



Homeland
Security

April 8, 2020

MEMORANDUM FOR: Mark A. Morgan
Acting Commissioner
U.S. Customs and Border Protection

Scott K. Falk
Chief Counsel
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(b)(6)

FROM: Cameron P. Quinn
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SUBJECT: Detention and Care of Pregnant Individuals by
U.S. Customs and Border Protection
Complaint Nos. 20-06-DHS-0433, 20-06-CBP-0508,
19-05-DHS-0180, 20-04-CBP-0329, 20-01-CBP-0073,
and 19-09-CBP-0414

The Office for Civil Rights and Civil Liberties (CRCL) has opened complaints alleging that U.S. Customs and Border Protection (CBP) has violated the civil rights and civil liberties of pregnant individuals held in their custody. Allegedly, the standards governing the detention of pregnant individuals and the provision of their healthcare are insufficient and inconsistently applied, and where standards do exist, they are routinely violated. The purpose of this memorandum is to notify you of the complaints and describe the allegations, inform you that, consistent with its authority described below, CRCL will retain the complaints for investigation, and to explain how CRCL will work with CBP during our investigation.

As part of this investigation, consistent with its authority described in the CRCL and Scope of Review sections of this memorandum, CRCL will examine the allegations discussed below. Because the matters raise similar issues, CRCL will also look at the detention and care of pregnant individuals more generally to determine if the individual allegations are indicative of systemic civil rights and civil liberties violations. In order to accomplish this broad review, CRCL will:

1. Review CBP Border Patrol (BP) and the Office of Field Operations (OFO) policies,

procedures, and directives that address the care and treatment of pregnant individuals held in CBP custody;

2. Assess the timeliness, quality, and clinical appropriateness of pre- and post-natal care (including mental health care) provided to pregnant individuals in CBP custody;
3. Evaluate whether pregnant individuals in CBP custody are appropriately identified, monitored, tracked, and held in facilities that can appropriately manage their medical care directly, or alternatively, have sufficient access to offsite medical/specialty care¹;
4. Assess the continuity of care provided to pregnant individuals transferred from CBP to ICE;
5. Identify any potential risks and/or potential negative pregnancy outcomes that may result from DHS detaining pregnant individuals.

Complaints

Complaint No. 20-06-DHS-0433

On March 4, 2020, CRCL reviewed a letter dated February 3, 2020, from Congressman Ron Wyden to Mark Morgan, CBP Acting Commissioner, and Matthew Albence, ICE Acting Director, regarding the treatment of pregnant migrants in ICE and CBP custody. Congressman Wyden stated that he traveled to the southern border in July 2019 and encountered a pregnant woman seeking asylum in the United States. According to Congressman Wyden, he was accompanied by a doctor at the Paso del Norte Port of Entry (POE) when the doctor quickly determined that the woman was in distress due to pregnancy-related complications and required immediate medical attention. Congressman Wyden stated that as he observed CBP officers process the woman and her family, he became concerned that she would not receive the medical care she needed in a timely manner. Congressman Wyden added, "Following my trip, I looked further into the treatment of pregnant women in detention facilities, including those managed by Immigration and Customs Enforcement (ICE) and I became increasingly concerned that this administration's revision of policies has only worsened a systemic problem."

Complaint No. 20-06-CBP-0508

On March 2, 2020, CRCL received an email referral from the DHS OIG regarding CBP's alleged mistreatment of detained pregnant individuals. In a letter dated January 22, 2020 submitted to the OIG by The American Civil Liberties Union Foundation of San Diego & Imperial Counties and the ACLU Border Rights Center (together, "ACLU"), it is alleged that during the course of interviews the ACLU completed between March and July 2019 with people in San Diego and Tijuana who recently had been released from CBP custody, the individuals related instances of abuse or neglect by CBP officials, including BP agents (BPAs). According to the ACLU, CBP's existing policies (including TEDS) are inadequate to safeguard pregnant individuals in CBP custody. Further, Border Patrol allegedly fails to respect minimal standards or to provide prompt and necessary medical care to pregnant people in custody. The ACLU also provided individual

¹ This includes the treatment and care provided to pregnant individuals held in CBP custody over 72 hours in order to facilitate placement into the Migration Protection Protocols (MPP) program.

accounts of anonymous pregnant individuals based on reportedly lengthy interviews conducted by ACLU staff, usually within days of release from CBP detention.

Complaint No. 19-05-DHS-0180

On February 25, 2019, ICE and CBP issued a joint statement regarding a stillbirth in DHS custody. On February 22, 2019, while being processed for release, a 24-year-old Honduran woman later identified as (b)(6), went into premature labor and delivered a stillborn baby at the Port Isabel Detention Center (PIDC) in Los Fresnos, Texas. According to the statement, Ms. (b)(6) reported being six months pregnant at the time of her apprehension by the U.S. Border Patrol (USBP), shortly before midnight on February 18, 2019, near Hidalgo, Texas. While in USBP custody, she was taken to the hospital and cleared for release on February 21, 2019, after receiving two medical screenings. In the late afternoon on February 22, 2019, she was transferred to ICE custody to be processed for release. According to the statement, while being processed for release by ICE, she began complaining of abdominal discomfort and was examined by the ICE Health Service Corps (IHSC). The clinical director ordered that she be sent to the hospital and Emergency Medical Services (EMS) was called. At 27 weeks pregnant, Ms. (b)(6) delivered an unresponsive male infant while still at the facility. The report states that IHSC initiated cardiopulmonary resuscitation (CPR) and EMS transported them both to the Valley Baptist Medical Center in Harlingen, Texas, where the infant was later pronounced dead. According to the statement, Ms. (b)(6) would remain in ICE custody awaiting medical clearance, after which time she would be released from custody.

Complaint No. 20-04-CBP-0329

On January 1, 2020, CRCL received an email notification from the CBP SITROOM regarding Kerline Louis, a 33-year-old Haitian national who was seven months pregnant while in CBP custody.² According to the notification, on January 23, 2020, USBP agents assigned to the Chula Vista, California Station reported that Ms. (b)(6), then in CBP custody for holding, was taken to a local hospital for evaluation after complaining of abdominal pain. Hospital medical staff determined Ms. (b)(6) unborn fetus had suffered an intrauterine fetal demise (stillbirth), which terminated the pregnancy.

Complaint No. 20-01-CBP-0073

On October 21, 2019, CRCL received an email notification from the CBP SITROOM, regarding (b)(6).³ According to information provided by CBP, on October 12, 2019, Ms. (b)(6) a 24-year-old Mexican national, arrived at the San Ysidro, California Point of Entry (POE) with her spouse and two minor children. Ms. (b)(6) was reportedly four months pregnant at the time she was encountered at the POE. Ms. (b)(6) and her family reportedly applied for asylum via the pedestrian lanes and the case was turned over to the Admissibility Enforcement Unit (AEU) for processing.

² Significant Incident Report (SIR) Number: (b) (7)(E)

³ SIR Number: (b) (7)(E)

According to the SIR, on October 14, 2019, at approximately 23:45 hours, Ms. (b)(6) complained of abdominal pains and vaginal bleeding during processing. According to the SIR, CBP officers immediately transported Ms. (b)(6) to Scripps Chula Vista Hospital, and upon arrival, she was moved directly into the labor and delivery unit. The SIR indicated that on October 15, 2019, at approximately 09:15 hours, Ms. (b)(6) underwent surgery, and at approximately 12:00 hours, she was out of surgery and transferred to the recovery unit. The SIR cited hospital medical personnel as stating that Ms. (b)(6) suffered an ectopic pregnancy which resulted in the fetus not surviving the surgery and further noted that she would remain hospitalized for recovery and observation.

Complaint No. 19-09-CBP-0414

On June 5, 2019, CRCL received an email from The Refugee and Immigrant Center for Education and Legal Services (RAICES) on behalf of (b)(6) (b)(6) a 17-year-old Honduran national. Ms. (b)(6) alleged that after she was apprehended, she told a female Border Patrol Agent (BPA) that she was spotting. She alleged that she was then transported to the processing center, at which point she told a male BPA that she was spotting. She alleged that despite having this information, the BPA continued the interview, which lasted for about an hour. Ms. (b)(6) alleged that after the interview was over, she was taken to the hospital, but halfway there, the individual who was transporting her realized that he did not have all of her paperwork, so he had to go back to retrieve it. She then went to the hospital, at which time the doctor told her that she was under a lot of stress and needed some rest. Ms. (b)(6) stated that she didn't know if the doctor told the officer this, because when she returned to the processing center she was forced to sleep on a hard surface with a foil blanket.

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. In investigating

complaints, if CRCL believes that the complaints raise similar issues, CRCL may look into whether there are systemic problems that justify a broader investigation. Specifically, CRCL is charged under 42 U.S.C. § 2000ee-1(a)(2) to “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”. Pursuant to its authority under 6 U.S.C. § 345(a)(3), CRCL shall assist components to “periodically review Department policies and procedures to ensure that the protection of civil rights and civil liberties is appropriately incorporated into Department programs and activities.” Additionally, pursuant to DHS Delegation Number 19003, issued October 26, 2012, the Secretary has delegated to the Officer of CRCL the authority to “assess new and existing policies throughout the Department for the policies’ impact on civil rights and civil liberties” and “review . . . programs within any Component to ensure compliance with standards established by the Officer for CRCL to protect civil rights and civil liberties.” The procedures for CRCL investigations and the recommendations they may generate are outlined in DHS Management Directive 3500, DHS Instruction 046-01-001, and DHS Instruction 046-01-002.

Access to information. 42 U.S.C. § 2000ee-1(d) grants CRCL 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.”

Additionally, DHS Instruction 046-01-002 (V)(B)(2) provides Component Heads are to ensure that CRCL is given access to information, material, and personnel determined by CRCL to be necessary to carry out or review investigations. This memorandum serves as a request for information or assistance pursuant to section 5.1(e) of the "Memorandum of Agreement between [CRCL] and [CBP] Regarding the Coordination of CRCL Complaint Investigations" dated February 28, 2017.⁴

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 the accompanying request for documents and information are issued pursuant to these authorities.

⁴ Section 5.1(e) of the Memorandum of Agreement provides, in relevant part, that CRCL will issue information requests clearly identifying the documents, information, video and personnel CRCL is requesting from CBP and that CBP will provide the same within 60 days unless an extension is approved by CRCL.)

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 Web site—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 on our findings and any recommendations.

SCOPE OF REVIEW

The purpose of our review is to: determine if the allegations in the complaints can be verified or disproven; determine whether the facts we find suggest that the Constitution, a federal statute, or a Departmental policy has been violated; and to determine what steps, if any, should be taken by CBP to address the complaints, both individually (if the problem is ongoing) and as a matter of policy. This review will also examine the additional areas specified above for similar concerns related to protection of civil rights and civil liberties. It is our goal to produce a report that will assist you in making CBP the best agency possible.

QUESTION(S) PRESENTED

(b)(5)

INITIATING THE INVESTIGATION

CRCL will be in contact with CBP staff about this complaint and CRCL’s plans for reviewing the matter, which is assigned to Policy Advisor (b)(6). 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 Ms. (b)(6) by phone at (b)(6) or by email at (b)(6).

Enclosure

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