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# Department of Homeland Security Office for Civil Rights and Civil Liberties

Semiannual Report to Congress

Third and Fourth Quarters, FY 2020 (April 1, 2020 – September 30, 2020)

August 13, 2021



### Foreword



I am pleased to present this Semiannual Report on the activities of the Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties (CRCL), as required by Section 803 of the *Implementing Recommendations of the 9/11 Commission Act of 2007*, 42 U.S.C.§ 2000ee-1(f).

This Report includes information on the third and fourth quarters of Fiscal Year (FY) 2020. The DHS Chief Privacy Officer provides separate quarterly reports under the 9/11 Commission Act concerning privacy advice and complaints, available at the Privacy Office's web site, <u>http://www.dhs.gov/privacy</u>.

Pursuant to congressional requirements, this Report is being provided to the following Members of Congress:

#### The Honorable Chris Murphy

Chairman, U.S. Senate Subcommittee on Homeland Security Appropriations

#### The Honorable Shelly Moore Capito

Ranking Member, U.S. Senate Subcommittee on Homeland Security Appropriations

#### The Honorable Gary C. Peters

Chairman, U.S. Senate Committee on Homeland Security and Governmental Affairs

#### The Honorable Rob Portman

Ranking Member, U.S. Senate Committee on Homeland Security and Governmental Affairs

#### The Honorable Mark Warner

Chairman, U.S. Senate Select Committee on Intelligence

### The Honorable Marco Rubio

Vice Chairman, U.S. Senate Select Committee on Intelligence

#### **The Honorable Dick Durbin**

Chairman, U.S. Senate Committee on the Judiciary

#### The Honorable Chuck Grassley

Ranking Member, U.S. Senate Committee on the Judiciary

#### The Honorable Lucille Roybal-Allard

Chairwoman, U.S. House of Representatives Subcommittee on Homeland Security Appropriations

#### The Honorable Chuck Fleischmann

Ranking Member, U.S. House of Representatives Subcommittee on Homeland Security Appropriations

#### The Honorable Bennie G. Thompson

Chairman, U.S. House of Representatives Committee on Homeland Security

#### The Honorable John Katko

Ranking Member, U.S. House of Representatives Committee on Homeland Security

#### The Honorable Adam Schiff

Chairman, U.S. House of Representatives Permanent Select Committee on Intelligence

#### The Honorable Devin Nunes

Ranking Member, U.S. House of Representatives Permanent Select Committee on Intelligence

**The Honorable Jerry Nadler** Chairman, U.S. House of Representatives Committee on the Judiciary

**The Honorable Jim Jordan** Ranking Member, U.S. House of Representatives Committee on the Judiciary

#### The Honorable Carolyn Maloney

Chairwoman, U.S. House of Representatives Committee on Oversight and Government Reform

#### **The Honorable James Comer**

Ranking Member, U.S. House of Representatives Committee on Oversight and Government Reform

Additional information, including our prior semiannual and annual reports and our civil rights complaint contact information, is available at: <u>www.dhs.gov/crcl</u>. Please direct inquiries regarding this Report to the Office of Legislative Affairs at 202-447-5890.

Yours very truly,

Katheme Culton-Benzo Dec

Katherine Culliton-González Officer for Civil Rights and Civil Liberties U.S. Department of Homeland Security

### **Executive Summary**

This Semiannual Report details CRCL's complaints activities, as required by section 803 of the *Implementing Recommendations of the 9/11 Commission Act of 2007*, 42 U.S.C. § 2000ee-1(f). It includes information on CRCL's investigative work during the third and fourth quarters of FY 2020.

The majority of complaint investigations opened during this time period focused on allegations made against U.S. Immigration and Customs Enforcement (ICE). A significant portion of complaints, 324 of the 488 received, concerned ICE's alleged inadequate medical and/or mental health care for detainees in ICE custody. CRCL contracts with subject matter experts in areas including general corrections, medical and mental health, suicide prevention, environmental health and safety, and law enforcement practices to evaluate these claims and make recommendations.



### DHS Office for Civil Rights and Civil Liberties FY 2020 Third and Fourth Quarter Report

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### I. Statutory Authority for Semiannual Report

#### 42 U.S.C. § 2000ee-1 Privacy and Civil Liberties Officers

Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53, sec. 803, 121 Stat. 266, 360-362, as amended by the Intelligence Authorization Act for Fiscal Year 2014, Pub. L. No. 113-126, title III, § 329(b)(4), 128 Stat. 1390, 1406.

(a) Designation and functions

. . .

[T]he Secretary of Homeland Security . . . shall designate not less than 1 senior officer to serve as the principal advisor to—

(1) assist the head of such department, agency, or element and other officials of such department, agency, or element in appropriately considering privacy and civil liberties concerns when such officials are proposing, developing, or implementing laws, regulations, policies, procedures, or guidelines related to efforts to protect the Nation against terrorism;

(2) periodically investigate and review department, agency, or element actions, policies, procedures, guidelines, and related laws and their implementation to ensure that such department, agency, or element is adequately considering privacy and civil liberties in its actions;

(3) ensure that such department, agency, or element has adequate procedures to receive, investigate, respond to, and redress complaints from individuals who allege such department, agency, or element has violated their privacy or civil liberties; and

(4) in providing advice on proposals to retain or enhance a particular governmental power the officer shall consider whether such department, agency, or element has established—

(A) that the need for the power is balanced with the need to protect privacy and civil liberties;

(B) that there is adequate supervision of the use by such department, agency, or element of the power to ensure protection of privacy and civil liberties; and

(C) that there are adequate guidelines and oversight to properly confine its use.

(b) Exception to designation authority

•••

#### (2) Civil liberties officers

In any department, agency, or element referred to in subsection (a) of this section . . . which has a statutorily created civil liberties officer, such officer shall perform the functions specified in subsection (a) of this section with respect to civil liberties.

(c) Supervision and coordination

Each privacy officer and civil liberties officer described in subsection (a) or (b) of this section shall—

(1) report to the head of the department . . . ; and

(2) Coordinate their activities with the Inspector General of such department . . . to avoid duplication of effort.

(d) Agency cooperation

The head of each department, agency, or element shall ensure that each privacy officer and civil liberties officer—

(1) has the information, material, and resources necessary to fulfill the functions of such officer;

(2) is advised of proposed policy changes;

(3) is consulted by decision makers; and

(4) is given access to material and personnel the officer determines to be necessary to carry out the functions of such officer.

•••

(f) Periodic reports

(1) In general

The privacy officers and civil liberties officers of each department, agency, or element referred to or described in subsection (a) or (b) of this section shall periodically, but not less than semiannually, submit a report on the activities of such officers—

(A)(i) to the appropriate committees of Congress, including the Committee on the Judiciary of the Senate, the Committee on the Judiciary of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives;

(ii) to the head of such department, agency, or element; and

(iii) to the Privacy and Civil Liberties Oversight Board; and

(B) which shall be in unclassified form to the greatest extent possible, with a classified annex where necessary.

#### (2) Contents

Each report submitted under paragraph (1) shall include information on the discharge of each of the functions of the officer concerned, including—

(A) information on the number and types of reviews undertaken;

(B) the type of advice provided and the response given to such advice;

(C) the number and nature of the complaints received by the department, agency, or element concerned for alleged violations; and

(D) a summary of the disposition of such complaints, the reviews and inquiries conducted, and the impact of the activities of such officer.

(g) Informing the public

Each privacy officer and civil liberties officer shall-

(1) make the reports of such officer, including reports to Congress, available to the public to the greatest extent that is consistent with the protection of classified information and applicable law; and

(2) otherwise inform the public of the activities of such officer, as appropriate and in a manner consistent with the protection of classified information and applicable law.

(h) Savings clause

Nothing in this section shall be construed to limit or otherwise supplant any other authorities or responsibilities provided by law to privacy officers or civil liberties officers.

### I. Civil Rights and Civil Liberties Impact Assessments

As part of its statutory requirement to advise Department leadership on constitutional, statutory, regulatory, policy, and other requirements relating to civil rights and civil liberties (see 6 U.S.C. § 345), CRCL conducts in-depth examinations of the civil rights and civil liberties implications and effects of selected DHS programs, and provides suggestions for improvements to those programs. There was no activity concerning such impact assessments in the third and fourth quarters.

### II. Investigations Data and Analysis

CRCL reviews complaints concerning:

- abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion by employees or officials of the Department, 6 U.S.C. § 345(a)(1);
- compliance with constitutional, statutory, regulatory, policy, and other requirements relating to the civil rights or civil liberties of individuals affected by the programs and activities of the Department, 6 U.S.C. § 345(a)(4);
- possible abuses of civil rights or civil liberties, unless the DHS Office of Inspector General determines that any such complaint or information should be investigated by the Inspector General, 6 U.S.C. § 345(a)(6); and
- department, agency, or element actions, policies, procedures, guidelines, and related laws and their implementation to ensure that such department, agency, or element is adequately considering civil liberties in its actions, 42 U.S.C. § 2000ee-1(a)(2).

Under these authorities, CRCL reviews and assesses civil rights and human rights complaints. These matters arise in a variety of contexts—labeled "situtions" in the tables below—,and concern one or more issues. The tables below identify investigations by the primary situation and issue involved.

CRCL initiates investigations based on allegations received from the general public and nongovernmental organizations. Allegations may be sent via U.S. mail, email, fax, and the CRCL telephone hotline. Incidents that might merit investigation are also forwarded to CRCL from other offices at DHS and other government agencies. **Table 2** summarizes investigations opened during the third and fourth quarters by the primary civil rights *issue* raised, the *situation* in which the investigation arose, and the DHS *Component* that was the primary subject of the investigation.

Pursuant to 6 U.S.C. § 345(a)(6) and internal DHS policies, CRCL begins the investigation process by referring all complaints to the DHS Office of Inspector General (OIG).<sup>1</sup> OIG then determines whether or not it will investigate the complaint. In the tables below, complaints kept by the OIG for investigation are designated "OIG retained." If the OIG declines to investigate a complaint, the complaint is referred back to CRCL for investigation.

<sup>&</sup>lt;sup>1</sup> Under the former ICE Secure Communities initiative, and under its successor the Priority Enforcement Program (PEP), complaints involving the activities of state or local law enforcement agencies, acting under state law, that come to CRCL may not initially be referred to OIG if they do not involve allegations of DHS employee misconduct. In those cases, CRCL would notify the Department of Justice, which has jurisdiction to investigate certain violations of civil rights by state and local officers.

**Table 3** summarizes all complaints, including those initiated prior to FY 2020, in process as of the last day of the quarter.<sup>2</sup> If a complaint is referred to a Component for investigation, the Component issues a Report of Investigation to CRCL, which is reviewed by CRCL. If the case is retained by CRCL, or short-formed,<sup>3</sup> CRCL conducts its own investigation of the matter.

When an investigation is complete, whether conducted by CRCL or the Component(s) involved, CRCL may close the complaint or provide senior leadership of the relevant Component(s) with any recommendations or advice for improving policies, practices, or training as appropriate. CRCL notifies complainants of the result of investigations, including any actions being taken in response.

**Table 4** includes data about investigations closed during the third and fourth quarters, by issue, situation, and Component principally involved.

<sup>&</sup>lt;sup>2</sup> The "in process" categories include multiple cases in which Reports of Investigation (ROIs) have been received from Components and are currently under review within CRCL. Pursuant to CRCL practice, these investigations remain officially "in process" until CRCL has completed its review and response to the ROIs.

<sup>&</sup>lt;sup>3</sup> CRCL has implemented "short-form" complaint processing procedures to facilitate swift action on urgent complaints and expeditious resolution of allegations that are narrowly focused and require limited investigation. The short-form process makes it easier to open and close complaints, allowing speedier resolution. Cases that subsequently require additional work are converted to standard investigations.

Total by issue	Component						
Subtotal by situation	CBP	DHS*	ICE	TSA	USCIS	USSS	Total
Abuse of authority/misuse of official position	2		3	1			6
DHS law enforcement activity	1		1				2
Federal government building or area	1						1
Immigration detention			2				2
Screening (non-watch list)				1			1
Conditions of detention	2		35				37
CBP detention	1						1
Immigration detention			31				31
Unaccompanied minor	1		4				5
Disability discrimination	1	1	5		4		11
CBP detention		1					1
CBP OFO port of entry or USBP checkpoint	1						1
DHS supported activity					4		4
Immigration detention			5				5
Discrimination/profiling	5	3	1		1		10
CBP OFO port of entry or USBP checkpoint	5	1					6
DHS supported activity		1			1		2
Federal government building or area		1					1
Immigration detention			1				1
Due process	16	3	15				34
CBP detention	2						2
CBP OFO port of entry or USBP checkpoint	5						5
DHS regulatory/rule processing	1						1
ICE 287(g) Program			1				1
Immigration benefit application processing		2					2
Immigration detention			14				14
Unaccompanied minor	8	1					9
Excessive force or inappropriate use of force	4	1	10			2	17
CBP OFO port of entry or USBP checkpoint	3						3
DHS law enforcement activity			1			1	2
Federal government building or area						1	1
Immigration detention			9				9
Political demonstration/rally	1	1					2
First Amendment (free speech/association)		4	1			2	7
DHS supported activity		1					1
Federal government building or area		1					1
Immigration detention			1				1
Political demonstration/rally		2				2	4
Fourth Amendment (search and seizure)	3		1				4
CBP OFO port of entry or USBP checkpoint	3						3
DHS law enforcement activity			1				1

**Table 2.** Investigations opened, 3Q and 4Q 2020 (as of September 30, 2020)

Total by issue		Component									
Subtotal by situation	CBP	DHS*	ICE	TSA	USCIS	USSS	Total				
Human Rights	4	1					5				
CBP OFO port of entry or USBP checkpoint	4						4				
DHS supported activity		1					1				
Inappropriate questioning/ inspection conditions		1					1				
Federal government building or area		1					1				
Language access			1				1				
Immigration detention			1				1				
Legal access			2				2				
Immigration detention			2				2				
Medical/mental health care	11	2	326				339				
CBP detention	4						4				
CBP OFO port of entry or USBP checkpoint	6						6				
Immigration benefit application processing			2				2				
Immigration detention	1	2	324				327				
Privacy <sup>4</sup>			2		1		3				
Immigration benefit application processing					1		1				
Immigration detention			2				2				
Sexual assault/abuse	3		7				10				
CBP detention	1						1				
CBP OFO port of entry or USBP checkpoint	2						2				
DHS law enforcement activity			1				1				
Immigration detention			6				6				
TSA AIT and TSA pat-downs				1			1				
Screening (non-watch list)				1			1				
Grand Total	51	16	409	2	6	4	488				

Table 2 continued, Investigations opened 3Q and 4Q 2020 (as of September 30, 2020)

<sup>&</sup>lt;sup>4</sup> This category involves claims about the unauthorized disclosure of private information and may arise in the context of unauthorized sharing of medical and mental health information, and breaches of confidentiality of information.

	Crond	Unden	OIG	CRCL Reta	ined	I. int	
	Grand Total	Under Review <sup>5</sup>	Retained	Full Investigation	Short Form	Joint Investigation	CRCL Referred
By issue							
Abuse of authority/misuse of official position	20	2		5	9		4
Conditions of detention	68	14	3	23	20		8
Disability discrimination	17	2			15		
Discrimination/profiling	30	2		4	19		5
Due process	89	16	2	28	37		6
Excessive force or inappropriate use of force	33	7	8	5	10		3
First Amendment (free speech/association)	10	3	4	1	2		
Fourth Amendment (search and seizure)	10	1	1	1	7		
Human rights	24				24		
Inappropriate questioning/inspection conditions	6	1			4		1
Inappropriate touch/search of person (non-TSA)	1		1				
Intimidation/threat/improper coercion	2						2
Language access	2		1		1		
Legal access	4	1		1	2		
Medical/mental health care	271	75	9	41	140		6
Privacy	4	3			1		
Retaliation	1			1			
Sexual assault/abuse	16	4	1	2	7		2
TSA AIT and TSA pat-downs	1				1		
Total by issue	609	131	30	112	299	0	37

### Table 3. Investigations in process 3Q and 4Q 2020 (as of September 30, 2020)

<sup>&</sup>lt;sup>5</sup> The data in this column cover investigations opened that were not yet categorized in CRCL's database as Retained, Referred, Short Form, or Joint Investigations, or those which CRCL was awaiting a decision from the OIG on whether or not they will retain.

Table 3 continued, Investigations in process 3Q and 4Q 2020 (as of September 30, 2020)

	Grand	Under	OIG	CRCL Reta	ined	Joint	CRCL	
	Total	Review	Retained	Full Investigation	Short Form	Investigation	Referred	
By situation								
CBP detention	27	1	2	9	12		3	
CBP OFO port of entry or USBP Checkpoint	117	8	10	18	70		11	
DHS law enforcement activity	22	5	6		10		1	
DHS regulatory/rule processing	1				1			
DHS supported activity	13	3			10			
Federal government building or area	10	1	1		7		1	
ICE 287(g) Program	1				1			
Immigration benefit application processing	7	2		1	3		1	
Immigration detention	342	97	9	60	164		12	
Political demonstration/ rally	6	3			3			
Screening (non-watch list)	1				1			
Unaccompanied minor	62	11	2	24	17		8	
Total by situation	609	131	30	112	299	0	37	
By Component								
CBP	199	21	16	44	95		23	
DHS	36	5	1	10	19		1	
FEMA	2				2			
ICE	356	101	13	58	172		12	
TSA	1				1			
USCIS	10	2			7		1	
USSS	5	2			3			
Total by Component	609	131	30	112	299	0	37	

Total by issue			<u> </u>		ponent			
Subtotal by situation	CBP	DHS*	FEMA	ICE	TSA	USCIS	USSS	Total
Abuse of authority/misuse of official position	6	1		3				10
CBP OFO port of entry or USBP checkpoint	6							6
DHS law enforcement activity		1		1				2
Immigration detention				2				2
Conditions of detention	3	1		25				29
CBP OFO port of entry or USBP checkpoint	2							2
Immigration detention		1		25				26
Unaccompanied minor	1							1
Disability discrimination	7	1	1	5		4		18
CBP detention	1							1
CBP OFO port of entry or USBP checkpoint	5							5
DHS supported activity			1	1		4		6
Federal government building or area		1						1
Immigration detention				4				4
Unaccompanied minor	1							1
Discrimination/profiling	10	3	2	4				19
CBP OFO port of entry or USBP checkpoint	9	2						11
DHS law enforcement activity				2				2
DHS supported activity		1	1					2
Federal government building or area			1					1
Immigration detention				2				2
Unaccompanied minor	1							1
Due process	25	7		15		2		49
CBP detention	1							1
CBP OFO port of entry or USBP checkpoint	15	3						18
DHS law enforcement activity		1		1				2
DHS supported activity	1							1
Immigration benefit application processing		1				2		3
Immigration detention				13				13
Unaccompanied minor	8	2		1				11
Excessive force or inappropriate use of force	6	2		10				18
CBP OFO port of entry or USBP checkpoint	6							6
Federal government building or area		2		1				3
Immigration detention				9				9
First Amendment (free speech/association)		2		1			1	4
Federal government building or area		1						1
Immigration detention				1				1
Political demonstration/rally		1					1	2

Table 4. Investigations closed, 3Q and 4Q 2020 (as of September 30, 2020)

Table 4 continued, Investigations closed 3Q and 4Q 2020 (as of September 30, 2020)

Total by issue	Component								
Subtotal by situation	CBP	DHS*	FEMA	ICE	TSA	USCIS	USSS	Total	
Fourth Amendment (search and seizure)	5							5	
CBP OFO port of entry or USBP checkpoint	4							4	
DHS law enforcement activity	1							1	
Hate Speech	1							1	
CBP OFO port of entry or USBP checkpoint	1							1	
Human Rights	5	4		1				10	
CBP OFO port of entry or USBP checkpoint	5	3						8	
DHS supported activity		1						1	
Immigration detention				1				1	
Inappropriate touch/search of person (non-TSA)	2							2	
CBP OFO port of entry or USBP checkpoint	1							1	
Screening (non-watch list)	1							1	
Intimidation/threat/improper coercion	2							2	
CBP OFO port of entry or USBP checkpoint	1							1	
DHS law enforcement activity	1							1	
Language access	3			1		1		5	
CBP OFO port of entry or USBP checkpoint	3							3	
Immigration benefit application processing						1		1	
Immigration detention				1				1	
Legal access		1		4				5	
DHS supported activity		1						1	
Immigration detention				4				4	
Medical/mental health care	12	8		290				310	
CBP detention	4							4	
CBP OFO port of entry or USBP checkpoint	5	2						7	
DHS law enforcement activity	2							2	
Immigration benefit application processing				2				2	
Immigration detention		6		288				294	
Unaccompanied minor	1							1	
Privacy				3		1		4	
Immigration benefit application processing						1		1	
Immigration detention	1			3				3	
Religious accommodation		2		2				4	
Immigration detention	1	2		2				4	

Table 4 continued, Investigations closed 3Q and 4Q 2020 (as of September 30, 2020)

Total by issue	Component							
Subtotal by situation	CBP	DHS*	FEMA	ICE	TSA	USCIS	USSS	Total
Sexual assault/abuse	3			7				10
CBP detention	3							3
DHS law enforcement activity				1				1
Immigration detention				6				6
TSA AIT and TSA pat-downs					1			1
Screening (non-watch list)					1			1
Grand Total	90	32	3	371	1	8	1	506

# IV. Appendix: Acronyms

CBP	U.S. Customs and Border Protection
CRCL	DHS Office for Civil Rights and Civil Liberties
DHS	Department of Homeland Security
FEMA	Federal Emergency Management Agency
ICE	U.S. Immigration and Customs Enforcement
OIG	DHS Office of Inspector General
PEP	Priority Enforcement Program
ROI	Report of Investigation
TSA	Transportation Security Administration
USBP	U.S. Border Patrol
USCIS	U.S. Citizenship and Immigration Services
USCG	U.S. Coast Guard
USSS	U.S. Secret Service