACTED], which is not close by. I explained that this was not my room. Alvarez said I refused a direct order. It felt like they were just looking for an excuse to punish me.

8. I was handcuffed and taken to medical. [REDACTED] was there in a wheelchair I think because he couldn't walk after being beat up. They then brought in two other Black men handcuffed, even though they had been in their room during the entire incident. No one who wasn't Black was handcuffed. I told several different officers that the handcuffs were too tight but they did not care. My hands were handcuffed so tightly that the blood drained out of them and I could not feel my hands. It felt like I was being tortured. After about an hour, I asked to see the psychiatrist. I have authorization to see the psychiatrist at any time I want because of my mental health conditions. At my appointment, I showed my hands to the psychiatrist and he agreed that this was not right and made note of it in his records. Then I was taken to solitary confinement.
9. After about three days, on or about January [REDACTED], 2022, I was brought before the disciplinary board. They said that I had to serve 72 hours in solitary confinement but that the time was already served. However, an officer took me back to solitary confinement anyway. They kept me there for nine days total. For six of those days, I went on hunger strike because I believed that I was being wrongly punished. The guards put me in medical observation. I was taken to see the psychiatrist and told him I

was being held longer in solitary confinement than I should have been. He told me to focus on getting out of lockdown.

10. I experience blackouts due to my mental health conditions. During blackouts, I am not aware of anything that is happening and I cannot react. You could put my hands in a fire, but I would not be able to react. On the night of my eighth day in solitary confinement, I had one of these blackouts. The next day, I woke up confused and scared and had a very severe mental breakdown. I kicked the door a couple of times to get the attention of an officer people call the major, who is high up in leadership just below the Warden. I asked him to take me to the psychiatrist. He tried to tell me to calm down and told me I would go see the psychiatrist. About ten officers came because they thought I would hurt myself. I was aware of what was going on, but I was afraid they would accuse me of doing something bad the night before. When I get blackouts, I get accused of getting into trouble. Thank God that didn't happen.
11. They took me to medical and I saw the psychiatrist. The psychiatrist helped me a little bit, mostly to calm down. I think I was having a panic attack. I told them that I wanted to get out of solitary confinement. On or about January █, 2022, they put me back in the █ dorm with other people.
12. Two or three weeks later, I was interviewed by CBS News and Telemundo about how the officers refused to give us COVID-19 tests. After the CBS News interview, Alvarez told me that whatever I do in this facility, it will come back to me whether it's good or it's bad.

13. On January █, 2022, I was at the table and about to eat my food when I saw Perry walk into the room. He was not the officer working in our pod. I believe he came in to bother me on purpose. I went to my room and closed the door. Perry came to the door and banged on it at around 12:50pm. I jumped and hit my head on the bunk bed. He saw me jump through the window in the door, laughed, and walked away. This incident triggered my PTSD so I went to talk to the psychiatrist.
14. The psychiatrist wrote a letter that day to the administration of the detention center telling him that Perry and Alvarez are triggering my PTSD. He said it would take time and that the letter might help to prevent further “misunderstanding.” The psychiatrist said that he himself would get a slap on the wrist for writing the letter. I feel that the psychiatrist is trying to help but at the same time he is not saying it how it is and rather getting along to go along.
15. Later that same day when I came back to eat, another detainee told me he saw Perry touching my food with no gloves on around 2:15 PM. I asked an older Black officer to call the captain. The captain, who is a Black woman who wears a white shirt as part of her uniform arrived. The Black male officer told her that he saw the officer touch my food. She was shocked and said that she would talk to the person in charge of grievances and make sure that someone talks to Perry. Anyone can look at the cameras and see that Perry banged on the door and touched my food without gloves. Since that day, I have seen Perry a few times. Once in the hallway he pinched his nose as if to say that I stink.

16. I have nightmares that Perry is chasing me with a gun. I am worried I will have a mental breakdown. Every time someone has a breakdown, it's not guaranteed that they will come back the same. That's what happened to my brother. The rebels in [REDACTED] took me and my brother as children. My brother lost his senses and was never the same. I am scared because I have seen what Alvarez and Perry can do –choking, pepper spraying, and beating. When other officers see them doing something like this, they don't ask what's going on or try to deescalate; they just join in.

17. I no longer want to complain at the detention facility because I fear Alvarez will do something if I keep complaining. I don't want to be charged or tased or beat up, like the officers beat up [REDACTED]. I'm scared that I will face the same fate. But I want to submit my affidavit because this is America – somebody has to stand up for what is right.

/s/ [REDACTED]
[REDACTED]

February 25, 2022