



Homeland
Security

April 5, 2022

MEMORANDUM FOR: Chris Magnus
Commissioner
U.S. Customs and Border Protection

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

FROM: Dana Salvano-Dunn
Director, Compliance Branch
Office for Civil Rights and Civil Liberties

(b)(6)

(b)(6)
Attorney Advisor, Legal Counsel Division
Office of the General Counsel

SUBJECT: Tactical Terrorist Response Team
Complaint Nos. 19-11-CBP-0592, 20-06-CBP-0469,
20-10-CBP-0814, 20-11-CBP-0928, 21-04-CBP-0219,
21-07-CBP-0381, 001058-21-CBP, 001557-21-CBP,
002245-21-CBP, 002341-21-CBP, and 002610-22-CBP.

The purpose of this memorandum is to notify U.S. Customs and Border Protection (CBP) that the Office for Civil Rights and Civil Liberties (CRCL) will be conducting an investigation of CBP's Tactical Terrorism Response Team (TTRT) training, activities, policies, and procedures, which will include onsite investigations at the following air Ports of Entry: Washington Dulles International Airport and Boston Logan International Airport.

CRCL has received complaints involving the activity of the TTRT alleging that CBP OFO has violated the civil rights or civil liberties of certain travelers subjected to repeated secondary inspections and unwarranted scrutiny. The complaints fall into the following categories: (1) repeated, unnecessary, and/or excessive inbound and outbound secondary inspections; (2) questioning during secondary inspections unrelated to inadmissibility and/or customs enforcement including, but not limited to, religious practices, familial relationships, political beliefs, and participation in First Amendment protected activity; (3) travelers detained for lengthy periods; (4) use of open-source research on First Amendment protected activity for inadmissibility and enforcement determinations; (5) advanced electronic searches conducted without sufficient justification. In each of the complaints retained for this investigation, the

secondary inspection was performed by TTRT officers. In this memorandum, CRCL notifies you of the complaints, describes the allegations, informs you that CRCL will retain these complaints for investigation, and explains how CRCL will work with CBP during this investigation.

ALLEGATIONS

Specific complaint allegations include the following:

19-11-CBP-0592¹

On August 28, 2019, CRCL reviewed articles from the New York Times, The Harvard Crimson, and Pen America regarding (b)(6), 17-year-old Palestinian student from Lebanon who attempted to enter the United States at Boston Logan International Airport (Logan) on August 23, 2019, as part of Harvard's incoming freshman class. CBP allegedly revoked the student's visa due to comments on his friends' social media that were critical of the United States. It was reported that the student was singled out for questioning by a CBPO at Logan Airport and subjected to questioning about his religion and religious practices in Lebanon. The CBPO then asked the student to unlock his phone and laptop and left to search them for approximately five hours. The student stated that the CBPO then screamed at him and stated that she found social media posts from his social media friends that were critical of the United States. The student stated that he had nothing to do with those posts, did not like or comment on them, and should not be held responsible for other people's political views.

20-06-CBP-0469

On March 5, 2020, CRCL received correspondence from (b)(6), Head of Governance, Islamic Relief Worldwide, on behalf of his employee (b)(6), a Dutch citizen of Somali descent. The complainant reportedly traveled to the United States in her personal capacity for vacation and to visit relatives in the United States arriving at Logan on December 17, 2019. According to Mr. (b)(6), when CBP encountered the complainant, officers initially asked her questions that were appropriate and related to admissibility, but that they then began to ask her highly inappropriate and discriminatory questions regarding her employer Islamic Relief Worldwide and its alleged ties to terrorism and the Muslim Brotherhood.

20-10-CBP-0814

On May 6, 2020, CRCL received email correspondence from (b)(6) of the Council on American-Islamic Relations on behalf of his United States citizen (USC) clients (b)(6) and his wife (b)(6) ("the Hamouis"). The complaint alleges that, upon returning to the United States via Miami International Airport on September 21, 2019, the complainants were referred to secondary screening, where their luggage and phones were searched. The complaint further alleges that the complainants believe that they were questioned and detained due to their Muslim faith or race.

¹19-11-CBP-0592 was investigated by CBP's Office of Inspector General as I19-CBP-BOS-22201 and the OIG provided JICMS file # 201911353) on November 23, 2021.

Complaint 20-11-CBP-0928

On July 17, 2020, CRCL received an email from the CBP Info Center forwarding a complaint (Case#200714-2286809) from (b)(6) regarding his outbound inspection at the Massena Port of Entry in Massena, New York, on July 12, 2020. The complainant is a naturalized USC born in Afghanistan who was traveling with his wife (b)(6), a Canadian citizen also born in Afghanistan. The complainant alleges that CBP questioned him extensively about "every single detail about[his] life and [his] origins and that of [his] father and the whole extended family, including "the affiliation of [his] tribe and origins." He alleges that he was asked to provide the date of birth of a deceased uncle and told that "[CBP] would make it easy for [him] to leave" if he provided the date of birth. The complainant alleged that this questioning was racial and religious discrimination. He also alleged that he and his wife were directed to use a restroom with a camera situated behind the toilet. Although he refused to use the restroom, his wife used it, which he feels also constituted a violation of privacy.

Complaint 21-04-CBP-0219

On December 18, 2020, CRCL received direct correspondence from attorney (b)(6) of Council on American-Islamic Relations (CAIR) on behalf of (b)(6) a USC, who alleges that that CBP has discriminated against him based on his religion. Mr. (b)(6) asserts that CBP has violated the complainant's civil rights and civil liberties by detaining and subjecting secondary inspection and questioning multiple times since 2016 and asking about his religious beliefs. Mr. (b)(6) detailed multiple instances of the difficulties the complainant experienced during his international travel. This included his referral to a CBP preclearance secondary inspection on September 25, 2018, at Toronto Pearson International Airport. Mr. (b)(6) asserts that during this secondary inspection CBP Officers asked the complainant questions regarding his religious beliefs including how often he prays, what mosques he attends or associates with, and how religious he is. According to Mr. (b)(6), the CBP Officers also asked the complainant questions about his travel companions and mams at certain mosques. Mr. (b)(6) asserted that the complainant was again referred for secondary inspection at Lynden Border Crossing on June 25, 2019 during which CBP Officers asked him questions regarding his visit to Saudi Arabia in 2016 for umrah, a religious pilgrimage to Mecca.

Complaint 20-07-CBP-0381

On January 26, 2021, CRCL received direct correspondence from (b)(6), a USC, regarding excessive interrogations and secondary screening interviews by DHS agents and CBP officers at US both Washington Dulles International Airport and other foreign airports. The complainant alleges she had been forced to undergo secondary screening almost every time upon return from vacation overseas. She also alleges CBP officers question her about her travels and familial relationships, specifically the activism work of her father- a USC born in Libya. The complainant alleges CBP officers ask the same question every time such as: address, workplace, where Ms. (b)(6) traveled, where her father is, her father's workplace, and how much money her father makes. She reported that some officers are nice, some are mocking, and others make racist comments.

Complaint 001058-21-CBP

On June 27, 2021, CRCL received a direct email from (b)(6) regarding the repeated secondary inspections of his client (b)(6) when he travels and a specific encounter with CBP officers at George Bush Intercontinental Airport on June 27, 2021. Mr. (b)(6) asserted that the complainant was treated in a disrespectful manner and questioned about his religious activity. In addition, the complainant alleged that the CBP officer lied and misrepresented the complainant's rights by implying that he had no rights and was obligated to answer all questions during secondary inspection.

Complaint 001557-21-CBP

On August 1, 2021, CRCL received a direct complaint from (b)(6), a USC, related to his treatment at Seattle Tacoma International airport. According to the complaint on July 21, 2021, a CBP officer questioned him for approximately 30 minutes and asked questions about his education, employment, family, and foreign travels. The complaint alleged that this is not the first time he has been "profiled by a CBP officer" and he believes that he is being profiled based on religion and national origin.

Complaint 002245-21-CBP

On September 1, 2021, CRCL received correspondence via standard mail from attorney (b)(6) of CAIR Michigan on behalf of (b)(6), a USC. The correspondence alleged that on July 15, 2021, CBP seized two Samsung cell phones from the complainant at the Detroit Airport for "media review" and that CBP violated policy for keeping the devices over five days. Ms. (b)(6) alleged that seizure of the phones was a violation of the complainant's Fourth Amendment rights. Furthermore, Ms. (b)(6) stated that the phones were seized because her client refused CBP access and "not as a result of any articulable rationale, basis, or probable cause to believe there were grounds to actually seize and search the phones." According to Ms. (b)(6), the complainant was met with indifference by CBP officials when she has inquired about the return of her property.

Complaint 002341-21-CBP

On September 9, 2021, CRCL received email correspondence from (b)(6) of Lewis Baach Kaufmann Middlemiss PLLC on behalf of (b)(6) and (b)(6), both USCs. The correspondence alleged that the complainants endured "a pattern of abusive conduct that has been aimed at them by the Customs and Border Patrol upon their reentry to the United States from abroad." According to the correspondence, "[f]or the past several years, they [complainants] have been referred to secondary screenings, where they have been made to endure a series of racially charged questions, humiliating searches, and been subjected to inordinately lengthy waits without explanation or opportunity to clarify the underlying issue that is causing the screenings." The correspondence alleged that it is the law firm's belief that the complainants have received questionings and comments during secondary screenings because of the complainants' "ethnic background and frequent travels to the Middle East."

Complaint 002610-21-CBP

On October 17, 2021, CRCL received direct correspondence from (b)(6). Mr. (b)(6), a United States Citizen, alleged that he is sent to secondary and asked questions based on his religion. “I get profiled discriminated against because of my religion. I get pulled from the line or get asked secondary questions that I feel are against my civil rights. I get treated like a second-class citizen every time and I get embarrassed because I’m never going to enjoy being an American citizen and be let in the country just like every citizen.”

ADDITIONAL AREAS TO BE REVIEWED

Due to the number and significance of civil rights and civil liberties concerns raised by these allegations CRCL will look broadly at TTRT nationwide training, policies, and procedures and TTRT operations during onsite visits to determine if are 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.” 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 § 5.1(e) of the "Memorandum of Agreement between [CRCL] and [CBP] Regarding the Coordination of CRCL Complaint Investigations" dated February 28, 2017.

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."

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) assess if current TTRT policies, procedures, directives and guidance ensure all appropriate civil rights and civil liberties protections; (2) determine whether CBP has complied with all applicable authorities, policies and procedures in the referral and

conduct of traveler secondary inspections; (3) investigate the allegations in the complaints referenced; (4) determine if the facts we find suggest that the Constitution, a federal statute, or a Departmental policy has been violated; and (5) assess whether CBP should take any steps to address and concerns found during the investigation. It is possible that our investigation will reveal other matters of concern; if this occurs, we will inform you.

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 Dr. Berge 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 Dr. (b)(6) by telephone at (b)(6) or by email at (b)(6)

Copy to:

Nathaniel Kaine
Acting Chief of Staff
U.S. Customs and Border Protection
(b)(6), (b) (7)(C)

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

Tasha Reid-Hippolyte
Chief of Staff
Office of Field Operations
U.S. Customs and Border Protection
(b)(6), (b) (7)(C)

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

Eric W. Dugger
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)

