



**Homeland
Security**

November 12, 2021

MEMORANDUM FOR: Troy A. Miller
Acting Commissioner
U.S. Customs and Border Protection

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

FROM: Dana Salvano-Dunn (b)(6)
Director, Compliance Branch
Office for Civil Rights and Civil Liberties

(b)(6)
Attorney Advisor, Legal Counsel Division
Office of the General Counsel

SUBJECT: Allegations of Disciplinary Actions Against
Unaccompanied Children in CBP Custody

Complaint Nos. 21-07-CBP-0357, 21-06-CBP-0319,
21-07-CBP-0389, 21-07-CBP-0393, and 19-10-CBP-0610¹

The Office for Civil Rights and Civil Liberties (CRCL) has opened complaints alleging violations of civil rights or civil liberties resulting from incidents of alleged disciplinary actions taken against unaccompanied children (UC) in U.S. Customs and Border Protection (CBP) custody. The purpose of this memorandum is to notify you of the complaints, describe those allegations, and inform you that CRCL will retain these complaints for investigation.

ALLEGATIONS

From February 2021 through present CRCL has received many allegations related to the care and treatment of UC in CBP custody.² The majority of these allegations corresponded with a dramatic increase in UC apprehensions along the Southern border in the spring of 2021, and included issues such as: length of time in custody; hold room conditions and capacity; hygiene

¹ Complaint Nos. 21-06-CBP-0319, 21-07-CBP-0389, 21-07-CBP-0393, and 19-10-CBP-0610 have previously been opened as short form investigations, but will be included in this retained investigation.

² Since February 2021 CRCL has received approximately two thousand complaints alleging that CBP violated the civil rights or civil liberties of UC in CBP custody.

and sanitation; provision and quality of food; and behavior management or disciplinary measures.

For the purposes of this investigation, CRCL will focus on the allegations concerning behavior management which occurs while a UC is in CBP custody (described as “discipline” or “punishment” by the UC). This investigation reviews CBP policies, procedures and training related to behavior management practices used by CBP employees and contractors while caring for UC in CBP custody. CRCL has opened the following complaints for investigation that best exemplify the discipline-related allegations:

Complaint No. 21-07-CBP-0357

On March 11, 2021, CRCL received a complaint alleging that UC (b)(6) was “punished” while in CBP custody when another child accidentally knocked over a gallon of water. (b)(6) alleged that a “CBP official” yelled at the children, called them “bestias” and made (b)(6) sit next to a garbage bin as “punishment.” (b)(6) alleged that his mattress was taken away when he returned to the pod.

Complaint No. 21-06-CBP-0319

On April 7, 2021, CRCL received a complaint alleging that UC (b)(6) got into a physical altercation with another child while in CBP custody and “was placed in a closed room by himself for one day.”

Complaint No. 21-07-CBP-0389

On April 12, 2021, CRCL received a complaint alleging that UC (b)(6) was denied bathroom access while in CBP custody. (b)(6) alleges that officers made him wait to go to the bathroom, and on one occasion he had to wait for more than an hour. (b)(6) alleges that “some of his peers urinated in a bucket because they were not allowed to go to the restroom and could not hold it.” (b)(6) alleges that “they were sometimes not allowed to go to the bathroom as they were being disciplined for being too loud.”

Complaint No. 21-07-CBP-0393

On April 15, 2021, CRCL received a complaint alleging that UC (b)(6) was punished for making noise while in CBP custody. According to the complaint, (b)(6) alleges that an officer yelled at her and other girls for making noise and her bed was “taken away by the officer as punishment.”

Complaint No. 19-10-CBP-0610

On July 12, 2019, CRCL received an allegation that CBP officers forced UC (b)(6) to stand against a wall for hours without allowing her to sit down, as a form of punishment.³

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”;

³ This complaint was referred to CBP for investigation on October 22, 2019. CBP responded on April 23, 2020. CBP’s response did not address the issue of disciplinary practices beyond the statement “RGV CPC does not discipline detainees.” CRCL is therefore including Complaint No. 19-10-CBP-0610 within the scope of this retention memo to investigate the allegation related to discipline. CRCL has received additional complaints alleging that CBP personnel forced UC to stand for long periods of time as “punishment.” For example, one UC alleged he placed in a “time out” and forced to stand for three hours with his hands in front of his chest; another UC alleged he was forced to stand with his hands against a rail for five hours after a BP agent witnessed him spitting; and a third UC alleged he was “punished” for “doing noises and disorder in the cell” by being forced to stand for an hour.

- “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 whether CBP has complied with applicable policies and procedures relating to behavior management of UC in CBP custody; 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 any concerns CRCL identifies, both individually (if the problem is ongoing) and as a matter of 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 CBP about these complaints and CRCL's plans for reviewing these matters. Senior Policy Advisor (b)(6) will be handling this review. 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 (b)(6) by phone at (b)(6) or by email at (b)(6).

Enclosure

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