



Homeland  
Security

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MEMORANDUM FOR: Troy Miller  
Senior Official Performing the Duties of the Commissioner  
U.S. Customs and Border Protection

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

FROM: Peter E. Mina (b)(6)  
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SUBJECT: Tucson Sector Onsite Investigation  
CRCL Complaint Nos. 21-01-CBP-0064, 21-06-CBP-0278, 21-06-  
CBP-0290, 19-09-CBP-0453, 21-06-CBP-0343, 21-05-CBP-0222,  
21-05-CBP-0242, 21-05-CBP-0265, 21-06-CBP-0324, 21-01-CBP-  
0061, 20-09-CBP-0794, 001547-21-CBP, 21-06-CBP-0277, 21-07-  
CBP-0356, and 21-07-CBP-0378

The purpose of this memorandum is to notify U.S. Customs and Border Protection (CBP) that the U.S. Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL) will be conducting an onsite investigation within the Tucson Sector from **August 2-6, 2021**. CRCL will be reviewing CBP's general adherence to relevant CBP and sector policies and procedures regarding short-term custody. CRCL will also investigate complaints relating to the Tucson Sector, specifically, the Tucson Coordination Center, Brian A. Terry, Nogales, Casa Grande, and Ajo Stations. The complaint allegations include: inferior hold room conditions, such as time in custody, insufficient health screening and medical care and protocols for the prevention of the spread of infectious diseases; insufficient language access; failure to provide outdoor recreation; overcrowded hold rooms; failure to provide telephone calls to unaccompanied minors; and failure to return personal property upon departure from the CBP facility.

A contract subject matter expert in the area of corrections and detention and a contract subject matter expert in the area of medical care will accompany CRCL. Lastly, CRCL will review any other important civil rights and civil liberties issues that arise during its visit to the Tucson Sector.

## BACKGROUND

In March 2008, CRCL conducted an onsite investigation in the Tucson Sector. Soon after the 2008 investigation, on November 30, 2009, CRCL submitted to CBP a Final Report and Recommendations memorandum including eight recommendations regarding the treatment of unaccompanied minors. CRCL returned to the Tucson Sector in February and August 2010 and conducted a limited factual investigation of two complaints regarding conditions of detention and other issues in the Tucson Sector.<sup>1</sup> On September 24, 2012, CRCL submitted to CBP a formal report and recommendations memorandum including six recommendation in the following areas: hold room conditions, medical care, language services, time in custody, recordkeeping, and juvenile coordinators.

Following the issuance of the September 24, 2012, formal report and recommendations memorandum, CBP worked with CRCL to develop an action plan to address the implementation of these six recommendations, most of which were implemented by early 2013.

In May 2015, CRCL again conducted an investigation in the Tucson Sector in connection with a complaint alleging concerns about conditions of detention and the treatment of unaccompanied minors in detention.<sup>2</sup> Because similar allegations had been raised in a number of sectors CRCL conducted a multi-sector onsite, and at the conclusion of the this investigation, CRCL provided an exit-briefing to Tucson Sector leadership to discuss (b)(5)

(b)(5)

### *Recent Events*

Various reports of “a fast-growing migration surge along the Mexico border” have recently circulated, making this a critical time for CRCL to undertake a new onsite in the Tucson Sector. For example, on March 6, 2021, the Washington Post published an article stating, “[m]inors arriving without their parents are the one group not being returned to Mexico under Biden, and their fast-growing numbers have created the most immediate challenge. One agent in Arizona described grim conditions at a Border Patrol station where dozens of teens have been waiting for as long as six days for space to open up in shelters run by the Department of Health and Human

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<sup>1</sup> CRCL referred Complaint Nos. 10-02-CBP-0023 and 10-04-CBP-0085 to CBP for joint investigation with CRCL. CBP provided CRCL with information pertaining to both complaints and CRCL conducted onsite investigations in the Tucson Sector in February and August 2010.

<sup>2</sup> On June 11, 2014, CRCL received email correspondence from several non-governmental organizations on behalf of 116 unaccompanied minors regarding conditions of detention and treatment of detainees in the Tucson Sector that was investigated by CRCL as Complaint No. 14-09-CBP-0237.



Services, despite U.S. laws mandating their transfer within 72 hours.”<sup>3</sup> CRCL also opened specific complaints related to the recent surge which are described below in detail. Therefore, CRCL plans to investigate whether the 2015 informal recommendations have been implemented, to address the specific allegations detailed below, and to monitor how individuals in custody are being treated during the recent surge within the Tucson Sector.

## CURRENT ALLEGATIONS

### *Tucson Coordination Center Complaints*

#### *Complaint Number: 21-01-CBP-0064<sup>4</sup>*

On October 22, 2020, CRCL received an email from the U.S. Department of Health and Human Services, Administration for Children & Families, Office of Refugee Resettlement (ORR) on behalf of (b)(6), a 17-year-old unaccompanied minor at the time of the reported allegations. (b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

#### *Complaint Number: 21-06-CBP-0278*

On August 15, 2019, CRCL received direct correspondence from attorney (b)(6) of the Florence Immigrant and Refugee Rights Project on behalf of (b)(6) (b)(6) a three-year-old unaccompanied minor at the time of the reported allegations. (b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

#### *Complaint Number: 21-06-CBP-0290*

On June 27, 2019, CRCL received direct correspondence from attorney (b)(6) of the ProBar South Texas Pro Bono Asylum Representation Project, Immigrant Children's Assistance Project on behalf of (b)(6), a 16-year-old unaccompanied minor at the time of the reported allegations. (b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

<sup>3</sup> See [Biden administration rushes to accommodate border surge, with few signs of plans to contain it - The Washington Post](#).

<sup>4</sup> This complaint was previously opened on a separate issue. For the onsite, CRCL will be looking into the language access issue.

out himself, and that the Border Patrol agents made him sign some documents that were not explained to him.

*Complaint Number: 19-09-CBP-0453*

On June 12, 2019, CRCL received an email from ORR on behalf of (b)(6), a ten-year-old unaccompanied minor at the time of the reported allegations. (b)(5); (b)(7)(E)

(b)(5); (b)(7)(E) The correspondence alleges that during her seven days in CBP custody, this unaccompanied minor had no access to the outdoors.

*Complaint Number: 21-06-CBP-0343*

On November 12, 2020, CRCL received an email from ORR on behalf of (b)(6), a 17-year-old unaccompanied minor at the time of the reported allegations. (b)(5); (b)(7)(E)

(b)(5); (b)(7)(E) The correspondence alleges that during his six days in CBP custody, this unaccompanied minor was not provided the opportunity to make a telephone call. He was also informed that he was in close contact with a COVID-19 positive minor and had to be quarantined with the other eight individuals who were also exposed.

*Complaint Number: 21-05-CBP-0222*

On January 22, 2021, CRCL received an email from ORR on behalf of (b)(6), a 15-year-old unaccompanied minor at the time of the reported allegations. (b)(5); (b)(7)(E)

(b)(5); (b)(7)(E) The correspondence alleged that after this minor was apprehended he temporarily gave his eyeglasses to the Border Patrol agent when he was taking off his sweater, but the glasses were not returned to him. This minor alleges that, at the TCC, he wanted to ask for his glasses back, but he was not sure who to ask because, according to him, it did not appear that any of the Border Patrol agents spoke Spanish. The correspondence alleges this minor was transferred to ORR custody without receiving his glasses back.

*Complaint Number: 21-05-CBP-0242*

On November 9, 2020, CRCL received an email from ORR on behalf of (b)(6), a 17-year-old unaccompanied minor at the time of the reported allegations.

(b)(5); (b)(7)(E) During that time, on November 6-7, CBP transported the unaccompanied minor for a return flight to Guatemala, but the flight was cancelled. The correspondence alleges that the unaccompanied minor was not provided the opportunity to make a telephone call.

*Complaint Number: 21-05-CBP-0265*

On November 10, 2020, CRCL received an email from ORR on behalf of (b)(6), a 16-year-old unaccompanied minor at the time of the reported



allegations. (b)(5); (b)(7)(E)  
(b)(5); (b)(7)(E) The correspondence alleges that the unaccompanied minor was not provided the opportunity to make a telephone call.

*Complaint Number: 21-06-CBP-0324*

On September 20, 2020, CBP provided CRCL a copy of a Significant Incident Report (SIR) regarding the death of an unnamed Mexican national who was apprehended on September 20, 2020, by U.S. Border Patrol agents assigned to the “Tucson, Arizona Station.” The SIR reports that the subject appeared to be dehydrated and was taken to a local hospital and was diagnosed with multisystem organ failure and died.

*Brian A. Terry Station Complaint*

*Complaint Number: 21-01-CBP-0061*

On October 8, 2020, CBP provided CRCL a copy of a SIR regarding an unnamed Mexican national who was apprehended on October 7, 2020, by U.S. Border Patrol agents assigned to the Brian A. Terry Station. The SIR reports that the subject appeared to be ill and was taken to a local hospital where he tested positive for COVID-19. Due to his time in custody and the need to limit any additional exposure, the subject was processed for removal and expelled through the Douglas Port of Entry.

*Nogales Station Complaint*

*Complaint Number: 20-09-CBP-0794*

On June 22, 2020, CBP provided CRCL a copy of a SIR regarding an unnamed Mexican national who was apprehended on June 13, 2020, by U.S. Border Patrol agents assigned to the Nogales Station. The SIR reports the subject was processed for removal and medically screened, including receiving a test for COVID-19. On June 14, 2020, the subject was returned to Mexico. On June 18, 2020, Border Patrol agents were notified that the subject’s test results were positive for COVID-19.

*Casa Grande Station Complaints*

*Complaint Number: 001547-21-CBP*

On March 8, 2021, CRCL received an email from ORR on behalf of (b)(6)  
(b)(6) a 16-year-old unaccompanied minor at the time of the reported allegations.

(b)(5); (b)(7)(E)  
(b)(5); (b)(7)(E) The correspondence alleges that was not provided the opportunity to make a telephone call.

*Complaint Number: 21-06-CBP-0277*

On June 12, 2019, CRCL received an email from ORR on behalf of (b)(6)  
(b)(6) a 17-year-old unaccompanied minor at the time of the reported

allegations. (b)(5); (b)(7)(E)  
(b)(5); (b)(7)(E) The unaccompanied minor alleges that he was held in an overcrowded room.

Ajo Station Complaint

*Complaint Number: 21-07-CBP-0356*

On February 24, 2021, CRCL received an email from ORR on behalf of (b)(6)  
(b)(6), a 16-year-old unaccompanied minor at the time of the reported allegations. (b)(5); (b)(7)(E)  
(b)(5); (b)(7)(E) The correspondence alleges that during his four days in CBP custody, this unaccompanied minor was not allowed to contact his family or his sponsor.

*Complaint Number: 21-07-CBP-0378*

On March 10, 2021, CRCL received a referral from ORR on behalf of (b)(6)  
(b)(6), a 17-year-old unaccompanied minor at the time of the reported allegations. The UC reported that he was in DHS custody for eleven days. In addition, the UC reported that he was not able to speak to his sponsor. (b)(5); (b)(7)(E)  
(b)(5); (b)(7)(E) In addition, the I-213 summary states that the minor “was given the opportunity to speak to his mother and father on February 26, 2021 at approximately 20:29. Two attempts were made to contact [Sis]-  
(b)(6) mother, (b)(6) and his father, (b)(6) The number that was provided for his mother, a male answered the phone and stated we had the wrong number. The phone number that was provided for his father failed to go through.”

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 U.S. Border Patrol 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.”<sup>5</sup> 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

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<sup>5</sup> 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).

- “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.<sup>6</sup>

*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) determine whether CBP has complied with applicable policies and procedures relating to the care and detention conditions of individuals detained in CBP custody within the Tucson Sector; 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)

<sup>6</sup> § 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.



(b)(5)

INITIATING THE INVESTIGATION

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

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