



Homeland
Security

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MEMORANDUM FOR: Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement

Kerry E. Doyle
Principal Legal Advisor
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement

FROM:

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

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

SUBJECT: Recommendations Regarding ICE
Use of Maryland Database
Complaint No. 20-05-ICE-0474

Purpose

The purpose of this memorandum is to make recommendations to U.S. Immigration and Customs Enforcement (ICE) regarding the implementation of effective protocols to document certain information in its case management system. Specifically, these recommendations relate to when ICE Enforcement and Removal Operations (ERO) officers access databases containing facial images and other sensitive data. Further, these recommendations seek to ensure proper supervisory audits of, and training on, the standard procedures and requirements for logging information into appropriate case management systems. These protocols, procedures, and training would promote consistency, transparency, and accountability and institute appropriate oversight over Departmental activities that may implicate civil rights and civil liberties issues.

Background

Pursuant to 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, the U.S. Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (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. 6 U.S.C. §§ 345(a)(1) and (6). CRCL also has the overarching responsibility to direct, oversee, and coordinate the protection of the civil rights and civil liberties of members of the public in their interaction with DHS, including the development of policies to protect civil rights and civil liberties. This responsibility is set forth in 6 U.S.C. §§ 345(a)(3) and (4) (Section 345), as well as DHS Delegation 19003. CRCL also has the authority to investigate complaints alleging disability discrimination in DHS programs and activities in violation of Section 504 of the Rehabilitation Act of 1973, as amended (Section 504).¹

On February 26, 2020, CRCL learned of allegations through a news article regarding ICE's permission to run facial-recognition searches on millions of Maryland driver's license photographs without seeking state or court approval.² According to this news article, immigrant rights groups alleged that Maryland allows undocumented immigrants to obtain driver's licenses without having to provide proof of legal status and that ICE targeted these undocumented immigrants by accessing their driver's license photographs in the Maryland database without state or court approval.

Investigation

CRCL Investigation of ICE Sub-Components – ERO and Homeland Security Investigations (HSI)

In order to ensure due diligence and not rely solely on the article, CRCL sought initial information from ICE sub-components, ERO and HSI, to ensure the allegations were plausible.³

On June 8, 2020, CRCL requested documents from both ERO and HSI relating to their access to the Maryland Dashboard, a central access point which includes access to the Maryland Image Repository System (MIRS), and ICE's policies regarding the use of databases containing facial images. HSI responded to CRCL in June 2020. The ERO Baltimore Field Office provided initial responses on July 6, 2020. Additionally, they provided an informal briefing on ERO's use of MIRS to CRCL on November 23, 2020, and then responded to CRCL's follow-up questions (issued on December 7, 2020, and May 26, 2021) in January and June 2021, respectively. Relevant information to the allegations pulled from the responses provided to CRCL by both ERO and HSI are outlined below.

1. Enforcement and Removal Operations' Response

¹ See 29 U.S.C. § 794; 6 C.F.R. pt.15 (2003).

² This complaint is based on a February 26, 2020, Washington Post article, *ICE has run facial-recognition searches on millions of Maryland drivers*. See [ICE has run facial-recognition searches on millions of Maryland drivers - The Washington Post](#).

³ CRCL has broad authority to open a complaint based on "any information" alleging civil rights or civil liberties abuses. See 6 U.S.C 346(a)(6). This can include a new article. However, as news articles may be broadly worded or lack specific details, CRCL typically performs a "due diligence" check to ensure the allegations appear reasonable and related to DHS work. ERO is responsible for the arrest and removal of migrants who are in the U.S. unlawfully to ensure the safety of communities and the integrity of U.S. immigration laws. HSI investigates a range of domestic and international activities involving the illegal movement of people and goods into, within and out of the U.S.

In response to CRCL's Short Form Information Request and follow-up questions, the ERO Baltimore Field Office stated it has access to the Maryland Dashboard, a suite of systems available for law enforcement use, which includes MIRS.

Although the ERO Baltimore Field Office leadership stated it does not maintain records of its searches of either the Maryland Dashboard or MIRS, leadership estimated that they have accessed MIRS fewer than ten times since the ERO Baltimore Field Office gained access to the Maryland Dashboard in 2014. The ERO Baltimore Field Office leadership explained to CRCL that access has been given to approximately 40 officers depending upon their need to know based on their job function (e.g., individuals on street enforcement with active investigations). The ERO Baltimore Field Office leadership explained further that they access the Maryland Dashboard to identify an unknown address for persons who have absconded or are attempting to elude law enforcement and to identify individuals booked into county detention centers. They also explained that, although MIRS is available to them, they would not have a functional reason to use it generally⁴ and they would use it only for advancing a lead they have in connection with an investigation, not generating a lead.

Oversight by the ERO Baltimore Field Office

According to leadership, the ERO Baltimore Field Office does not monitor compliance with the rules of behavior⁵ related to the Maryland Dashboard and MIRS because it is not ICE's database. The ERO Baltimore Field Office did state that its users receive training from Maryland every two years and authorized users comply with the rules of behavior related to the Maryland Dashboard and MIRS provided by the system owner which is the state of Maryland.⁶ For oversight purposes, however, the ERO Baltimore Field Office told CRCL it relies solely upon adherence to the rules of behavior and the biennial training provided by the state of Maryland to authorized users accessing the Maryland Dashboard. CRCL requested but did not receive copies of the rules of behavior and the biennial training provided by the state of Maryland to authorized ICE ERO users accessing the Maryland Dashboard from ERO.

The ERO Baltimore Field Office also told CRCL that the state of Maryland performs audits and that those audits would surface any problems of misuse. According to the ERO Baltimore Field Office leadership, they have not been informed by Maryland officials of any audits or complaints about ERO Baltimore Field Office personnel usage of the Maryland Dashboard. Notwithstanding the foregoing,

⁴ According to ERO Baltimore Field Office leadership, ERO would have little cause to enter a photo into MIRS to find an image match because ERO investigation leads are based upon fingerprint biometrics and biographical data, not photos, as ERO targets individuals in violation of immigration laws. They explained image search investigative tools are useful for those law enforcement agencies or departments where a photo of a suspect is obtained (e.g., a bank robbery caught on tape) and the identity of the suspect is unknown. This is not a resource prominently useful to ERO.

⁵ Rules of behavior provide the guidelines for individuals regarding use and access to information systems and data. The rules of behavior should include all applicable laws, regulations, policies, procedures, and standards related to the appropriate retention and dissemination of the information as well as the parameters of role-based access.

⁶ When CRCL requested a copy of the terms and conditions and rules of behavior ERO personnel agreed to in order to access the Maryland Dashboard, including MIRS, ICE referred CRCL to the state of Maryland to obtain the information. CRCL was also referred to the state of Maryland for more information about the training for individuals accessing the Maryland Dashboard. Because CRCL does not have the ability to compel information from the state of Maryland in connection with its investigations, CRCL is unable to draw any conclusions about the contents of the rules of behavior and the biennial training and ERO's compliance with those requirements.

ERO did not indicate any understanding of what would be audited by Maryland and how a state auditor would be expected to identify misuse by a federal user. Nor did ICE indicate how potential problems uncovered through a state audit would be communicated back to ICE supervisors.

Review of Database Tracking Protocol

As a follow up, CRCL asked about ERO's case management protocols for logging calls and database searches such as searches in the Maryland Dashboard in the course of an investigation. The ERO Baltimore Field Office leadership explained to CRCL that it does not maintain separate or distinct logs or tracking systems to document the numerous queries made into various databases, or the utilization of these systems, and there are no policies in place to levy such a requirement on ICE law enforcement officers.⁷ Accordingly, this information may be placed into existing ERO case management systems, but there is no requirement to do so.

To better understand the case management systems used by ERO, CRCL reviewed the Privacy Impact Assessments (PIA) for two other case management systems ICE uses – Investigative Case Management (ICM) and Enforcement Integrated Database (EID).⁸ CRCL learned that the ERO Baltimore Field Office's primary case management systems are Enforce Alien Detention Module (EADM) and Enforce Alien Removal Module (EARM) which both interact with EID.

The PIA for EID issued in January 2010 describes what case management information should be maintained: "DHS case management information, including case category, case agent, and date initiated and completed. Descriptions of evidence collected during arrest, investigation, or other DHS enforcement operations."⁹ The PIA for EID also states that "ICE law enforcement personnel are required to adhere to the ICE Case Management Handbook and complete ICE Integrity Training and privacy/security training annually, all of which stress the need to verify information and the techniques for doing so."¹⁰

To determine whether any standard procedures or requirements in the Case Management Handbook would be applicable to accessing and documenting access to the Maryland Dashboard and MIRS, CRCL requested, but ERO did not provide, a copy of the Case Management Handbook referenced in the EID PIA.¹¹

2. Homeland Security Investigations Response

⁷ In addition, ICE informed CRCL that it has not conducted a Privacy Threshold Analysis (PTA) or a PIA related to ERO's collection, sharing, and receipt of data from the Maryland Dashboard or MIRS because, according to the ERO Baltimore Field Office leadership, the database is owned and administered by the state of Maryland, not ICE.

⁸ <https://www.dhs.gov/publication/dhs-ice-pia-045-ice-investigative-case-management>
<https://www.dhs.gov/publication/dhsicepia-015h-enforcement-integrated-database-eid-criminal-history-information-sharing>

⁹ <https://www.dhs.gov/publication/dhsicepia-015h-enforcement-integrated-database-eid-criminal-history-information-sharing>, p. 8.

¹⁰ *Id.* at 12.

¹¹ CRCL requested this information more than once and ERO did not provide it before the recommendation memorandum was drafted and provided to ICE for comment.

In response to CRCL’s information request and follow-up questions, HSI conveyed that it uses databases containing facial images in connection with its investigations targeting alleged criminals involved in child exploitation and human trafficking to provide a possible match in identity of a subject previously suspected of being involved in alleged child exploitation or human trafficking. HSI also indicated it uses state Department of Motor Vehicles (DMV) information, including photos, biographical data, and registration information to confirm the identification of child exploitation and human trafficking suspects. HSI confirmed it does not use the technology to search for undocumented individuals. HSI accesses state driver’s license information through the National Law Enforcement System or through the Maryland Dashboard, and HSI does not pay Maryland any fee to access the Maryland Dashboard. HSI also indicated it has access to four databases covering five states¹² and does not have memoranda of understanding to conduct facial image searches through these state databases. HSI accesses these databases by agreeing to the terms and conditions for all users and they are accessed for law enforcement purposes only by those HSI personnel with a legitimate need to know.

HSI Facial Biometric Policies and Procedures

HSI published a PIA in May 2020¹³ related to facial recognition services (FRS), which indicates that HSI submits “probe photos” to a database containing facial images such as MIRS only in connection with an investigation. Prior to submitting a probe photo to a database containing facial images, the HSI “agent must use reasonable efforts to identify the individual through government database queries, open source research, and other conventional investigative techniques based on biographical and other non-biometric information.”¹⁴ Moreover, “[t]he agent’s use of existing processes must be noted in the ICE Investigative Case Management System (ICM)[] as a Report of Investigation [ROI]. [] When the HSI agent submits the probe photo, the agent notes the agency or vendor providing the [facial recognition services] as part of the ROI in ICM. HSI supervisors are required to perform a review of agent submissions to [facial recognition services] on a periodic basis. HSI supervisors review ICM and the relevant case file to ensure agents use [facial recognition services] by the terms outlined in this PIA.”¹⁵

The PIA details how HSI vets and validates information received from FRS and states that non-vetted information would not be documented in ICM.¹⁶ The PIA also indicates that if the information from the FRS is successfully vetted, the HSI agent would work up a lead for further investigation, which would be entered into ICM as a ROI.¹⁷ The PIA further states: “The fact that a lead was derived from an FRS generated candidate list will also be noted in the ROI, including the name of the FRS (e.g., name of the state DMV, name of the commercial vendor source).”¹⁸

¹² Maryland and access to HSI is provided by the Maryland Department of Public Safety & Corrections; Florida and access to HSI is provided by the Pinellas County Sheriff’s Office; New York and New Jersey and access to HSI is provided by New York/New Jersey High Intensity Drug Trafficking Area; and Pennsylvania and access to HSI is provided by the Pennsylvania State Police.

¹³ [DHS/ICE/PIA-054 ICE Use of Facial Recognition Services | Homeland Security](#)

¹⁴ *Id.* at 6-7.

¹⁵ *Id.* at 7.

¹⁶ *Id.* at 10.

¹⁷ *Id.*

¹⁸ *Id.* at 10-11.

Finally, the PIA sets forth an audit function by the HSI supervisor of investigative case files to ensure that the use of an FRS and the name of the FRS are documented as an ROI in ICM and notes that “accountability checks regarding the collection, sharing, and receiving of information in connection with an FRS is dependent on HSI agents following HSI standard procedures and requirements for logging information in the ICM system.”¹⁹

On January 15, 2021, HSI issued a four-page memorandum from (b) (6), (b) (7)(C), Acting Executive Associate Director to all HSI personnel titled, “Use of and Access to Third-Party Facial Recognition Services.”²⁰ This memorandum outlines the proper use of FRS within the scope of the official duties of HSI personnel, the prerequisite training, and civil rights and civil liberties safeguards. These civil rights and civil liberties safeguards include prohibiting the collection of probe photos based on activities protected by the First Amendment or “race, ethnicity, gender, national origin, religion, sexual orientation, gender identity, nationality, or any individual characteristic protected by law.” Significantly, the memorandum also outlines the oversight and supervisory approval and case management requirements, including supervisory review of logs, case files, and case management system entries and audits to ensure compliance with the guidance outlined in the memorandum and documented in the PIA.

Database Tracking Protocols

HSI reported to CRCL that it did not know how many queries it had run in MIRS. HSI also informed CRCL that ICE does not use this facial recognition technology for routine immigration enforcement and is not interested in using bulk data for immigration enforcement.

Analysis

It is important to note that ERO and HSI have approached their use and documentation of accessing MIRS differently. HSI has a direct criminal law enforcement use for MIRS and it has instituted policies and training in order to meet the standard for potential criminal investigations. Although ERO uses the Maryland Dashboard when it has already generated information on a person of law enforcement interest, ERO indicated it does not routinely use FRS nor does it access MIRS routinely in connection with its immigration law enforcement activities. (b) (5)

[REDACTED]

Based on CRCL’s investigation, it is apparent that, for purposes of oversight and accountability, the ERO Baltimore Field Office points to the rules of behavior and the biennial training provided by the state of Maryland to authorized users accessing the Maryland Dashboard. ERO’s rationale is that it

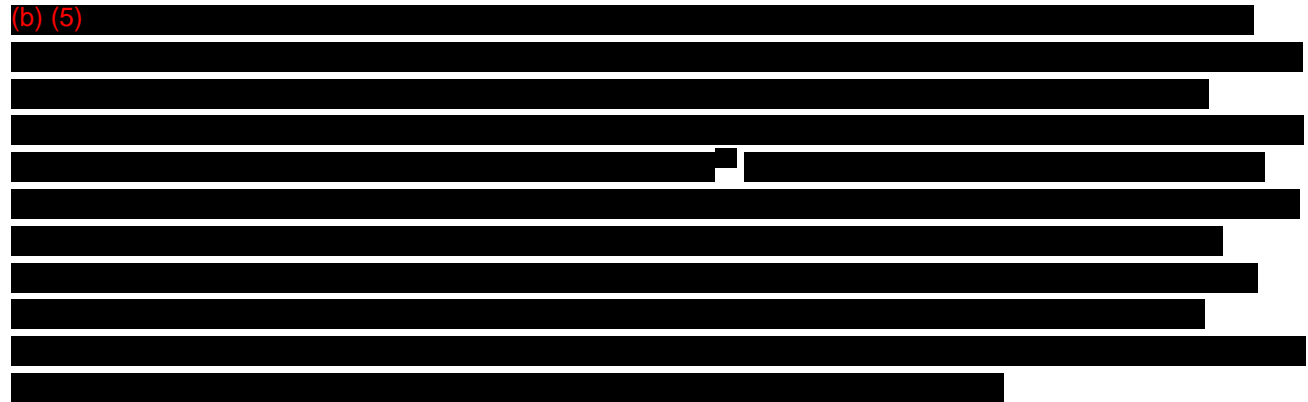
¹⁹ *Id.* at 29.

²⁰ This memorandum was issued to all HSI personnel by Acting Executive Director (b) (6), (b) (7)(C)

generally does not have a need to use FRS and access MIRS in connection with its immigration enforcement activities. Such use is not prohibited, rather it is just deemed atypical.

Because CRCL did not receive copies of the rules of behavior and the biennial training provided by the state of Maryland to authorized users accessing the Maryland Dashboard from ERO, it is unable to draw any conclusions about the contents of the rules of behavior or the biennial training, and unable to assess compliance with those requirements.²¹ ERO acknowledges, however, that it lacks standard procedures and requirements for documenting their officers' accessing the Maryland Dashboard (and any similar databases) in a case management system and lacks supervisory audit protocols regarding the use of such databases. This leaves open the possibility for authorized users to access and potentially use FRS information from MIRS improperly without any mechanism for ERO to exercise oversight. Similarly, because CRCL did not receive a copy of the Case Management Handbook referenced in the EID PIA to determine whether any standard procedures would be applicable to accessing MIRS, CRCL is unable to draw any specific conclusions about the contents of ERO's case management protocols.

(b) (5)



With respect to HSI, CRCL believes they have a robust system for the protection of the data accessed through the Maryland Dashboard. During its investigation, CRCL learned that HSI accesses state driver's license information through the National Law Enforcement System or through the Maryland Dashboard, among other states' databases with similar information to confirm the identification of child exploitation and human trafficking suspects.

HSI has provided transparency about the use of FRS in its investigations and outlined requirements for entering information into its case management system and supervisory audit functions to promote accountability regarding the collection, sharing, and receipt of information in connection with FRS.²³ In addition, HSI's January 15, 2021 memorandum titled, "Use of and Access to Third-Party Facial Recognition Services" includes information about adhering to civil rights and civil liberties safeguards and demonstrates how HSI has incorporated supervisory oversight and audit checks into its policies, procedures, and training. There was one concern with the HSI system, that they could not

²¹ CRCL requested the rules of behavior and biennial training from ERO and ERO referred CRCL to the state of Maryland. CRCL does not have jurisdiction to request information from the state of Maryland in connection with its investigations.

²² Historically, one means of providing transparency is within the Privacy Impact Assessment. CRCL has flagged its assessment of the need for greater transparency in these circumstance to the DHS Privacy Office for their consideration.

²³ [DHS/ICE/PIA-054 ICE Use of Facial Recognition Services | Homeland Security](#)

identify the number of users of the system. This inability to identify the number of users significantly limits HSI's audit and tracking of individual agent access and use of FRS to ensure compliance with all appropriate civil rights and civil liberties protections.

Conclusion

Based on the information provided by ICE, CRCL concludes:

1. (b) (5) [Redacted]
[Redacted]
[Redacted].²⁴
2. (b) (5) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
3. HSI has incorporated into its policies, procedures, and training oversight and supervisory audit checks of its case management system to promote accountability regarding the collection, use, sharing, and retention of facial images and other sensitive data to provide appropriate oversight over activities that may implicate civil rights and civil liberties issues.
4. HSI may need to implement the audit requirements documented by the PIA.

Recommendations

CRCL recommends the following:

1. (b) (5) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

²⁴ (b) (5) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

(b) (5) [Redacted]

2. (b) (5) [Redacted]

3. HSI should ensure it is fulfilling its audit requirements, including reviewing instances where FRS is accessed and used.

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 ICE to determine the best way to resolve this complaint. We request that ICE provide a response to CRCL within 120 days indicating 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) [Redacted]. CRCL will share your response with (b) (6) [Redacted], the Senior Policy Advisor who conducted this investigation.

Copy to:

Jason P. Houser
Chief of Staff
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C) [Redacted]

Claire Trickler-McNulty
Assistant Director
Office of Immigration Program Evaluation
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C) [Redacted]

Deborah Fleischaker
Assistant Director
Office of Regulatory Affairs and Policy
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C) [Redacted]

Scott Lanum
Assistant Director
Office of Diversity and Civil Rights

U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

Corey A. Price
Executive Associate Director
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

Daniel Bible
Deputy Executive Associate Director
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

Steve K. Francis
Acting Executive Associate Director
Homeland Security Investigations
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

Patrick McElwain
Acting Deputy Executive Associate Director
Homeland Security Investigations
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

Jason B. Mitchell
Chief of Staff
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

Monica Burke
Acting Assistant Director, Custody Management
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

Stephen M. Antkowiak
Acting Chief of Staff, Custody Management
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

Greg Hutton
Acting Deputy Assistant Director, Custody Programs
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

Lon D. Weigand II
Deputy Assistant Director
Domestic Operations
Homeland Security Investigations
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

Christopher S. Kelly
Deputy Assistant Director
Office of Regulatory Affairs and Policy
U.S. Immigration and Customs Enforcement
(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)
[Redacted]
[Redacted]