



Homeland
Security

January 20, 2023

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FROM:

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SUBJECT:

Maritime Interdiction, Protection Screening, and Custody of
Migrants in the Caribbean
Complaint No. 005118-23-DHS

Pursuant to 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, the U.S. Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties (CRCL) has opened a complaint investigation into DHS's operations involving the interdiction, protection screening, and care and custody of migrants who are interdicted by U.S. Coast Guard (USCG); screened for protection claims by U.S. Citizenship and Immigration Services (USCIS); and cared for by U.S. Immigration and Customs Enforcement (ICE) at the Migrant Operations Center (MOC)¹ at the U.S. Naval Station in Guantanamo Bay. This investigation will also evaluate the role of U.S. Customs and Border Protection (CBP) in the care and/or custody of interdicted unaccompanied children (UC) and migrants with emergent medical concerns. The purpose of this memorandum is to notify you of the complaint, inform you that CRCL will retain these complaints for investigation, and explain how CRCL will work with USCG, USCIS, ICE, and CBP due to the interconnected role the agencies perform interdicting maritime migrants.

ALLEGATIONS

On November 4, 2022, CRCL received a letter ("NGO Sign-On Letter") signed by 289 non-governmental organizations (NGOs), requesting that DHS protect Haitian asylum seekers and cease transferring and holding migrants at the MOC in Guantanamo Bay or other "lily pad" countries.² The letter alleges that the U.S. government's policy of interdicting Haitian asylum seekers in international waters and repatriating them to Haiti prevents Haitians from accessing the U.S. asylum system. The letter alleges that this policy discriminates against migrants who are seeking protection in the U.S. via travel by sea versus migrants who seek asylum at U.S. land

¹ The MOC is a facility that is utilized by DHS and the Department of State (DOS) to process migrants interdicted at sea, by USCG, for third-country resettlement. Migrants who are found to be eligible for third-country refugee resettlement are under DOS care and responsibility. ICE is responsible for the care of "not protected" migrants, i.e., migrants who are waiting to undergo protection screenings by USCIS as well as migrants who did not meet the protection standard and are awaiting repatriation to their countries of origin.

² On November 4, 2022, non-governmental organizations (NGO) submitted an organizational sign-on advocacy letter via email directly with CRCL. The letter, titled, "Do not send Haitians to detention at Guantanamo Bay or subject them to third-country arrangements," addressed to President Biden and signed by 289 NGOs, shared concerns with reports that Haitians interdicted at sea by the United States would be sent to third countries or to Guantanamo Bay. The letter is also publicly available. [Haitian Bridge Alliance, National Immigration Law Center, and 287 Organizations Call on Biden Administration to Reject Plans to House Haitian Refugees in Guantánamo Bay - National Immigration Law Center \(nilc.org\).](#)

borders. The letter also alleges that placing interdicted Haitians, including families and children, at offshore detention centers on Guantanamo Bay and other third countries contravenes international human rights law, undermine DHS's efforts to end the use of family detention in the U.S., and create a dangerous precedent for other countries to follow. The letter further alleges that returning interdicted Haitians to Haiti contravenes the U.S.'s commitment to the principle of *non-refoulement* and ignores recent calls by refugee and human rights organizations under the United Nations to cease repatriations to Haiti given the current country conditions there. The NGO Sign-On Letter was submitted to President Biden in response to two NBC news articles published on October 30, 2022, and November 4, 2022, raising concerns about an anticipated surge in maritime migration and the potential expanded use of the MOC—or third countries—to accommodate the increase in number of migrants interdicted at sea.³

FOCUS OF THE REVIEW

CRCL seeks to investigate DHS's operations involving Caribbean maritime interdictions of migrants who may be seeking protection based on a fear of persecution or torture in their countries of origin. This investigation spans across multiple DHS Components: the investigation will evaluate USCG's policies and practices for interdicting migrant vessels in the Caribbean, its process for identifying and referring possible fear claims and trafficking concerns to USCIS for protection screening, and USCG's role in repatriating migrants who do not meet the protection standard. The investigation will also evaluate USCIS's policies and practices for conducting protection screenings for fear of persecution and torture, both on board the USCG cutters and at the MOC. The investigation will evaluate ICE's care and custody of migrants who are not in the refugee resettlement process (i.e., "not protected" migrants) at the MOC. Finally, the investigation will also evaluate CBP's role in the care and/or custody of interdicted UC and migrants with emergent medical concerns.

CRCL is evaluating the role of all four components due to the interconnected role the agencies play interdicting maritime migrants.

CRCL seeks to conduct this investigation by reviewing relevant policies, training, and other documentation, conducting interviews with DHS personnel and migrants, and by observing DHS operations on board a USCG cutter and at the MOC.

CRCL will, if warranted, provide policy recommendations to help the Department ensure that its policies and practices involving protection screening and custody of migrants interdicted in the Caribbean do not diminish the civil rights and civil liberties of migrants who may be seeking protection in the United States.⁴ In conducting this investigation, CRCL recognizes that procedures relating to mass maritime migrations are complex, governed by multiple components

³ NBC News, "With a Possible surge of Haitian migrants ahead, the Biden Admin is weighing holding them in a third Country or at Guantanamo," October 30, 2022 at [With a possible surge of Haitian migrants ahead, the Biden admin weighs holding them in a third country or Guantánamo \(nbcnews.com\)](#) and "Immigration and rights groups ask Biden Administration not to send Haitian migrants to Guantanamo facility," November 4, 2022 at [Immigration and rights groups ask Biden administration not to send Haitian migrants to Guantanamo facility \(nbcnews.com\)](#).

⁴ 6 U.S.C. §111 establishes the Department of Homeland Security and its primary missions, including, to "(G) ensure that the civil rights and civil liberties of persons are not diminished by efforts, activities, and programs aimed at securing the homeland[.]"

within the Department and other Federal agencies, and present a fast-evolving operational landscape.

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; and,
- 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 CRCL 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 issued pursuant to these authorities.

Privilege and required transparency. Our communications with DHS 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 recommendations.

SCOPE OF REVIEW

The purpose of our review is to determine if DHS policies and practices involving protection screening and custody of migrants interdicted in the Caribbean are diminishing the civil rights and civil liberties of migrants seeking protection; if our findings suggest that the Constitution, a Federal statute, or a Departmental policy has been violated; and what steps, if any, should be taken by DHS to address the complaints, both individually (if the matter is ongoing) and as a matter of policy. This review also will examine the additional areas specified above for similar concerns related to protection of civil rights and civil liberties.

QUESTIONS PRESENTED

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INITIATING THE INVESTIGATION

At this time, we request that you contact Senior Policy Advisor (b) (6) and Policy Advisor (b) (6) as soon as possible about this complaint and CRCL’s plans to visit a USCG cutter and the MOC. 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) at (b) (6)

Enclosure

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