



Homeland
Security

July 5, 2023

MEMORANDUM FOR: Patrick J. Lechleitner
Deputy Director and
Senior Official Performing the Duties of the Director
U.S. Immigration and Customs Enforcement

Kerry E. Doyle
Principal Legal Advisor
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement

FROM: Dana Salvano-Dunn (b) (6)
Director, Compliance Branch
Office for Civil Rights and Civil Liberties
(b) (6)
Senior Attorney, Legal Counsel Division
Office of the General Counsel

SUBJECT: **Retention Memorandum: ICE Language Access Periodic Review**
CRCL Complaint No. 005402-23-ICE

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) is conducting a periodic review of U.S. Immigration and Customs Enforcement's (ICE) language access programs, policies, and services for limited English proficient (LEP)¹ individuals in immigration detention.² This investigation will assess ICE's compliance with, and implementation of, ICE policies under Executive Order No. 13166, *Improving Access to Services for Persons with Limited English Proficiency*, (Aug. 11, 2000) (EO 13166).

Specifically, this review will focus on how ICE Headquarters and ICE field offices have implemented the requirements of the ICE Language Access Plan (LAP) and related policies and procedures which stem from the EO 13166. Additionally, CRCL will examine ICE's oversight of

¹ A limited English proficient (LEP) person is one who does not speak English as their primary language, and has a limited ability to read, speak, write, or understand English.

² Under [6 U.S.C. § 345](#) and [42 U.S.C. § 2000ee-1](#), CRCL is called upon to "periodically review Departmental policies and procedures to ensure that the protection of civil rights and civil liberties is appropriately incorporated in Departmental programs and activities." In 2020, CRCL formally initiated and began conducting broadscale and thematic "periodic reviews" to evaluate whether DHS's implementation of a well-established policy or program complies with civil rights and civil liberties.

facility-level requirements, including those from the ICE's detention standards, and how these requirements have been executed to provide meaningful access for LEP individuals in ICE programs, activities, services, and operations.

The purpose of this memorandum is to explain how CRCL will work with ICE during this investigation.

BACKGROUND

Under DHS Delegation 19003, CRCL is responsible for ensuring that all federally conducted programs of the Department comply with Executive Order 13166. As a result, CRCL leads the Department's efforts, through policy, to provide meaningful access for LEP individuals in its programs, activities, services, and operations. Since the issuance of Executive Order 13166 in 2000, CRCL's Anti-Discrimination Group has worked with DHS components, including ICE, to develop, evaluate, and implement component-specific language access plans. On June 14, 2015, ICE issued its first LAP.³

In 2018, CRCL called upon each DHS Component to update their LAPs to ensure that the plans remain effective for the populations that each component serves and take into account any new technologies used to support language access efforts⁴ In response, on July 21, 2020, ICE issued an updated version, "ICE Language Access Plan: Supplemental Update Covering Fiscal Years 2019 and 2020" (LAP Supplemental Update).⁵ ICE's LAP Supplemental Update sets forth the standards that ICE programs and activities follow to provide services to external stakeholders, including LEP non-citizens in their custody.⁶

Throughout the course of this policy work, CRCL's Compliance Branch has continued to receive allegations and open complaint investigations into alleged language access violations, including breaches of the LAP, within ICE detention. Over the past five years, CRCL has received 208 allegations related to language access, opened 116 complaint investigations, and issued approximately 118 recommendations to ICE regarding language access issues in its detention facilities. For example, CRCL has identified concerns and made recommendations related to ICE and facility personnel using non-citizens as interpreters; not translating written forms and responses to grievances; not using interpreters when discussing/executing immigration forms; and not using interpretative services during medical appointments.

CRCL has taken steps to begin its review of a collected sample of language access complaints.⁷ These cases represent different aspects of the language access services and have been selected to

³ U.S. Immigration and Customs Enforcement (ICE), Language Access Plan (June 14, 2015), <https://www.ice.gov/doclib/about/offices/ero/pdf/iceLanguageAccessPlan2015.pdf>

⁴ CRCL Officer Cameron Quinn Memo to Component Heads on Updating LEP Plans (August 15, 2018), <https://www.dhs.gov/sites/default/files/publications/officer-memo-component-heads-updating-lep-plans-2018.pdf>

⁵ ICE Language Access Plan, Supplemental Update Covering Fiscal Years 2019 and 2020 *July 21, 2020*. Found at [DHS Language Access Plans | Homeland Security](#)

⁶ CRCL is aware that ICE is working to issue an updated language access plan and will review this plan in place of the current plan once issued in final.

⁷ CRCL has recently opened investigations into Complaint Numbers 004993-23-ICE and 004418-22-ICE, which are related to language access issues within ICE detention facilities.

assist CRCL in assessing the implementation of the current ICE Language Access Program. In addition, CRCL will request additional information and/or request interviews as the investigation proceeds.

CRCL intends to conduct this periodic review alongside separate investigations into individual language access allegations.

FOCUS OF THE REVIEW

This review will assess the overarching framework mandated by EO 13166 and ICE's related Language Access Plan, as well as how ICE personnel are executing the requirements set forth in this plan. Further, CRCL will review and assess ICE's compliance with the Performance Based National Detention Standards (2011 and 2008) and the National Detention Standards (2019) in order to assess the delivery of language access services to detained LEP non-citizens in ICE custody.

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 on our findings and recommendations.

SCOPE OF REVIEW

The purpose of our review is to determine if ICE is implementing requirements as directed by EO 13166 in the Language Access Plan and other ICE standards and policies related to language access for noncitizens in ICE custody; if t violated; what steps, if any, should ICE take to improve its oversight and implementation of language access services within ICE detention; and what steps, if any, should DHS take to address any individual language access issues that may be found to be in violation of ICE policy and procedures, both individually (if the matter is ongoing) and as a matter of policy.

QUESTIONS PRESENTED

(b) (5)



INITIATING THE INVESTIGATION

At this time, we request that ICE schedule initial discussions with Senior Policy Advisor (b) (6), and Policy Advisor (b) (6) as soon as possible related to our complaint and the plans to review this matter. We look forward to working together. If you have any questions, please do not hesitate to contact Ms. (b) (6) at (b) (6) and Ms. (b) (6) at (b) (6).

Enclosure

Copy to:

Deborah Fleischaker
Acting Chief of Staff
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

Claire Trickler-McNulty
Assistant Director
Office of Immigration Program Evaluation
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

Scott Lanum
Assistant Director
Office of Diversity and Civil Rights
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

Corey A. Price
Executive Associate Director
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

Daniel Bible
Deputy Executive Associate Director
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

Jason B. Mitchell
Chief of Staff
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

Dr. Stewart D. Smith
Assistant Director, ICE Health Service Corps
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

Dr. Ada Rivera
Medical Director, ICE Health Service Corps
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

Monica Burke
Acting Assistant Director, Custody Management
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

Stephen M. Antkowiak
Chief of Staff, Custody Management
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

Nathalie Lummert
Acting Deputy Assistant Director, Custody Programs
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

Greg Hutton
Unit Chief, Custody Programs
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

Christopher S. Kelly
Deputy Assistant Director
Office of Regulatory Affairs and Policy
U.S. Immigration and Customs Enforcement

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

