



Homeland  
Security

September 28, 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 (b) (6)  
Director, Compliance Branch  
Office for Civil Rights and Civil Liberties

Susan Mathias /s/  
Assistant General Counsel, Legal Counsel Division  
Office of the General Counsel

SUBJECT: Reconsideration Memorandum Regarding  
Alleged Nationality and Place of Birth Discrimination  
at the Blaine Port of Entry

This memorandum requests that U.S. Customs and Border Protection (CBP) reconsiders its response to two recommendations issued by the Office for Civil Rights and Civil Liberties (CRCL) regarding the CBP nondiscrimination policy.

*Background*

On July 16, 2021, CRCL issued a Recommendation Memorandum following an investigation of alleged nationality and place of birth discrimination at the Blaine Port of Entry. (b) (5)

[REDACTED], CRCL issued CBP the following three recommendations:

1. (b) (5)  
[REDACTED]

2. (b) (5) [Redacted]
3. (b) (5) [Redacted]

On November 19, 2021, CBP responded to CRCL’s Recommendation Memorandum, partially concurring with recommendation 1 and concurring with recommendations 2 and 3.

*Analysis*

CRCL acknowledges CBP’s consideration of CRCL’s three recommendations and recognizes that CBP has initiated steps to implement parts of these recommendations. In particular, CRCL appreciates that CBP concurred with recommendation 2, agreeing to provide additional guidance to personnel in the Seattle Field Office regarding DHS and CBP nondiscrimination policy. This training will help prevent discrimination against arriving travelers while continuing to allow CBP to meet its mission. Nonetheless, CRCL maintains several concerns with CBP’s response to recommendations 1 and 3.

**Review process for local operations (Recommendation 1)**

In its partial concurrence, CBP agreed that there is a standard review process for all Office of Field Operations (OFO) Headquarters (HQ) policies and directives that involve the use of race, ethnicity, country of birth, and nationality. (b) (5)

[Redacted]

(b) (5) [Redacted]

**Amend CBP’s nondiscrimination policy statement (Recommendation 3)**

In its concurrence, CBP states that “CBP follows the DHS policy standards” and then quotes CBP’s current non-discrimination policy. CRCL disagrees that CBP policy is following the DHS policy standards outlined in the 2013 DHS nondiscrimination memo.

In the memorandum, CRCL identified several sources for CBP’s nondiscrimination policy, including a February 6, 2014, CBP memo titled “Nondiscriminatory Law Enforcement and Screening Activities” and a January 27, 2020, email from the CBP OFO Executive Assistant Commissioner that reiterated information from that memo.

(b) (5)

[Redacted]

CBP stated its concurrence to CRCL’s recommendation to amend its non-discrimination policy statement, explaining that it will reissue its non-discrimination policy statement while noting that it adopts the DHS non-discrimination policy. (b) (5)

[Redacted]

While CRCL recognizes that the global DHS non-discrimination policy is pending revision, that effort should not impede CBP from amending its policy to align with the current version of the DHS non-discrimination policy. Additional amendments can be made later but will likely incorporate this change as it merely brings CBP policy in line with DHS policy. CRCL also is confident that CBP can develop a robust review process on the use of protected characteristics in local operations in a manner that will not impact operational requirements for expediency and can update the CBP nondiscrimination policy to conform with DHS policy. CRCL remains available to provide technical assistance regarding these recommendations.

*Conclusion*

CRCL requests that CBP reconsider its responses to recommendation Nos. 1 and 3 as noted above. We request that CBP provide a response to CRCL within 60 days on whether CBP will reconsider its responses. If CBP decides to reconsider the prior responses, please include an amended action plan. Please send your response and any questions to (b) (6). CRCL will share your response with (b) (6), the Senior Policy Advisor who conducted this investigation. If CBP does not decide to reconsider, CRCL maintains the ability to appeal a Component’s response to the DHS Deputy Secretary.

Copy to:

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