



**Homeland
Security**

June 24, 2022

MEMORANDUM FOR: Tae D. Johnson
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FROM:

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SUBJECT:

Allegations Relating to Competency Concerns in Protection
Screening
Complaint Nos. 002657-22-USCIS, 002973-22-USCIS,
and 21-07-DHS-0387

The Office for Civil Rights and Civil Liberties (CRCL) has received complaints alleging a failure to address competency concerns of individuals detained by U.S. Immigration and Customs Enforcement (ICE) and interviewed by U.S. Citizenship and Immigration Services (USCIS) as part of the credible fear and reasonable fear screening processes. 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

CRCL has received several similar complaints from attorneys regarding their clients' negative credible fear or reasonable fear screening determinations. Generally, these complaints allege that traumatic brain injuries or other mental health conditions creating competency concerns were not taken into account by USCIS during protection screening interviews; protection claims were not adequately explored or considered by asylum officers; and interpretation problems negatively impacted the credible fear or reasonable fear interviews. Additionally, two of the complaints allege that ICE was aware of mental health conditions that could create competency concerns but did not share this information with USCIS in advance of the protection screening interview.

For the purpose of this investigation, CRCL will focus only on the allegations relating to competency concerns.¹ This investigation reviews ICE and USCIS policies, procedures and training related to addressing competency concerns in the credible fear and reasonable fear screening process.

Complaint No. 002657-22-USCIS

On October 25, 2021, CRCL received information alleging that (b)(6) wrongfully received a negative credible fear screening determination when the asylum officer conducting the interview failed to recognize difficulties Mr. (b)(6) was allegedly experiencing due to mental health issues and a pre-existing traumatic brain injury. The information further alleges that ICE did not issue a Notice to Appeal (NTA) to have him go to proceedings in front of an Immigration Judge or share material information about Mr. (b)(6) mental health concerns with the asylum officer prior to the interview.

Complaint No. 002973-22-USCIS

On December 9, 2021, CRCL reviewed allegations that (b)(6) was erroneously found not credible by a USCIS Asylum Officer (AO) during his reasonable fear screening interview (RFI). According to the complaint, the interviewing officer failed to elicit sufficient testimony to explore Mr. (b)(6) mental health, which was allegedly impacted by depressive disorder and a traumatic brain injury. Specifically, the complaint alleged that the AO failed to adequately screen Mr. (b)(6) for competency issues and based the screening interview determination on the perception that he "suffers from no medical issues that would affect his ability to testify during the RFI." According to the complaint, Mr. (b)(6) attorney submitted requests for reconsideration to the Houston Asylum Office on October 30, 2021, and November 22, 2021, and included previously unavailable medical evaluations, but those requests for reconsideration were denied.

Complaint No. 21-07-DHS-0387

On March 18, 2021, CRCL received allegations that (b)(6) erroneously received a negative reasonable fear screening when the interviewing AO did not take into account potential competency concerns, and that ICE failed to alert the AO to Mr. (b)(6)

¹ CRCL has addressed similar limited English proficiency allegations in other complaint investigations.

(b)(6) reportedly known competency concerns. According to the complaint, Mr. (b)(6) suffers from a traumatic brain injury and experiences hallucinations. The complaint alleged that Mr. (b)(6) was diagnosed and treated for a head injury, hallucinations, nightmares, and other illnesses while in ICE custody, yet ICE did not share this information with USCIS in advance of his RFI, or use its discretion to issue Mr. (b)(6) a Form I-862 Notice to Appear and place him into removal proceedings. The complaint attaches Mr. (b)(6) medical records from the Caroline Detention Facility, submitted by DHS to the Arlington Immigration Court after an immigration judge allegedly continued a hearing due to the indicia of incompetence.

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 CRCL investigations and the recommendations those investigations may generate are outlined in DHS Management Directive 3500, DHS Instruction 046-01-001, and DHS Instruction 046-01-002.

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 requests for information are pursuant to these authorities.

Privilege and required transparency. Our communications with ICE and USCIS 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 ICE and USCIS have complied with applicable policies and procedures relating to protection screening of individuals where there are indicia of incompetency or other competency concerns; if any additional facts suggest that the Constitution, a federal statute, or a Departmental policy has been violated; and what steps, if any, should be taken by ICE and/or USCIS 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 in making DHS the best agency possible.

QUESTIONS PRESENTED

(b)(5)



(b)(5)

INITIATING THE INVESTIGATION

Senior Policy Advisor (b)(6) will be handling this investigation. 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).

Enclosures

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