



Homeland
Security

November 4, 2022

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

Scott K. Falk
Chief Counsel
U.S. Customs and B (b) (6)

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: Close Memorandum Regarding
CBP's Treatment of Children with Disabilities
Complaint Nos. 18-09-CBP-0354, 18-09-CBP-0366,
18-09-CBP-0473, and 18-09-CBP-0565

Purpose

This memorandum concludes the investigation the Office for Civil Rights and Civil Liberties (CRCL) conducted into allegations related to U.S. Customs and Border Protection's (CBP) separation of children with disabilities from their parents or legal guardians.

Background

On September 10, 2020, CRCL issued a Recommendation Memorandum to CBP following an investigation of several CRCL complaints concerning the separation of children with disabilities from their families. CRCL found that existing CBP measures and guidelines did not fully address the factors that CBP should consider when separating a child with a disability from his or her parent or guardian, and that CBP documentation was often inadequate.

As a result of the findings, CRCL issued eight recommendations. On January 28, 2021, CBP responded; CBP divided three of CRCL's recommendations into subparts, resulting in 14 total responses to the original eight recommendations. In its response, CBP non-concurred with six of

CRCL's recommended actions. On August 13, 2021, CRCL issued a follow-up memorandum requesting that CBP reconsider its non-concurrences with respect to four recommendations. On April 20, 2022, CBP issued a memorandum restating its previous non-concurrences.

Analysis

CBP maintained its nonconcurrences [REDACTED] (b) (5) [REDACTED] stating current policy and legal requirements already govern the situations where a parent may be separated from his or her child. CBP also acknowledged that additional guidance relating to family separation may be developed as a result of policies developed pursuant to Executive Order 14011, *Establishment of Interagency Task Force on the Reunification of Families*, and settlement of the *Ms. L* litigation. CRCL appreciates that new guidance and policy could be forthcoming. [REDACTED] (b) (5) [REDACTED]

CBP also non-concurred with CRCL's recommendation [REDACTED] (b) (5) [REDACTED] CBP stated that information about known or reported disabilities is already shared with the appropriate government agencies, and that CBP has completed development of the Unified Immigration Portal (UIP) to enable more relevant data sharing. [REDACTED] (b) (5) [REDACTED]

CRCL and CBP share concerns about meeting the needs of children with disabilities in CBP custody, and agree that all efforts should be made to keep families together. CRCL appreciates that family separation policy and practices continue to evolve and that improvements may be forthcoming. However, CRCL remains concerned that because we were unable to reach agreement on the recommended actions described above, children with disabilities in CBP custody are missing additional civil rights protections to accommodate their particular vulnerability.

Conclusion

It is CRCL's statutory role to advise Department leadership and personnel about civil rights and civil liberties issues, ensuring respect for civil rights and civil liberties in policy decisions and implementation of those decisions. While CRCL continues to have concerns, CRCL is closing these complaints. CRCL, however, will continue to monitor allegations regarding separations of families with children with disabilities. If you have any questions, please contact the Director of the Compliance Branch, Dana Salvano-Dunn, at [REDACTED] (b) (6) or [REDACTED] (b) (6) [REDACTED]

Copy to:

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

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

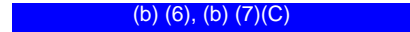
Jacob B. Mayer
Chief of Staff
Office of Field Operations
U.S. Customs and Border Protection
(b) (6), (b) (7)(C)

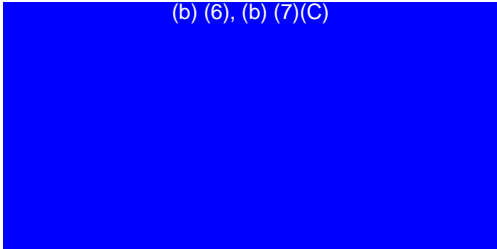
Raul L. Ortiz
Chief
U.S. Border Patrol
U.S. Customs and Border Protection
(b) (6), (b) (7)(C)

Matthew J. Hudak
Deputy Chief
U.S. Border Patrol
U.S. Customs and Border Protection
(b) (6), (b) (7)(C)

Jon A. Roop
Chief of Staff
U.S. Border Patrol
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 C. Ulmer
Acting Director of Operations Management
Office of Professional Responsibility
U.S. Customs and Border Protection
 (b) (6), (b) (7)(C)

Kristy Montes
Director, Custody Support and Compliance Division
Privacy and Diversity Office
U.S. Customs and Border Protection
 (b) (6), (b) (7)(C)