



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
(b) (6)

FROM: Dana Salvano-Dunn
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: Final Report
Complaint No. 002710-22-CBP

Purpose

The purpose of this memorandum is to inform U.S. Customs and Border Protection (CBP) about the results of the investigation conducted by the Office for Civil Rights and Civil Liberties (CRCL) into the allegation that CBP discriminated against (b) (6) who was a 16-year-old unaccompanied minor during the relevant time period, in violation of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794(a) (Section 504).

Background

Through Department of Homeland Security (DHS) Delegation Number 19003, the Secretary of DHS delegated to the Officer for Civil Rights and Civil Liberties responsibility for coordinating the implementation of the Department's regulations issued pursuant to the requirements of Section 504. 6 C.F.R. Part 15. The regulations require the Department to issue findings of fact, conclusions of law, a description of a remedy for each violation found, and a notice of the right to appeal to the Officer for Civil Rights and Civil Liberties. See 6 C.F.R. § 15.70(g)(1)(i)-(iii). On February 28, 2008, based on an earlier but similar delegation, the Officer for Civil Rights and Civil Liberties delegated this responsibility to the Deputy Officer for Civil Rights and Civil

Liberties for Programs and Compliance to allow an appeal to the Officer for Civil Rights and Civil Liberties as provided for in the Interim Regulation. DHS Delegation No. 19001.

CRCL also has responsibility to oversee compliance with constitutional, statutory, regulatory, policy, and other requirements relating to the civil rights and civil liberties of individuals affected by the programs and activities of the Department. 6 U.S.C. § 345(a)(4). Additionally, DHS Management Directive Number 065-01 establishes policy and implementation mechanisms for ensuring nondiscrimination for individuals with disabilities served by DHS-conducted programs and activities under Section 504.

Analysis

In his complaint, (b) (6) alleged that during his apprehension, Border Patrol Agents took away the crutch that he was using to assist with mobility and to relieve pressure on his surgically repaired knee. CBP was not able to provide CRCL with any medical documentation for (b) (6), including from his initial health screening. CBP also had no records or other information indicating whether (b) (6) was using a crutch when he was apprehended. However, based on the nature of (b) (6) disability, the description of the incident, and CRCL's observance that on prior occasions CBP was found to have discarded items (including assistive devices) without documentation, CRCL found in its Section 504 determination letter that it was more likely than not that CBP took away (b) (6) crutch upon apprehension. CRCL further concluded that CBP violated Section 504 when it took away his crutch and neither provided him an alternative assistive device, nor engaged in an interactive process to determine his limitations and needs.

CRCL has previously investigated several similar complaints alleging disability discrimination in violation of Section 504 when CBP interacted with unaccompanied children (UC) who utilize assistive mobility devices. In a letter related to Complaint No. 19-06-CBP-0219, dated January 21, 2020, CRCL found that CBP violated Section 504 when it did not allow a UC to use his crutch in U.S. Border Patrol (USBP) custody and failed to engage in an interactive process to determine his limitations and needs. CRCL issued the following remedy:

CBP shall update its "Hold Rooms and Short Term Custody" policy to include guidance for processing individuals entering detention with assistive mobility devices, to include individuals with wheelchairs, canes, walkers, crutches, or any other device that assists with mobility.

In Complaint No. 20-03-CBP-0163, CBP agreed to informally resolve a Section 504 complaint alleging that CBP took a UC's walking boot after he was apprehended by USBP. CBP admitted no liability or wrongdoing, committed to updating its policy as noted in the remedy outlined above, and agreed to reference its disability access directive at a date to be determined after the completion of litigation regarding detention.

While CRCL appreciates CBP's commitment to updating its policy, CRCL is concerned that it continues to receive similar allegations regarding assistive mobility devices belonging to minors in USBP custody.

Conclusion

As stated in the summary above and in the attached letter containing CRCL's findings of fact, conclusions of law, and remedy regarding this complaint, we have completed our investigation and determined that CBP discriminated against the complainant on the basis of his disability.

Remedies Issued Pursuant to CRCL's Section 504 Authority

Under 6 C.F.R. §§15.70(g)(1)(ii) and 15.70(d)(1), CRCL may order remedies for both individual complainants and for those belonging to a class of persons, for each Section 504 violation found. If the complainant does not appeal to the Officer for Civil Rights and Civil Liberties, under 6 C.F.R. § 15.70(h), the ordered remedies are part of the final agency decision. If the complainant appeals, the Officer for Civil Rights and Civil Liberties will issue the final agency decision, which may include appropriate corrective action to be taken by the Department. 6 C.F.R. § 15.70(i).

Accordingly, and pursuant to CRCL's authority under 6 C.F.R. §15.70(g)(1)(ii), the remedy that is contained in our decision letter to the complainant is as follows:

In coordination with CBP's Disability Access Coordinator, CBP shall provide mandatory training to all USBP personnel in the Rio Grande Valley Sector by December 31, 2022, about engaging in an interactive, individualized process with, and providing reasonable modifications to, individuals with disabilities who use mobility and/or medical devices (e.g., crutches, walkers, canes, wheelchairs, walking boots, braces, etc.). CRCL is to be informed when the training has been completed.

The above remedy is issued pursuant to CRCL's authority under 6 C.F.R. §15.70(g)(1)(ii) and DHS Delegation Number 19003, which delegates responsibility for coordinating the enforcement of the Department's regulations issued pursuant to the requirements of Section 504 to the Officer for Civil Rights and Civil Liberties. CBP's cooperation in implementation of this resolution is authorized per 6 C.F.R. § 15.70(g)(2). Please inform CRCL within 120 days of how and when this remedy will be implemented by contacting (b) (6) CRCL will share your response with (b) (6), the Compliance team member who conducted this investigation.

Recommendations Issued Pursuant to CRCL's Section 345 Authority

While 6 U.S.C. § 345(a)(4) affords no remedies to individuals, it authorizes CRCL to make recommendations to components regarding our investigative findings. The recommendation below, which is based on our findings and address compliance with Section 504 and the Interim Regulation throughout CBP, are pursuant to CRCL's 6 U.S.C. § 345 authorities. As stated in the DHS Instruction, Components must formally concur or non-concur with CRCL recommendations and must provide CRCL with an implementation plan for any concurred-with recommendations.

Because of the repeated concerns related to USBP's handling of individuals with disabilities who utilize assistive mobility devices, CRCL recommends that CBP undertake the following measures:

As part of the ordered remedy described above requiring sector-wide training, CBP should incorporate a scenario-based learning component using interactive scenarios, whereby USBP personnel "encounter" individuals with disabilities who use mobility and/or medical devices in a wide-range of situations, including during inspection, processing, holding, detention, and transport.

It is CRCL's statutory role to oversee DHS's compliance with constitutional, statutory, regulatory and policy requirements relating to the civil rights and civil liberties of all individuals affected by DHS programs and activities. In turn, CRCL advises 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. The above recommendation is made pursuant to that role; we believe they will assist you in meeting CBP's important mission. We request that CBP provide a response to CRCL within 120 days indicating whether it concurs or does not concur with this recommendation. 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 Compliance team member who conducted this investigation.

Enclosure

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