



**Homeland
Security**

August 22, 2022

MEMORANDUM FOR: Ur M. Jaddou
Director
U.S. Citizenship and Immigration Services

Ashley Tabaddor
Chief Counsel
U.S. Citizenship and Immigration Services

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

Susan Mathias /s/
Assistant General Counsel, Legal Counsel Division
Office of the General Counsel

SUBJECT: Allegations Relating to Credible Fear and Reasonable Fear
Interviews at the Houston Asylum Office
Complaint Nos. 003743-22-USCIS, 003796-22-USCIS,
004141-22-USCIS, and 004142-22-USCIS

The Office for Civil Rights and Civil Liberties (CRCL) has received complaints alleging multiple deficiencies during the credible fear and reasonable fear screening processes at the U.S. Citizenship and Immigration Services (USCIS) Houston Asylum Office relating to civil rights.¹ 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

To date, CRCL has received separate similar allegations from different non-government organizations regarding the credible fear and reasonable fear screenings conducted by the USCIS Houston Asylum Office. Generally, these complaints allege that in the credible fear and reasonable fear screening process, the Asylum Office did not follow Refugee, Asylum, and International Operations (RAIO) Directorate guidance on interviewing Lesbian, Gay, Bisexual,

¹ Certain allegations involve the New Orleans Asylum Sub-Office. While this office recently became a separate Asylum Office from the Houston Asylum Office, the allegations raised to CRCL included protection screenings that occurred when the New Orleans Asylum Sub-Office was a part of the Houston Asylum Office. Accordingly, CRCL's investigation will include the New Orleans Asylum Office in that context.

Transgender, and Intersex (LGBTI+) asylum seekers, children, and survivors of torture and severe trauma; failed to provide appropriate language access; did not confirm that individuals understood the protection screening process; and hindered legal access.

Of note, on April 27, 2022, CRCL received direct correspondence signed by ten non-governmental organizations providing a list of 30 individuals alleging a variety of civil rights or civil liberties violations during their credible fear or reasonable fear screenings.² The complainants alleged that these screenings were all conducted by the Houston Asylum Office, and a majority of the individuals were incorrectly issued negative screening determinations. Subsequently, CRCL received three other allegations that involved concerns of the credible fear or reasonable fear screenings conducted by the Houston Asylum Office.³ Below are summaries of the allegations from the four complaints that CRCL will investigate:

Interviewing LGBTI+ Asylum Seekers

CRCL received allegations that Asylum Officers displayed insensitive, hostile, or biased language towards LGBTI+ asylum seekers during the credible fear or reasonable fear screening. Another allegation involved an asylum seeker who was not provided an opportunity to request a male or female Asylum Officer for the screening interview.

Interviewing Children

CRCL received allegations that the Asylum Office did not notify the U.S. Department of Health and Human Services when the Asylum Office became aware that one child in DHS custody was an unaccompanied child, and again for another child in DHS custody and separated from his parents. CRCL also received allegations that the Asylum Office failed to consider the age of the individual at the time of the past harm in the screening determination, as instructed by guidance in the RAIO Children's Claims lesson plan.

Interviewing Survivors of Torture and Severe Trauma

CRCL received allegations that in at least one individual's screening interview, the Asylum Officer failed to consider past trauma and post-traumatic stress disorder (PTSD). Involving another screening interview, CRCL received allegations that the Asylum Officer conducted the interview in an adversarial manner that impeded the individual's ability to testify.

Language Access

CRCL received allegations that at least ten individuals were provided inadequate language access during their credible fear and reasonable fear screenings.⁴ Allegations raised relating to language access included pressure to complete the interview in a non-preferred language; translation errors during the interview; and failure to follow the 2013 USCIS Asylum Division Memorandum, "Processing Credible Fear Cases When a Rare Language Interpreter is Unavailable."

² 003743-22-USCIS

³ 003796-22-USCIS, 004141-22-USCIS, and 004142-22-USCIS

⁴ On March 4, 2022, CRCL issued a retention memorandum to USCIS regarding Language Access Procedures and Protocols for individuals in the credible fear screening process. This investigation, however, will focus on the Houston Asylum Office's specific procedures, policies, and guidance.

Credible Fear and Reasonable Fear Orientations

CRCL received allegations that some individuals completed their credible fear or reasonable fear interviews without understanding the purpose of the interviews as required by 8 CFR §§ 208.30(d)(2) and 208.31(c). CRCL also received allegations that in at least one interview, the Asylum Officer instructed the individual that he was not there to tell his story as he wanted. For another individual, he was allegedly taken to his screening interview shortly after having an eight-hour bus ride to another detention facility without having time to rest.

Legal Access

CRCL received allegations that the Asylum Office provides inadequate notice to counsel about scheduled interviews, and the Asylum Office continually does not respond to counsels' request to schedule an interview at time when the counsel can be present.

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 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 the factual allegations in the complaints can be verified or disproven; whether any additional facts suggest that the Constitution, a federal statute, or Department policy or procedures has been violated; and what steps, if any, should be taken by USCIS to address any concerns CRCL identifies, both individually (if a problem is ongoing) and as a matter of policy. It is our goal to produce a report that will assist in making USCIS the best agency possible.

QUESTIONS PRESENTED

(b)(5)



(b)(5)



INITIATING THE INVESTIGATION

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).

Enclosure

Copy to:

Cara M. Selby
Associate Director
External Affairs Directorate
U.S. Citizenship and Immigration Services
(b)(6), (b) (7)(C)

Brandon Fauquet
Acting Chief
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⁵ As noted in Footnote 4, CRCL has a separate investigation into whether USCIS conformed to language access, policies, and procedures, and civil rights requirements during credible fear screenings.

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