



Homeland  
Security

November 8, 2023

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FROM: Dana Salvano-Dunn (b) (6)  
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(b) (6)  
Senior Attorney, Legal Counsel Division  
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SUBJECT: **Retention Memorandum:** Allegations Relating to  
Confidentiality and Decision Services in the Credible Fear  
Process at the Torrance County Detention Facility  
Complaint Nos. 006721-23-DHS, 005680-23-USCIS,  
and 006104-23-USCIS

The Office for Civil Rights and Civil Liberties (CRCL) has received complaints alleging that U.S. Immigration and Customs Enforcement (ICE) and U.S. Citizenship and Immigration Services (USCIS) fail to provide confidential settings for credible fear interviews and do not provide credible fear decision documents to noncitizens at the Torrance County Detention Facility (TCDF) in Estancia, New Mexico. The complaints further allege that ICE fails to notify noncitizens in advance of their scheduled immigration judge (IJ) reviews and the subsequent IJ

decisions. The purpose of this memorandum is to notify you of the complaints, describe those allegations, and inform you that CRCL will retain these complaints for investigation.

## ALLEGATIONS

To date, CRCL has received multiple allegations from different non-government organizations regarding the credible fear process for noncitizens at TCDF. The below allegations are representative examples of the allegations received.<sup>1</sup>

### **005680-23-USCIS**

On February 6, 2023, CRCL received correspondence from Innovation Law Library. The organization alleged that noncitizens at TCDF lacked privacy when their credible fear interviews occurred and noncitizens were not provided a copy of their credible fear determinations. Although this correspondence did not provide specific names of noncitizens, the organization raised these issues generally based upon previous conversations with noncitizens who were in custody at TCDF. On February 10, 2023, CRCL received supplemental information from Innovation Law Library that contained a draft declaration from (b) (6), a noncitizen formerly in custody at TCDF, alleging that during his credible fear interview, he was able to hear other noncitizens discussing their fear claims via telephones with asylum officers, and this lack of privacy prevented him from discussing his own fear claim which resulted in a negative credible fear determination. Mr. (b) (6) further alleged that ICE or USCIS never provided him with his credible fear decision documents, and ICE failed to notify him in advance of his scheduled IJ review.

### **006104-23-USCIS**

On April 11, 2023, CRCL received correspondence from New Mexico Immigrant Law Center. The correspondence alleged that the USCIS Houston Asylum Office did not serve credible fear determinations to noncitizens who were in ICE custody at TCDF. The correspondence also alleged that in some instances noncitizens received the determinations, including the credible fear interview transcripts, after the IJ reviewed the negative determination.

### **006721-23-DHS**

On July 5, 2023, CRCL received correspondence from Las Americas Immigrant Advocacy Center on behalf of (b) (6), a noncitizen formerly in custody at TCDF. The correspondence alleged that ICE and USCIS did not provide a confidential setting for the noncitizen's credible fear interview at TCDF, USCIS failed to serve the credible fear decision on the noncitizen, ICE failed to notify the noncitizen of his immigration judge review in advance, and ICE did not provide the noncitizen with copy of the IJ decision.

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<sup>1</sup> On March 6 and June 1 of 2023, CRCL notified USCIS of Complaint Nos. 005680-23-USCIS and 006104-23-USCIS through short form complaint initiation documents. Although USCIS is already aware of the first two matters, the summaries are included for clarity and to notify ICE of the allegations.

## 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 USCIS and ICE 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 the factual allegations in the complaints can be verified or disproven; whether any additional facts suggest that the Constitution, a federal statute, or Department policy or procedures has been violated; and what steps, if any, should be taken by USCIS or ICE to address any concerns CRCL identifies, both individually (if a problem is ongoing) and as a matter of policy. It is our goal to produce a report that will assist in making USCIS and ICE the best agencies possible.

### QUESTIONS PRESENTED

This investigation will cover the following question(s):



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

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