

February 12, 2019

Honorable John Kelly
Office of Inspector General
Department of Homeland Security
245 Murray Lane SW
Washington, DC 20528-0305
DHSOIGHOTLINE@DHS.GOV

Via electronic delivery

Dear Mr. Kelly:

As the nation's largest Sikh American civil rights organization, the Sikh Coalition has engaged with the Department of Homeland Security (DHS) in resolving civil rights and civil liberties matters of importance to the Sikh community. We are deeply concerned about allegations raised by immigration detainees in federal custody regarding inhumane and cruel treatment; the disproportionate and discriminatory denial of due process in the Credible Fear process; violation of privacy rights and risking the safety of families in their home country; and egregious deprivation of religious accommodations and rights. Our shared commitment to national security must not infringe upon the civil rights and civil liberties of anyone, especially those most vulnerable who are already in federal custody. These issues, along with the detainees affected by them, deserves more attention and scrutiny.

I. Sikh Detainees Protest Unfair Detention

Sikh political refugees from India have consistently sought asylum in the United States beginning in the late 20th century. Since 2014, our organization has cited concerns about Sikh immigration detainees held in federal custody with the Department of Justice; the Bureau of Prisons; The Office for Civil Rights & Civil Liberties (CRCL) within the Department of Homeland Security; and federal legislators. The fact that Sikh detainees are wrongfully denied bond release by Immigration and Customs Enforcement (ICE) officers - even upon favorable findings by USCIS officers after their credible fear interviews - is a rampant problem plaguing asylum seekers from India, including Sikhs. Furthermore, these asylum seekers also allege a lack of access to Punjabi language translators or adequate time with counsel to meaningfully prepare for their bond hearings.

We understand that credible fear determinations are being routinely denied for detainees from India, including Sikhs fleeing persecution. Immigration attorneys have consistently reported that asylum seekers from India are denied bond at rates higher than nationals of other countries, even when they have sponsors and are willing to submit their valid passports to the U.S. government pending their case along with valid supporting documentation. As a result, we are very troubled that the bond denials are being applied in a manner that appears disproportionate



and discriminatory against Sikh detainees from India. These same concerns were allayed to CRCL on April 30, 2014, whereby recommendations were promulgated by CRCL to improve policies, training, and in providing translator access to individuals who are limited English proficient (see attachment).

Starting in January 2019, Sikh detainees at the El Paso Processing Center in Texas began an ongoing hunger strike due to untenable detention standards and discrimination.¹ Namely, the Sikh detainees are protesting the disparate treatment as asylum seekers of Indian origin, as opposed to detainees of other backgrounds and races. Further, it has been reported to us that these detainees have found they are released on bond at a significantly lower rate than their counterparts from other regions of the world even when other factors, including sponsorship and lack of flight risk, remain the equal for them and their counterparts.

While we understand that parole for detainees seeking asylum is completely discretionary, ICE, under its guidelines effective January 4, 2010, enumerated four factors its field officers should consider in determining whether to grant parole: (1) credible fear; (2) proof of identity; (3) proof of a relative in the US who can attest that the parolee will be present at future hearings; and (4) that the detainee is not a "flight risk." The guidelines further state that "[when] an arriving alien found to have a credible fear established to the satisfaction of the Office of Detention and Removal Operations (DRO) his or her identity and that he or she presents neither a flight risk or danger to the community, DRO should, absent additional factors, parole the alien on the basis that his or her continued detention is not in the public interest." See U.S. Immigration and Customs Enforcement, "Parole of Arriving Aliens Found to have a Credible Fear of Persecution or Torture," Directive 11002.1, § 6.2 (Eff. Jan. 4, 2010). It is our understanding that many Sikh detainees have provided the requisite documentation and met all of these factors. However, we have and continue to receive reports that the ICE officers, in violation of these ICE guidelines, continue to make excessive documentation requests and refuses to parole these detainees.

Despite ICE acting pursuant to a court order permitting force-feeding against the hunger-strikers, detainees are reporting inhumane and cruel punishment. Based on reports we have received it is our understanding that the detainees are subjected to tubing that is stiffer and larger than necessary in order to increase the pain and physical discomfort of the hunger-striking detainees, which are also placed by medical staff who are not familiar with how to insert these tubes. As a result, the force-fed detainees are suffering from persistent nose bleeds, vomiting and rectal bleeding. Legal counsel for some of the detainees is also reporting that the hunger-striking detainees are being threatened for immediate deportation despite being in medically unstable and fragile conditions. In addition to force-feeding, the detainees are alleging solitary confinement placement, harassment and coercion by guards for exercising their rights under the Bureau of Prisons' religious guidelines pursuant to the Religious Land Use and

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¹ See, Samantha Michaels, "How an El Paso Detention Center Is Treating Some Asylum-Seekers Could Violate the UN Convention Against Torture," MotherJones on (Feb. 9, 2019) available at <https://www.motherjones.com/politics/2019/02/el-paso-asylum-seekers-hunger-strike-force-fed/>.



Institutionalized Persons Act (“RLUIPA”) and the Religious Freedom and Restoration Act (“RFRA”).

The United States government has a responsibility to respect the civil rights and civil liberties of all people, including those most vulnerable in our prison and detention systems. Based upon patterns of suspect behavior against the Sikh detainees, we respectfully request the following immediate next steps of action:

1. An immediate inspection by the Office of the Inspector General of DHS. Medical staff and guards, including review of facility video footage and documents recording abuse and mistreatment, should be included in the scope of any such investigation. Any and all wilful violations of medical care should be appropriately submitted to the U.S. Department of Justice, Civil Rights Division and Federal Bureau of Investigations for review of color of law violations.
2. An immediate review of CRCL’s recommendations cited by their June 2, 2016 response. There is a need to develop new recommendations to correct the Credible Fear process in consultation with key stakeholders and advocates like the Sikh Coalition and immigration attorneys. The scope of such recommendations must also take into consideration recommendations that protect an individual’s right to counsel and guaranteeing access for limited English proficient individuals.
3. An immediate review of bond and parole processes, including release, in the El Paso Processing Center and across all other detention facilities. Such findings should be released to the public and include all statistical data and methodologies related to the findings.
4. Conduct a comprehensive assessment on ICE’s compliance with Title VI² provisions relating to language access and issue make this report public.

II. ICE Places Detainees at Risk of Torture with India

We are equally alarmed and troubled by reports that the El Paso Processing Center is distributing a flyer to detainees informing them that officials from the Indian consulate plan to visit Indian (including Sikh) detainees this week. If true, it is unconscionable to identify and subject vulnerable, captive detainees to face representatives of the country they are fleeing. We are extremely disappointed that the El Paso Detention Center is ignoring CRCL’s guidance on protecting the privacy rights of the detainees (see attachment). Specifically, DHS has already admitted that detention facilities allowing consulate access to detainees was a violation of their privacy rights and previously trained ICE officers in El Paso to rectify this very issue in 2016. If these allegations are true, the same facility allowing consulates access to detainees and potentially endangering these detainees and their families is reprehensible and tortious.

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² Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color or national origin in programs and activities operated by recipients of federal funds.



Federal law explicitly prohibits the disclosure of any information that links an asylum seeker's identity to the fact that he or she has applied for asylum. Without the written permission of the individual asylum seeker - many of whom may be represented by counsel --information pertaining to their application may not be shared with anyone outside the U.S. government. It is our understanding that the Sikh detainees here have not granted ICE permission to reveal their identities to anyone, including officials from the Indian consulate.

We understand that this tactic may possibly be part of a broader practice of coercive behavior designed to end hunger strikes by placing the detainees and their families at fear of torture and harassment from the Indian government. The detainees in El Paso have been unequivocally clear with their attorneys and local advocates that they do not want to meet with the Indian consulate due to safety concerns if they return to India and for those of their remaining family members. In 2014, we wrote CRCL expressing concerns about Sikh detainees conducting a hunger strike and wrongful exposure with Indian consular officials (see attached response to Complaint No. 14-07-ICE-0183)³. Though CRCL indicated the El Paso ICE officers would receive mandatory training and policy changes along these lines would be implemented, it appears that no meaningful changes were instituted. We renew our concerns that such protests will continue and expect that ICE must do more to respect the privacy and safety of not only the detainees but also the families left behind in their home countries.

If these allegations are in fact accurate, we seek an immediate stop to any contact with officials or affiliates of the Indian government and Indian detainees - most of whom are Sikh - seeking asylum. Based on the information we understand we request swift intervention by:

1. Enforcing privacy protections of detainees by not identifying them to Indian government officials and not providing access to Indian government officials to contact or otherwise meet with detainees.
2. CRCL should revisit ICE's implementation of the recommendations cited in the letter sent on June 2, 2016 in response to our letter dated April 18, 2014 (see attachment) and recirculate immediate guidance to officials at the El Paso Detention Center.
3. An investigation must be conducted to determine violations of detainee privacy rights; extreme and outrageous conduct in threatening the wellbeing of the detainees and family members of the home country; and all other applicable statutes, rules, and regulations. If violations are identified, disciplinary proceedings should be initiated against these individuals.

III. Sikh Detainees Willfully Denied Religious Accommodations

In the last year, we have also seen reports of Sikh detainees denied the right to practice their faith by acts of law enforcement and contractors with authority, under the color of law. The

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³ See, Caitlin Dickson, "How the U.S. Sold Out Indian Asylum Seekers on the Border," The Daily Beast on (Aug 11, 2014) available at <https://www.thedailybeast.com/how-the-us-sold-out-indian-asylum-seekers-on-the-border>.



deprivation of a detainee's constitutional rights to practice their faith is protected by both the United States Constitution and other laws of the United States. Specifically, RLUIPA prohibits any prison facility receiving federal funding from placing restrictions on prisoners' rights to practice their religion while incarcerated; and RFRA, which protects the ability of religious minorities to practice their faiths.

In 2018, Sikh detainees at the Sheridan Detention Facility in Oregon filed federal habeas petitions listing a litany of religious violations perpetrated upon them, including the forcible cutting of hair and no access to vegetarian meals.⁴ In violation of Sikhs' religious customs, detainees at the facility were also denied access to pray in a hygienic room (one without a toilet), and given no head coverings (which are necessary as religious articles of faith)⁵. Upon the habeas corpus filing, that detention facility began working with the Federal Defender's Office to provide detainees with turbans and were instructed by the federal court to continue working with that office and detainees to make sure their rights were no longer violated.

Furthermore, detainees at Victorville Detention Facility in California were neither permitted to wear their religiously mandated turbans nor provided access to vegetarian meals. Detainees there also described guards snatching makeshift turbans or head coverings from their heads and threatened penalties to those caught wearing them. The violations of civil and human rights at that facility were so egregious that the ACLU filed a class action lawsuit against Victorville Detention Center and ICE.

The Sikh Coalition met with CRCL in May of 2018 to raise concerns about the lack of religious accommodations for Sikh detainees outlined above. We continue to request the following action to remedy these serious allegations, including:

1. An investigation by the U.S. Department of Justice, Civil Rights Division and Federal Bureau of Investigations into the allegations of color of law violations by guards, security personnel, and contractors at the Victorville Detention Facility, Sheridan Detention Facility, and others within the chain of custody that temporarily housed Sikh detainees - the majority of whom are Sikh and Punjabi speaking. Investigations that reveal willful violations should be aggressively prosecuted to the full extent of the law.
2. Develop, implement and enforce policies that protect the religious practices of Sikh detainees at all stages of custody in consultation with key stakeholders, including the Sikh Coalition.
3. Train *all* detention facility staff and contractors on appropriate religious accommodations and cultural competency, and make such training mandatory.

⁴ See, Lydia Gerike, "We pray to rather die': Immigrants detail struggles at Sheridan prison," The Oregonian (Jul. 19, 2018) available at https://www.oregonlive.com/politics/2018/07/we_pray_to_rather_die_immigran.html.

⁵ See, Sara Sidner and Jason Kravarik, "They asked for asylum. Instead, they say they were sent to a prison and treated like criminals," CNN (July 24, 2018) available at <https://www.cnn.com/2018/07/24/politics/oregon-prison-asylum-detainees/index.html>.



4. Discipline and reprimand any and all guards, medical staff, contractors, and other law enforcement officials responsible for violating constitutional protections, RLUIPA, RFRA, and all other applicable statutes, rules, and guidance that protects a detainee's religious rights.

Respectfully,



Sim J. Singh

Senior Advocacy & Policy Manager
The Sikh Coalition

Attachments:

[June 2, 2016 Response to Complaint No. 14-07-ICE-0183]

CC:

Cameron Quinn, Office for Civil Rights and Civil Liberties, U.S. Department of Homeland Security;

Adrian P. Macias, Field Office Director, Enforcement and Removal Operations, El Paso Processing Center;

Eric Dreiband, Assistant Attorney General, Civil Rights Division;

Rep. Bennie G. Thompson, Chairman of the U.S. House Committee on Homeland Security;

Rep. Mike Rogers, Ranking Member of the U.S. House Committee on Homeland Security;

Rep. Jarrold Nadler, Chairman of the U.S. House Judiciary;

Rep. Mary Gay Scanlon, Vice Chair of the U.S. House Judiciary;

Warren Kenneth Paxton Jr., Attorney General of Texas;

Ellen Rosenblum, Attorney General of Oregon;

Xavier Becerra, Attorney General of California;

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ATTACHMENT 1 of 1

Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

June 2, 2016

Amardeep Singh
The Sikh Coalition
Program Director and Co-Founder
50 Broad St., Suite 1537
New York, NY 10004
Amar@sikhcoalition.org

Re: Complaint No. 14-07-ICE-0183

Dear Mr. Singh:

On April 18, 2014, the Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties (CRCL) received your letter, dated April 16, 2014, alleging that Immigration and Customs Enforcement (ICE) disclosed the identities of asylum seekers to their consulate without their permission. Specifically, you alleged that in June and July 2013, 40 Punjabi Sikh political refugees from India entered the United States border at Columbus, New Mexico and sought asylum. They were detained by ICE at the El Paso Service Processing Center (SPC), where on April 14, 2014 ICE invited Mr. Saini from the Houston, Texas Indian Consulate to the SPC to meet with the detainees. During this meeting the detainees reported that Mr. Saini attempted to persuade them to voluntarily depart back to India. When the detainees refused, Mr. Saini allegedly threatened them, stating that if their asylum petitions were denied, they would not be allowed back into India.

Under 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, CRCL has the responsibility to review and assess complaints against DHS employees and officials concerning violations of civil rights and civil liberties. CRCL opened this matter and conducted an investigation. During the investigation, CRCL reviewed the information provided in the complaint and contacted ICE for additional information.

Based upon our review, which included a number of other complaints raising similar concerns to yours, CRCL identified concerns within ICE's Credible Fear process and has issued recommendations to improve the program, including policy changes, introducing training, and ensuring meaningful access to services for individuals who are limited English proficient. Related to your complaint, CRCL recommended that ICE provide mandatory training on the

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Credible Fear process, including confidentiality of asylum seekers and the role of consular offices.

CRCL is closing the above referenced complaint, but will monitor ICE's implementation of our recommendations. We appreciate you bringing this matter to our attention; inquiries like yours help DHS meet its obligation to protect civil rights and civil liberties. If in the future you have concerns relating to civil rights and civil liberties violations by DHS, please contact CRCL by phone at 866-644-8360, 866-644-8361 (TTY), or by email at CRCLCompliance@hq.dhs.gov.

Sincerely,



Tamara J. Kessler
Deputy Officer for Programs and Compliance
Office for Civil Rights and Civil Liberties