



Homeland  
Security

February 8, 2024

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

Pete Flores  
Acting Deputy Commissioner  
U.S. Customs and Border Protection

Frederick B. Smith  
Chief Counsel  
U.S. Customs and Border Protection

FROM: Dana Salvano-Dunn (b) (6)  
Director, Compliance Branch  
Office for Civil Rights and Civil Liberties

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

SUBJECT: **Retention Memorandum:** Revocation and Reinstatement of CBP  
Trusted Traveler Program Memberships  
Complaint Nos. 007240-24-CBP, 000741W-24-CBP, 000645W-  
24-CBP

The Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL) has opened three unrelated complaints involving allegations that U.S. Customs and Border Protection (CBP) denied individuals' applications to participate in the Global Entry and Secure Electronic Travelers Rapid Inspection (SENTRI) Trusted Traveler Programs, allegedly in violation of the applicants' civil rights, including their right to due process. Complaints also alleged that the CBP Ombudsman, the office designated within CBP to address Global Entry and SENTRI denials, did not provide the applicants with sufficient opportunity for redress and information to rebut adverse determinations regarding their eligibility for these programs. The purpose of this memorandum is to notify CBP of the complaints and to indicate that CRCL has retained them for investigation.

#### BACKGROUND

*CRCL Complaint 007240-24-CBP*

On September 18, 2023, the CBP INFO Center referred to CRCL allegations from (b) (6) (Complainant 1), a U.S. citizen.<sup>1</sup> Complainant 1 alleged that CBP discriminated against him on the basis of his race by denying his application to participate in the Global Entry program following his interview on April 17, 2023, at Los Angeles International Airport (LAX). Complainant 1 alleged that he contacted the CBP Ombudsman to appeal CBP's denial of his application and the CBP Ombudsman reversed CBP's denial. Subsequently, a different CBP officer at LAX interviewed him and approved his application for Global Entry.<sup>2</sup> Complainant 1 alleged that he received the Global Entry card by mail, but that it was active for one day only before CBP revoked it a second time because, according to a CBPO he cites in his complaint, "the residential address on my application came back as a mailing place." Complainant 1 reported in his complaint that while he has two mailing addresses, he does not have a current residential address because he is living in a commercial space. Mr. (b) (6) alleged that since his Global Entry was revoked, CBP has searched him every time he has crossed the border.

*CRCL Complaint 000645W-24-CBP*

On September 14, 2023, CRCL received a web portal submission from (b) (6) (Complainant 2), a resident of El Paso, Texas. Complainant 2 alleged that on September 1, 2023, while crossing the land border from Mexico into the United States in El Paso, Texas, CBP revoked his SENTRI membership. Complainant 2 alleged that CBP retained his SENTRI card and instructed him to go to the Isleta Port of Entry because he had committed a violation, which he did on September 7, at which time CBP Officer (b) (6) allegedly told him that his membership was revoked because "the husband of my wife's sister had been detained at the border, trying to import illegal substances, and he had used my home address for mailing purposes, since he is Mexican and lives in Juarez." Complainant 2 stated that CBP's cancellation of his SENTRI membership was unjustified because the arrest of his wife's sister's husband, who is Mexican, was unrelated to his conduct and he personally had not violated any laws.

*CRCL Complaint 000741W-24-CBP*

On October 11, 2023, CRCL received a web portal submission from (b) (6) (Complainant 3), a U.S. citizen born in Haiti. Complainant 3 alleged that CBP revoked his Global Entry membership while local authorities were investigating him for allegedly having committed a felony. Complainant 3 alleged that within two months of the accusation, the Charlotte, N.C., District Attorney dismissed the allegations without a plea agreement, and the presiding judge granted Complainant 3 an order of expunction. According to Complainant 3, following the order, the prosecutor mailed to the North Carolina Department of Justice State Crime Laboratory forms AOC-CR-640, verification of basis for expunction of DNA record, and Destruction of DNA Sample. Complainant 3 alleged that in August 2023, he submitted a request for reconsideration to CBP concerning the revocation of his Global Entry membership, but, to date, CBP has not replied. Complainant 3 also alleged that except for CBP, all other governmental agencies have reinstated his privileges, including his concealed carry permit.

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<sup>1</sup> CBP Complaint No. 230911-5405368

<sup>2</sup> CRCL has provided the complainants PII in a separate PII memo.

## 1. 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; and,
- 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. The procedures for our investigations and the recommendations they may generate are outlined in DHS Management Directive 3500.

*Access to information.* More particularly, 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.”

*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 its accompanying request for information are issued pursuant to these authorities.

*Privilege and required transparency.* Our communications with DHS 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 our findings and recommendations.

### SCOPE OF REVIEW

The purpose of our review is to determine whether: 1) there are systemic issues with the Global Entry and SENTRI programs, specifically concerning CBP’s denials and revocations of those privileges; 2) whether the Constitution, a Federal statute, a Federal regulation, or a Departmental policy has been violated; 3) whether the CBP Ombudsman provides sufficient information and opportunities for redress to applicants or former participants whose memberships in Global Entry or SENTRI have been denied or revoked; and 4) whether there are appropriate oversight and investigative mechanisms of the programs and to ensure any systemic civil rights concerns are addressed.

### QUESTIONS PRESENTED

This investigation will cover the following questions:

1. (b) (5) [REDACTED]
2. (b) (5) [REDACTED]
3. (b) (5) [REDACTED]

It is possible that our investigation will reveal other matters of concern; if this occurs, we will inform you.

### INITIATING THE INVESTIGATION

CRCL has requested additional information in the RFI and may request additional information as the investigation proceeds. (b) (6) [REDACTED] will be handling this matter. We look forward to working together on this matter. We request that CBP schedule an initial discussion with Ms. (b) (6) [REDACTED] as soon as possible. If you have any questions, please do not hesitate to contact Ms. (b) (6) [REDACTED] by phone at (b) (6) [REDACTED] or by email at (b) (6) [REDACTED]

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