



**Homeland
Security**

December 6, 2019

MEMORANDUM

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

FOR:

Scott K. Falk
Chief Counsel
U.S. Customs and Border Protection
(b)(6)

FROM:

Cameron Quinn
Officer for Civil Rights and Civil Liberties
(b)(6)

Attorney Advisor (Legal Counsel Division)
Office of General Counsel

SUBJECT:

Questioning Advocates and Journalists at the Lukeville, Arizona
and San Ysidro, California Ports of Entry

Complaint 19-08-CBP-0354
Complaint 19-08-CBP-0404

The Office for Civil Rights and Civil Liberties (CRCL) has opened complaints alleging that Customs and Border Protection (CBP) has violated civil rights or civil liberties by targeting and harassing human rights advocates and journalists at Lukeville, Arizona Port of Entry (POE) and San Ysidro, California POE respectively. In this memorandum, CRCL notifies you of two of the complaints and describes the allegations, informs you that CRCL will retain these complaints for investigation, and explains how CRCL will work with CBP during this investigation. Additionally, CRCL outlines some of the larger issues that led CRCL to open a full investigation into these matters.¹

ALLEGATIONS

¹ CRCL has opened for investigation the following related complaints, which are on hold because of litigation or investigation by the Department of Homeland Security (DHS), Office of Inspector General (OIG): 19-08-CBP-0335; 19-07-CBP-0272; 19-08-CBP-030 .

On May 24, 2019, CRCL received correspondence alleging that in April 2019, at the Lukeville, Arizona POE, CBP Officers targeted, referred to secondary inspection, and detained a U.S. citizen based upon her role as a human rights advocate.² On May 30, 2019, CRCL received correspondence alleging that on May 24, 2019, a CBP officer referred a U.S. citizen and freelance journalist to secondary inspection at San Ysidro, California POE.³ The journalist suggested that the secondary inspection was retaliatory and that CBP targeted him because of his publicly-stated disapproval of CBP policies.

Separately, CRCL received additional allegations, which led CRCL to open complaints that are on hold either because of ongoing litigation or investigations by the DHS, Office of Inspector General (OIG).⁴ These complaints are similar to those in this investigation and generally involve the same categories of conduct, described below. The complaints include allegations that CBP targeted for inspection and questioning, retaliated against, and put holds on passports of, U.S. citizen human rights advocates and journalists because of their respective First Amendment-protected expressive activities.⁵ CRCL also opened a complaint involving allegations that CBP targeted a U.S. citizen journalist and harassed him about the nature of his reporting.⁶

The complaints described below represent the issues discussed above. CRCL intends to investigate the issues involving civil liberties raised by these complaints. In particular, the complaints allege the following categories of conduct that CRCL will investigate: (1) that CBP referred to outbound inspection a freelance journalist engaged in First Amendment protected activities potentially because of those activities; (2) that CBP referred to secondary inspection and detained a U.S. citizen at the Lukeville, Arizona POE because of her engagement in First Amendment protected activities or protected associations, or in retaliation for such activities; (3) that CBP may be generally targeting and questioning journalists and advocates who are engaging in protected First Amendment activities; and (4) that CBP may be questioning individuals regarding the content of protected First Amendment associations and engagement in activities as conduct justifying additional screening.

The specific complaint allegations in this retained investigation are as follows:

Complaint 19-08-CBP-0354

On May 24, 2019, CRCL received correspondence from (b)(6) of Kino Border Initiative forwarding allegations by (b)(6) that CBP targeted and harassed her and three other volunteers when they sought to reenter the U.S. through Lukeville, Arizona POE on April 10, 2019. Ms. (b)(6) alleges that CBP Officer (b)(6), (b)(7)(C) wrongly referred them to secondary inspection, where CBP Officer (b)(6), (b)(7)(C) threatened them and questioned them inappropriately. Ms. (b)(6) claimed that CBP released her and the three other volunteers after detaining them for approximately 45 minutes.

² 19-08-CBP-0354

³ 19-08-CBP-0404

⁴ Specifically, CRCL has opened for investigation the following related complaints, which are on hold: 19-08-CBP-0335; 19-07-CBP-0272; and, 19-08-CBP-0302.

⁵ See note 1, *supra*.

⁶ 20-01-CBP-0015

Complaint 19-08-CBP-0404

On May 30, 2019, CRCL received correspondence from (b)(6), Director of the US-Mexico Border Program of the American Friends Service Committee, on behalf of (b)(6) Mr. (b)(6), a U.S. citizen and freelance journalist, alleged that when he approached the border at San Ysidro, California POE on May 24, 2019, to attend a work meeting in Tijuana, Mexico, a CBP officer instructed him to move to a side area, where officers emptied his pockets. Mr. (b)(6) alleged that CBP Officer (b)(6) asked how much money he was carrying and whether it exceeded \$10,000, whether he was carrying drugs, where he was traveling, and the purpose of his trip. Mr. (b)(6) alleges that he replied he was traveling to Mexico for a work meeting and that he works as a freelance writer. Mr. (b)(6) alleged that Officer (b)(6), patted him down in a demeaning manner. Mr. (b)(6) also alleged that Officer (b)(6) inspected (b)(7)(C) shoes with a flashlight and photographed his passport card. Mr. (b)(6) (b)(6), alleged that throughout the process, CBP personnel were rude to him and would not explain why he was being singled out for outbound inspection. Mr. (b)(6) noted that days before the incident he recorded and filmed a podcast for the NPR affiliate station close to the area where CBP detained him, in which he noted his disapproval of U.S. border policies.

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; and,
- 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 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.”

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 issued 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 recommendations.

SCOPE OF REVIEW

The purpose of our review is to determine if the factual allegations in the complaints can be verified or disproven; if the facts that we find suggest that the Constitution, a Federal statute, or a Departmental policy has been violated; and 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 also will examine the additional areas identified above for similar concerns related to protection of civil rights and civil liberties.

QUESTIONS PRESENTED

(b)(5)

(b)(5)

INITIATING THE INVESTIGATION

CRCL has taken steps to begin its investigation of these complaints, which are assigned to Contract Support Investigator (b)(6).

We request that CBP schedule an initial discussion with (b)(6) as soon as possible to discuss this complaint and our plans to review this matter. We look forward to working together to determine 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) (b)(6) by phone at (b)(6) (TTY) or by email at (b)(6) (b)(6)

Copies to:

Rebekah Salazar
Executive Director
Privacy and Diversity Office
Office of the Commissioner
U.S. Customs and Border Protection
(b)(6), (b) (7)(C)

Jeffery R. Egerton
Acting Deputy Executive Director
Office of Professional Responsibility
U.S. Customs and Border Protection
(b)(6), (b) (7)(C)

Kristy Montes
Director, Custody Support and Compliance Division
Privacy and Diversity Office
U.S. Customs and Border Protection
(b)(6), (b) (7)(C)

Debbie Seguin
Acting Chief of Staff

U.S. Customs and Border Protection
(b)(6), (b) (7)(C)

Todd Owen
Executive Assistant Commissioner
Office of Field Operations
U.S. Customs and Border Protection
(b)(6), (b) (7)(C)

Tyesha Bordeaux
Chief of Staff
Office of Field Operations
U.S. Customs and Border Protection
(b)(6), (b) (7)(C)

Via Email:
(b)(6), (b) (7)(C)

Enclosure