



Homeland
Security

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MEMORANDUM FOR: Troy A. Miller
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U.S. Customs and Border Protection

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(b) (6)

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SUBJECT: Recommendations Regarding CBP/DHS Response to Migrant
Activity in Del Rio, Texas, and at the Del Rio-Ciudad Acuña
International Bridge in September 2021

Purpose

This memorandum provides recommendations related to the investigation conducted by the Office for Civil Rights and Civil Liberties (CRCL) of the U.S. Department of Homeland Security (DHS) and U.S. Customs and Border Protection (CBP) response to a surge of primarily Haitian migrants in September 2021. Specifically, CRCL investigated: 1) conditions in the area under the Del Río-Ciudad Acuña International Bridge (Bridge) where CBP established a ticketing system where thousands of migrants who had unlawfully entered the United States were called by a numbered and color-coded ticket to present themselves for processing by CBP and transportation to CBP facilities. This area contained temporary fencing to guide migrants who were waiting to be taken into CBP custody and processed (hereinafter referred to as “partially fenced staging area”), an area where none of the interviewees expressed a belief or understanding that they were free to leave; 2) allegations of disparate and discriminatory treatment of Haitian migrants based on race and/or nationality; and 3) policies and procedures related to the deployment of the U.S. Border Patrol Horse Patrol Units (HPU).

Background

From September 8 to September 24, 2021, the Border Patrol responded to a mass migration event, in which approximately 19,752 individuals crossed into the United States at the Del Rio

International Bridge area during that 16-day period. CRCL received multiple complaints alleging that CBP had violated the civil rights of the predominately Haitian migrant population in the partially fenced staging area Bridge in September and October 2021.¹ While CBP asserts that the purpose of the fencing was to guide the migrants, we note that, based on CRCL interviews with Haitian migrants, there was very little communication between the Border Patrol Agents (BPAs) issuing tickets for processing and the migrants as will be discussed further in this memo. None of the interviewees expressed a belief or understanding that they were free to leave. CRCL believes that it was a rational inference that migrants, who had entered the U.S. without inspection, believed they were not free to leave a partially fenced staging area which was being monitored by CBP. The complaints alleged that CBP did not provide adequate food, water, sanitation, sufficient medical care, or appropriate language access for Haitian migrants while in the partially fenced staging area.² In addition, the complaints alleged that the poor conditions and lack of resources in response to the surge of migrants crossing the Rio Grande River into the United States and in the partially fenced staging area during this period are indicative of CBP's disparate treatment of Haitian migrants based on both race and nationality. Similarly, the complaints alleged that the deployment and use of USBP's HPU to patrol the Rio Grande River near the Bridge constituted discrimination based on the race and/or nationality of the majority Haitian migrants. CRCL opened three investigations based on these complaints: 002462-21-CBP, 002621-22-CBP, and 002419-21-CBP. Below are summaries of the specific complaint allegations CRCL opened as representative complaints related to this issue.

Complaint 002462-21-CBP

On September 24, 2021, CRCL received a direct email from the ACLU, writing on behalf of several Non-Governmental Organizations (NGO) organizations, concerning the "conduct of DHS's officers and agents in and around Del Rio, Texas." The ACLU states that the organizations are aware that CBP Office of Professional Responsibility (OPR) and DHS Office of Inspector General (OIG) are "narrowly investigating recent violence toward Haitian migrants". According to the letter, the complaint on behalf of the NGOs "complements the pending investigations and covers a range of violations committed in connection with CBP's grotesque treatment of migrants." The reported violations alleged in the correspondence included but were not limited to: 1) lack of interpreters for communication with DHS officials; 2) substandard conditions of nourishment and sanitation in punishing heat; 3) verbal abuse from DHS guards and CBP officers/agents; 4) physical intimidation from CBP officers/agents; 5) physical violence, including what appear to be assaults, against migrants by CBP/officers/agents; and 6) inadequate medical care.

Complaint 002621-22-CBP

On October 18, 2021, Lawyers for Civil Rights Boston sent email correspondence on behalf of Haitian Americans United (HAU) and 48 individual Haitians who allegedly experienced inhumane conditions in an "overcrowded and squalid "camp" under a bridge near Del Rio, Texas." HAU demanded that DHS provide written assurances that it will improve conditions for all detained immigrants and protect the Haitian community. The correspondence also specifically alleged that people were detained for up to 10 days under the Bridge where "they did not have access to food, water, hygiene products, sanitation or protection from the elements". Additionally, the correspondence alleged that "DHS's failure to provide medical care led to at least one miscarriage"

¹CBP's Southwest Border Coordination Center was stood up in March 2022 and not operational at this time.

²CRCL observed an elongated rectangle fenced on both long sides (one under the Highway 277 running northeast to southwest, the other along the side path running northwest to southwest) and one short side (on the northeast end of the partially-fenced area), with the only opening on the southwest side effectively blocked by the Rio Grande River.

and that, although the conditions were overcrowded, DHS did not provide protection from or screening for COVID-19. Finally, HAU alleged that, “of the 48 Black people who fled Haiti — whose experiences form the basis of this complaint — not a single person was ever given information in Haitian Creole.”

Complaint 002419-21-CBP

CRCL reviewed a *Politico* article published on September 20, 2021, titled "White House: Possible use of Whips on Haitian Migrants is ‘Horrific.’” According to the article, White House Press Secretary Jen Psaki had expressed dismay at images that appeared to show BPAs using whips on migrants potentially seeking asylum in the U.S. In addition, Press Secretary Psaki asserted that administration officials were aware of the situation and that “it’s horrible to watch.” She also said people were “understandably” outraged at the possibility that law enforcement used whips or similar objects against those gathered near Del Rio, many of them from Haiti.

Scope of CRCL investigation

In response to the emergent nature of the events under the Bridge in Del Rio, CRCL sent a member of its Rapid Response Team to conduct observations of the activity in the partially fenced area from September 20-21, 2021. It should be noted that CRCL’s onsite observation is best understood as a snapshot in time of CBP’s activity during that specific period. The purpose of the onsite was to better inform CRCL’s statutory mandate to assist the Secretary and Components in the development and implementation of policies and procedures ensuring the protection of civil rights and civil liberties.³ As such, CRCL’s onsite observation did not include official meetings with CBP senior leadership who were directing CBP’s response efforts, including those who were directly engaged in medical and other extensive humanitarian support efforts. Rather, CRCL’s onsite involved direct observations and included discussions with USBP and CBP onsite personnel on the ground, including the USBP Incident Commander and medical staff in the partially fenced staging area. CRCL felt it was imperative to get a true sense of how the operation was unfolding in real time and was offered an unrestricted look at CBP’s handling of an evolving situation. CRCL made sure to include interviews with onsite medical staff who were both cognizant of and responsible for responding to emergent medical needs. CRCL is very grateful to the informative and consistently professional onsite USBP and CBP personnel who graciously answered CRCL’s inquiries while continuing to respond to the developing situation.

In addition, CRCL senior leadership and staff present in Del Rio met with representatives of Haitian American NGOs and legal advocacy groups to understand their concerns and viewpoint. Following the Del Rio visit, CRCL reviewed the observations and responses to CRCL’s onsite inquiries and the issues and concerns raised by NGO representatives. Based upon that review, CRCL began a large-scale investigation into the events at Del Rio in September 2021.

Following the site visit and NGO engagement, CRCL conducted multiple interviews of both detained and non-detained Haitian migrants regarding their experiences while under the Bridge.⁴ This was done via a stratified random sampling of Haitian migrants in ICE detention facilities based

³6 U.S.C. § 345.

⁴CRCL used two strata: N1 was comprised of women and N2 was comprised of men. CRCL was able to interview all of the Haitian migrants in the N1 random sampling but was unable to conduct one of the interviews in the N2 random sample as the detainee had been transferred from the facility prior to the interview. L=2, N1=122, N2=271, N=393, K=30. A total of 14 interviews were conducted with the assistance of CRCL contracted interpreters.

on a review of ICE and CBP records for migrants who were encountered between September 19, 2021, and September 22, 2021. CRCL interviewed both men and women separately. CRCL also conducted interviews of three non-detained Haitian migrants with the assistance of a Non-Governmental Organization that had submitted a complaint on their behalf.

Investigation

Discriminatory Treatment

CRCL observed the population in the partially fenced staging area to be primarily Black migrants, likely self-reporting as Haitian nationals. Additionally, there were no more than five individuals in the area whom CRCL perceived to be Latino or Indigenous persons. CRCL perceived the DHS law enforcement officers, including BPA and CBP Officers (CBPO) under the Bridge, to be predominately White, but there were also a small number of CBP officers who appeared to be Latino. CRCL did not observe any Black USBP or CBP officers but did observe a limited number of Black National Guard members providing logistics support.⁵

None of the Haitian migrants interviewed by CRCL reported that they personally encountered or witnessed BPAs under the Bridge physically or verbally assault any migrants.⁶ All of the migrant interviewees confirmed that the migrant population under the Bridge was not limited to Haitian nationals. When asked if they believed that they had been treated worse due to their nationality or color of their skin by BPAs while under the Bridge, most of the migrants stated they had not personally experienced discriminatory or disparate treatment. According to one Haitian migrant interviewed by CRCL, “All other nations [were] present there” and “from what [she] saw, everybody was treated the same.”⁷ Another Haitian migrant told CRCL that he saw other migrants with “light skin complexions like Caucasians, but I don’t know their nationality.” When CRCL asked if he thought that those individuals were treated differently or better, he responded “No, they treated everyone equally.”⁸

That said, one of the Haitian migrants interviewed told CRCL that he believed that BPAs treated Haitian migrants differently. When CRCL asked him to describe his experience, he stated that, “I didn’t like when they distributed the food, they called the people with white color first.” He then added that, “For me, that was not good because if were in the same situation, why because I’m Black I have to be treated worse than the lighter-skin? We’re not supposed to have different treatment; we’re all there for the same goals, same reason. It was not fair to not get the same treatment.”⁹

Medical Assessments and Care – COVID-19 Concerns

CRCL recognizes and appreciates the efforts of medically trained staff to respond to a rapidly evolving event. Their efforts to provide medical care in response to identified issues and concerns

⁵As of September 30, 2021, the USBP permanent workforce consisted of 21,184 employees, 48.9% White, 46.5% Hispanic/Latino, and 2.22% Black. The OFO Officer permanent workforce consisted of 32,832 employees, 51.0% White, 29.8% Hispanic/Latino, and 10.1% Black.

⁶The BPAs discussed in this section were on foot and assigned within the cordoned section under the Bridge where migrants were waiting to be transported.

⁷Teleconference interview by CRCL staff with Haitian migrant (November 9, 2021).

⁸Teleconference interview by CRCL staff with Haitian migrant (November 9, 2021).

⁹Teleconference interview by CRCL staff with Haitian migrant (February 11, 2022).

was laudable. As discussed above, this memo reflects CRCL’s direct observations of activity in the partially fenced staging area from September 20-21, 2021, and CRCL’s contemporaneous discussions with onsite DHS medically trained staff. In briefings following the events at Del Rio, CBP asserted that it employed a tiered approach to respond to emergent medical issues which included engaging multiple lines of medical response such as local Emergency Medical Technicians (EMT), deployed EMTs, and CBP contract Loyal Source Government Services (LSGS) medical personnel. As this was a rapidly evolving situation, CBP notes that it adjusted and enhanced its medical support efforts by establishing additional medical support efforts including staging and treatment areas and by deploying U.S. Department of Health and Human Services, Disaster Medical Assistance Teams (HHS/DMAT) capabilities.¹⁰

Given that there was significant information provided while at Del Rio, as well as observations of the care provided, (b) (5)

. A temporary structure had been erected for the CBP LSGS medical contractor. An LSGS nurse was onsite but not located in the partially fenced staging area. In addition, a physician was on call to provide onsite medical examinations as needed. Likewise, a limited number of DHS medically trained personnel were located in the partially fenced staging area and were available for Haitian migrants who self-reported medical conditions/concerns.

CBP medically trained staff were conducting occasional and unscheduled roving observational assessments of the general population for visible medical concerns/conditions. In addition, they responded to exigent medical situations by providing immediate medical assistance and contacting local emergency responders for transport to the appropriate medical facility. For example, according to a Haitian migrant interviewed by CRCL, “[b]y my side, I had a lady who was sick and reached out to the medical team, who was not too far from us. They hurried to come and took care of the lady.”¹¹ (b) (7)(E)

The Haitian migrants interviewed by CRCL reported that while there was some medical care available in partially fenced staging area, access to medical care was sporadic and limited to emergency situations. For example, one individual reported that DHS medical personnel responded to a woman in labor who was transported to a hospital where she gave birth.¹² She also told CRCL that the same woman later returned to the partially fenced staging area with the newborn infant where the mother and newborn waited in the mud with the other migrants for transportation.¹³ Other Haitian migrants reported that even when requested, medical assistance was largely

¹⁰Disaster Medical Assistance Teams (DMATs) are an asset of the National Disaster Medical System (NDMS), a federally coordinated healthcare system and partnership of the United States Departments of Health and Human Services, Homeland Security, Defense, and Veterans Affairs. DMATs are composed of professional and para-professional medical personnel, supported by pharmacists, logistical, and administrative staff that provide medical care during a disaster or other special events.

¹¹Teleconference interview by CRCL staff with Haitian migrant (November 9, 2021).

¹²Teleconference interview by CRCL staff with Haitian migrant (November 9, 2021).

¹³Teleconference interview by CRCL staff with Haitian migrant (November 9, 2021). According to CBP, all migrants that delivered babies were sent, via ambulance, to the local hospital. CBP states that no newborn infants were sent to the partially fenced staging area.

unavailable. One interviewee asserted that when he informed BPAs that his seven months pregnant wife was feeling ill and experiencing discomfort, DHS personnel responded that she was not in need of medical assessment.¹⁴ The interviewee professed that at that point, “[he] was tired of asking and telling them my wife wasn’t feeling well. They said I was overreacting when I told them strongly, one of them threatened me saying ‘[d]on’t bother me.’” Another Haitian migrant interviewed by CRCL alleged that, when he reported to BPA that his nursing infant had lost weight due to the lack of food available in the partially fenced staging area, there was no medical follow-up.

(b) (5) [REDACTED]. According to CBP, there were 672 total documented medical calls with the screening of approximately 300 Family Units. HHS/DMAT responded to 425 of the 672 calls. (b) (5), (b) (7)(E) [REDACTED]

[REDACTED]. As an example, CRCL received an allegation of a Haitian who requested medical assistance upon arrival in the partially fenced staging area but did not receive appropriate medical attention and later suffered a miscarriage. While CBP does have a documented medical call record of a Haitian migrant seen for a possible miscarriage who received an ultrasound from HHS/DMAT before being referred to the local hospital, it is unclear if this is the same person as the subject of the allegation, as CBP was not keeping systematic records of individual requests for medical treatment. Similarly, regarding the request for medical treatment for the infant referenced above, CBP notes that an extremely malnourished infant was brought to the medical area and mother and child were sent to the local hospital. However, due to the absence of records of individual requests, CRCL cannot confirm that this record reflects the resolution of the Haitian migrant’s request for medical assistance, particularly as the interviewee asserted that the BPA was not responsive to his entreaties.

At Risk Populations

(b) (5), (b) (7)(E) [REDACTED]¹⁵

CBP, however, was triaging migrants in the partially fenced staging area for transport and future processing based on the following categories: 1) adult men; 2) adult women; and 3) family units.

¹⁴Teleconference interview by CRCL staff with Haitian migrant (February 11, 2022).

¹⁵The TEDS standards govern CBP’s interaction with detained individuals. U.S. Customs and Border Protection, *National Standards on Transport, Escort, Detention, and Search*, October 2015.

As a Haitian migrant interviewed by CRCL described, “They gave us a card as a way to group us. They grouped the kids, they grouped the pregnant women, and they grouped the couples.”¹⁶ The result of CBP’s triage was an identification of the at-risk subpopulation of pregnant women and juveniles. At the time of CRCL’s visit, USBP was working to set-up a soft-sided area specifically for the specific at-risk subpopulations. In addition, CBP had established a medical support staging and a DMAT had just been deployed. DMAT personnel reported that they had provided medical care to individuals with chronic conditions, including refilling necessary medications, but that they had not encountered any migrants with physical or intellectual disabilities or mental health concerns requiring immediate treatment or accommodation. The Haitian migrants that CRCL interviewed reported that the BPAs did identify family units, but women of child-bearing age were not asked if they were pregnant unless they were late term and visibly pregnant. The interviewees did not report traveling with or encountering any individuals who, to their knowledge, had chronic medical conditions or physical or intellectual disabilities or mental health concerns.

Environmental, Health, and Sanitation Conditions

During its onsite, CRCL witnessed many BPAs undertaking extensive and unprecedented efforts to address the humanitarian needs of the migrants and conditions in a uniquely challenging situation. Their hard work should be acknowledged and appreciated. Moreover, CBP asserts that it undertook extensive, timely, and unprecedented efforts to address humanitarian needs and conditions in a uniquely challenging situation. CRCL does not dispute this claim. However, despite these efforts, the conditions that CRCL observed in the partially fenced staging area were problematic; they were crowded, congested, and unhygienic. Men, women, and children including infants were huddled in groups, standing, sitting, and, at times, lying on the ground. There was no housing available and CRCL witnessed innumerable ad-hoc shelters built by migrants using available materials such as branches, rocks, and repurposed trash including plastic grocery bags and discarded clothing. There was also no provision of sleeping mats or bedding. While USBP did have a limited number of mylar blankets available in the partially fenced staging area, there was no systemic distribution. CRCL witnessed many migrants using cardboard boxes or plastic sheets in order to avoid lying directly in the dirt and mud. There were no showers available in the partially fenced staging area, although USBP worked to provide products such as no-rinse bathing wipes. USBP did manage to distribute diapers, formula for infants, female hygiene products in the partially fenced staging area. At the time of CRCL’s observation, USBP had also secured potable water, and, along with the Texas National Guard, handed out food. In addition, a charitable organization prepared and served meals onsite. According to a representative from that organization, however, it had only begun food service the previous day.¹⁷

All of the Haitian migrants interviewed by CRCL, most of whom had arrived prior to CRCL’s onsite observation, described extremely difficult environmental conditions in the partially fenced staging area, including, but not limited to, crowded conditions, exposure to extreme heat and cold, an absence of shelter, and limited access to food, sanitation, and potable water. As one Haitian migrant interviewed explained to CRCL, “[t]he conditions were not okay at all. We were exposed to the rain and to dirt.”¹⁸ Another Haitian migrant describing the situation stated that, “[w]e didn’t

¹⁶Teleconference interview by CRCL staff with Haitian migrant (November 9, 2021).

¹⁷ CRCL conducted its observation in Del Rio, Texas from September 20-21, 2021. The charitable organization stood up their kitchen on September 19. The majority of the Haitian migrants that CRCL staff interviewed estimated their arrival to be several days to over a week prior to September 19, 2021.

¹⁸Teleconference interview by CRCL staff with Haitian migrant (November 9, 2021).

have shelter, but people went to trash cans and in the wild environment used cartons to make tents”¹⁹

In particular, the Haitian migrants recounted difficulties regarding the lack of food in the partially fenced staging area. All of the Haitian migrants interviewed asserted that as there was little or no food available when they arrived in Del Rio, and they relied on provisions that they had carried with them from Mexico. One Haitian migrant interviewed stated that, “[w]hat helped me not die of hunger was that I brought crackers and cookies with me.”²⁰ A second option used by the migrants in the partially fenced staging area was to return to Mexico to try to obtain food or purchase provisions from other migrants who, according to the migrants interviewed, were able to evade HPU agents as they returned to Mexico, obtained food there, and then crossed the Rio Grande again, back to the partially fenced staging area in Del Rio. For example, an interviewee reported to CRCL staff that, “[w]e had to give money to other people on the other side to purchase a meal. Sometimes we didn’t have a meal. We had to wait a while for other people to get food.”²¹ A number of the Haitian migrants also expressed frustration that HPU agents were preventing individuals in the partially fenced staging area from crossing the Rio Grande River back into Mexico and returning to the partially fenced staging area because for many migrants it was the only means of obtaining food and supplies. As one Haitian migrant alleged, “[t]hey were there to stop people from crossing the river. Some of us were hungry so we wanted to cross the river to buy food, but they didn’t want us to cross the river and buy food.”²²

Language Access

In response to CRCL’s inquiries regarding the availability of Haitian Creole interpreters in the partially fenced staging area, BPAs asserted that there were three or four Haitian-Creole interpreters available onsite. CRCL did not encounter or interact with any interpreters in the partially fenced staging area. USBP also noted that they had access to a telephone language line but there was a limited capacity due to the lack of infrastructure onsite. CRCL did not observe any Haitian migrants using language lines. According to the CBP Incident Commander, the language lines were largely unnecessary as BPAs were able to effectively communicate in Spanish with the Haitian migrants.

By contrast, according to the Haitian migrants interviewed by CRCL, beyond non-verbal communications such as pointing and hand signals and a few commands in Spanish that some of the migrants could understand, there was little, if any, communication between the Haitian migrants and BPAs in the partially fenced staging area. According to one of the Haitian migrants interviewed by CRCL, “[t]hey didn’t speak to no one. They didn’t tell us, didn’t talk to us, just patrol. When they were ready, they took us to the bus and to another place, they didn’t speak with us.”²³ Another interviewee, asserted, “[t]hey communicated with us only using signs.”²⁴

When verbal communication was necessary in the partially fenced staging area, BPAs spoke in either English or Spanish and relied upon migrants with limited Spanish proficiency to

¹⁹Teleconference interview by CRCL staff with Haitian migrant (November 9, 2021).

²⁰Teleconference interview by CRCL staff with Haitian migrant (November 9, 2021).

²¹Teleconference interview by CRCL staff with Haitian migrant (November 17, 2021).

²²Teleconference interview by CRCL staff with Haitian migrant (November 9, 2021).

²³Teleconference interview by CRCL staff with Haitian migrant (February 11, 2022).

²⁴Teleconference interview by CRCL staff with Haitian migrant (November 9, 2021).

communicate essential information to other Haitian nationals. For example, when one Haitian migrant interviewee was asked how he knew that they were going leave the partially fenced staging area to be transported to a CBP facility, he responded that, “[i]f you didn’t speak Spanish, you just show your card to someone who speaks Spanish, and they tell you if that was the right number or not.”²⁵ The Haitian migrants CRCL interviewed asserted that they neither observed nor interacted with any Haitian Creole interpreters in the partially fenced staging area. Furthermore, none of the Haitian migrants interviewed had been offered the use of a telephone language line during their time in Del Rio.

Horse Patrol Unit (HPU) agents

On October 26, 2021, CRCL notified CBP that it was investigating USBP’s Horse Patrol Program (HPP). It is important to note that the CBP Office of Professional Responsibility also undertook its own review of the HPP’s involvement in events in Del Rio and, on July 8, 2022, issued a 511-page report regarding that activity.²⁶ In response to CRCL’s notice of its investigation, senior leaders from CBP’s Office of Field Operations and HPP, which develops and implements national policies, briefed CRCL on November 12, 2021. The briefing included information regarding HPP operations and procedures, training, staffing, equine acquisitions, and the deployment of Horse Patrol Unit (HPU) agents. In addition, CBP provided CRCL with the following documents related to HPP:

- 1) National Horse Patrol Program Policy (July 20, 2013)
- 2) National Horse Patrol Program Basic Course Instructor Training Guide
- 3) National Horse Patrol Instructor Student Training Guide
- 4) HPU Horse Assessment Checklist
- 5) PR Event Checklist

According to HPP, the deployment of HPUs is critical to USBP’s ability to fulfill its mission needs, as they are the only way to patrol difficult terrain. In addition, some areas such as national and state parks are inaccessible to motor vehicles and can only be patrolled via horseback. HPUs are used for: 1) field deployments; 2) search and rescue operations; 3) evidence recovery; 4) public affairs, funerals, and community events; and 5) special circumstances as determined by agents and authorized by a supervisor.²⁷ The HPP makes regular assessments regarding which sectors can benefit from the deployment of HPUs, including which sectors require an increased number of units and where HPUs are no longer needed. As per HPP, it is not necessary to place a HPU in every sector.

CRCL specifically asked about the alleged “whips” that appeared to be used in the photos of the HPU in Del Rio. CBP informed CRCL that HPU agents are never issued whips, but they are provided with split reins for safety and increased control of the horses and to allow the agents to safely mount and dismount. Unlike closed reins that are a single piece, split reins are not attached to one another at the end and tend to be longer. They are commonly used for western riding as they

²⁵Teleconference interview by CRCL staff with Haitian migrant November 17, 2021).

²⁶CRCL investigated what, if any, policies and procedures should be put into place to ensure the appropriate protection of civil rights and civil liberties. U.S. Customs and Border Protection, Office of Professional Responsibility, Report of Investigation Del Rio Horse Patrol Unit, Case No. 202112280 investigation was on the potential misconduct of individual BPAs assigned to the Del Rio Sector HPU.

²⁷Horse Patrol Policy (HP Policy) issued July 10, 2013.

help prevent the horse from getting tangled up in the reins during dismounts.²⁸

HPU Assignments and Deployments

CBP stated that most HPU assignments and deployments are to remote, rural, and environmentally protected areas. HPUs can also be deployed closer to urban areas, however, when it is necessary to make rapid apprehensions. Depending on traffic, the HPP will shift HPU agents to urban areas as part of deterrence operations to create a larger visible presence and discourage individuals from entering specific areas or locations. During emergent situations and depending upon the circumstance, a Border Patrol Sector can request a deployment of HPU agents. As per HPP policy, if the HPU or specific agent is requested to do something outside of the scope of their standard duties, they can refuse. Similarly, HPP policy states that agents “will exhaust reasonable precautions to ensure that all horse patrol related activities do not unnecessarily endanger themselves, the horses, or any other parties in the interest of safety”.²⁹ A command group discusses the request and determines if using a horse patrol unit is feasible.

Staffing and Training

According to the HPP briefers, when there is an opening for HPU based on an identified need, a solicitation goes out within the sector inviting eligible BPAs to apply for a detail to the HPU. A USBP applicant is not required to have any experience with horses before applying for the program, and it is not uncommon for applicants to have limited prior knowledge about horses. To standardize the program nationally, the HPP is currently establishing a national preselection riding aptitude test to determine if the applicant can meet minimal athletic capabilities that are required to attend the Basic Rider Course. This preselection riding aptitude test will be used to make all the selections of applicants to attend a Basic Rider course. The Basic Rider Course curriculum is designed for all levels of riding knowledge and provides selectees with basic horsemanship skills. The Basic Rider Course is four weeks and covers the following topics: 1) equipment, feeding, and grooming; 2) saddling, bridling, mounting, dismounting; and 3) basic riding and horsemanship skills and safe horse handling. HPP includes HPUs that are certified “mobile field force.” The training for mobile field force is its own separate advanced training course. Because the training for mobile field force is an advanced training course, not every unit receives this training.

Equine Training

HPP requires that the horses it procures for its program have specific skills. Selection is based on a 25-point inspection reflecting the level of training that the horse has received. In general, the horses have had an average of 90 days of training. The horses used for parades and the mobile field force are given an additional evaluation to determine if they can handle the additional environmental stressors.

HPU Deployment in Del Rio

Not all of the Haitian migrants interviewed by CRCL witnessed HPU agent activity in the partially fenced staging area. Most of the Haitian migrants who did witness HPU activity reported that HPU agents appeared to be patrolling the area looking for migrants who were either attempting to return to Mexico (to purchase food) or to return from Mexico. A few detainees reported that it was their understanding and/or had heard from the other migrants in the partially fenced staging area that the HPU agents were there to protect migrants from danger due to the swift river current. For example,

²⁸U.S. Customs and Border Protection, Office of Professional Responsibility, Report of Investigation Del Rio Horse Patrol Unit, Case No. 202112280.

²⁹U.S. Border Patrol, Horse Patrol Policy, Reference: 11-19589, July 10, 2013.

one migrant stated that, “From far away, I could see them going back and forth and ensure people’s security.”

Two Haitian migrants interviewed, however, reported that they had witnessed HPU agents acting aggressively and engaging in acts of verbal or physical assault. One Haitian migrant maintained that he had witnessed an HPU agent patrolling in the partially fenced staging area in an aggressive manner. The interviewee, however, did not report that the HPU agent engaged in any physical or verbal interactions with migrants.³⁰ A second Haitian migrant asserted that he was a “witness of that the horse thing; if I run, I’m going to get hurt.” According to the interviewee, “they [HPU agents] don’t want you to stay by the river, they have a stick, a thing in their hand, so we don’t stay.” He also stated that, “[t]hey were on their horse, making the horse running after you, chasing after you, they had something in their hand I don’t know what you call it they were hitting people with it.”³¹

Complaint Analysis

CRCL recognizes the emergent nature of the surge of migrants to Del Rio in late September 2021 and the challenges associated with developing and rapidly deploying sufficient resources in this difficult environment. CRCL has determined, however, that CBP and DHS were not able to adequately ensure the protection of individuals or maintain their civil rights and civil liberties in the partially fenced staging area. This includes responding to the immediate critical needs of the migrants including: (b) (5); 2) adequate environmental, (b) (5) and sanitation conditions; and 3) language access and communications. In addition, CRCL does not believe that the current HPU policies and procedures enable HPU agents to fulfill their missions in a way that fully mitigates potential civil rights and civil liberties concerns in response to emergent issues involving crowded conditions in urban environments.

Discrimination Based on Race or National Origin

CRCL did not find conclusory evidence of a culture of discriminatory treatment toward migrants based on race or nationality by BPAs at the Bridge. The crowd appeared to be predominantly Black migrants who were likely Haitian. Most migrants interviewed did not feel they were treated differently due to their race or nationality. As previously discussed, however, there was an instance when one migrant stated he believed that lighter skinned individuals were receiving better treatment. This same interviewee claimed that this was an issue that was discussed by “a lot” of migrants under the bridge and “some of them cried.”³² While these observations are anecdotal, they are not unimportant. Although they do not sustain a finding of discrimination, they are reminders that CBP must ensure at all times that it treats everyone with dignity and respect, providing equal access and treatment to all migrants they encounter, and avoid any appearances of preferential treatment based on factors such as race, nationality, gender, religion, or other characteristics.

Disparate impact based on race was not measured through data collection, as data regarding race is not currently collected by CBP. CRCL continues to work with DHS entities, including CBP, to enhance their collection of data related to race as this is essential for a complete disparate impact analysis. Regarding a review of disparate treatment based on nationality, CRCL first notes that

³⁰Teleconference interview by CRCL staff with Haitian migrant (November 1, 2021).

³¹Teleconference interview by CRCL staff with Haitian migrant (February 11, 2022).

³²Teleconference interview by CRCL staff with Haitian migrant (February 11, 2022).

(b) (5) (b)

Environmental, (b) (5) and Sanitation Conditions

CRCL believes it is important to note that the influx of Haitian migrants to Del Rio presented significant operational and humanitarian challenges. Furthermore, CRCL is aware of individual BPAs who went to extraordinary measures to provide basic needs to migrants in the partially fenced staging area. However, based on CRCL's onsite observations and migrant interviews, the conditions in the partially fenced staging area were crowded and untenable. Moreover, sufficient food, (b) (5), sanitation provisions, and shelter were not readily available.

Based on CRCL's observations and interviews with Haitian migrants, the inadequate food, (b) (5), sanitation, and shelter in the partially fenced staging area resulted in physical discomfort for migrants in the partially fenced staging area. (b) (5)

Moreover, a lack of food led to hazardous activity, security concerns, and chaos as migrants, with little or no alternatives, put their lives at risk to feed themselves, their families, and other migrants in the partially fenced staging area.

Language Access

Pursuant to Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*, CBP is required to take reasonable steps to provide meaningful access to its programs, services, and activities to individuals with Limited English Proficiency (LEP).³⁶ DHS's Language Access Plan requires that "each Federal department and agency 'examine the services it provides to LEP persons and develop and implement a system by which LEP persons have 'meaningful access' to those services without unduly burdening the fundamental mission of the agency."³⁷ CBP's *Language Access Plan* requires that CBP establish language access procedures or protocols that staff should follow to provide language services to LEP persons encountered in their daily activities. These CBP language access procedures or protocols include: 1) recognizing the LEP status of an individual; 2) identifying the language spoken and situations requiring appropriate language assistance; and 3) providing access to language assistance. In addition, as per CBP's *Language Access Plan*, protocols should include limits on the use of family members, friends, or other persons associated with LEP persons to rare situations and nonessential information.³⁸

While CRCL recognizes and acknowledges that the rapid influx of Haitian migrants to Del Rio was an emergent event, there was no meaningful access to language services throughout this experience for Haitian migrants or to communicate essential information. CBP noted it had only four interpreters and was using Spanish with the belief that most of the migrants understood some Spanish. While onsite, CRCL did not see any interpreters interacting with the migrants. During

(b)

(5)

³⁶Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*. (August 11, 2000).

³⁷See U.S. Department of Homeland Security, Language Access Plan (2012) available at: <https://www.dhs.gov/sites/default/files/publications/crcl-dhs-language-access-plan.pdf>.

³⁸Customs and Border Protection, *Language Access Plan*, (November 18, 2016).

interviews, with limited exceptions, the Haitian migrants stated that they could not understand what was being said to them in Spanish.³⁹

Additionally, this lack of ability to communicate clearly added to the general confusion of the situation. According to the Haitian migrants interviewed who witnessed HPU agent activity and could overhear the instructions, the HPU agents were shouting commands in Spanish and English. Migrants crossing the Rio Grande River into the United States or returning to Mexico to buy food did not comply with the HPU agent instructions in part because the instructions were not in a language they understood. It is reasonable to assume that this lack of communications added to and likely elevated the tension what was already a difficult situation.

HPUs

The decision to deploy HPU agents to the crowded and congested environment in the partially fenced staging area in Del Rio that included at-risk populations reflects a lack of sufficient processes in place to evaluate and consider the operational benefits of the deployment of HPUs in light of potential harms to public safety such as:

- 1) The possibility that the deployment of HPUs would introduce additional public safety concerns and further compound and exacerbate an already chaotic environment;
- 2) The possibility that a lack of HPU agents able to speak Haitian Creole might result in public harm as many migrants would be unable to understand and comply with HPU agent instructions including safety instructions;
- 3) The extent to which each HPU agent and horse deployed was trained and sensitized to operating in the surrounding semi-urban environment and densely packed conditions under the bridge to minimize public safety concerns.
- 4) The extent to which deployment of HPU agents was the most effective means of ensuring the safe and secure conditions in the partially fenced staging area and prevent migrants from crossing the river in order to obtain food while minimizing public safety concerns.

Conclusions

CRCL makes the following findings:


- 1) Although CRCL did not find conclusive evidence of discriminatory treatment, in addition to the formal complaints included in this investigation, CRCL had the opportunity to meet with and discuss allegations of discriminatory treatment of the Haitian migrants with a number of organizations that had direct contact with individual Haitian migrants.⁴⁰ Based on the complaints submitted to CRCL and the allegations reported in CRCL's discussions with these organizations, there was the perception of discriminatory treatment among some of the Haitian migrants that CBP should work to address. In addition, in CRCL's interviews, Haitians did make claims that, in some instances, CBP acted in a discriminatory manner or in a manner that gave the appearance of discriminatory treatment. CRCL acknowledges that

³⁹Of the 14 Haitian migrants interviewed by CRCL staff, two asserted that they could understand what was being communicated to them in Spanish.

⁴⁰On Wednesday, September 29, 2021, the DHS Officer for Civil Rights and Civil Liberties met with representatives from Haitian Bridge Alliance, Undocublack Network, Justice Action Center, National Immigration Project of the National Lawyers Guild, and ACLU.

many of the migrants interviewed reported no concerns related to discriminatory treatment. However, one Haitian migrant CRCL interviewed stated a belief that BPAs were acting in discriminatory manner, and that other migrants felt the same way. CRCL strongly believes that, given the sensitivity and importance of the CBP mission when dealing with all migrants, especially potential asylum-seekers, CBP should be aware of the impact that any discriminatory treatment or appearance of discriminatory treatment may have and take special care to ensure that all processes and procedures consider these concerns.

2) (b) (5), (b) (7)(E)



- 3) At the time of its visit, CRCL observed the conditions in the partially fenced staging area were crowded, unhygienic, dusty, and, on occasion, muddy. In addition, the weather conditions were very difficult, fluctuating between hot during the day and cold at night, with alternating rainstorms and subsequent flooding of the Rio Grande River. There was no shelter available beyond ad-hoc shelters built by Haitian migrants using available materials. As a result, many migrants including children slept on the ground using extra clothing for warmth. According to Haitian migrant interviewees, in the early stages of the surge prior to the deployment of the DHS strategy to address the increase in migrants in Del Rio on September 18, 2021, there were no portable sanitation facilities available. It should be noted that USBP was successful in its later efforts to transport a number of portable sanitation facilities and showers to the area as the surge continued.
- 4) Although USBP Del Rio Sector worked to locally procure potable water and food—and their laudable efforts should be acknowledged and recognized—the lack of infrastructure in the Del Rio area resulted in a significant lack of food and water. Consequently, migrants reported either purchasing food and water from other migrants who crossed back to Mexico to buy food or returning to Mexico themselves in order to bring food back to their family and/or traveling companions. During the later stages of the surge, CBP took meaningful steps to provide additional food and water, including through coordinating with charitable organizations as the situation continued. The shortage of food, however, raises serious civil rights concerns. It also placed the migrant population in the partially fenced staging area gathered under the Bridge in an untenable situation. Migrants were left few options other than crossing the border back into Mexico to purchase food, despite the deployment of HPU

agents at the banks of the Rio Grande River tasked with ensuring the safety of law enforcement and the migrants. Consequently, individual migrants placed themselves at considerable risk to obtain food for themselves, family, and the population in the partially fenced staging area.⁴¹

- 5) CRCL found that the population in the partially fenced staging area was not provided accurate, timely, and effective language access. All of the Haitian migrants CRCL interviewed as part of its investigation reported that there was minimal, if any, interaction with BPAs and the primary method of communication used by USBP were non-verbal cues such as hand gestures, signals, and pointing. According to the interviewees, verbal communications, and announcements to the population in the partially fenced staging area were primarily in English although, on occasion, BPAs did make announcements in Spanish. The Haitian migrants noted that the Haitian-Creole speakers exclusively relied on Spanish speaking migrants who spoke Haitian-Creole to provide interpretations, even though USBP reported that there were a small number of Haitian-Creole interpreters available onsite and that USBP had access to a telephone language line. During its Del Rio observation, CRCL did not observe the presence of a Haitian-Creole interpreters in the partially fenced staging area. Similarly, none of the Haitian migrants interviewed recalled Haitian-Creole translators or being offered use of a telephonic language line. CRCL did not observe any written communications available to the population in the partially fenced staging area in either Spanish or Haitian-Creole.

- 6) CRCL acknowledges that the HPP is critical to USBP's ability to fulfill certain operational missions given the often challenging and difficult environmental conditions CBP faces at the border. The deployment of the HPU agents at Del Rio, however, reflects existing vulnerability within the HPP related to the deployment of riders and horses in emergent situations to conduct non-routine tasks such as crowd control in urban environments.⁴² Individual BPAs selected for the detail are provided basic training and are required to become certified prior to being placed in an HPU detail. Deployment to urban environments to conduct crowd control activity generally requires advanced horsemanship skills, extensive experience, and an appropriately desensitized horse to effectively mitigate potential physical harm to members of the crowd and the HPU agent. CRCL believes that the HPP does not have sufficient processes in place to ensure that all horses and riders deployed in response to emergent situations have been certified to perform non-routine tasks such as crowd control in urban environments. Additionally, CRCL believes there are insufficient processes in place to ensure that the emergent use of HPUs is fully documented and vetted, particularly when being used in a situation that involves surging crowds, including families.

Southwest Border Coordinating Center

It is important to recognize the March 2022 stand up of the Southwest Border Coordinating Center (SBCC). CRCL is encouraged by the SBCC's ongoing efforts to develop and implement

⁴¹U.S. Customs and Border Protection, Office of Professional Responsibility, Report of Investigation Del Rio Horse Patrol Unit, Case No. 202112280.


⁴²For the purposes of this analysis, CRCL considered the deployment to be to an urban environment. The HPU activity occurred in an area that is zoned as part of the city of Del Rio and the horses were exposed to the hazards and physical stresses of an urban environments such as noise pollution, ground surface hardness, and exposure to motor vehicles.

operational plans to respond to a potential increase in the number of migrants and to surge resources including personnel, transportation, and medical support. This includes efforts to make medical resources available across the Southwest Border to provide urgent clinical care for a planning scenario of 18,000 migrants in CBP custody at any given time. It is CRCL's belief that the increase in resources will afford CBP the opportunity to fulfill its commitment to ensuring that the basic humanitarian needs of migrants encountered at the border are met. CRCL also welcomes the increased collaboration with NGO's envisioned by the SBCC.

As previously discussed, the purpose of CRCL's onsite was to assist the Secretary in the development and implementation of policies and procedures ensuring the protection of civil rights and civil liberties. As such, it is CRCL's hope that its recommendations, by suggesting means of resolving the civil rights and civil liberties concerns articulated in our findings, will be complementary to those of the SBCC.

Recommendations

CRCL makes the following recommendations:

- 1) CBP and the SBCC should expand its engagement with CRCL. In order to ensure all appropriate civil rights and civil liberties protections, CBP and SBCC should work with CRCL to develop a process to ensure appropriate coordination with applicable subject matter experts within CRCL.
- 2) (b) (5)

- 3)
- 4) CBP should develop and implement a mission-specific Internal Operating Procedure to define responsibilities, policies, and procedures for USBP personnel for taking reasonable steps to provide meaningful access to CBP's operations, services, and other activities to persons with limited English proficiency. These should include procedures for exigent and/or unforeseeable circumstances where immediate action is required.
- 5) USBP should conduct an evaluation of the HPP's deployment of HPU agents and horses to assess the need for additional training and/or a specialized HPU unit with riders and horses trained and certified to conduct non-routine or emergent tasks such as crowd control in urban environments.
- 6) The HPP should revise the HPU policy to approve use of HPUs in non-routine situations,

including documenting the reasons for the deployment.

- 7) Given the serious potential consequences that could result from the lack of strong training on the need to have non-discriminatory law enforcement throughout DHS, CRCL recommends that CBP train BPAs on the current non-discrimination policy and the importance to ensure that all individuals in CBP custody are not discriminated against.
- 8) Upon completion of new non-discrimination in law enforcement policy changes that are pending at the Department, CBP should train all BPAs regarding the potential appearance of racial bias and discriminatory treatment when securing crowds, especially when in an emergent and potentially tense situation, such as a surge. CRCL can assist with this training.

It is CRCL's statutory role to advise department leadership and personnel about civil rights and civil liberties issues, ensuring respect for civil rights and civil liberties in policy decisions and implementation of those decisions. We look forward to working with CBP on this issue. We request that CBP provide a response to CRCL 120 days whether it concurs or does not concur with these recommendations. If you concur, please include an 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.

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