



**Homeland
Security**

September 26, 2023

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

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SUBJECT: Complaint 000903-21-CBP, Interacting with Passengers with
Disabilities at the Miami International Airport

Purpose

Pursuant to 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, this memorandum provides recommendations to U.S. Customs and Border Protection (CBP) to better enable CBP to appropriately interact with passengers with disabilities at the Miami International Airport (MIA). Specifically, this memorandum provides recommendations to CBP stemming from an allegation of inappropriate questioning of a U.S. citizen traveler by a CBP Officer (CBPO) on June 13, 2021.¹

Background

¹ CRCL did not open this as a disability discrimination complaint under Section 504 of the Rehabilitation Act, as amended, because it did not meet the full regulatory requirements in 6 C.F.R. §15.3.

On June 22, 2021, CRCL received correspondence from the CBP Information Center (Case 210617-2869433) originating from a phone call from a U.S. citizen Complainant² regarding a June 13, 2021, incident at Miami International Airport (MIA). Per the correspondence, Complainant alleged that she was being pushed in a wheelchair by an airport employee when a CBPO³ asked where her legs were and asked how she could be disabled as she appeared to be an able-bodied person. Complainant further alleged that when she questioned the appropriateness of the line of questioning, another CPBO responded that the CBPO was not violating her rights and mocked her by saying "oh, can I ask you question, is it ok if I can ask?" She also alleged that at one point a CBPO asked her to show proof of her disability.

On June 30, 2021, CRCL made a request to the CBP Privacy and Diversity Office (PDO) to contact the field and preserve any available video relating to Complainant's inspection by CBP on June 13, 2021. On July 23, 2021, CRCL sent a short form information request to CBP regarding this complaint.

Investigation

Video Footage of Complainant's June 13, 2021 Inspection

According to a video recording of Complainant's inspection, the CBPO devoted a significant portion of the Complainant's primary inspection, which lasted approximately ten minutes, to questions and comments about her disability.

Initially, the CBPO inquired of the Complainant's disability as she approached for inspection. Specifically, he asked "[w]hy are you in a wheelchair, what's going on, you got a new leg?"⁴ The Complainant appeared taken aback or offended by the question, after which the CBPO commented that she was a "young lady" and "in good shape."⁵ The CBPO continued to ask Complainant why she was in a wheelchair and commented that she "looked healthy"⁶ and that she was not "missing a limb."⁷ The CBPO then stated that Complainant had "no brace" and asked Complainant where her brace was. The Complainant responded that she did not need a brace for her condition and the CBPO asked her, "what condition do you have? Do you have paperwork for your condition?"⁸ Complainant responded that she did not have her paperwork. At this point, the CBPO asked Complainant, "Are you disabled?" to which she replied, "Yes, sir."⁹ The CBPO then addressed the airport employee who was pushing the wheelchair instead of the Complainant to ask about Complainant's disability before telling the Complainant, "You don't look disabled to me."¹⁰ Complainant replied, "You don't have to look disabled to be disabled."¹¹ The CBPO then asked whether Complainant could walk and whether she had been

² Complainant's identifying information is provided in **Appendix A**.

³ The CBPO's identifying information is provided in **Appendix A**.

⁴ Video: Complainant's Inspection, at 00:09 (June 13, 2021).

⁵ *Id.* at 00:20.

⁶ *Id.* at 01:03.

⁷ *Id.* at 01:08.

⁸ *Id.* at 01:19 – 01:21.

⁹ *Id.* at 01:34.

¹⁰ *Id.* at 01:47.

¹¹ *Id.* at 01:50.

in a car accident, to which Complainant replied that yes, she had been in a car accident.¹² The CBPO then told Complainant that she was a very difficult person.

After over two minutes of questioning Complainant about her wheelchair, the CBPO asked Complainant for her passport and asked questions about her travel, but before Complainant could answer the CBPO's question about her transit through London, the CBPO interrupted Complainant to tell her that it was the CBPO's job to ask these questions, that everything [CBP] asks is for a specific reason, and that he was "trying to educate [Complainant] a little bit so [she] could know and give up the attitude."¹³ The CBPO then asked Complainant questions about her travel and time in Nigeria, and took her photograph, while stating to another individual off camera, "this lady is giving me an attitude, I don't know why."¹⁴

The CBPO then began to ask additional questions about Complainant's travel and asked Complainant whether that was okay, to which Complainant responded, "Yeah, that's okay. Per [the Americans with Disability Act] you're not supposed to ask someone what their disability is."¹⁵ The CBPO then argued with Complainant about whether the CBPO asked her about her disability and questioned Complainant about being a student and whether she challenged her professors the same way she challenged the CBPO.¹⁶

Complainant informed the CBPO that she was beginning medical school, and the CBPO questioned whether Complainant would allow her patients to ask her questions and again asked Complainant about her attitude.¹⁷ Complainant stated, "I think my response is based on the way you are talking to me."¹⁸ Complainant further stated that she was offended by the CBPO's question about why she was in a wheelchair.¹⁹ The CBPO responded, "I'm sorry if I offended you," and Complainant replied, "you did."²⁰ The CBPO then asked a CBPO off-camera whether what he said was offensive.²¹ Complainant then explained to the CBPO off-camera that she was offended by the questioning and felt that it was unfair to assume that just because she is young and that she "look[s] able-bodied" that she couldn't be in a wheelchair.²² The CBPO off-camera stated that the first CBPO was "just trying to do his job" and that he knows the first CBPO very well and that the first CBPO did not mean to be offensive.

Relevant Policies and Training

CRCL reviewed relevant policies and procedures provided by CBP in response to the CRCL Information Request.

¹² See *id.* at 01:53.

¹³ *Id.* at 02:35.

¹⁴ *Id.* at 03:38.

¹⁵ *Id.* at 04:00.

¹⁶ *Id.* at 04:00 – 05:40.

¹⁷ *Id.* at 05:40 – 06:17.

¹⁸ *Id.* at 06:22.

¹⁹ *Id.* at 06:30.

²⁰ *Id.* at 06:42.

²¹ *Id.* at 06:55.

²² *Id.* at 07:10.

CBP

The MIA Sensitivity and Awareness Disability Training (“MIA training”) contains a slide titled “Passengers Using Wheelchairs” describing some best practices for interacting with a passenger using a wheelchair, including: not touching the wheelchair without permission, speaking to the person with the disability and not their companion, and making eye contact. The slide on interacting with a person with a wheelchair does not address whether it is appropriate to speculate or ask a person why they are in a wheelchair. The MIA training provides “10 Top Disability Etiquette Tips” on slide 18. These include, “Focus on the person, not their disability or their companion[.]” and “Don’t ask or guess a person’s disability.” The MIA training does not include any practical examples and does not directly address interacting with persons with disability during primary inspections.

The Field Operations Officer Post-Academy Training “Module: 1: Professionalism and Integrity” Instructor Guide (“Module”) provides “CBP officers’ personal conduct must be fair and impartial and never act, fail to act, or make negative statements on the basis of an individual’s race, color, age, sexual orientation, religion, sex, national origin, or disability.”²³

A November 2018 CBP document titled, “Providing Reasonable Accommodation to Persons with Disabilities in CBP-Public Facing Programs & Activities” notes that medical documentation should not be requested from a person with a disability, even when they are seeking a reasonable accommodation. That guidance states that, “[a]n individualized assessment is important because persons who have what appear to be similar disabilities do not all have the same needs[.]”

Additionally, in August 2021, CBP informed CRCL that Disability Access Training had been implemented at all CBP’s basic training academies as of July 2021. The “Disability Access Lesson 4: Physical and Mobility Disabilities” Instructor Guide (“Lesson 4”) notes that when encountering an individual with a mobility disability, the “individual MUST still be approached with the same respect and professionalism as anyone else encountered” and instructs officers to “observe and assess” individuals with assistive devices as they still may commit a crime. (Lesson 4 at p. 5). When discussing the interactive process, Lesson 4 highlights that individuals with disabilities often have very different needs and instructs officers that appropriate questions to ask include asking whether there are limitations that may interfere with the individual’s ability to access a CBP program, activity or service, about prior accommodations received, and whether the individual has any suggestions for possible accommodations that may be effective. Lesson 4 states on p. 8, “DO NOT ask for medical documentation or proof of the disability. If you have a reasonable doubt as to the nature of an individual’s disability or your duty station’s ability to provide the requested accommodation, **ask a supervisor for guidance**” (emphasis in original). Lesson 4 notes on p. 17, “Be very cautious about seeking the assistance of the person’s companion, caregiver, or personal assistant. While this individual may be able to assist you with communication and interpreting the person’s meaning and/or responding to behaviors, it is easy to make an incorrect assumption and fail to communicate directly with the individual.”

²³ The Field Operations Officer Post-Academy Training “Module: 1: Professionalism and Integrity” Instructor Guide at 44 (May 2011).

DHS

The September 26, 2013 DHS CRCL resource guide for DHS personnel, contractors, and grantees, "[A Guide to Interacting with People who have Disabilities](#),"²⁴ ("Guide") provides additional relevant guidance. It notes that people with disabilities make up a significant portion of the population within all communities, regardless of age or other factors. (Guide at p. 2). The Guide also notes that the abilities and needs of people with disabilities can vary and may not be visually apparent. (Guide at p. 3). As an example, the Guide notes that "many people who use a wheelchair can stand or walk for short periods." (*Id.*) The Guide further states, "When talking to a person with a disability, look at and speak directly to that person, rather than their companion." (Guide at p. 6).

Analysis

CRCL found multiple areas of concern with Complainant's inspection at MIA. It violates CBP and DHS policies and training for a CBPO to express opinions about the body of a traveler (such as saying they are a "young lady in good shape") during an inspection and to confront a passenger on their use of a wheelchair based on that passenger's physical appearance. Additionally, beginning the interaction with Complainant by immediately asking why Complainant was in a wheelchair and whether she had a "new leg" set an unnecessarily confrontational tone about Complainant's disability. As DHS guidance provides, not all persons with disabilities have the same abilities and needs, and a person may have a disability regardless of their age or appearance.²⁵

The CBPO also addressed the person assisting Complainant to ask about her disability before telling Complainant that she did not look disabled to the CBPO. It is inappropriate and inconsistent with DHS training to address questions about a person's use of a wheelchair to their companion instead of the person using the wheelchair.²⁶

Moreover, extending the length of the inspection to confront Complainant about her perceived "attitude" in response to the CBPO's questions about her disability, including questions about how much deference Complainant gives to her professors, appears to CRCL to be outside the professional scope of a primary inspection of a traveler. The participation of another CBPO to reinforce, rather than correct, the first CBPO's inappropriate questioning is indicative of a possible wider training need at MIA.²⁷

²⁴ Available at https://www.dhs.gov/sites/default/files/publications/guide-interacting-with-people-who-have-disabilities_09-26-13_0.pdf.

²⁵ See Guide at pp. 2, 3.

²⁶ See MIA training at p. 18; Guide at p. 6; Lesson 4 at p. 17.

²⁷ While this Complaint investigation is focusing on this individual primary inspection and training materials from MIA, CRCL has received similar complaints of inappropriate questioning at other airports relating to a passenger's use of a wheelchair. For example, in 003713-22-Contact, CRCL received allegations forwarded from the CBP INFO center (Case 220422-3678129) that a CBPO at Fort Lauderdale-Hollywood International Airport (FLL) asked a passenger why she was in a wheelchair and threatened to send her to secondary for additional screening if she did not disclose her disability to the CBPO. However, unlike in this case, that passenger spoke with a Supervisory CBPO who apologized for the inappropriate questioning and clarified that it is not CBP's policy to ask passengers to explain their disability when they are using a wheelchair.

Finally, CRCL has concerns regarding the generally disrespectful and confrontational mode of communication used throughout this inspection. The repeated reference to Complainant's "bad attitude" exacerbates the perception by the Complainant that she was being questioned and not believed by CBP relating to her status as a person with a disability. These questions and comments were not needed for purposes of the primary inspection. Dignity and respect are paramount in all CBP interactions.

Findings

1. During the June 13, 2021, primary inspection of Complainant at MIA, the CBPO made inappropriate comments to Complainant about her disability, physical appearance, and demeanor. These included opining that the Complainant was a "young lady" "in good shape" who did not "look disabled" to the CBPO.
2. During the June 13, 2021, primary inspection of Complainant at MIA, the CBPO addressed the person assisting Complainant with her wheelchair to ask about Complainant's disability. DHS and CBP training materials emphasize that CBP personnel should address a traveler with a disability directly, rather than asking their companion about their disability.
3. The local training materials at MIA provided by CBP in response to CRCL's information request lacked sufficient detail and practical examples on how to appropriately interact with passengers using wheelchairs.
4. The CBPO did not treat Complainant with respect and dignity as required by CBP policy and training.

Actions Taken by CBP to Address Issues Raised in this Complaint

Subsequent to CRCL's initiation of this investigation, CBP took measures to address issues raised by this civil rights complaint. CBP informed CRCL of these measures during the process of CRCL soliciting feedback on its draft recommendations, which proposed similar actions. CRCL acknowledges CBP's proactive efforts in this area, in particular:

1. CBP provided a recent training dated May 13, 2022, titled "Disability Access Training for Law Enforcement Professionals."²⁸ This training, launched in 2022 through the Acadis training software, is required for CBPOs to take every 2 years. The 2022 training materials are a significant improvement over the previous training materials that were in place at the time of the incident in this complaint. Notably, the 2022 training explicitly states that CBP law enforcement professionals should not ask for medical documentation or proof of a disability and that disabilities may not be apparent.²⁹

²⁸ U.S. Customs and Border Protection, "Disability Access Training for Law Enforcement Professionals", TRAEN: G0790002-01 (May 13, 2022).

²⁹ *Id.* at 37.

2. Following a referral of this matter to the Joint Intake Center (JIC) MIA conducted a management inquiry. CBP determined that the officer involved engaged in misconduct affecting the efficiency of the service and initiated corrective disciplinary action. This matter was also referred to the CBP Office of Professional Responsibility (OPR).

Recommendations

CRCL recommends that CBP take the following additional measure:

1. As a reminder of DHS personnel's obligations for interacting with persons with disabilities, CBP should distribute, within 90 days, a muster or email to personnel at MIA containing a copy of the "DHS Guide to Interacting with People who have Disabilities". This communication should also refer personnel to the "Disability Access" resource section of the CBPnet SharePoint site, which provides CBP-specific policy, guidance, resources, and training materials relating to disability access and nondiscrimination.

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 to determine the best way to resolve these complaints. We request that CBP 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 [crlcrecommendations@hq.dhs.gov](mailto:crcirecommendations@hq.dhs.gov). CRCL will share your response with (b) (6), the Senior Policy Advisor who conducted this investigation.

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