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Law Center

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Katherine Culliton-González  
Office for Civil Rights and Civil Liberties  
[katherine.culliton-gonzalez@hq.dhs.gov](mailto:katherine.culliton-gonzalez@hq.dhs.gov)  
[CRCLCompliance@hq.dhs.gov](mailto:CRCLCompliance@hq.dhs.gov)

Christi A. Grimm  
Inspector General  
Office of the Inspector General  
[dhs-oig.officepublicaffairs@oig.dhs.gov](mailto:dhs-oig.officepublicaffairs@oig.dhs.gov)  
[public.affairs@oig.hhs.gov](mailto:public.affairs@oig.hhs.gov)

CC: Director David Neal  
Executive Office for Immigration Review  
[David.Neal@usdoj.gov](mailto:David.Neal@usdoj.gov)

Ombudsman David Gersten  
Office of the Immigration Detention  
Ombudsman  
[david.gersten@hq.dhs.gov](mailto:david.gersten@hq.dhs.gov)

*Via e-mail*

**Re: Physical and Verbal Abuse, Excessive Use of Force at Folkston Detention Facility**

Dear Ms. Culliton-González and Inspector General Grimm:

We jointly file this complaint to request an investigation into excessive and retaliatory use of force, inhumane treatment, and rights violations reported by individuals detained at the Folkston ICE Processing Center (“FIPC”) in Folkston, Georgia. Rights violations under the Department of Homeland Security’s purview include denial of access to counsel, restrictions on protected First Amendment speech, and severe violations of the protections established by ICE’s *Performance Based National Detention Standards*, including the withholding of food, water, and medication. The series of abuses documented here were committed by GEO Group staff and began on April 16, 2022.

**Retaliation**

The men at Folkston have faced systematic retaliation orchestrated by multiple GEO staff members, including superior officers, in response to the exercise of their rights. On April 16th, approximately sixteen individuals detained at Folkston peacefully resisted the curtailment of their regular recreation time by GEO guards. Pursuant to PBNDS 3.1(V)(4), ICE staff may not deprive individuals of recreation time unless doing so would create a documented unsafe condition.

In response to their nonviolent resistance, officers locked the men outside for approximately three hours in nearly 90-degree heat. During that time, the men were denied access to shade, food, water, or medicine despite their multiple requests for these necessities. According to the men, an officer informed them that a superior officer, Major Holmes, gave the order to keep them locked outside. Such retaliation for peaceful protest violates these men's First Amendment rights. Further, denying them access to drinking water contravenes PBNDS 5.4(V)(D)(5), which provides that detainees "participating in outdoor recreation shall have access to drinking water and toilet facilities."

Being outside in the heat also exacerbated some men's medical conditions. While outside, two men were denied access to their inhalers and one man experienced an asthma attack, asking for his inhaler at least 30 times. Refusing these men timely access to healthcare and medication violates PBNDS 4.3(V)(A) and (V)(U)(4),<sup>1</sup> which establish requirements related to appropriate healthcare for detainees. This refusal also potentially constitutes retaliatory withholding of care, a form of cruel and unusual punishment.

Officer retaliation for protected activities continued days later when one of the men, Mr. Dorley, filed a complaint related to a separate incident. Officer Jackson had assaulted Mr. Dorley while on detail in the solitary confinement unit, and Mr. Dorley filed a grievance. Afterwards, Mr. Dorley received threats from other GEO guards who told him that, due to the grievance he filed, "It's on" and "It's GEO vs. Dorley." These threats contravene Mr. Dorley's right to pursue a grievance without fear of retaliation per PBNDS 3.1(V)(B)(3), 6.2(II)(8), and 6.2(V)(G).

### **Excessive use of force**

Men detained at Folkston describe a culture of excessive use of force, perpetrated by not one or two officers, but many sometimes working together. Such violence is often accompanied by emotional callousness and mockery.

The men have noted at least one incident in which multiple officers have beaten and abused a man. The morning of April 18, Mr. Dorley was locked in his cell. Lieutenant Campbell, accompanied by five officers, went to Mr. Dorley's cell and ordered him to come out. Mr. Dorley asked why he was being ordered out of his cell, but, as witnesses report, he received no explanation. He also asked to see Dr. Lewis, the facility psychiatrist, who had previously instructed Mr. Dorley to request his presence whenever there might be a confrontation with guards. Instead of getting Dr. Lewis, Lieutenant Campbell left to get Major Holmes, who returned with around seven guards. Mr. Dorley again asked to see Dr. Lewis, but rather than complying with this request, Major Holmes informed Mr. Dorley that an extraction team would be removing him from his cell. Mr. Dorley then explained that that would not be necessary and said, "Let me just get ready to go."

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<sup>1</sup> "All prescribed medications and medically necessary treatments shall be provided to detainees on schedule and without interruption, absent exigent circumstances."

As he began preparing himself to leave his cell by brushing his teeth and putting on clothes, the extraction team ambushed Mr. Dorley. They hit him in the face and back and twisted his arm behind him. Witnesses heard Major Holmes tell her officers to “apprehend him, it doesn’t matter how you do it.” They overheard the thud of blows and Mr. Dorley’s shouts of pain and requests to stop, interspersed with the sound of the officers laughing among themselves. One other witness watched the guards drag Mr. Dorley out of his cell, shackled by his hands and feet and only wearing his underwear.

The use of force against a detainee despite him neither resisting nor posing a threat to himself or others violates multiple subsections of the PBNDS that militate against arbitrary force, including 2.15(II)(2), 2.15(II)(3), 2.15(V)(B)(4), 2.14(V)(E),<sup>2</sup> and 2.15(V)(I). Such unprovoked physical aggression also contravenes the Fifth Amendment right to be free of gross physical abuse.<sup>3</sup> Guards’ use of restraints on top of physical violence was also inappropriate under PBNDS 2.15(V)(B)(1), given that Mr. Dorley posed no chance of escape, had no related health issues, and posed no harm to himself or others. Additionally, by failing to abide by Mr. Dorley’s request to see the facility psychiatrist, officers violated PBNDS 2.15(II)(2), 2.15(II)(3), and 2.15(V)(I), all of which favor de-escalation of conflict and avoidance of force.

Mr. Dorley suffers from persistent pain and injuries resulting from the April 18 physical abuse, including severe jaw pain, skull pain, dizziness, swelling, and scars. At a medical visit outside the facility, a doctor informed Mr. Dorley that his jaw pain and inability to open his jaw fully are the result of damage sustained to a ligament in the temporomandibular joint (TMJ). Medical staff also informed him that this TMJ injury was severe enough to possibly require surgery in the future. Given that this use of force resulted in a claim of injury, the failure to prepare a related incident injury report violates PBNDS 2.15(V)(P)(2).<sup>4</sup>

### **Excessive use of solitary confinement**

Pending a disciplinary hearing, three men, including Mr. Dorley, were placed in disciplinary segregation without explanation. This decision contravenes PBNDS 3.1(II)(3), which only permits disciplinary segregation “when alternative dispositions may inadequately regulate the detainee’s behavior.”

In light of the officers’ refusal to explain their decision to segregate the three men, some individuals in the C1 unit hypothesized that their cellmates were being punished because of the April 16 incident in order to send a message to the whole unit to be compliant. Such punishment

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<sup>2</sup> Stating that it is prohibited to “us[e] force against a detainee offering no resistance.”

<sup>3</sup> *Lynch v. Cannatella*, 810 F.2d 1363, 1374 (5th Cir. 1987); cf. *Adras v. Nelson*, 917 F.2d 1552, 1559 (11th Cir. 1990).

<sup>4</sup> “When any use of force resulting in an injury or claim of injury occurs, the staff member must immediately prepare an incident report.” See also PBNDS 2.15(V)(P)(1) (requiring “after-action review of use of force incidents (immediate or calculated) and applications of restraints” in order “to assess the reasonableness of the actions taken and determine whether the force used was proportional to the detainee’s actions”); 2.15(V)(P)(4)-(5) (requiring after-action reporting and investigation); PBNDS 3.1(II)(6) (“Each Incident Report shall be objectively and impartially investigated and reported, ordinarily by a person of supervisory rank.”).

once again constitutes retaliation for peaceful protest, infringing on these men's First Amendment rights. Some of the men have written a letter requesting help so that their cellmates could be removed from solitary.

Not only was the decision to place these individuals in solitary confinement a form of retaliation, but physical abuse continued after the three men's transfer to solitary. On April 26th, Mr. Dorley was physically assaulted by Officer Jackson, who had indicated that he wanted to get out of detail on solitary by instigating a fight with one of the three men detained in the unit. Jackson entered Mr. Dorley's cell and shoved him until he fell against his bed. Per 2.15(V)(H), the immediate use of force is not acceptable when an individual – like Mr. Dorley here – does not pose a serious and immediate threat to himself or others. The facility's failure to follow-up and investigate this unprovoked and excessive use of force against a detainee violates PBNDS 2.15(V)(P)(1), which mandates after-action review of use of force.

Two of the men's subjection to 32 days and Mr. Dorley's subjection to 54 consecutive days in solitary confinement contravenes scientific consensus around the harmfulness of even short periods of isolation. The United Nations Special Rapporteur on Torture has stated that isolation for more than 15 days should be absolutely prohibited given that isolation "can amount to torture or cruel, inhuman or degrading treatment."<sup>5</sup> Mr. Dorley in particular was held in solitary for more than three times that amount.

## **Harassment**

The men at the facility have also described multiple instances of harassment from officers. Guards make inappropriate comments, and on at least two occasions they have mocked and laughed at the men in the course of subjecting them to force.

The men subjected to the April 16 incident have reported that while they were locked outside, officers stood in the shade and laughed at them. This laughter continued even as the men requested water and access to their inhalers. Later, on April 18 when Mr. Dorley was removed to solitary, officers laughed as they physically beat him.

In addition to being assaulted by Officer Jackson while in solitary, Mr. Dorley was verbally harassed by him as well. Mr. Dorley described how Jackson told him that if he filed a complaint regarding Jackson's behavior, nobody would believe him since he "already had a history with the facility." Jackson then continued to shout and make derogatory remarks, including slapping Dorley's drinking cup to the floor. He did not stop shouting until another officer arrived and he had completed his shift.

The men's right against harassment by guards is guaranteed by PBNDS 2.15(V)(B)(1), and Jackson's harassment of Dorley to induce him to not file a complaint is a form of retaliation prohibited by PBNDS 6.2(II)(8) and 6.2(V)(G).

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<sup>5</sup> *Solitary confinement should be banned in most cases, UN expert says*, UN News (October 18, 2011), <https://news.un.org/en/story/2011/10/392012-solitary-confinement-should-be-banned-most-cases-un-expertsays>

## **Denial of due process rights**

In the course of the three men's disciplinary hearings, officers violated their due process rights. First, the three men were placed in segregation on April 18 before being found guilty of the charged offenses – in fact, Mr. Dorley reports that he was not even given notice of the charges against him until April 19. Placing these men in segregation even though they posed no immediate, significant threat and had not been found guilty of an offense is contrary to both the letter of PBNDS 2.12(II) and the Fifth Amendment, which forbids the use of punitive, prison-like conditions while in civil detention.<sup>6</sup> Mr. Dorley's due process rights were also violated again when, contrary to the mandate of PBNDS 3.1(V)(H)(3)-(4), he stated that he was neither allowed to attend nor submit evidence in his IDP disciplinary hearings.<sup>7</sup>

## **Denial of access to counsel**

Mr. Dorley reports that after he used the process endorsed by the facility to share confidential legal materials with his legal representative, including a witness statement from one of the men in detention, he was told by Major Holmes that he had violated the rules and was not allowed to share documents of that sort with his attorney. Such review and restriction of Mr. Dorley's legal correspondence violates PBNDS 5.1(V)(F)(2) and (G)(2), which guarantee privacy in special correspondence or legal mailings.

## **Recommendations**

Men detained at Folkston have faced unlawful and abusive treatment by GEO Group staff, and at least one man, Mr. Dorley, has suffered physical injury and persistent pain as a result. We request that you formally and transparently investigate the actions committed by the officers implicated in the mistreatment described above, pursuant to PBNDS 2.4(V)(H),<sup>8</sup> and that you provide Mr. Dorley's legal representative the video footage of the April 16, 18, and 26, 2022 incidents described above. Finally, we ask that you release all potential witnesses and victims of the undue use of force at FIPC to enable them to freely participate in the investigation without fear of retaliation.

We appreciate your prompt attention to this matter.

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<sup>6</sup> *Jones v. Blanas*, 393 F.3d 918, 933 (9th Cir. 2004); *Lynch v. Baxley*, 744 F.2d 1452, 1463 (11th Cir. 1984).

<sup>7</sup> See also PBNDS 3.1(V)(H) (requiring Institution Disciplinary Panel to “verify that the detainee has been advised of and afforded his/her due process rights”).

<sup>8</sup> “The facility shall ensure a thorough investigation of any incident or allegation of staff-on-detainee physical assault, and staff determined to have perpetrated a physical assault on a detainee shall be appropriately disciplined.”

Sincerely,

**INNOVATION LAW LAB**



ALLISON CRENNEN-DUNLAP  
Staff Attorney  
allison@innovationlawlab.org  
(971) 357-1215

**GEORGIA LATINO ALLIANCE FOR  
HUMAN RIGHTS**



ADELINA NICHOLLS  
Executive Director  
anicholls@glahr.org  
(770) 457-5232

**MALAYA MOVEMENT USA,  
GEORGIA CHAPTER**



SAMANTHA C. HAMILTON  
schamilton916@gmail.com

**PROJECT SOUTH**



PRIYANKA BHATT  
Senior Staff Attorney  
Priyanka@projectsouth.org  
(404) 622-0602

**SOUTHERN POVERTY LAW CENTER**



MICH P. GONZALEZ  
Associate Director of Advocacy  
mich.gonzalez@splcenter.org  
(786) 753-1383