



Homeland
Security

March 10, 2020

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

Scott K. Falk
Chief Counsel
U.S. Customs and Border Protection

FROM: Cameron P. Quinn (b)(6)
Officer
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SUBJECT: Rio Grande Valley Sector Onsite Investigation
CRCL Complaint Nos. 19-08-CBP-0345, 19-08-CBP-0358,
19-10-CBP-0497, 19-10-CBP-0551, 19-12-CBP-0671,
19-12-CBP-0724, 19-12-CBP-0732, and 19-11-CBP-0748

In July 2014 and July 2018, the U.S. Department of Homeland Security, Office for Civil Rights and Civil Liberties (CRCL) conducted onsite investigations in the Rio Grande Valley Sector (RGV). Soon after the 2014 investigation, CRCL provided U.S. Customs and Border Protection (CBP) with informal preliminary findings and recommendations, and, in September 2017, CRCL submitted to CBP a formal report and recommendations memorandum.¹ Following the 2018 investigation, during which CRCL enlisted the assistance of an expert in conditions of detention, CRCL provided CBP with an expert report and recommendations.

In a memorandum dated September 18, 2019, CBP responded to the 24 recommendations in the 2018 expert report, concurring with 17 and providing an action plan addressing their implementation. In this memorandum, CBP also asked that CRCL revisit the sector to observe the numerous changes that have occurred since CRCL's last visit.

Since CRCL's 2018 visit, CBP experienced an unprecedented influx of unaccompanied alien children and families in the spring and summer of 2019 that created numerous challenges for CBP along the Southwest Border. As a result, CRCL understands that CBP has made significant

¹ In November 2017, CBP concurred with all seven of CRCL's recommendations.

changes to daily operations at facilities across RGV, including at the Centralized Processing Center (CPC).

The purpose of this memorandum is to notify CBP that CRCL will conduct a follow-up onsite investigation in RGV from April 14-16, 2020. CRCL will review U.S. Border Patrol's (USBP) implementation of the expert's recommendations and the sector's adherence to relevant USBP policies and procedures regarding the care and treatment of individuals in its custody. In addition, CRCL will review the changes enacted as a result of the influx. Expert consultants in the areas of conditions of detention and medical care will accompany CRCL staff.

In addition, CRCL has continued to receive allegation related to RGV and has opened the above referenced complaints since the last onsite investigation and will retain them for this investigation in accordance with the authorities discussed below. These complaints include allegations that were both previously addressed during prior onsite investigations and that raise novel issues.

ALLEGATIONS

Complaint No. 19-08-CBP-0345

On May 17, 2019, CRCL received a letter from the American Civil Liberties Union (ACLU) of Texas and the ACLU Border Rights Center regarding conditions of custody at CBP facilities in RGV. The organizations indicated that their staff conducted over 120 interviews with families, who alleged concerns related to the following:

- custody in outdoor holding "pens" with minimal protection from the elements;
- sleeping on wet, muddy, and rocky ground with limited access to bedding for children;
- disruption of sleep due to constant processing throughout the night;
- time in custody in excess of 72 hours;
- excessive overcrowding;
- lack of and ignored requests for medical care;
- inability to shower;
- insufficient and poor-quality food, such as a cheese sandwich three times per day;
- limited access to water; and
- verbal abuse and threats.

Complaint No. 19-08-CBP-0358

On May 23, 2019, CRCL received an email from a U.S. Department of Health and Human Services, Office of Refugee Resettlement (ORR) care provider on behalf of (b)(6), a 15-year-old unaccompanied alien child (UAC) at the time of the reported allegations. According to EARM, the UAC was in CBP custody, including at the CPC, from approximately May 13 to 20, 2019. The UAC alleges that an officer in a grey uniform denied her request for medical treatment. Following transfer of custody to ORR, the complaint claims that UAC's medical condition had worsened, and she required hospitalization.

Additionally, the minor claims that she was not able to sleep due to agents calling out names for processing throughout the night.

Complaint No. 19-10-CBP-0497

On July 1, 2019, CBP provided CRCL a copy of a Significant Incident Report (SIR) regarding the death of Manuel Guillen Landaverde. According to the SIR, Mr. (b)(6) was taken from the CPC to the hospital on June 26, 2019, because of seizures. Within several hours, he was medically cleared and returned to the CPC. On June 29, 2019, he reportedly collapsed in his holding cell, and medical staff administered a defibrillator and conducted CPR. He was transported to the hospital, where he died. Following his death, CBP reportedly processed his daughter, (b)(6) as a UAC.

Complaint No. 19-10-CBP-0551

On July 2, 2019, CRCL received an email from ORR on behalf of (b)(6), a seven-year-old UAC at the time of reported incident. According to EARM, the UAC was in CBP custody, including at the CPC, from approximately June 20 to 28, 2019. He alleges that USBP failed to return his property, including his backpack containing clothes.

Complaint No. 19-12-CBP-0671

On September 26, 2019, CRCL received a letter from Carly Sessions of Kids in Need of Defense (KIND). Ms. (b)(6), who has represented numerous UAC apprehended in RGV, alleges that a significant majority of Notices to Appear (NTAs) from UAC held by CBP in McAllen are not signed by the minors. She indicates that between March 1, 2018, and June 30, 2019, KIND conducted legal screenings of 100 UAC, of which 39 had NTAs issued in McAllen. Of those 39, she alleges that 29 were stamped "Subject Refused to Sign," that nine were either stamped "Served on Conservator" or left blank, and that only one had been signed by a UAC. However, she alleges that of the 61 NTAs issued outside of McAllen, only two were stamped "Subject Refused to Sign." She claims that the vast majority of her clients whose NTAs were stamped "Subject Refused to Sign" told her that they were not asked to sign any documents while in custody.

Complaint No. 19-12-CBP-0724

On September 11, 2019, CRCL received a letter from the (b)(6) of the South Texas Pro Bono Asylum Representation Project on behalf of (b)(6) a 17-year-old UAC at the time of the reported incident. According to EARM, the UAC was in CBP custody, including at the CPC, from approximately July 13 to 16, 2019. The UAC alleges that officers in grey uniforms would insult and humiliate minors and impose unnecessary punishments. For instance, the UAC claims that if one individual did not respond during roll call, the officers in grey uniforms would awaken the entire group and require everyone to return their mattresses, forcing them to have to sleep on the bare floor for hours. The UAC notes that the agents in green uniforms were courteous.

Complaint No. 19-12-CBP-0732

On September 4, 2019, CRCL received correspondence from the Dilley Pro Bono Project (DPBP) regarding the conditions of detention and the medical care of children in CBP custody in RGV. DPBP, which provides legal services to mothers detained with their children in the South Texas Family Residential Center, conducted a survey of 200 mothers in June and July 2019. According to DPBP, 90% of the respondents entered the United States in RGV. DPBP claims that 43% reported that they requested medical care for their child while in CBP custody, and of those who requested such care, 58% reportedly stated that CBP did not provide medical care when requested. DPBP included nine anonymous accounts that describe the lack of access to medical care for children in CBP custody and the general poor conditions of detention. DPBP later provided CRCL with identifying information, which allowed CRCL to determine that six of the families were in custody at the CPC and one family was held at Weslaco Border Patrol Station. The following are summaries of their allegations:

(b)(5), (b)(6), (b) (7)(E)

(b)(5), (b)(6), (b) (7)(E)

Complaint No. 19-11-CBP-0748

On August 26, 2019, CBP provided CRCL a copy of a SIR regarding an unknown Honduran adult male and his infant daughter, who were apprehended near Rio Grande City among a group of 21 individuals. According to the SIR, the father told agents that his daughter had suffered two seizures during their travel. USBP reportedly transported the family unit to the CPC, where they were given an initial medical assessment. Medical staff reportedly referred the infant to Edinburg

Regional Children’s Hospital, where she was diagnosed with severe hydrocephalus and transported by Medevac helicopter to a hospital in Corpus Christi that could provide a higher level of care.

ADDITIONAL AREAS TO BE REVIEWED

Due to the number of allegations and because CRCL will be reviewing the implementation of prior recommendations, CRCL will look broadly at operations at the USBP facilities visited to determine if the individual allegations or findings are indicative of systemic civil rights and civil liberties concerns.

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. 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.”² Additionally, pursuant to

² In addition, pursuant to 42 U.S.C. § 2000ee-1(a)(2), CRCL has the authority 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” (emphasis added).

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 § 5.1(e) of the "Memorandum of Agreement between [CRCL] and [CBP] Regarding the Coordination of CRCL Complaint Investigations" dated February 28, 2017.³

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.

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.”

³ § 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.

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 1) determine if USBP has implemented the recommendations with which CBP concurred in its September 18, 2019, response to CRCL's expert report; 2) investigate the allegations in the complaints referenced; 3) determine if the facts we find suggest that the Constitution, a federal statute, or a Departmental policy has been violated; and 4) assess whether CBP should take any steps to address and concerns found during the investigation.

QUESTIONS PRESENTED

(b)(5)

INITIATING THE INVESTIGATION

We request an initial discussion with your agency about these complaints and CRCL's plans for reviewing the matter. (b)(6) will be handling the review. We request that CBP schedule an initial discussion with Mr. (b)(6) as soon as possible. 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 Mr. (b)(6) by phone at (b)(6) or by email at (b)(6)

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