



**Homeland
Security**

May 10, 2016

MEMORANDUM FOR: R. Gil Kerlikowske
Commissioner
U.S. Customs and Border Protection

Scott Falk
Chief Counsel
U.S. Customs and Border Protection

FROM: Tamara J. Kessler (b)(6)
Deputy Officer for Civil Rights and Civil Liberties
Office for Civil Rights and Civil Liberties

Susan Mathias
Assistant General Counsel – Strategic Oversight
Office of General Counsel

SUBJECT: Complaint No. 16-01-CBP-0110
Complaint No. 15-02CBP-0132
Complaint No. 14-12CBP-0374
Complaint No. 14-04-CBP-0053

The Office for Civil Rights and Civil Liberties (CRCL) has received four complaints alleging that the Office of Field Operations (OFO) and U.S. Border Patrol (USBP) within U.S. Customs and Border Protection (CBP) have violated an individual's civil rights or civil liberties. The purpose of this memorandum is to notify you of the complaint and describe those allegations, inform you that CRCL will retain this complaint for investigation, and explain how CRCL will work with CBP during our investigation.

ALLEGATIONS

On October 28, 2015, CRCL received a notification of a non-employee suicide attempt from CBP's SITROOM. The complete notification is below:

Protected by Attorney-Client and Deliberative Process Privileges

On October 28, 2015, CBP officers assigned to the Chicago O'Hare International Airport POE encountered a citizen of Ukraine. After the subject was found inadmissible, she was placed in a holding cell. The officers discovered the subject attempted to commit suicide while in a detention. The subject wrapped a piece of fabric around her neck and attached it to the top bunk of her cell. Officers conducting a cell check discovered the subject, and although the subject did not display any visible injuries, EMS was contacted. The subject was alert and responsive when EMS transported her to the hospital. **The subject was admitted for suicide observation.**

This is the fourth complaint of an attempted or completed suicide in CBP custody that CRCL has opened since January 10, 2014. CBP has already been notified of three open complaints, summarized below, as short form investigations. The preliminary investigations of these complaints has been completed, however, CRCL has decided to combine these complaints and will combine the results of these investigations into one findings and recommendation memorandum.

14-04-CBP-0053 (b)(6) – On January 10, 2014, CRCL received an allegation that a 13 year old UAC attempted to choke himself in a USBP hold room at the Weslaco Border Patrol Station. The UAC reported to HHS ORR that he became upset and desperate after he was told he would be deported and decided to choke himself.

14-12-CBP-0374 (b)(6) – On September 5, 2014, CRCL was notified that Mr. (b)(6) committed suicide at the Rio Grande Valley Combined Processing Station. Mr. (b)(6) hung himself while held in isolation due to a contagious disease. According a the video of the incident, Mr. (b)(6) was in his holding cell, hanging from a light switch plate, unmoving, for forty five minutes before personnel entered and attempted CPR.

15-02CBP0132 (b)(6) – On November 13, 2014, CRCL was notified that Mr. (b)(6) attempted suicide by hanging himself with a computer cord in an immigration processing room at the Laredo Port of Entry.

CRCL

CRCL Mission. CRCL supports the Department's mission to secure the Nation while preserving individual liberty, fairness, and equality under the law. CRCL integrates civil rights and civil liberties into all the Department's activities:

- Promoting respect for civil rights and civil liberties in policy creation and implementation by advising Department leadership and personnel, and state and local partners;

- Communicating with individuals and communities whose civil rights and civil liberties may be affected by Department activities, informing them about policies and avenues of redress, and promoting appropriate attention within the Department to their experiences and concerns;
- Investigating and resolving civil rights and civil liberties complaints filed by the public regarding Department policies or activities, or actions taken by Department personnel;
- Leading the Department's equal employment opportunity programs and promoting workforce diversity and merit system principles.

CRCL authorities. Under 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, CRCL is charged with investigating and assessing complaints against DHS employees and officials of abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion. The procedures for our investigations and the recommendations they may generate are outlined in DHS Management Directive 3500.

Access to information. More particularly, 42 U.S.C. § 2000ee-1(d) grants this Office access to the “information, material, and resources necessary to fulfill the functions” of the office, including the complaint investigation function; Management Directive 3500 further authorizes CRCL to:

- “Notify[] the relevant DHS component(s) involved of the matter and its acceptance by CRCL, and whether the matter will be handled by CRCL or by the component organization”;
- “Interview[] persons and obtain[] other information deemed by CRCL to be relevant and require[e] cooperation by all agency employees”; and
- “Access[] documents and files that may have information deemed by CRCL to be relevant.”

Reprisals forbidden. In addition, 42 U.S.C. § 2000ee-1(e) forbids any Federal employee to subject a complainant or witness to any “action constituting a reprisal, or threat of reprisal, for making a complaint or for disclosing information to” CRCL in the course of this investigation.

This memorandum and its accompanying request for information are pursuant to these authorities.

Privilege and required transparency. Our communications with CBP personnel and documents generated during this review, particularly the final report, will be protected to the maximum extent possible by attorney-client and deliberative process privileges. Under 6 U.S.C. § 345(b), however, we submit an annual report to Congress—also posted on CRCL’s website—that is

required to detail “any allegations of [civil rights/civil liberties] abuses . . . and any actions taken by the Department in response to such allegations.”

We look forward to working with your staff on this matter and will report back to you our findings and any recommendations.

SCOPE OF REVIEW

The purpose of our review is to determine if the factual allegations in the complaint can be verified or disproven; if the facts we find suggest that the Constitution, a federal statute, or a Departmental policy has been violated; and what steps if any should be taken by CBP to address the complaint, both individually (if the problem is ongoing) and as a matter of policy. Many of the policy issues raised in suicide prevention are addressed in CBP’s National Standards on Transport, Escort, Detention, and Search (TEDS) and many more may be addressed in specific policies written to implement TEDS. It is CRCL’s understanding that TEDS has not been fully implemented throughout CBP. CRCL is also aware of OBP’s policy, “Detainee Suicide Prevention Awareness,” signed by Chief (b)(6) on November 5, 2014. To the extent there are gaps in implementation, training or policy, it is our goal to produce a report that will assist you in making CBP the best agency possible.

QUESTIONS PRESENTED

(b)(5)

INITIATING THE INVESTIGATION

We request an initial discussion with your agency about this complaint and our plans for reviewing the matter. (b)(6) will be handling this review.

We request that CBP schedule an initial discussion with CRCL as soon as possible. We look forward to working together to determine all the facts surrounding this matter and if appropriate, the best way forward. If you have any questions, please do not hesitate to contact Ms. (b)(6) by phone at (b)(6) 866-644-8361 (TTY) or by email at (b)(6)

Copies to:

Franklin C. Jones
Executive Director of Privacy and Diversity Office
U.S. Customs and Border Protection

Chris Pignone
Office of Internal Affairs
U.S. Customs and Border Protection

Kathleen Gless
Office of the Commissioner
Privacy and Diversity Office
U.S. Customs and Border Protection

Gila Zawdazki-Phipps
Office of the Commissioner
Privacy and Diversity Office
U.S. Customs and Border Protection

Enclosures