



# Office for Civil Rights and Civil Liberties

Second Quarter Fiscal Year 2009 Report to Congress



Homeland  
Security

# Foreword

I am pleased to present the following report, “Office for Civil Rights and Civil Liberties Second Quarter Fiscal Year 2009 Report to Congress.” The *Implementing Recommendations of the 9/11 Commission Act of 2007*, Public Law 110-53, requires the Office for Civil Rights and Civil Liberties (CRCL) to report quarterly regarding: (1) the number and types of review of Department actions undertaken; (2) the type of advice provided and the response given to such advice; (3) the number and nature of complaints received by DHS for alleged violations; and (4) a summary of the disposition of such complaints, the reviews and inquiries conducted, and the impact of these activities. In accordance with this requirement, this report serves as CRCL’s second quarter report, covering the period from January 1, 2009, to March 31, 2009.

Pursuant to congressional requirements, this report is being provided to the following Members of Congress:

The Honorable Joseph R. Biden  
President of the Senate

The Honorable Christopher S. Bond  
Ranking Member, U.S. Senate Select Committee on Intelligence

The Honorable Susan M. Collins  
Ranking Member, U.S. Senate Committee on Homeland Security and Governmental Affairs

The Honorable John Conyers, Jr.  
Chairman, U.S. House of Representatives Committee on the Judiciary

The Honorable Dianne Feinstein  
Chairman, U.S. Senate Select Committee on Intelligence

The Honorable Peter Hoekstra  
Ranking Member, U.S. House of Representatives Permanent Select Committee on Intelligence

The Honorable Darrell Issa  
Ranking Member, U.S. House of Representatives Committee on Oversight and Government Reform

The Honorable Peter T. King  
Ranking Member, U.S. House of Representatives Committee on Homeland Security

The Honorable Patrick J. Leahy  
Chairman, U.S. Senate Committee on the Judiciary

The Honorable Joseph I. Lieberman  
Chairman, U.S. Senate Committee on Homeland Security and Governmental Affairs

The Honorable Nancy Pelosi  
Speaker of the House, U.S. House of Representatives

The Honorable Silvestre Reyes  
Chairman, U.S. House of Representatives Permanent Select Committee on Intelligence

The Honorable John D. Rockefeller IV  
Chairman, U.S. Senate Select Committee on Intelligence

The Honorable Lamar Smith  
Ranking Member, U.S. House of Representatives Committee on the Judiciary

The Honorable Jeff Sessions  
Ranking Member, U.S. Senate Committee on the Judiciary

The Honorable Bennie G. Thompson  
Chairman, U.S. House of Representatives Committee on Homeland Security

The Honorable Edolphus Towns  
Chairman, U.S. House of Representatives Committee on Oversight and Government Reform

The Honorable Henry A. Waxman  
Chairman, U.S. House of Representatives Committee on Oversight and Government Reform

Inquiries relating to this report may be directed to the Office for Civil Rights and Civil Liberties at 1-866-644-8360 or [civil.liberties@dhs.gov](mailto:civil.liberties@dhs.gov).

Sincerely,



Stephen Shih  
Acting Officer for Civil Rights and Civil Liberties  
U.S. Department of Homeland Security

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# **OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES**

## **I. CRCL Mission**

In accordance with 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, the mission of the Office for Civil Rights and Civil Liberties (CRCL) is to assist the dedicated men and women of this Department to secure the nation while preserving our freedoms and our way of life. CRCL assists our colleagues in four ways:

1. We help the Department to shape policy in ways that are mindful of civil rights and civil liberties by providing proactive advice, evaluation and review of a wide range of technical, legal and policy issues;
2. We investigate and resolve complaints filed by the public regarding Departmental policies or actions taken by Departmental personnel;
3. We provide leadership to the Department’s equal employment opportunity programs, seeking to make this Department the model Federal agency; and
4. We are engaged with the public regarding these issues.

## **COMPLAINT INVESTIGATIONS**

CRCL investigates complaints under 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, which requires the DHS Officer for Civil Rights and Civil Liberties to:

- Review and assess information alleging abuses of civil rights, civil liberties, and racial, ethnic, or religious profiling, 6 U.S.C. § 345(a)(1);
- Oversee compliance with Constitutional, statutory, regulatory, policy, and other requirements relating to the civil rights or civil liberties of individuals affected by the programs and activities of the Department, 6 U.S.C. § 345(a)(4);
- Investigate complaints and information indicating possible abuses of civil rights or civil liberties, unless the Inspector General of the Department determines that any such complaint or information should be investigated by the Inspector General, 6 U.S.C. § 345(a)(6); and
- Periodically investigate and review department, agency, or element actions, policies, procedures, guidelines, and related laws and their implementation to ensure that such department, agency, or element is adequately considering civil liberties in its actions, 42 U.S.C. § 2000ee-1(a)(2).

### **I. Summary of Complaints Received Under CRCL Statutes**

CRCL received 31 new complaints during the second quarter involving the following components: U.S. Customs and Border Protection (CBP) - 8; DHS - 5 (implicate more than one component); Immigration Customs Enforcement (ICE) - 12; and Transportation Security Administration (TSA) - 6.

CRCL closed 36 complaints in the second quarter. These complaints involved the following components: CBP - 8; DHS - 2 (implicate more than one component); Federal Emergency Management Agency (FEMA) - 1; ICE - 18; and TSA - 7.

<b>PRIMARY ISSUES FOR NEW COMPLAINTS</b>		<b>PRIMARY ISSUES FOR CLOSED COMPLAINTS:</b>	
Abuse of authority/color or race	7	Abuse of authority/color or race	2
Conditions of Detention	8	Conditions of Detention	15
Discrimination	4	Discrimination	7
Other (misuse of government property)	1	Other (misuse of government property)	0
Profiling	0	Profiling	4
Treatment	7	Treatment	2
Unaccompanied Minors	4	Unaccompanied Minors	5
Watch Lists	0	Watch Lists	1
<b>TOTAL:</b>	<b>31</b>	<b>TOTAL</b>	<b>36</b>

## **II. Examples of Complaints Resolved by CRCL**

**A. *Conditions of Detention for Adult ICE Detainees.*** CRCL issued a Final Report and Recommendations to ICE regarding the treatment of detainees at a detention facility in Wisconsin. The complaint raised issues related to the facility's compliance with ICE Detention Standards on Detainee Grievance Procedures, Staff-Detainee Communication, and Detainee Classification System. CRCL made recommendations for detainee care in the areas of sexual abuse and assault prevention, and the facility's compliance with the ICE detention standard on Classification System. The ICE Office of Detention and Removal Operations (DRO) welcomed and fully addressed each recommendation. Review of medical care at the facility is ongoing.

**B. *Complaint Filed Under Section 504 of the Rehabilitation Act of 1973.*** CRCL closed a complaint and issued a Final Report and Recommendations to CBP and ICE, as well as a Findings of Fact, Conclusions of Law and Remedy to the Complainant. The complaint alleged discrimination based on disability by CBP and ICE for failing to provide a reasonable accommodation for an individual with a disability in the pedestrian line at the San Ysidro, CA Port of Entry. CRCL concluded that CBP and the Federal Protective Service (FPS) are required to provide reasonable accommodations for individuals with disabilities provided the individual articulate such a need at the time of crossing. CRCL also concluded that the allegations of misconduct against the contract security officer by the Complainant were unsubstantiated.

**C. *Complaint Concerning Citizen's Treatment by CBP and ICE.*** CRCL issued a Final Report and Recommendations to CBP and ICE regarding a complaint alleging that a bi-racial photography student photographing an infrastructure site was approached and interviewed by CBP and ICE due to his race. The complaint also raised issues pertaining to 18 U.S.C. § 793, *Gathering Transmitting or Losing Defense Information*. CRCL did not substantiate the Complainant's claim of racial profiling by DHS officials.

## **III. Examples of Ongoing Issues Being Reviewed by CRCL Investigators**

**A. *Conditions of Detention for Adult Detainees.*** CRCL is reviewing complaints alleging inadequate conditions of detention for ICE detainees at two facilities in Texas, implicating numerous ICE national detention standards including access to medical and dental care, use of force, staff-detainee communication, detainee searches, recreation, and food service. CRCL will review these complaints pursuant to the applicable ICE national detention standards.

**B. *Treatment of Unaccompanied Minors.*** CRCL opened four new complaints and resolved five complaints concerning the treatment of unaccompanied minors in DHS custody. Allegations included physical and verbal abuse and threats, inadequate food and bedding, inadequate medical attention while in DHS custody, and lack of telephone access.

CRCL continues to work with the DHS components responsible for unaccompanied minors to implement CRCL's recommendations concerning appropriate treatment by DHS, and subsequently reviews component compliance with those recommendations. In addition, CRCL maintains a productive relationship with leadership and staff of the U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR), which assumed responsibility, under the Homeland Security Act of 2002, for the care and placement of unaccompanied minors after DHS apprehension and processing. Finally, CRCL participates in opportunities to review and comment on legislation as well as on ICE, CBP, and departmental policies impacting unaccompanied minors such as the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, and policy concerning the transport of unaccompanied minors from DHS facilities to ORR placements.

**C. Removal of Passengers from Air Tran Flight.** CRCL opened a complaint concerning the treatment of a Muslim family by TSA employees at the Ronald Reagan Washington National Airport. The complaint resulted from the removal of nine Muslim passengers from an Air Tran flight and alleged that the passengers were subjected to religious profiling based upon their appearance. CRCL's investigation of this complaint is ongoing.

**D. ICE Arrest of Day Laborers in South Texas.** CRCL is reviewing a complaint from the New Orleans Workers' Center for Racial Justice concerning the arrest by ICE of day laborers recruited to work on cleanup operations in the Beaumont, TX area following Hurricanes Gustav and Ike. The complaint alleged race and national origin discrimination when workplace disputes between the day laborers and their employer led the employer to retaliate by providing information regarding their immigration status to law enforcement. This information was eventually received and acted upon by ICE.

**E. Traveler Redress Inquiry Program.** DHS TRIP serves as a single point of contact for individuals who have inquiries or seek resolution regarding difficulties they experienced during their travel screening at transportation hubs. CRCL receives TRIP travelers' complaints asserting discrimination on the basis of race, disability, religion, gender, or ethnicity by DHS employees. During this period, DHS TRIP received 5,346 requests for redress and 266 individuals alleged DHS employees had discriminated against them. For additional information on how travelers may file a complaint, visit [www.dhs.gov/trip](http://www.dhs.gov/trip).

#### **IV. Enhanced Communication and Coordination Efforts with ICE**

**A. Notification Procedures.** CRCL and ICE DRO instituted new notification procedures to ensure that complaints alleging significant medical issues are brought to the immediate attention of DRO. Upon receipt of information involving allegations of serious problems involving medical care, CRCL notifies DRO leadership to allow DRO to take timely and appropriate action. CRCL may issue a data request regarding specific issues to ICE at any time, including after notification of the death of a detainee. During the second quarter CRCL notified DRO of six significant medical issues.

**B. Meeting with the Secretary's Special Advisor on ICE and DRO.** CRCL has participated in meetings with Dr. Dora Schriro and discussed CRCL's role within DHS, including experience in investigating conditions of detention for ICE detainees and providing appropriate policy advice in this area. CRCL also discussed recurring allegations from facilities operating under inter-governmental service agreements, particularly with regard to the provision of medical care, and other ICE programs and activities that impact the civil rights and civil liberties of persons within the United States.

## **CRCL PROGRAMS**

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The following is a summary of the CRCL Programs Division's second quarter activities. The CRCL Programs Division reviews DHS programs, policies, reports, regulations, and other activities and provides advice to DHS senior leadership and staff on issues at the intersection of homeland security and civil rights and civil liberties.

### **I. Disability and Special Needs Policy and Technical Assistance**

**A. Outreach Activities.** CRCL believes that many current and future obstacles can be avoided or resolved if collaborative relationships between special needs communities, the Federal Government, and the private sector are established and maintained. To develop and encourage these relationships, CRCL has a proactive outreach program. Below are selected outreach activities in which CRCL staff presented remarks, participated in workshops or plenary sessions in the second quarter FY 2009:

- Interagency Coordinating Council (ICC) on Emergency Preparedness and Individuals with Disabilities Workplace Subcommittee meeting. Provided an overview of CRCL activities; insights regarding the ICC moving into the new Administration; and input into the next addendum to the

*Framework of Guidance* document related to “Preparing for Visitors and Contractors with Disabilities.”

- ICC Non-governmental Organizations (NGO) Partners meeting where Ready.gov provided a presentation on how to involve stakeholders in preparedness activities.
- Attended the ICC Health Subcommittee Meeting hosted by HHS. Agenda items included discussion of the Report to Congress on the Implementation of the Pandemic and All Hazards Preparedness Act, Provisions Addressing At-Risk Individuals.
- Convened a meeting of the ICC Points of Contact (POC) where featured presenter, Dr. Kevin Yesky, Deputy Assistant Secretary and Director of Preparedness and Emergency Operations at HHS, presented on the role of emergency support function (ESF) #8 in disaster response.
- American National Standards Institute Conference that was co-sponsored by ANSI and the National Fire Protection Association to identify and pursue new standards in several areas of emergency evacuation.
- Hosted a Department-wide workshop: “Americans with Disabilities (ADA) Amendment Act of 2008: Major Changes to the Definition of Disability,” which highlighted changes to the definition of disability.
- Attended a meeting of the United We Ride Emergency Transportation Workgroup and provided an overview on recent activities and offered input into the possible expansion of the workgroup’s mission.
- Provided remarks at the plenary session of the Collaborating Agencies’ Disaster Relief Effort (CADRE), Together We Do Better Conference. CRCL also conducted a workshop at the emergency management conference. Additionally, CRCL met with the Executive Director of the Urban Area Security Initiative Bay region.
- Participated in a panel discussion at the 2<sup>nd</sup> Annual DHS Women’s Leadership Forum: “Women Taking the Lead.”

***B. Emergency Preparedness Planning, Training, and Implementation Activities.*** During the second quarter FY 2009, CRCL participated in several preparedness planning, training and implementation activities:

- FEMA’s Citizen Corps meeting to discuss plans for collaboration regarding the Annual Citizen Corps Conference planned for August 2009.
- Input into pilot course, “Household Pets in Disaster,” led by the University of Illinois in Chicago. FEMA Voluntary Private Sector Accreditation and Certification Preparedness Program Public Stakeholder Meeting designed for stakeholders to comment on the program, which is intended to raise the level of private sector preparedness.
- Meals on Wheels pilot course and provided feedback in the context of special needs populations, as well as overall course design.
- Winter 2009 Incident Communications Public Affairs Coordination Committee meeting which provided a forum for all government communicators to process information, share best practices, and network.
- Meetings with NGOs to discuss the Gulf Coast Civic Works Campaign which aims to achieve the passing of legislation resulting in a comprehensive program to revitalize areas impacted by Hurricane Katrina.
- Meeting with FEMA Federal Coordinating Official (FCO) to discuss coordination during Hurricane Ike recovery operations.
- DHS training on effective completion of the biannual U.S. Department of Justice (DOJ) questionnaire on compliance with Federal civil rights laws in DHS assisted programs and activities.
- Liberty RadEx Exercise Concepts and Objectives planning meeting designed to test department/agency responsibilities in a “post emergency” phase following a radiation incident.

- National Council on Disability Quarterly meeting where the Special Assistant to the President for Disability Policy, Kareem Dale, spoke about President Obama's plans to empower Americans with disabilities.

## **II. Engagement with Cultural, Ethnic, and Religious Communities**

The CRCL "Engagement Team" leads the effort to regularly engage with leaders from the American Arab, Muslim, Sikh, South Asian, Somali, and Middle Eastern communities and non-profit organizations across the country. The following is a brief summary of some of the work in this area during the second quarter of FY 2009:

### ***A. Roundtables and Meetings.***

- Convened the bi-monthly roundtable in Los Angeles, CA with leaders from the U.S. Government and leaders from the American Arab, Muslim, Sikh, South Asian, Somali, and Middle Eastern communities. Discussion topics included goals for 2009, the U.S. Government's transition to a new Administration, and new US-VISIT policies.
- Attended the regular roundtable in Boston, MA with local community leaders and government officials to discuss services provided by U.S. Citizenship and Immigration Services (USCIS) including the new naturalization exam and an overview of the fraud detection and national security unit.
- Attended a regular roundtable in Boston, MA with local community leaders and government officials. The roundtable included a presentation by the FBI in response to questions about the use of informants and clarification of the FBI's continued commitment to constructively engage with American Muslim organizations.
- Led a conference call with a number of Somali American community leaders from the Washington, DC metropolitan area to provide updates on CRCL outreach and engagement activities.
- Met with government officials in Minneapolis/St. Paul, Minnesota who are engaged with local Somali American communities and discussed outreach activities. CRCL also met with representatives from the Somali community where additional insight was gained regarding community concerns and grievances.
- Participated in two roundtables in Minnesota facilitated by the Federal Bureau of Investigations (FBI) and ICE, and engaged with 17 organizations representing the Somali American community. CRCL also met with representatives of the Social Security Administration's Minnesota Office to exchange information about engagement efforts.
- Met with the Executive Director of Sister Cities International to discuss the organization's engagement efforts with Muslim majority countries.
- Met with representatives of the Bosniak Federation of America to discuss CRCL outreach and engagement activities.
- Presented an overview of CRCL activities to BLIND, Inc., an adjustment to blindness training center in Minneapolis.
- Briefed the International Association of Chiefs of Police and the National Sheriff's Association concerning the protection of civil rights and civil liberties in a homeland security environment, as it relates to state and local law enforcement.
- Met with representatives of the Raindrop Turkish House, the Institute for Interfaith Dialogue, the Gülen Institute, and members of the South Asian American community in Houston, Texas. While in Houston, CRCL also attended a community roundtable with Arab, Muslim, Sikh, South Asian, and Middle Eastern American communities, which the local FBI field office hosted.
- Met with the Council of Islamic Organizations of Greater Chicago. The organization includes members from 50 community organizations, social service agencies, mosques, schools, and community centers. CRCL discussed engagement efforts in Chicago, IL.

- Provided information on CRCL activities at the Federal Law Enforcement Career Fair held at York College, coordinated by Congressman Gregory Meeks.

***B. Engagement with Government, Private Sector, and NGO Partners.***

- Presented on engagement efforts with ethnic and religious communities at the State Department Foreign Service Institute “Transformational Diplomacy Seminar on Counterterrorism and Soft Power.”
- Attended the U.S. State Department Foreign Service Institute Seminar “Creative Engagement with Diasporas in the U.S. to Further American Interests.”
- Attended the regular DOJ, Civil Rights Division interagency meeting with community leaders from the Arab, Muslim, Sikh, South Asian, Somali, and Middle Eastern Communities.
- Briefed staff from the Senate Homeland Security and Governmental Affairs Committee, Subcommittee on Oversight of Government Management, the Federal Workforce, and District of Columbia on CRCL engagement efforts with the Somali American communities in Ohio.
- Briefed staff from the House Committee on Homeland Security on CRCL engagement efforts with the Somali American community in Minnesota.
- Participated in a panel discussion of the Transatlantic Initiative (TAI), a project formed under the auspices of the US-UK Joint Contact Group that serves as the official bilateral engagement between UK counter-terrorism officials and DHS. The TAI aims to build a long-term network of Pakistani Americans and Pakistani Britons, and serve as a catalyst to foster integration and civic engagement among current and future generations.
- Organized a Speaker Series on the Somali Diaspora where Professors from Davidson College and Oakland University, as well as the City of Columbus, Ohio Mayor’s Office, presented on the Somali Diaspora.
- Organized a Speaker Series on Somali Diaspora with Dr. Altaf Husain where Dr. Husain presented on his academic studies on the Somali diaspora in the U.S., as well as his experience working on the social and economic issues affecting Somali communities, especially youth.
- Organized a brown-bag briefing on U.S. and Somalia policy for interagency partners, featuring presentations by representatives of the U.S. Department of State and the U.S. Agency for International Development.

**III. International Engagement Initiatives**

In the second quarter of FY 2009, CRCL continued to increase its international initiatives in the arena of the protection of civil rights and civil liberties. Strengthening relationships with foreign partners, as well as the international community in the United States, continues to be a high priority for this Department. The following is a brief summary of some of the work in this area in which CRCL:

- Briefed a delegation of the Organization of Security and Cooperation in Europe in Vienna, Austria. The briefing, held via teleconference, was organized by the U.S. Department of State, Office of European Security and Political Affairs. CRCL educated our European partners on our efforts in countering violent extremism through engagement with Arab, Muslim, and South Asian communities.
- Briefed a delegation from the European Union on DHS engagement efforts involving the protection of civil rights and civil liberties, in the context of homeland security. The briefing was held in conjunction with partners from the DHS Privacy Office.
- Briefed the Assistant Secretary from the Department of Immigration and Citizenship, Government of Australia. The policy and strategy discussion focused on the use of detention versus non detention preferences in immigration matters. CRCL and the Government of Australia discussed mutual obligations of the protection of civil rights in the context of the International Covenant on Civil and Political Rights.

- Discussed various DHS initiatives with a delegation from the Federal Republic of Germany, which included the German Federal Commissioner on Data Protection. CRCL discussed its proactive role in working with the DHS Privacy Office to ensure data protection of personal information.

#### **IV. Immigration Initiatives**

During the second quarter of FY 2009, CRCL continued to work with its DHS colleagues on the civil rights and civil liberties impacts of the Department's immigration policy initiatives. For example, CRCL:

- Hosted a meeting of the Immigrant Worker Roundtable, an interagency and non-governmental working group dedicated to ensuring that civil rights and civil liberties considerations are fully incorporated into DHS policies and procedures that affect U.S. and immigrant workers. This meeting addressed the potential use of biometrics to confirm the identities of employees via the E-Verify program.
- Hosted a governmental meeting of the Immigrant Worker Roundtable with representatives from DHS, National Labor Relations Board, DOJ's Civil Rights Division, and Equal Employment Opportunity Commission. The participants discussed improved inter-agency communication when complainants or witnesses in civil rights-related agency investigations or legal action are in detention.
- Briefed staff from the House of Representatives on the civil rights implications of E-Verify. The briefing was requested by the Ways and Means Committee and included staff from a number of committees including Judiciary, Education and Labor, and Appropriations.
- Attended an E-Verify evaluation workshop sponsored by Westat in Phoenix, AZ. The participants were employers that are required by law to use E-Verify. Issues discussed included the impact of the mandatory Arizona law on legal workers and small employers, communication regarding E-Verify use, and results and reactions of employers.
- Trained new employees at USCIS, Verification Division on the civil rights implications of the E-Verify electronic employment eligibility verification system.
- Participated in the inaugural membership conference call of the Rights Working Group, a coalition of over 250 non-governmental organizations concerned with issues at the intersection of civil and human rights, immigration, and homeland security.
- Spoke on a panel at a symposium hosted by Penn State University's Dickinson School of Law Center for Immigrants' Rights on "Immigration Enforcement and Security."
- Spoke on a panel at the American Bar Association's midyear meeting in Boston, MA on the role and responsibilities of CRCL with respect to medical care for individuals in ICE custody.

#### **V. Civil Liberties Impact Assessments**

CRCL is regularly called upon to give civil rights and civil liberties advice on a variety of policies and programs. The Civil Liberties Impact Assessment (CLIA) provides a formal, written evaluation of a program to identify potential civil liberties concerns. The following is an update of the CLIAs in process and completed during the second quarter of FY 2009:

- *State, Local and Regional Fusion Centers one-year follow-up, mandated by Section 511 of the 9/11 Act.* CRCL visited several fusion centers and gathered additional materials and information. A CLIA is being drafted. The 90-day review of the DHS program to support state, local, and regional fusion centers was submitted to Congress in the first quarter and is available at [www.dhs.gov/civilliberties](http://www.dhs.gov/civilliberties).
- *National Immigration Information Sharing Office (NIISO), mandated by Division E, Title V of the Consolidated Appropriations Act of 2008, Public Law 110-161 and Division D, Title V of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, P.L. 110-329.* Congress required the Secretary to review and certify that the NIISO program "complies with all existing laws, including all applicable privacy and civil liberties standards" and that the Government Accountability Office (GAO) reviews the Secretary's certification before any funds can be used to commence NIISO operations. A CLIA for NIISO is being drafted.

- *Interagency Threat Assessment and Coordination Group (ITACG)*, mandated in Section 521 of the 9/11 Act. As required, a draft CLIA is being coordinated with the DHS Privacy Office, the DOJ Chief Privacy and Civil Liberties Officer, and the Office of the Director of National Intelligence (ODNI) Civil Liberties Protection Officer.
- *Information Sharing Fellows Program*, mandated by Section 512 of the 9/11 Act. This CLIA on the Homeland Security Information Sharing Fellows was completed and delivered to Congress on April 18, 2008. A one year follow-up CLIA is currently in progress.

## **VI. Civil Liberties Institute**

In the second quarter FY 2009, the Civil Liberties Institute (CLI) provided classroom and on-line training, distributed multiple training products, and continued to partner with DHS components and other agencies in the development and delivery of civil rights and civil liberties training. CLI supports DHS through State and Local Fusion Center (SLFC) training and through its work with DHS components.

*Training DHS Intelligence Analysts Deployed to Fusion Centers.* CRCL is fulfilling its statutory mandate<sup>1</sup> to provide civil rights and civil liberties training to DHS analysts before deployment to SLFCs. In this reporting period, CRCL trained DHS Office of Intelligence and Analysis (I&A) analysts who will be working in three locations - Houston, Dallas, and Chicago.

*Training and Support for Fusion Center Personnel.* CRCL is developing an expanded “toolkit” of civil rights and civil liberties resources to support training for all fusion center personnel in FY 2009 and FY 2010. In collaboration with the DOJ’s Bureau of Justice Assistance and the Global Initiative as well as the DHS Privacy Office and I&A, CRCL:

- Launched an expanded version of the web portal that contains a simplified “road map” to all relevant Federal materials on privacy, civil rights and civil liberties in the Information Sharing Environment (ISE), and serves as a resource for the onsite and distance training of fusion center staff;
- Hosted a half day “Learning Lab” session at the National Fusion Center Conference in March 2009. CRCL also distributed various training materials;
- Announced the launch of the integrated State and Local Fusion Center training program;
- Participated in the Indiana Statewide training and presented on civil rights and civil liberties issues to the over 130 liaison officers who are associated with the fusion center;
- Confirmed three training dates for the Maryland fusion center (April 29, May 13, and May 20) and met with representatives of the western states of CA, WA, OR, and AZ, to discuss future training; and,
- Met with leadership from the Federal Law Enforcement Training Center’s (FLETC) Rural Policing Institute to plan for an integrated approach to the privacy and civil liberties training required by the 9/11 Commission Act.

*Training and Support for DHS personnel and Other Federal Agencies.* CLI continued to support the CRCL online and class room courses offered to DHS personnel and other Federal agencies in a variety of ways including the following:

- Coordinated with the Foreign Service Institute of the U.S. State Department and provided an electronic version of the *Employing Persons with Disabilities* course that will be modified for their use and offered to all managers;
- Supported the February CRCL Review and Compliance Division and training workshop on investigating complaints involving civil rights and civil liberties issues by ICE factfinders during a weeklong session at the FLETC center in Georgia;

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<sup>1</sup> Section 511(a) of the 9/11 Commission Act of 2007.

- At the request of one CBP office, CRCL reviewed and commented on their “Anti-Terrorism Passenger Training” course with a focus on the “cultural competence for law enforcement” portion; and,
- Conducted a civil rights/civil liberties workshop at I&A’s *Basic Intelligence and Threat Analysis (BITAC)* course offered to DHS personnel from all components.

**VII. Intelligence Community Activities and Information Sharing**

CRCL provides civil rights and civil liberties advice to DHS senior leaders and program managers on intelligence and information sharing programs and activities. CRCL helps to ensure such information sharing activities are conducted in a lawful manner consistent with Constitutional, statutory, regulatory, and other legal and policy requirements, including applicable civil liberties standards.

In addition to the activities already cited, CRCL contributed to Departmental programs and policies relating to the State and Local Fusion Center Program, Suspicious Activity Reporting, standards for information sharing outside of the Department, cyber security initiatives, and special projects. CRCL visited several fusion centers and gathered additional materials to support its one-year CLIA of the State, Local and Regional Fusion Centers program, and coordinated with the DHS Privacy Office, I&A personnel assigned to ITACG, DOJ and ODNI on a draft CLIA for the ITACG. CRCL also continued work on CLIAs for the NIISO and the Information Sharing Fellows Program. CRCL also continues to actively participate in the DHS Information Sharing Coordinating Council and was added as an ex officio member to the DHS Information Sharing Governance Board. CRCL continues to participate in the Information Sharing Environment Privacy Guidelines Committee, chairing two working groups and helping to issue a white paper on civil liberties and privacy in the information sharing environment that was posted to the new State, Local and Tribal Fusion Center training site and referenced in training for fusion center personnel.

CRCL is participating in planning for the National Level Exercise 2009 for the purpose of ensuring that civil liberties are protected in the sharing of information disseminated during the exercise. CRCL is injecting multiple scenarios into the exercise to assess the degree to which care is taken to ensure the protection of First Amendment and other civil liberties when sharing information with Federal, State and local partners in response to a simulated crisis. The exercise is scheduled for next quarter.

CRCL also coordinated with I&A in the development of a training course for I&A’s NIISO program. The course includes modules on privacy, civil rights/liberties, intelligence oversight, and immigration information handling requirements.

**VIII. Office of Accessible Systems & Technology**

CRCL and the DHS Chief Information Officer (CIO) continue to collaborate to fully implement and enforce the provisions of Section 508<sup>2</sup> throughout the Department.

**A. *Accessibility Helpdesk.*** The Office of Accessible Systems and Technology (OAST) received 146 helpdesk requests from 13 DHS components, two outside agencies, and three public entities. Assistance was provided in the following areas: Technical Assistance, Application Reviews, Document Reviews, IT Requests, Enterprise Architecture (EA) Reviews, and 504 Reasonable Accommodations. Component Section 508 Programs processed an additional 111 Section 508 related technical assistance requests.

**B. *Document Accessibility.*** OAST reviewed and remediated 27 electronic document files including forms, memorandums, informational pamphlets, flyers, and reports for seven components and the

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<sup>2</sup> Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998 (P.L. 105-220), August 7, 1998.

Argonne National Laboratory. Additionally, OAST trained 36 individuals across DHS on how to create accessible documents.

**C. Training.** OAST successfully trained 128 DHS employees through online, classroom, one-on-one, and hands-on trainings. In March, OAST hosted its first “Introduction to Section 508” Brown Bag presentation.

**D. Web and Application Accessibility Assessments.** OAST evaluates DHS Web sites quarterly for accessibility. Second quarter results show that accessibility of DHS Web sites improved 2% over last quarter raising overall DHS accessibility by 42% since the program’s inception two years ago. Five components, USCIS, National Protection Programs Directorate (NPPD), ICE, the Directorate for Science and Technology (S&T), and United States Secret Service (USSS) received perfect scores.

OAST evaluated 14 Web applications. Of those evaluated, ten applications failed for Section 508 compliance. OAST also evaluated 29 Commercial-Off-the-Shelf applications for Section 508 compliance. In total, 12 passed; one passed with conditions, nine passed with exceptions, six failed, and one was cancelled by the requestor.

**E. Compliance Reviews.** OAST processed five EA Reviews comprised of four Technical Insertions and one Program Alignment. OAST personnel also reviewed 114 acquisition packages in the amount of \$1,245,474,598 for Section 508 compliance. In the second quarter, 81 acquisitions were approved, 30 are in process, and three have pre-conditional status. Out of the 81 acquisitions approved, 25 were granted National Security Exceptions.

**F. Interim Change Control Board (ICCB).** OAST reviewed 346 standard IT change requests (326 approved, 20 deferred). There was one emergency change request that was also approved. OAST intervened or has follow-up activity pending on 50 of the requests. Cooperation between the Enterprise Vault team and OAST resulted in a new release of Enterprise Vault capable of being used by employees with disabilities.

## **EQUAL EMPLOYMENT OPPORTUNITY**

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CRCL provides Departmental guidance and standards for establishing and maintaining effective programs of equal employment opportunity (EEO) as required under applicable legal authorities, including Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e) et seq., and Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791 et seq.

### **I. EEO and Civil Rights Leadership**

EEO Programs continued to provide leadership to DHS and its components by focusing on policy guidance, program management, complaint adjudication, functional integration, and diversity management, including the following action items:

- Reorganized EEO and Diversity Units within the EEO Programs, including the hiring of a Supervisory EEO Diversity Manager, Senior EEO Diversity Manager, and Special Emphasis Program Manager;
- Submitted new Functional Requirements documents to OCIO Business Services for enterprise-wide database systems for EEO and Diversity data and reporting; and
- Posted Fourth Quarter, FY 2008 Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) EEO data on the agency’s public web site.

### **II. Reporting Requirements**

CRCL submitted the following annual reports:

- FY 2008 EEOC Management Directive (MD) 715 Report, which reviews the sufficiency of agency Title VII and Rehabilitation Act programs and includes a periodic agency self-assessment for the removal of barriers to free and open workplace competition;
- Annual Federal Performance Report on Executive Agency Actions to Assist Historically Black Colleges and Universities (HBCUs) for FY 2008; and,
- FY 2008 No FEAR Act Annual Report, which has specific information relating to each agency's EEO complaints activity (including Federal district court cases) and resulting disciplinary actions, Judgment Fund reimbursements, adjustments to agency budgets to meet reimbursement requirements, as well as an analysis of trends, causation, and practical knowledge gained through experience.

### **III. Diversity Management**

- The Diversity Management Unit responded to a General Accountability Office (GAO) Audit on the agency's MD 715 Report and Program. The GAO Audit team interviewed CRCL and the Chief Human Capital Officer (CHCO) and requested various documents for review;
- CRCL submitted the Department's Five-Year Plan to Assist Tribal Colleges and Universities (TCUs) to the Office of the White House Initiatives on TCUs. This Plan reflects the Department's commitment to support the objectives of Executive Order 13270. DHS key strategies include participation in research and development, training & technical assistance, equipment donation, internships, recruitment, administrative infrastructure, and partnerships.
- CRCL organized a workshop for DHS Tribal Colleges and University Program (TCUP) Managers in which the Chair of the Working Group on Engineering Studies at the Tribal Colleges and Universities, a group comprised of 11 TCUs, provided insight on developing relationships with TCUs.
- CRCL arranged a meeting between the President of Turtle Mountain Community College and DHS TCUP Managers to discuss coordination on programs in support of Executive Order 13270 on Tribal Colleges and Universities. FEMA hosted this informative meeting.
- CRCL attended a Federal Disability Workforce Consortium meeting, held at U.S. Department of State.
- CRCL sponsored a program for the Disability Employment & Accessibility Council on America's Heroes, a program that offers counselors, coaches, mentors, and other assistance to support employment of disabled veterans with traumatic brain injuries and post traumatic stress disorder. CRCL also attended a meeting of the America's Heroes Steering Committee held at U.S. Department of Labor (DOL).
- CRCL participated in the DOL/U.S. Department of Defense (DOD) annual launch of the Workforce Recruitment Program for College Students with Disabilities (WRP). This program contains a national database of 1,922 students with disabilities from every state in the nation seeking temporary and/or career placements. CRCL also participated in the DHS Corporate Recruitment Council meeting and hosted the WRP Steering Committee meetings.
- CRCL participated in the American Indian Higher Education Consortium's (AIHEC) Spring Board Meeting held in Missoula, MT. The AIHEC Board is comprised of the presidents from all 37 TCUs. CRCL participated in AIHEC's Science, Technology, Engineering, and Mathematics (STEM) meeting. The STEM Working group is comprised of officials from TCUs with engineering programs, and those seeking to develop such programs. CRCL also conducted a second site visit to Salish-Kootenai College (SKC) in Pablo, MT. CRCL met with the tribal college's career center director to discuss DHS careers and internship opportunities and toured new facilities on the expanding campus. Further, CRCL participated in the all-day Information Sessions of the Board meeting, and presented an overview of DHS's TCU program. As a result, DHS enhanced the relationship between DHS and SKC, and established direct contacts with additional TCUs to further explore increasing DHS visibility and partnership opportunities.

#### **IV. Complaint Adjudication**

- EEO Programs reduced its inventory of cases to below 500, as of March 31, 2009 (498 open cases).
- In the second quarter of FY 2009, CRCL closed 266 complaints of employment discrimination. Of these closures, six were resolved by withdrawal, 30 were resolved by settlement, and 223 were Final Agency Actions issued by CRCL.
- In the second quarter of FY 2009, EEO Programs issued 114 merit final agency decisions (FADs); by comparison, in all of FY 2008, EEO Programs issued 105 merit FADs.

#### **V. Headquarters Equal Employment Opportunity**

- During this period, 223 new employees received EEO training, including information on rights and responsibilities under the No FEAR Act.
- HQ EEO met with the President of Federally Employed Women (FEW) to discuss potential partnerships. FEW assists individuals in building and sustaining successful careers.
- HQ EEO conducted the 2nd Annual DHS Women's Leadership Forum – "Women Taking the Lead."
- HQ EEO developed a "Lunch and Learn" session, entitled "Your Sphere of Influence." The goal is to promote inclusion and diversity at all levels for women in DHS.
- HQ EEO is planning the 3rd Annual DHS Pre-Conference Agency Forum and Career Fair during the FEW 40th National Training Program scheduled for July 20, 2009. The goals and objectives are to improve retention and advancement of women in DHS by showcasing management support, providing education and training, supporting networking opportunities, and encouraging involvement in mentoring opportunities.
- HQ EEO continued to attend external meetings with resource groups and organizations, such as Minority Serving Institutions-Community of Partners Council and the FEW Foundation, to seek best practices for building an effective Federal Women's Program (FWP). The FWP Coordinator attended several federal Women History Month forums and events to develop new partnerships.
- Headquarters Selective Placement Coordinator continued to work with the OAST on employee requests' for Reasonable Accommodation (RA) including:
  - Processed 11 requests;
  - Conducted five Accessibility Evaluations;
  - Coordinated with OAST to establish requirements for a joint Sec. 504 & Sec. 508 database to track and record RA requests; and
  - Coordinated with OAST to develop a process for ensuring RA requests are processed in the most efficient manner. The result, a Fact Sheet entitled, "Reasonable Accommodation at DHS" is now distributed to all new HQ and OIG employees.

## **CONCLUSION**

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As required by the 9/11 Act, this second quarter report provides a summary of CRCL's activities from January 1, 2009, to March 31, 2009. CRCL will continue to work with Congress, its colleagues in other Federal departments and agencies, and the public to ensure civil rights and civil liberties are protected in our homeland security efforts.