



Homeland
Security

February 8, 2024

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

Pete Flores
Acting Deputy Commissioner
U.S. Customs and Border Protection

Frederick B. Smith
Chief Counsel
U.S. Customs and Border Protection

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: Identifying, Linking, and Recording Family Units and Family Groups in CBP Systems of Record, Transporting Family Units and Family Groups together, and Aligning Processing Pathways
Complaint Nos. 006808-23-CBP, 006699-23-CBP, 007211-23-DHS, 007358-24-DHS, 007245-24-CBP, 007382-24-CBP, 007433-24-CBP, 000559W-24-CBP, 007553-24-CBP, 007548-24-CBP, 007477-24-CBP, 007727-24-CBP, 000903W-24-CBP, 008302-24-CBP, 008348-24-CBP

The Office for Civil Rights and Civil Liberties (CRCL) has received multiple complaints alleging that family members who were encountered together by CBP were put into different immigration processing pathways or had different immigration processing outcomes after being transferred to different DHS facilities in violation of CBP policy and procedures. 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.

ALLEGATIONS

CRCL has reviewed multiple allegations alleging that family members who were encountered together at or near their time of entry into the U.S. were not processed out of CBP custody together. Concerns raised in the complaints include not only possible violations of CBP policy and procedure, but also concerns that the immigration outcomes of similarly situated individuals may be different. Given the number of complaints received, CRCL has opened representative complaints aligned into specific subcategories based on the nature of the allegations and has descriptions below:

Family Unit Members put in Different Processing Pathways

Complaints involving Adult Fathers put in Different Processing Pathways

Complaint No. 007211-23-DHS

CRCL received correspondence alleging that (b) (6) was placed into a different processing pathway than his spouse and minor daughters after the family was encountered together. While his spouse, (b) (6) and his two minor daughters, (b) (6) and (b) (6) were released from CBP custody together with a Notice to Appear, Mr. (b) (6) was put into Expedited Removal (ER) and removed from the United States after an immigration judge affirmed USCIS's negative credible fear finding.

Complaint No. 007245-24-CBP¹

CRCL received correspondence involving allegations that two-year-old (b) (6) was encountered with his minor mother and adult father but did not have his immigration processing pathway aligned with both parents. The child and his mother, who were both transferred to ORR custody as unaccompanied children, were issued a Notice to Appear, while the father was placed into ER.

Family Group Members put in Different Processing Pathways

Complaint No. 007727-24-CBP²

CRCL received correspondence alleging that (b) (6), a 19-yr-old citizen of Angola, was encountered with her mother, three minor siblings, and her 24-yr-old

¹ CRCL has opened multiple other complaints (Nos. 007433-24-CBP, 007553-24-CBP, and 007548-24-CBP) making similar allegations of an adult father being put into a different processing pathway from his minor child and the child's UC mother.

² CRCL has opened a complaint (007382-24-CBP) involving similar allegations that after being encountered together, a large family comprised of a father, mother, two minor children, three adult children, and the husband of one of the adult children, that CBP placed the two adult daughters (b) (6) and (b) (6) in ER while other family members were released with a Notice to Appear. CRCL opened another complaint (006699-23-CBP) involving similar allegations; CRCL sent a short form request for

sister. While the mother and minor siblings were released with a Notice to Appear, (b) (6) and her adult sibling were placed into ER. Although the complainant alleges that their protection claims are based on the same factual circumstances (the mother's religious activities), (b) (6) adult sister received a positive Credible Fear finding, while (b) (6) had a negative finding that was affirmed by an immigration judge.

Complaints involving Married Couples put in Different Processing Pathways

Complaint No. 007358-24-DHS³

CRCL received correspondence alleging that (b) (6) and his wife, (b) (6), who was 7-months pregnant at the time the couple was encountered together, were put into different immigration processing pathways. While the wife was processed out of CBP custody with a Notice to Appear, the husband was placed into ER and transferred to ICE detention.

Complaint No. 000903W-24-CBP

CRCL received correspondence alleging that same-sex spouses (b) (6) and her wife (b) (6) were encountered together but were put into different immigration processing pathways. According to the allegations, the couple provided CBP with a marriage certificate but were told "families [in the U.S.] are a mother and a father and that (b) (6) were not a family". While (b) (6) and her minor daughter were processed out of CBP custody with a Notice to Appear, (b) (6) was placed into ER and removed to Colombia.

Family Group Members Transported to Different Facilities, with Different Processing Outcomes

Complaint No. 006808-23-CBP⁴

CRCL received correspondence alleging that (b) (6) and his sibling (b) (6), both of whom were unmarried and between the ages of 18-25 at the time of being encountered together, were transferred to different DHS facilities and subsequently received different immigration outcomes. Although they allege that their protection claims were based on the same factual circumstances (having received death threats from the same individual), the sister received a positive credible fear finding based on having established a torture claim, while the male sibling was removed after an immigration judge affirmed USCIS's negative credible fear determination.

information to CBP in connection with that complaint and received responsive information from CBP on September 19, 2023. CRCL has opened two other complaints (Nos. 008302-24-CBP and 008348-24-CBP) involving allegations that grandparents were placed into ER after being encountered with their minor grandchildren.

³ CRCL also has an open complaint (007477-24-CBP) involving similar allegations that (b) (6) and his wife, (b) (6) presented at a port of entry together but were placed in different processing pathways.

⁴ CRCL sent a short form request for information to CBP in connection with this complaint and received responsive information from CBP on Sept. 28, 2023.

Vulnerable Noncitizen put in Different Processing Pathway than Other Family Members

Complaint No. 000559W-24-CBP

CRCL received correspondence alleging that a 67-year-old woman, (b) (6) was encountered with her adult daughter, son-in-law, and grandchildren, and that although her daughter requested to stay with her elderly mother when CBP transported her to the hospital, the daughter was not permitted to do so and following treatment, Ms. (b) (6) was not reunited with her family members, but was allegedly coerced to accept voluntary return.

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:

- 1) Promoting respect for civil rights and civil liberties in policy creation and implementation by advising Department leadership and personnel, and state and local partners;
- 2) 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;
- 3) Investigating and resolving civil rights and civil liberties complaints filed by the public regarding Department policies or activities, or actions taken by Department personnel;
- 4) 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:

- 5) “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”;
- 6) “Interview[] persons and obtain[] other information[] deemed by CRCL to be relevant and require[e] cooperation by all agency employees”; and

- 7) “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 determine whether CBP has complied with applicable policies and procedures relating to processing family units and family groups; if any additional facts suggest any violations of the Constitution, a federal statute, or a Departmental policy has been violated; and what steps, if any, should be taken by CBP to address any concerns CRCL identifies, both individually (if the problem is ongoing) and as a matter of policy. It is our goal to produce a report that will assist in making DHS the best agency possible.

ISSUES PRESENTED

This investigation will cover the following question(s):



(b) (5)

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

INITIATING THE INVESTIGATION

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 phone at (b) (6) or by email at (b) (6)

Enclosure

Copy to:

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