



**Homeland
Security**

December 6, 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
U.S. Customs and Border Protection

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

FROM:

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

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

SUBJECT:

Retention Memo: CBP's Application of Ketamine or
Other Sedatives as a Use of Force
Complaint No. CR-016418

The Office for Civil Rights and Civil Liberties (CRCL) has received a complaint alleging that U.S. Customs and Border Protection (CBP) violated individuals' civil rights and/or civil liberties with respect to the forced administration of sedatives. The purpose of this memorandum is to notify you of the complaint, describe the allegation, and inform you that CRCL will retain this complaint for investigation.

ALLEGATIONS

On October 11, 2024, CRCL received anonymous information alleging excessive force involving CBP. The allegation described an incident that occurred at an unnamed Border Patrol station within the Tucson Sector in late December 2023. Border Patrol Agents (BPAs) allegedly extracted a subject from a cell, of which he was the sole occupant, after he had removed his clothing and covered the cell floor with water and food. The allegation stated that BPAs

extracted the subject from the cell, handcuffed him, and then chemically restrained him with a forcible injection of Ketamine. Following the alleged forcible sedation, the complainant further alleged that BPAs secured the subject to a gurney, placed the gurney in the back seat of a non-medical Border Patrol vehicle and transported him approximately two hours to another CBP facility.

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 engender are outlined in Department of Homeland Security (DHS) Management Directive 3500. We have received information concerning the above listed complaint that may fall under 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1.

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 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 pursuant to these authorities.

Privilege and required transparency. Our communications with CBP 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 any recommendations.

SCOPE OF REVIEW

The purpose of CRCL’s review is to determine whether CBP used a chemical restraint as forced sedation, and if so, whether the use complied with the applicable policies and procedures relating to the administration of a forced sedative. CRCL will also consider if, based upon the investigation, CBP’s current policies, procedures, guidelines, training, and accountability procedures are sufficient to ensure compliance with applicable protections of individual civil rights and civil liberties.

ISSUES PRESENTED

The investigation will cover the following:

- Whether Ketamine (or another injected sedative) was applied in the alleged incident and if the application followed relevant legal, policy, and procedural guidelines.
- Whether CBP’s policies and procedures governing the use of force were appropriately applied.
- Whether CBP’s policies, procedures, guidance, directives, memos, musters, and training materials related to de-escalation and use of force procedures in response to individuals suffering from mental illness were applicable and, if so, properly applied.
- Whether CBP medical personnel received appropriate guidance regarding the application of forcible sedation to individuals within CBP care or control.
- If there have been other incidents in which CBP personnel have applied forced sedation to noncompliant arrestees or pre-trial detainees as a means of seizure.
- Whether CBP policies clearly distinguish and govern the application of forced sedation in a use of force incident.
- Whether CBP has sufficient policies, procedures, guidance, and training related to the administration of Ketamine or other injected sedatives.

- Whether CBP has oversight mechanisms to ensure objectively reasonable applications, accurate reporting, and effective accountability of forcible sedations in accordance with the law, as well as DHS and CBP Use of Force Policies

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

INITIATING THE INVESTIGATION

Deputy Director Stephen Hayes will be handling this investigation. We look forward to working together to determine all the facts surrounding this matter and if appropriate, the best way forward. If you have any questions, please do not hesitate to contact Stephen Hayes at

(b) (6)

Enclosure

Copy to:

Jason D. Owens
Chief
U.S. Border Patrol
U.S. Customs and Border Protection
(b) (6), (b) (7)(C)

David S. BeMiller
Deputy Chief
U.S. Border Patrol
U.S. Customs and Border Protection
(b) (6), (b) (7)(C)

Evangelina Hazelton
Chief of Staff
U.S. Border Patrol
U.S. Customs and Border Protection
(b) (6), (b) (7)(C)

Heather Santiago
Executive Director
Strategic Planning and Analysis Directorate
U.S. Border Patrol
U.S. Customs and Border Protection
(b) (6), (b) (7)(C)

Nathaniel Kaine
Chief of Staff
U.S. Customs and Border Protection
(b) (6), (b) (7)(C)

Rebekah Salazar
Executive Director
Privacy and Diversity Office
Office of the Commissioner
U.S. Customs and Border Protection
(b) (6), (b) (7)(C)

Brandon Ulmer
Director of Special Projects
Office of Professional Responsibility
U.S. Customs and Border Protection
(b) (6), (b) (7)(C)

Nawar Shora
Director, Custody Support and Compliance Division
Privacy and Diversity Office
U.S. Customs and Border Protection
(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)