



Homeland
Security

July 26, 2022

MEMORANDUM FOR: Chris Magnus
Commissioner
U.S. Customs and Border Protection

Troy Miller
Deputy Commissioner
U.S. Customs and Border Protection

Scott K. Falk
Chief Counsel
U.S. Customs and Border Protection

FROM: Veronica Venture (b) (6)
Deputy Officer
Office for Civil Rights and Civil Liberties

Susan Mathias /s/
Assistant General Counsel (Legal Counsel)
Office of General Counsel

SUBJECT: Final Report
CRCL Complaint No. 002274-21-CBP

Purpose

The purpose of this memorandum is to inform U.S. Customs and Border Protection (CBP) about the results of the investigation conducted by the Office for Civil Rights and Civil Liberties (CRCL) into the allegation that CBP discriminated against (b) (6), who was a 17-year-old unaccompanied minor during the relevant time period, in violation of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794(a) (Section 504).

Background

In September 2021, CRCL received an email referral from the U.S. Department of Health and Human Services Office of Refugee Resettlement (ORR) containing a Significant Incident Report (SIR) regarding information that (b) (6) reported to her care provider while in ORR custody. According to the SIR, (b) (6), who has a mobility disability due to a congenital hip condition

which causes one leg to be shorter than the other, reported that United States Border Patrol (USBP) at the El Paso Centralized Processing Center (El Paso CPC) confiscated her orthopedic shoes that she used to assist in her mobility.

Through Department of Homeland Security (DHS) Delegation Number 19003, the Secretary of DHS delegated to the Officer for Civil Rights and Civil Liberties responsibility for coordinating the implementation of the Department's regulations issued pursuant to the requirements of Section 504. 6 C.F.R. Part 15. The regulations require the Department to issue findings of fact, conclusions of law, a description of a remedy for each violation found, and a notice of the right to appeal to the Officer for Civil Rights and Civil Liberties. *See* 6 C.F.R. § 15.70(g)(1)(i)-(iii). On February 28, 2008, based on an earlier but similar delegation, the Officer for Civil Rights and Civil Liberties delegated this responsibility to the Deputy Officer for Civil Rights and Civil Liberties for Programs and Compliance to allow an appeal to the Officer for Civil Rights and Civil Liberties as provided for in the Interim Regulation. DHS Delegation No. 19001. CRCL also has responsibility to oversee compliance with constitutional, statutory, regulatory, policy, and other requirements relating to the civil rights and civil liberties of individuals affected by the programs and activities of the Department. 6 U.S.C. § 345(a)(4). Additionally, DHS Management Directive Number 065-01 establishes policy and implementation mechanisms for ensuring nondiscrimination for individuals with disabilities served by DHS-conducted programs and activities under Section 504.

Conclusion

As stated in the attached letter containing CRCL's findings of fact, conclusions of law, and remedy regarding this complaint, we analyzed whether CBP violated Section 504 during (b) (6) detention at the El Paso CPC. CRCL has completed its investigation and concluded that the *El Paso Sector's Standard Operating Procedures* (El Paso SOP)¹ regarding property disposition has a disparate impact on individuals with disabilities, like (b) (6) in violation of Section 504 and the DHS Regulation.

Remedies Issued Pursuant to CRCL's Section 504 Authority

Under 6 C.F.R. §§15.70(g)(1)(ii) and 15.70(d)(1), CRCL may order remedies for both individual complainants and for those belonging to a class of persons, for each Section 504 violation found. If the complainant does not appeal to the Officer for Civil Rights and Civil Liberties, under 6 C.F.R. § 15.70(h), the ordered remedies are part of the final agency decision. If the complainant appeals, the Officer for Civil Rights and Civil Liberties will issue the final agency decision, which may include appropriate corrective action to be taken by the Department. 6 C.F.R. § 15.70(i).

¹ *El Paso Sector Stored Property Standard Operating Procedures*, July 2017.

Accordingly, and pursuant to CRCL's authority under 6 C.F.R. §15.70(g)(1)(ii), the remedy that is contained in our decision letter to the complainant is as follows:

CBP shall update the *El Paso Sector Stored Property Standard Operating Procedures* regarding property disposition to include procedures and implementation guidelines that formalize the practice of inquiring whether personal property items serve a medical and/or disability purpose prior to deeming property a health risk subject to immediate disposal and destruction. The guidance and procedures shall be disseminated to all USBP personnel in the El Paso Sector, including contractors, and incorporated into existing training for USBP personnel in the El Paso Sector.

The above remedy is issued pursuant to CRCL's authority under 6 C.F.R. §15.70(g)(1)(ii) and DHS Delegation Number 19003, which delegates responsibility for coordinating the enforcement of the Department's regulations issued pursuant to the requirements of Section 504 to the Officer for Civil Rights and Civil Liberties. CBP's cooperation in implementation of this resolution is authorized per 6 C.F.R. § 15.70(g)(2). Please inform CRCL within 60 days of how and when this remedy will be implemented by contacting CRCL Contract Investigator (b) (6) at (b) (6).

Enclosures

Copies to:

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