



**Homeland
Security**

February 10, 2020

MEMORANDUM FOR: Matthew T. Albence
Acting Director
U.S. Immigration and Customs Enforcement

Michael P. Davis
Executive Deputy Principal Legal Advisor
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement

FROM: Cameron P. Quinn (b)(6)
Officer
Office for Civil Rights and Civil Liberties

(b)(6)
Susan Mathias
Assistant General (b)(6) Division)
Office of General Counsel

SUBJECT: CRCL Complaint No. 20-04-ICE-0307
Implementation of ICE's Sexual Abuse and Assault Prevention
and Intervention Program

Since its inception, the U.S. Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL) has investigated sexual abuse allegations and recommended improvement in policies designed to protect individuals from sexual abuse while in DHS custody. Over the past five years, DHS Components have implemented comprehensive protections against sexual abuse and assault pursuant to the Prison Rape Elimination Act of 2003 (PREA). In March 2014, DHS issued a final rule, *Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities* (DHS PREA Standards), implementing PREA as it applies to DHS confinement facilities. Since 2014, ICE has been actively engaged in implementing the specific requirements in the DHS PREA Standards, and CRCL has worked with ICE as part of that process.

With the passing of the fifth anniversary of the DHS PREA Standards, CRCL is conducting a periodic review of ICE's Sexual Abuse and Assault Prevention and Intervention (SAAPI) Program with a particular focus on how ICE Headquarters (HQ) has established and implemented the requirements in the DHS PREA Standards. The purpose of this memorandum is to explain how CRCL will work with you during this investigation.

CRCL is undertaking this review pursuant to its authority under 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1 and consistent with the role prescribed to CRCL in the DHS PREA Standards under 6 C.F.R. §§ 115.93, 115.193, and 115.201.

FOCUS OF THE REVIEW

This review will assess ICE HQ's implementation of the DHS PREA Standards by reviewing, in part, how these requirements were carried out in response to several allegations of sexual abuse by individuals in ICE custody. This review will also assess how ICE personnel are executing related requirements from the DHS PREA Standards that are at the ICE HQ or agency level and form the overarching framework of the ICE PREA Program and thus unrelated to any particular allegation of sexual abuse.

The list below and the attached information request indicate which requirements this review will consider:

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(b)(5)

CRCL seeks to assess ICE HQ's implementation of DHS PREA Standards and provide policy recommendations, if warranted, to help the Department ensure that the implementation of the DHS PREA Standards is complete and consistent throughout ICE and in accordance with requirements.

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.

Under 6 C.F.R. § 115.93, § 115.193, and § 115.201, CRCL is charged with assisting the agency in coordinating audits of DHS confinement facilities and with providing guidance on the conduct and contents of the audit instrument and methodology.

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 DHS 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 ICE HQ is consistently implementing requirements as directed in the DHS PREA Standards; if the Constitution, a Federal statute, a Federal regulation, or a Departmental policy has been violated; what steps, if any, should be taken by ICE to improve the implementation of the DHS PREA Standards; and what steps, if any, should be taken by DHS to address the sexual abuse allegations, both individually (if the matter is ongoing) and as a matter of policy.

QUESTIONS PRESENTED

(b)(5)

INITIATING THE INVESTIGATION

CRCL has taken steps to begin its review of a collected sample of PREA allegations. These allegations represent different parts of the PREA process and have been selected to assist CRCL in assessing the success of the current ICE PREA Program. In addition, CRCL will request additional information and/or request interviews as the investigation proceeds.

At this time, we request that ICE schedule initial discussions with Senior Policy Advisor (b)(6) (b)(6) and Policy Advisor (b)(6) as soon as possible related to our complaint and the plans to review this matter. We look forward to working together. If you have any questions, please do not hesitate to contact Ms. (b)(6) at (b)(6) or (b)(6) or Ms. (b)(6) by at (b)(6) or (b)(6)

Copy to:

Timothy S. Robbins
Acting Executive Associate Director
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
(b)(6), (b) (7)(C)

Enrique Lucero
Acting Deputy Executive Associate Director
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
(b)(6), (b) (7)(C)

Tae Johnson
Assistant Director, Custody Management
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
(b)(6), (b) (7)(C)

Alison Walder
Chief of Staff, Custody Management
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
(b)(6), (b) (7)(C)

Waldemar Rodriguez
Associate Director
Office of Professional Responsibility
U.S. Immigration and Customs Enforcement
(b)(6), (b) (7)(C)

Jennifer Fenton
Deputy Associate Director
Office of Professional Responsibility
U.S. Immigration and Customs Enforcement
(b)(6), (b) (7)(C)

Enclosure