



**Homeland  
Security**

August 22, 2022

MEMORANDUM FOR: Chris Magnus  
Commissioner  
U.S. Customs and Border Protection

Scott K. Falk  
Chief Counsel  
U.S. Customs and Border Protection

FROM: Dana Salvano-Dunn (b) (6)  
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 and Recommendations  
Complaint No. 002764-22-CBP

### *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) in connection with the investigation conducted by the Office for Civil Rights and Civil Liberties (CRCL) into the allegation that CBP discriminated against a traveler because of his mental health during his preclearance inspection at the Montreal Trudeau International Airport (Montreal Preclearance).

### *Investigation*

The complainant, who has an anxiety disorder, alleged that CBP discriminated against him when he was deemed inadmissible during his inspection at Montreal Preclearance on October 19, 2021. According to the complaint, the complainant previously attempted to travel to the United States on October 14, 2021, and withdrew his application for admission after he was told that he would be inadmissible primarily due to a previous overstay.<sup>1</sup> He alleged that when he applied for admission again on October 19, 2021, the CBP Officer (CBPO) who conducted his preclearance inspection asked him about his anxiety disorder and past depression. The complainant alleged that, after consulting with a Supervisory CBPO (SCBPO), the CBPO told him that “[the SCBPO]

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<sup>1</sup> According to CBP records, the complainant overstayed his authorized period of admission by more than six months in 2020.

denied your entry today because she's concerned that you could be a flight risk and have a panic attack on the airplane." The complainant stated that he later spoke to the SCBPO, who allegedly said "I'm worried that you could be a flight risk due to your anxiety disorder and we're calling it a public charge." The complainant further alleged that the SCBPO said "[he] didn't look like [he] had anxiety" and that "[he] looked like [he] could work."

CRCL sent an information request to CBP, and CBP provided documents including records relating to the complainant's past inspections and written statements from the CBPO and SCBPO who were involved in his October 19, 2021, inspection. According to CBP records, the complainant was found unable to overcome the presumption of being an intending immigrant<sup>2</sup> based on his previous overstay, his prior refusals, and his lack of demonstrated ties to Canada during both his October inspections. The written statement provided by the SCBPO details the various factors that contributed to CBP's determination.

### *Analysis*

CRCL did not substantiate the complainant's allegation that CBP discriminated against him during his preclearance inspection. The record provides ample support for CBP's determination that the complainant was unable to overcome the presumption of being an intending immigrant when he attempted to travel to the United States in October 2021. CRCL, however, has remaining concerns regarding CBP's interaction with the complainant.

As described above, the complainant alleged that the SCBPO who reviewed his case expressed concern that he might have a panic attack on the plane, said that he "didn't look like he had anxiety," and indicated that he could become a public charge. Although CRCL requested a statement from the SCBPO addressing whether she made each of these specific comments, the statement she provided did not address any of these comments.<sup>3</sup> Because of this, CRCL is unable to substantiate specific aspects of the SCBPO's conversation with the complainant, but the statement she provided suggests that she may have engaged in unnecessary commentary concerning his anxiety.

CBP records reflect that the complainant was determined to be inadmissible as an intending immigrant – not based on public health grounds or public charge concerns. In her statement, however, the SCBPO acknowledged that she asked the complainant whether he takes medication for his anxiety; why he "weaned himself off" of his anxiety medication; and why he was unemployed if he no longer requires medication for his anxiety. She also stated that the complainant became visibly upset during their conversation and felt that she was "picking on him because of his anxiety."

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<sup>2</sup> This determination was made pursuant to Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act, which describes that an immigrant who is not in possession of a valid unexpired immigrant visa or other valid entry document is inadmissible.

<sup>3</sup> The officer statements provided by CBP were overdue when they were received by CRCL, and CBP informed CRCL that one of the officers was on an extended leave of absence. In order to avoid further delay by requesting a second statement, and given the likelihood that, due to the passage of time, the SCBPO would not recall whether she made these specific remarks, CRCL will rely on the incomplete statement.

CBP has not provided information to demonstrate why this questioning was necessary. If not relevant to the admissibility determination for the complainant, this line of questioning is potentially problematic. The SCBPO had already determined that the complainant was an intending immigrant based on several factors unrelated to his anxiety. It was unnecessary for the SCBPO to ask repeated and probing questions about his anxiety, which clearly caused him distress. Based on available information, we cannot eliminate the possibility that the SCBPO followed this line of questioning, and if the SCBPO did speculate about the complainant's panic attacks or comment on whether the complainant "looked like he had anxiety," it would have been inappropriate.

CRCL appreciates that CBP may have reason to ask questions about a traveler's mental health condition – for example, when there are concerns about public safety or admissibility under public health grounds. No such concerns, however, appear to exist in this case.<sup>4</sup> The complainant's allegations that the SCBPO made comments about his anxiety and alluded to the possible public charge ground of inadmissibility raise concerns that the complainant's history of anxiety was improperly used as a factor in assessing his admissibility on other grounds. As CRCL has previously advised, it is important for CBP officers to carefully consider whether information about an individual's mental health condition is relevant to their inspection and be mindful of the potential implications of comments about an individual's mental health status. Individuals with mental health conditions are often stigmatized due in part to the misconception that the individual should be able to easily manage the illness and the suspicion that mental illness is associated with violent behavior. Additionally, there is often a belief that individuals with mental illnesses do not "look" mentally ill and thus are not being truthful in their interviews, which could negatively influence the ultimate admissibility decision.

CRCL previously issued recommendations to CBP addressing the need for additional officer training with respect to travelers with mental health conditions. These recommendations were made in response to complaints relating to travelers with histories of mental health conditions including anxiety and depression. In June 2018, CRCL recommended that CBP ensure that officers at the Toronto Preclearance location be trained to interact appropriately with persons with mental disabilities, and that CBP issue a muster reminding officers of the importance of using discretion and respect when communicating with someone they believe may have a mental illness.<sup>5</sup> In response, CBP agreed to issue a muster using the *DHS Guide to Interacting with People who have Disabilities* as a guide, and stated that the muster would serve to reinforce the basic academy training that officers receive relating to sensitivity, respect, and professionalism.

In June 2020, CRCL recommended that CBP develop and implement training for its frontline workforce about interacting with people with known or expressed mental health conditions,

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<sup>4</sup> CBP provided CRCL with a copy of the academy training unit titled "Health-Related and Public Charge Grounds," which covers determinations of inadmissibility based on these grounds. The training addresses the factors that could trigger these grounds of inadmissibility; it does not appear that the complainant's preclearance inspection presented concerns that would trigger health-related or public charge grounds of inadmissibility.

<sup>5</sup> This recommendation was made in a June 1, 2018 memorandum addressing allegations that CBP accessed private medical information about travelers who had attempted suicide and used it as grounds to deny entry at the Toronto Preclearance location. Although CRCL found that CBP's actions conformed to policy, CRCL addressed concerns about the treatment of travelers with mental illness at Toronto Preclearance.

including exercising care when deciding whether the condition is relevant to the inspections process, displaying sensitivity when discussing mental health conditions, and determining the necessity of disclosing private information to third parties.<sup>6</sup>

In response, CBP agreed to issue a muster and noted that it was developing and integrating disability awareness training for law enforcement professionals into basic academy training.

On March 12, 2021, CBO issued a muster titled “Strategies for Communicating with Persons with Mental Disabilities” to all CBPOs, which included the following reminders:

- Do not behave in a condescending manner to persons displaying symptoms of a mental illness and refrain from providing opinions or making personal comments related to a person’s mental health condition.
- For inspectional processes, ensure you carefully weigh the totality of the circumstances when deciding whether a person’s mental health condition is relevant to an inspection.

In August 2021, CBP informed CRCL that Disability Access Training had been implemented at all CBP’s basic training academies, and provided CRCL with the courses, which included a lesson titled “Mental Illness.”<sup>7</sup> This lesson focuses primarily on identifying signs of mental illness, conducting the interactive process to provide accommodations to those with mental health conditions, and strategies for recognizing and de-escalating a mental health episode. It does not address scenarios in which CBP officers interact with travelers with current or past mental health conditions in the ordinary course of inspections, where there is no need or request for an accommodation or any concerns about behavior or communication, despite the bullet noted above addressing whether a person’s mental health condition is relevant to an inspection.

### *Conclusions*

CBP’s determination that the complainant was inadmissible as an intending immigrant was supported by ample evidence unrelated to his history of anxiety. That said, unnecessary comments about the complainant’s anxiety appear to have been made during his inspection and his subsequent conversation with the SCBPO; as these were unrelated to his finding of inadmissibility, they appear to be improper.<sup>8</sup> The complainant’s allegations of discrimination, while unsubstantiated, raise ongoing concerns about the need for additional training focused on interactions between CBP officers and travelers with mental health conditions.

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<sup>6</sup> This recommendation was made in a June 26, 2020 memorandum addressing allegations that CBP harassed a traveler due to her mental health condition and denied her request to take medication for her anxiety during secondary inspection at John F. Kennedy International Airport. Although CRCL did not find that CBP discriminated against the traveler based on her disability, CRCL offered recommendations to improve training.

<sup>7</sup> CBP also stated that a PALMS-based training course, “Disability Access Training for Law Enforcement Professionals,” was under development.

<sup>8</sup> Mental or psychological disorders, including emotional or mental illness, are among the impairments covered under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended.

## *Recommendations*

As described above, CRCL previously twice recommended that CBP develop and implement training about interacting with people with mental health conditions, including exercising care when deciding whether the condition is relevant to the inspections process and displaying sensitivity when discussing mental health conditions. CBP concurred with these recommendations and has issued musters and a developed new PALMS-based training. We appreciate that effort to implement the recommendations, however CRCL believes more should be done in the future to address these concerns given this complaint.

CRCL recommends that CBP undertake the following measures:

1. CBP should issue guidance that includes the principles set forth in its muster *Strategies for Communicating with Persons with Mental Disabilities* dated January 20, 2021, to its workforce and emphasize the need to display sensitivity when discussing mental health conditions with travelers, specifically when there are no indications that the traveler is inadmissible due to their mental health history, or exhibiting a “mental health episode.”
2. CRCL appreciates that CBP developed training, effective May 5, 2022, that includes content relating to mental health information and was reviewed by CRCL’s Anti-Discrimination Group and Compliance Branch. CRCL recommends that in the next iteration of the training, CBP should incorporate scenario-based training that addresses interactions with individuals with mental health conditions. Scenario-based training - such as videos, role-playing exercises, or written fact patterns - can demonstrate realistic scenarios that students may encounter in the field, and provide students an opportunity to see training principals applied in the operational environment.
3. The training should be incorporated into required trainings that recur at regular intervals, not to exceed every two years, to ensure all new CBP law enforcement personnel are trained and others are retrained.

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 (b) (6) CRCL will share your response with (b) (6) the Policy Advisor who conducted this investigation.

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