



Department of Homeland Security Office for Civil Rights and Civil Liberties

Semiannual Report to Congress

Third and Fourth Quarters, FY 2018 (April 1, 2018 – September 30, 2018)

May 31, 2019



Homeland
Security

Foreword



I am pleased to present this Semiannual Report on the activities of the Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties (CRCL), as required by Section 803 of the *Implementing Recommendations of the 9/11 Commission Act of 2007*, 42 U.S.C. § 2000ee-1(f).

This Report includes information on the third and fourth quarters of Fiscal Year (FY) 2018. The DHS Chief Privacy Officer provides separate quarterly reports under the 9/11 Commission Act concerning privacy advice and complaints, available at the Privacy Office's web site, <http://www.dhs.gov/privacy>.

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

The Honorable Michael R. Pence
President of the Senate

The Honorable Richard Shelby
Chairman, U.S. Senate Committee on Appropriations

The Honorable Patrick Leahy
Vice Chairman, U.S. Senate Committee on Appropriations

The Honorable Ron Johnson
Chairman, U.S. Senate Committee on Homeland Security and Governmental Affairs

The Honorable Gary C. Peters
Ranking Member, U.S. Senate Committee on Homeland Security and Governmental Affairs

The Honorable Richard Burr
Chairman, U.S. Senate Select Committee on Intelligence

The Honorable Mark Warner
Vice Chairman, U.S. Senate Select Committee on Intelligence

The Honorable Lindsey Graham
Chairman, U.S. Senate Committee on the Judiciary

The Honorable Dianne Feinstein
Ranking Member, U.S. Senate Committee on the Judiciary

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

The Honorable Nita M. Lowey
Chairman, U.S. House of Representatives Committee on Appropriations

The Honorable Kay Granger
Ranking Member, U.S. House of Representatives Committee on Appropriations

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

The Honorable Mike Rogers
Ranking Member, U.S. House of Representatives Committee on Homeland Security

The Honorable Adam Schiff
Chairman, U.S. House of Representatives Permanent Select Committee on Intelligence

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

The Honorable Jerry Nadler
Chairman, U.S. House of Representatives Committee on the Judiciary

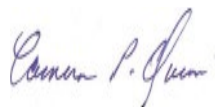
The Honorable Doug Collins
Ranking Member, U.S. House of Representatives Committee on the Judiciary

The Honorable Elijah E. Cummings
Chairman, U.S. House of Representatives Committee on Oversight and Government Reform

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

Additional information, including our prior semiannual and annual reports and our civil rights complaint contact information, is available at: www.dhs.gov/crcl. Please direct inquiries regarding this Report to the Office for Civil Rights and Civil Liberties at 866-644-8360 (TTY 866-644-8361) or crcl@dhs.gov.

Yours very truly,



Cameron Quinn
Officer for Civil Rights and Civil Liberties
U.S. Department of Homeland Security



DHS Office for Civil Rights and Civil Liberties FY 2018 Third and Fourth Quarter Report

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I. Legislative Language

42 U.S.C. § 2000ee-1 Privacy and Civil Liberties Officers

Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53, sec. 803, 121 Stat. 266, 360-362, as amended by the *Intelligence Authorization Act for Fiscal Year 2014*, Pub. L. No. 113-126, title III, § 329(b)(4), 128 Stat. 1390, 1406.

(a) Designation and functions

...

[T]he Secretary of Homeland Security . . . shall designate not less than 1 senior officer to serve as the principal advisor to—

- (1)** assist the head of such department, agency, or element and other officials of such department, agency, or element in appropriately considering privacy and civil liberties concerns when such officials are proposing, developing, or implementing laws, regulations, policies, procedures, or guidelines related to efforts to protect the Nation against terrorism;
- (2)** 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 privacy and civil liberties in its actions;
- (3)** ensure that such department, agency, or element has adequate procedures to receive, investigate, respond to, and redress complaints from individuals who allege such department, agency, or element has violated their privacy or civil liberties; and
- (4)** in providing advice on proposals to retain or enhance a particular governmental power the officer shall consider whether such department, agency, or element has established—
 - (A)** that the need for the power is balanced with the need to protect privacy and civil liberties;
 - (B)** that there is adequate supervision of the use by such department, agency, or element of the power to ensure protection of privacy and civil liberties; and
 - (C)** that there are adequate guidelines and oversight to properly confine its use.

(b) Exception to designation authority

...

(2) Civil liberties officers

In any department, agency, or element referred to in subsection (a) of this section . . . which has a statutorily created civil liberties officer, such officer shall perform the functions specified in subsection (a) of this section with respect to civil liberties.

(c) Supervision and coordination

Each privacy officer and civil liberties officer described in subsection (a) or (b) of this section shall—

- (1)** report to the head of the department . . . ; and
- (2)** Coordinate their activities with the Inspector General of such department . . . to avoid duplication of effort.

(d) Agency cooperation

The head of each department, agency, or element shall ensure that each privacy officer and civil liberties officer—

- (1)** has the information, material, and resources necessary to fulfill the functions of such officer;
- (2)** is advised of proposed policy changes;
- (3)** is consulted by decision makers; and
- (4)** is given access to material and personnel the officer determines to be necessary to carry out the functions of such officer.

. . .

(f) Periodic reports

(1) In general

The privacy officers and civil liberties officers of each department, agency, or element referred to or described in subsection (a) or (b) of this section shall periodically, but not less than semiannually, submit a report on the activities of such officers—

- (A)(i)** to the appropriate committees of Congress, including the Committee on the Judiciary of the Senate, the Committee on the Judiciary of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives;
- (ii)** to the head of such department, agency, or element; and
- (iii)** to the Privacy and Civil Liberties Oversight Board; and
- (B)** which shall be in unclassified form to the greatest extent possible, with a classified annex where necessary.

(2) Contents

Each report submitted under paragraph (1) shall include information on the discharge of each of the functions of the officer concerned, including—

- (A)** information on the number and types of reviews undertaken;
- (B)** the type of advice provided and the response given to such advice;

(C) the number and nature of the complaints received by the department, agency, or element concerned for alleged violations; and

(D) a summary of the disposition of such complaints, the reviews and inquiries conducted, and the impact of the activities of such officer.

(g) Informing the public

Each privacy officer and civil liberties officer shall—

(1) make the reports of such officer, including reports to Congress, available to the public to the greatest extent that is consistent with the protection of classified information and applicable law; and

(2) otherwise inform the public of the activities of such officer, as appropriate and in a manner consistent with the protection of classified information and applicable law.

(h) Savings clause

Nothing in this section shall be construed to limit or otherwise supplant any other authorities or responsibilities provided by law to privacy officers or civil liberties officers.

II. Civil Rights and Civil Liberties Impact Assessments

As part of its statutory requirement, the Office for Civil Rights and Civil Liberties (CRCL) conducts in-depth examinations of the civil rights and civil liberties implications and effects of selected Department of Homeland Security (DHS) programs, and provides suggestions for improvements to those programs. There was no activity concerning impact assessments in the third and fourth quarters.

III. Investigations Data and Analysis

CRCL investigates complaints concerning:

- abuses of civil rights, civil liberties, and racial, ethnic, or religious profiling, 6 U.S.C. § 345(a)(1);
- 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);
- possible abuses of civil rights or civil liberties, unless the DHS Office of the Inspector General determines that any such complaint or information should be investigated by the Inspector General, 6 U.S.C. § 345(a)(6); and
- 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).

Under these authorities, CRCL reviews and assesses civil rights and human rights complaints. These matters arise in a variety of contexts, which we designate in the tables that follow as “situations,” and raise one or more issues. The tables set forth here identify investigations by the primary situation and issue involved.

CRCL initiates investigations based on allegations received from the general public and non-governmental organizations by U.S. mail, email, fax, and the CRCL telephone hotline. Incidents that might merit investigation are also forwarded to CRCL from other offices at DHS and other government agencies. **Table 2** indicates investigations opened during the third and fourth quarters by the primary civil rights *issue* raised, the *situation* in which the investigation arose, and the DHS *Component* that was the primary subject of the investigation.

Pursuant to 6 U.S.C. § 345(a)(6) and internal DHS policies, CRCL begins the investigation process by referring all complaints to the DHS Office of Inspector General (OIG).¹ OIG then determines whether or not it will investigate the complaint. In this report, complaints kept by the OIG are designated *OIG retained*. If OIG declines to investigate the complaint, it is referred back to CRCL for its own investigation.

¹ Under the former ICE Secure Communities initiative, and under its successor the Priority Enforcement Program (PEP), complaints involving the activities of state or local law enforcement agencies, acting under state law, that come to CRCL may not initially be referred to OIG if they do not involve allegations regarding the conduct of DHS employees. In those cases, CRCL would notify the Department of Justice, which has jurisdiction to investigate certain violations of civil rights by state and local officers.

Table 3 describes all complaints, including those initiated prior to FY 2017, in process² as of the last day of the quarter. If a complaint is referred to a Component for investigation, the Component issues a Report of Investigation to CRCL, which is reviewed by CRCL. If the case is retained, or short-formed³, CRCL conducts its own investigation.

When any investigation is complete, whether conducted by CRCL or the Component(s) involved, CRCL may close the complaint or provide senior leadership of the relevant Component(s) with any recommendations or advice for improving policies, practices, or training as appropriate. CRCL notifies complainants of the result of investigations, including any actions being taken as a result. **Table 4** provides investigations closed during the third and fourth quarters, by issue, situation, and Component principally involved.

² The “in process” categories include multiple cases where Reports of Investigation (ROIs) have been received from Components and are currently under review within CRCL. For CRCL’s purposes, these investigations remain in process until we have completed our review and response to the ROIs.

³ CRCL has implemented “short-form” complaint processing procedures to facilitate swift action on urgent complaints and expeditious resolution of allegations that are narrowly focused and require limited investigation. The short-form process makes it easier to open and close complaints, allowing speedier resolution. Cases that subsequently require additional work are converted to standard investigations.

Table 3 continued, Investigations in process 3Q and 4Q 2018 (as of September 30, 2018)

	Grand Total	Under Review	OIG Retained	CRCL Retained		Joint Investigation	CRCL Referred
				Full Investigation	Short Form		
By situation							
CBP detention/hold room/CBP deferred inspection site	20	9	1	3	6		1
DHS law enforcement activity	51	15	11	1	22		2
DHS-supported activity (not 287(g) ⁶)	14	8			5		1
Federal government building or area	14	3	4		5		2
ICE 287(g) program	3				3		
Immigration benefit application processing	22	1			21		
Immigration detention	246	137	14	29	57		9
Political demonstration/rally	2				2		
Port of entry/CBP checkpoint	131	43	15	20	44		9
Screening (non-watch list)	1				1		
Unaccompanied minor	64	7	2	22	28		5
Watchlist/aviation security	2	1			1		
Total by situation	570	224	47	75	195	0	29
By Component							
DHS (multi-Component or Headquarters unit)	40	16	3	8	9		4
CBP	221	62	22	40	83		14
FEMA	8	2			6		
ICE	272	140	22	26	74		10
TSA	1				1		
USCG	2			1			1
USCIS	24	4			20		
USSS	2				2		
Total by Component	570	224	47	75	195	0	29

⁶ The 287(g) program, one of ICE's top partnership initiatives, allows a state and local enforcement entity to enter into a partnership with ICE, under a joint Memorandum of Agreement, in order to receive delegated authority for immigration enforcement within their jurisdictions.

Table 4 continued, Investigations closed 3Q and 4Q 2018 (as of September 30, 2018)

Total by issue	Component							
Subtotal by situation	CBP	DHS*	FEMA	ICE	TSA	USCIS	USSS	Total
Retaliation				3				3
DHS law enforcement activity				1				1
Immigration detention				2				2
Sexual assault/abuse	5			14				19
Immigration detention				12				12
Port of entry/CBP checkpoint	5							5
Unaccompanied minor				2				2
TSA AIT and TSA pat-downs				1	1			2
Screening (non-watch list)				1	1			2
Grand Total	73	11	1	458	3	9	1	556

*Multi-Component or DHS Headquarters unit

IV. Appendix: Acronyms

CBP	U.S. Customs and Border Protection
CRCL	DHS Office for Civil Rights and Civil Liberties
DHS	Department of Homeland Security
FEMA	Federal Emergency Management Agency
ICE	U.S. Immigration and Customs Enforcement
OIG	DHS Office of Inspector General
PEP	Priority Enforcement Program
ROI	Report of Investigation
TSA	Transportation Security Administration
USCIS	U.S. Citizenship and Immigration Services
USCG	U.S. Coast Guard
USSS	U.S. Secret Service