



Homeland
Security

May 24, 2023

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

Benjamine C. Huffman
Acting Deputy Commissioner
U.S. Customs and Border Protection

Fred B. Smith
Acting Chief Counsel
U.S. Customs and Border Protection

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

Lisa Taylor (b) (6)
Senior Attorney, Legal Counsel Division
Office of the General Counsel

SUBJECT: Civil Rights Implications of the “CBP One” Application
Complaint Nos. 005827-23-CBP, 005762-23-CBP,
006024-23-CBP, 006149-23-CBP, and 006058-23-CBP

The Office for Civil Rights and Civil Liberties (CRCL) has opened complaint investigation 005827-23-CBP, 005762-23-CBP, 006024-23-CBP, 006058-23-CBP and 006149-23-CBP, all of which involve allegations of significant difficulties found by migrants with the CBP One™ mobile application¹ (“CBP One” or “app”) functionality. The purpose of this memorandum is to notify you of the complaints, describe the allegations, and inform you that CRCL will retain these complaints for investigation.

¹ CBP One. <https://cbpone.cbp.dhs.gov/#/>. Accessed 3 April. 2023.

ALLEGATIONS

Specific complaint allegations include the following:

005827-23-CBP

On March 3, 2023, CRCL received email correspondence from Save the Children (SC) regarding a number of technical difficulties experienced by migrants related to the functionality of the CBP One app including but not limited to: 1) app crashes potentially related to insufficient server bandwidth; 2) limited registration window; 3) frequent app dates that interrupt registration processes; 3) app compatibility with all devices and operating systems; 4) issues related to the use of biometric registration.

005762-23-CBP

On February 2023, CRCL became aware that (b) (6) with “Al Otro Lado” submitted a request to CBP on behalf of (b) (6) and her daughter, (b) (6) from Cameroon to access the Title 42 exception process using CBP One.

Complainant alleged that they could not submit a request for an appointment through CBP One since they are French speakers, and the app is not available in this language. Complainant further alleged that they were not recognized by the app’s facial recognition feature due to being black. Complainant also submitted the response from CBP’s Admissibility Enforcement Unit at the San Ysidro Port of Entry indicating that the family must use CBP One to schedule an appointment.

006024-23-CBP

On March 31, 2023, CRCL reviewed the article from the website Border Report titled, “*DHS tweaks CBP One app after reports of family separations, agency says*,” regarding DHS improvements to CBP One based on stakeholder feedback, including updates making it easier for family units to secure appointments as a group.² According to the article several families who were waiting in northern Mexico had begun to send young undocumented children alone across the Hidalgo-McAllen-Reynosa International Bridge, from Reynosa, Mexico, and the Gateway International Bridge from Matamoros, Mexico, into Brownsville, Texas, after they could not secure asylum interviews as families via the app.

006058-23-CBP

On April 5, 2023, CRCL received email correspondence from (b) (6) (“complainant”) with Lawyers for Civil Rights Boston, alleging civil rights concerns related to features of the CBP One mobile application. Complainant alleged that the application has language access limitations and requires photo submissions that disproportionately reject people with darker skin tones, resulting in due process concerns. The complainant requests that DHS and CBP offer translations for all instructions and error messages possible for the application, upgrade the photo

² *DHS tweaks CBP One app after reports of family separations, agency says*, Border Report (Feb. 27, 2023), <https://www.borderreport.com/immigration/dhs-tweaks-cbp-one-app-after-reports-of-family-separations-agency-says>

submission software, and test any new technology with the demographic expected to use it prior to implementing it for full use.

006149-23-CBP

On April 17, 2023, CRCL received email correspondence from Attorney (b) (6), (b) (7)(C) (“complainant”) with Al Otro Lado on behalf of Mexican citizen (b) (6) requesting humanitarian parole/Title 42 exception because she was unable to access CBP One due to being placed into a confidential shelter for victims of domestic violence by a local city agency due to concerns for her safety following violence and threats by her ex-partner, an individual associated with local organized crime. Complainant stated that one of the requirements of the shelter is that residents are not allowed to use cell phones to protect the safety of both residents and staff. Complainant further alleged that a request for humanitarian parole or an exception from Title 42 was submitted to CBP officers at the San Ysidro Port of Entry on April 4, 2023, and on April 5, 2023, CBP issued a statement of denial: “Use the free CBP One application to schedule an appointment to present herself for inspection at the San Ysidro 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 (1) assess if current CBP One policies, procedures, directives, and guidance ensure all appropriate civil rights and civil liberties protections; (2) determine if the facts we find suggest that the Constitution, a federal statute, or a Departmental policy have been violated; and (3) assess whether CBP should take any steps to address concerns found during the investigation.

ISSUES PRESENTED

(b) (5)



It is possible that our investigation will reveal other matters of concern; if this occurs, we will inform you.

INITIATING THE INVESTIGATION

Contract Support Investigator (b) (6) and 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 telephone at (b) (6) or by email at (b) (6)

Enclosure

Copy to:

Pete Flores
Executive Assistant Commissioner
Office of Field Operations
U.S. Customs and Border Protection
(b) (6), (b) (7)(C)

Jacob B. Mayer
Chief of Staff
Office of Field Operations
U.S. Customs and Border Protection
(b) (6), (b) (7)(C)

Nathaniel Kaine
Chief of Staff
U.S. Customs and Border Protection
(b) (6), (b) (7)(C)

Rebekah Salazar
Executive Director
Privacy and Diversity Office
Office of the Commissioner
U.S. Customs and Border Protection
(b) (6), (b) (7)(C)

Brandon Ulmer
Acting Director, Operations Management
Office of Professional Responsibility
U.S. Customs and Border Protection
(b) (6), (b) (7)(C)

Michael Capparra
Acting Director, Custody Support and Compliance Division
Privacy and Diversity Office
U.S. Customs and Border Protection

(b) (6), (b) (7)(C)

