



March 4, 2024

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

Pete Flores
Acting Deputy Commissioner
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Frederick B. Smith
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FROM: Dana Salvano-Dunn (b) (6)
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Office for Civil Rights and Civil Liberties
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Senior Attorney, Legal Counsel Division
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SUBJECT: **Retention Memorandum:** Periodic Review of CBP’s Sexual
Abuse Prevention and Response Program
CRCL Complaint No. 008671-24-CBP

The U.S. Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties (CRCL) is conducting a periodic review of U.S. Customs and Border Protection’s (CBP) sexual abuse prevention and response program, including the DHS regulation under the Prison Rape Elimination Act of 2003 (PREA), the *DHS Standards to Prevent, Detect, and Respond to Sexual Abuse in Confinement Facilities* (DHS PREA Standards).¹

A CRCL “periodic review” is a broadscale and thematic investigation into whether DHS and/or a DHS Component is implementing a well-established policy or program in accordance with civil rights and civil liberties requirements and as required by the existing legal, regulatory, and policy framework.²

¹ 6 C.F.R. Part 115 (2014).

² Under 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, CRCL is called upon to “periodically review Departmental policies and procedures.”

The purpose of this memorandum is to explain the focus and scope of the periodic review and how CRCL will work with CBP during this review.

BACKGROUND

Over the past ten years, DHS Components have implemented comprehensive protections against sexual abuse and assault pursuant to the DHS PREA Standards.³ During that time, CRCL has investigated complaints related to the implementation of the DHS PREA Standards, looking at how DHS Components prevent, detect, and respond to sexual abuse allegations.⁴ As a result, CRCL has issued advice and made recommendations to DHS Components aimed at enhancing civil rights protections in this area, including recommendations to improve policies and training designed to protect individuals from sexual abuse while in DHS custody.

With the approach of the tenth anniversary of the DHS PREA Standards, CRCL is conducting a periodic review of CBP's sexual abuse and response program, including how CBP has established and implemented the requirements in the DHS PREA Standards.

FOCUS OF THE REVIEW

CRCL's periodic review will assess CBP's implementation of the DHS PREA Standards by reviewing, in part, how personnel at CBP Headquarters (HQ) and in the field are carrying out these requirements in response to allegations of sexual abuse by individuals in CBP custody.⁵ In addition, the scope of our work will include how CBP personnel are carrying out sexual abuse prevention, detection, and response policies relating to allegations of sexual abuse involving CBP interactions with the public that may fall outside the strict scope of the DHS PREA Standards. This review will also assess how CBP personnel are executing related requirements from the DHS PREA Standards that are implemented at the CBP HQ or "agency level"⁶ and form the overarching framework of the CBP sexual abuse prevention and response program and are not directly related to any particular allegation of sexual abuse.

CRCL seeks to provide recommendations, if warranted, to help the Department ensure that the implementation of the DHS PREA Standards specifically, and sexual abuse prevention and response policies more generally, are complete and consistent throughout DHS and CBP.

³ Specific to CBP, since 2014, CBP has been actively engaged in implementing the specific requirements in the DHS PREA Standards, and CRCL has worked with CBP as part of that process.

⁴ CRCL does not conduct administrative or criminal investigations into allegations of sexual abuse. Rather, CRCL conducts investigations into how DHS Components handle sexual abuse allegations to determine whether any policy and/or training gaps may have contributed to missteps in the prevention or response to the sexual abuse.

⁵ To conduct this aspect of the review, CRCL will request completed investigative reports and management inquiries from CBP to evaluate CBP's efforts to prevent, detect, and respond to sexual abuse in specific instances.

⁶ The DHS PREA Standards were written to include certain requirements that are "agency" or HQ-level requirements and certain requirements that are "facility" or field-level requirements.

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 information concerning potential abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion by DHS employees and officials; additionally, CRCL assists in developing, implementing, and periodically reviewing Department policies and procedures to ensure the protection of civil rights and civil liberties is appropriately incorporated into DHS programs and activities. CRCL is further charged with overseeing 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 DHS. The procedures for our investigations and the recommendations they may generate are outlined in DHS Management Directive 3500.

Under 6 C.F.R. § 115.93, § 115.193, and § 115.201, CRCL is also charged with assisting the agency in coordinating audits of DHS confinement facilities and with providing guidance on the conduct and contents of the audit instrument and methodology.

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. 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 review.

This memorandum and the 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.”

SCOPE OF REVIEW

The objective of our review is to determine if CBP is consistently implementing requirements as directed in the DHS PREA Standards and what steps, if any, CBP should take to improve implementation of the DHS PREA Standards and sexual abuse prevention and response policies more generally; if the Constitution, a Federal statute, a Federal regulation, or a Departmental policy has been violated; and whether changes or additions to policies, training, and procedures are needed to ensure that CBP appropriately incorporates the protection of civil rights and civil liberties into CBP’s implementation of the sexual abuse prevention and response policies and the DHS PREA Standards. This review will also assess how CBP personnel at both HQ and the field fulfill requirements from the DHS PREA Standards and form the overarching framework of the CBP sexual abuse prevention and response program.

QUESTIONS PRESENTED

This review will cover the following questions:

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

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

METHODOLOGY

CRCL will schedule an initial conference with CBP to discuss the upcoming review. After the initial conference, CRCL will:

- Schedule briefings with CBP’s relevant subject matter experts;
- Conduct interviews of CBP employees and contractors;

- Request and review information and documentation, including completed PREA Reports of Investigation and completed sexual abuse management inquiries;
- Observe CBP PREA audits and/or conduct other site visits;
- Observe training provided to OPR investigators relating to sexual assault prevention and investigations; and
- Observe CBP personal search training and/or receive a demonstration and briefing, among other things.

INITIATING THE REVIEW

CRCL has taken steps to begin its review of a collected sample of sexual abuse allegations involving CBP personnel and persons encountered by CBP or in CBP custody. These allegations represent different parts of the PREA process and have been selected to assist CRCL in assessing the success of the current CBP PREA program. In addition, CRCL will request additional information and/or request interviews as the review proceeds.

We look forward to working with your staff on this matter and will report back to you our findings and recommendations, if any. At this time, we request that CBP schedule initial discussions with Senior Policy (b) (6) and Policy Advisor (b) (6) as soon as possible. If you have any questions, please do not hesitate to contact Ms. (b) (6) at (b) (6) (b) (6) or (b) (6) or Ms. (b) (6) at (b) (6) or (b) (6)

Enclosure

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