



Department of Homeland Security Office for Civil Rights and Civil Liberties

Semiannual Report to Congress

Third and Fourth Quarters, FY 2016 (April 1, 2016 – September 30, 2016)



**Homeland
Security**

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) 2016. 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, <http://www.dhs.gov/privacy>.

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

The Honorable Thad Cochran

Chairman, U.S. Senate Committee on Appropriations

The Honorable Barbara Mikulski

Vice Chairwoman, U.S. Senate Committee on Appropriations

The Honorable Ron Johnson

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

The Honorable Thomas R. Carper

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

The Honorable Richard Burr

Chairman, U.S. Senate Select Committee on Intelligence

The Honorable Dianne Feinstein

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

The Honorable Charles Grassley

Chairman, U.S. Senate Committee on the Judiciary

The Honorable Patrick J. Leahy

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

The Honorable Paul D. Ryan

Speaker of the House, U.S. House of Representatives

The Honorable Hal Rogers

Chairman, U.S. House of Representatives Committee on Appropriations

The Honorable Nita M. Lowey

Ranking Member, U.S. House of Representatives Committee on Appropriations

The Honorable Michael McCaul

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

The Honorable Bennie G. Thompson

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

The Honorable Devin Nunes

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

The Honorable Adam Schiff

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

The Honorable Bob Goodlatte

Chairman, U.S. House of Representatives Committee on the Judiciary

The Honorable John Conyers, Jr.

Ranking Member, U.S. House of Representatives Committee on the Judiciary

The Honorable Jason Chaffetz

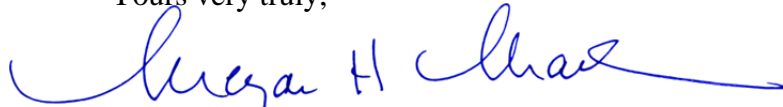
Chairman, U.S. House of Representatives Committee on Oversight and Government Reform

The Honorable Elijah E. Cummings

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, are available at www.dhs.gov/crcl. Please direct inquiries regarding this Report to the Office for Civil Rights and Civil Liberties at 866-644-8360 (TTY 866-644-8361) or crcl@dhs.gov.

Yours very truly,



Megan H. Mack
Officer for Civil Rights and Civil Liberties
U.S. Department of Homeland Security

Executive Summary

This Semiannual Report details CRCL’s complaint 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). This Report includes information on CRCL’s investigative work during the third and fourth quarters of FY 2016.

The majority of complaint investigations opened during this time period focused on allegations made against U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP). A significant portion of complaints received concerning ICE alleged inadequate medical and/or mental health care for detainees being held in ICE custody (outlined in the table below). The majority of complaints received concerning CBP alleged excessive force or inappropriate use of force and discrimination/profiling. CRCL utilizes contract 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.

Table 1: ICE and CBP Investigations Opened

Component	Issue	Situation	Total 3Q and 4Q
ICE	Conditions of detention	Immigration detention	16
ICE	Excessive force or inappropriate use of force	Immigration detention	9
ICE	Medical/mental health care	Immigration detention	105
CBP	Excessive force or inappropriate use of force	Port of entry/CBP checkpoint	11
CBP	Discrimination/profiling	Port of entry/CBP checkpoint	9



DHS Office for Civil Rights and Civil Liberties FY 2016 Third and Fourth Quarter Report

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I. Legislative Language

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.

II. Civil Rights and Civil Liberties Impact Assessments

As part of its statutory requirement, the Office for Civil Rights and Civil Liberties (CRCL) conducts in-depth examinations of the civil rights and civil liberties implications and effects of selected Department of Homeland Security (DHS) programs, and provides suggestions for improvements to those programs. There was no activity concerning impact assessments in the third and fourth quarters.

III. Investigations Data and Analysis

CRCL investigates complaints concerning:

- abuses of civil rights, civil liberties, and racial, ethnic, or religious profiling, 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 the 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, which we designate in the tables that follow as “situations,” and raise one or more issues. The tables set forth here identify investigations by the primary situation and issue involved.

CRCL initiates investigations based on complaints received from the general public and non-governmental organizations by U.S. mail, email, fax, and the CRCL telephone hotline, as well as through the DHS Traveler Redress Inquiry Program (TRIP). Incidents that might merit investigation are also forwarded to CRCL from other offices at DHS and other government agencies. **Table 2** indicates 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 matters involving the conduct of DHS employees to the DHS Office of Inspector General (OIG).¹ OIG then determines whether or not it will investigate the case. In this report, cases OIG decides to investigate are designated *OIG retained*. If OIG declines to investigate the complaint, it is referred back to CRCL for appropriate action, at which point CRCL determines whether the case should be retained for CRCL’s own investigation (*CRCL retained*) or referred to the relevant DHS Component(s) to conduct the factual investigation (*CRCL referred*). Retained cases may be subject to a *full investigation* or *short-form* resolution.²

¹ 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 regarding the conduct of DHS employees. 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.

² 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.

A small number of cases are subject to a *joint investigation*, combining CRCL's investigative resources with those of the relevant Component(s). Investigations at any other stage are noted as *in process*.³ **Table 3** describes all investigations, including those initiated prior to FY 2016, in process as of the last day of the quarter, under these categories. In cases where the OIG retains a complaint, once the OIG investigation is complete, the matter is returned to CRCL for consideration. CRCL may then close the matter or retain it for our own investigation.

If a case is referred to a Component for investigation, the Component issues a Report of Investigation to CRCL at the completion of the investigation, which is reviewed by CRCL. If the case is retained, CRCL conducts its own investigation and drafts an investigative report. When the investigation is complete, whether conducted by CRCL or the Component(s) involved, CRCL typically *closes* the matter and provides senior leadership of the relevant Component(s) with its conclusions and any recommendations for improving policies, practices, or training. At that time, we also notify the complainant of actions being taken as a result of our investigation. **Table 4** provides investigations closed during the third and fourth quarters, by issue, situation, and Component principally involved.

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.

³ The *in process* categories include multiple cases where Reports of Investigation (ROIs) have been received from Components and are currently under review within CRCL. For CRCL's purposes, these investigations remain in process until we have completed our review and response to the ROIs.

Table 2. Investigations opened, 3Q and 4Q 2016 (as of September 30, 2016)

<i>Total by issue</i>	Component					
	CBP	DHS*	ICE	TSA	USCIS	Total
Subtotal by situation						
<i>Abuse of authority/misuse of official position</i>	6		4			10
DHS law enforcement activity	1		1			2
Immigration detention			3			3
Port of entry/CBP checkpoint	5					5
<i>Conditions of detention</i>	9		16			25
CBP detention or CBP deferred inspection	2					2
Immigration detention			16			16
Port of entry/CBP checkpoint	2					2
Unaccompanied minor	5					5
<i>Disability accommodation (Section 504)</i>	3	2	3	1	31	40
DHS-supported activity (not 287(g))		2			31	33
Immigration detention			3			3
Port of entry/CBP checkpoint	3					3
Screening (non-watchlist)				1		1
<i>Discrimination/profiling</i>	11		6	1	3	21
DHS law enforcement activity	2		3			5
Immigration benefit application processing			1		3	4
Immigration detention			1			1
Political demonstration/rally			1			1
Port of entry/CBP checkpoint	9					9
Screening (non-watchlist)				1		1
<i>Due process</i>	16	9	6		6	37
DHS law enforcement activity			1			1
DHS-supported activity (not 287(g))		2			3	5
Immigration benefit application processing					1	1
Immigration detention		4	5		2	11
Port of entry/CBP checkpoint	11					11
Unaccompanied minor	5	3				8
<i>Excessive force or inappropriate use of force</i>	15	1	13			29
CBP detention or CBP deferred inspection	1					1
DHS law enforcement activity	1	1	3			5
Federal government building or area			1			1
Immigration detention			9			9
Port of entry/CBP checkpoint	11					11
Unaccompanied minor	2					2
<i>Fourth Amendment (search and seizure)</i>	4		4			8
DHS law enforcement activity	1		4			5
Port of entry/CBP checkpoint	2					2
Unaccompanied minor	1					1
<i>Human rights</i>	4	3	1			8
DHS-supported activity (not 287(g))		1				1
Immigration detention			1			1
Port of entry/CBP checkpoint	4					4
Unaccompanied minor		2				2

*Multi-Component or DHS Headquarters unit

Table 2 continued, Investigations opened 3Q and 4Q 2016 (as of September 30, 2016)

Total by issue	Component					
	CBP	DHS*	ICE	TSA	USCIS	Total
Subtotal by situation						
<i>Inappropriate questioning/inspection conditions</i>	1					1
Port of entry/CBP checkpoint	1					1
<i>Language access</i>			2			2
Immigration detention			2			2
<i>Legal access</i>	1		2		1	4
Immigration detention			2		1	3
Port of entry/CBP checkpoint	1					1
<i>Medical/mental health care</i>	8		105			113
CBP detention or CBP deferred inspection	3					3
Immigration detention			105			105
Port of entry/CBP checkpoint	3					3
Unaccompanied minor	2					2
<i>Religious accommodation</i>	1		2			3
Immigration detention			2			2
Port of entry/CBP checkpoint	1					1
<i>Retaliation</i>			1			1
Immigration detention			1			1
<i>Sexual assault/abuse</i>	1		2	1		4
Immigration detention			2			2
Screening (non-watchlist)				1		1
Unaccompanied minor	1					1
Grand Total	80	15	167	3	41	306

*Multi-Component or DHS Headquarters unit

Table 3. Investigations in process 3Q and 4Q 2016 (as of September 30, 2016)

	Grand Total	Under Review ⁴	OIG Retained	CRCL Retained		Joint Investigation	CRCL Referred
				Full Investigation	Short Form		
<i>By issue</i>							
Abuse of authority/misuse of official position	30	7	2	1	11		9
Conditions of detention	87	30	1	20	29		7
Disability accommodation (Section 504 ⁵)	15	9			6		
Discrimination/profiling	57	20	2	11	18		6
Due process	81	38	1	18	22		2
Excessive force or inappropriate use of force	58	13	8	5	21		11
Fourth Amendment (search and seizure)	13	6		1	6		
First Amendment (free speech/association)	3				2		1
Human rights	9	5		1	3		
Inappropriate questioning/inspection conditions	8	2			2		4
Inappropriate touch/search of person (non-TSA)	5	1	2		1		1
Intimidation/threat/improper coercion	18			8	5		5
Language access	7	1		2	4		
Legal access	8	1		3	2		2
Medical/mental health care	123	35	15	15	52		6
Privacy	8				8		
Religious accommodation	10	4		2	2		2
Retaliation	3	2			1		
Sexual assault/abuse	14	1	1	2	8		2
TSA AIT ⁶ and TSA pat-downs	1				1		
Total by issue	558	175	32	89	204	0	58

⁴ The data in this column cover investigations opened that have not yet been categorized in CRCL’s database as Retained, Referred, Short Form, or Joint Investigations, or those which we are awaiting decision from the OIG on whether or not they will retain.

⁵ Section 504 of the Rehabilitation Act of 1973 forbids discrimination on the basis of an individual’s disability by all federal agencies in all federally funded activities.

⁶ TSA uses AIT, or advanced imaging technology, to screen passengers at the checkpoint. Advanced imaging technology uses automated target recognition software that eliminates passenger-specific images and instead auto-detects potential threats by indicating their location on a generic outline of a person.

Table 3 continued, Investigations in process 3Q and 4Q 2016 (as of September 30, 2016)

	Grand Total	Under Review	OIG Retained	CRCL Retained		Joint Investigation	CRCL Referred
				Full Investigation	Short Form		
By situation							
CBP detention/hold room/CBP deferred inspection site	18	4	2	5	6		1
DHS law enforcement activity	55	16	3	10	20		6
DHS-supported activity (not 287(g) ⁷)	18	8		2	8		
Federal government building or area	15	2	1	2	8		2
Immigration benefit application processing	15	4			9		2
Immigration detention	252	77	12	52	94		17
Political demonstration/rally	4		1		2		1
Port of entry/CBP checkpoint	115	39	11	14	32		19
Screening (non-watchlist)	6	1	1		3		1
Unaccompanied minor	57	22	1	4	21		9
Visa processing	1				1		
Watchlist/aviation security	2	2					
Total by situation	558	175	32	89	204	0	58
By Component							
DHS (multi-Component or Headquarters unit)	44	17	1	8	15		3
CBP	199	68	15	18	66		32
FEMA	1				1		
ICE	285	83	14	62	105		21
TSA	5	1	1		3		
USCG	1				1		
USCIS	22	6		1	13		2
USSS	1		1				
Total by Component	558	175	32	89	204	0	58

⁷ The 287(g) program, one of ICE's top partnership initiatives, allows a state and local law enforcement entity to enter into a partnership with ICE, under a joint Memorandum of Agreement, in order to receive delegated authority for immigration enforcement within their jurisdictions.

Table 4. Investigations closed, 3Q and 4Q 2016 (as of September 30, 2016)

<i>Total by issue</i>	Component					
	CBP	DHS *	ICE	TSA	USCIS	Total
<i>Subtotal by situation</i>						
<i>Abuse of authority/misuse of official position</i>	3	1	6			10
DHS law enforcement activity			1			1
Federal government building or area		1				1
Immigration detention			4			4
Port of entry/CBP checkpoint	2					2
Unaccompanied minor	1		1			2
<i>Conditions of detention</i>	32	1	45			78
CBP detention or CBP deferred inspection	2					2
Immigration detention			45			45
Port of entry/CBP checkpoint	2					2
Unaccompanied minor	28	1				29
<i>Disability accommodation (Section 504)</i>		1	4	1	40	46
DHS public messaging/websites					1	1
DHS-supported activity (not 287(g))					37	37
Immigration benefit application processing					2	2
Immigration detention		1	4			5
Screening (non-watchlist)				1		1
<i>Discrimination/profiling</i>	4	1	5			10
DHS law enforcement activity	1		1			2
Federal government building or area		1				1
Immigration detention			4			4
Port of entry/CBP checkpoint	3					3
<i>Due process</i>	1	7	22		2	32
DHS law enforcement activity			6			6
Immigration benefit application processing		2	2		1	5
Immigration detention		2	14		1	17
Port of entry/CBP checkpoint	1	3				4
<i>Excessive force or inappropriate use of force</i>	17	1	23			41
DHS law enforcement activity	6		2			8
DHS regulatory/rule processing		1				1
Immigration detention			21			21
Port of entry/CBP checkpoint	4					4
Unaccompanied minor	7					7
<i>First Amendment (free speech/ association)</i>	1	1	3			5
DHS law enforcement activity			2			2
Federal government building or area		1				1
Immigration detention			1			1
Watchlist/aviation security	1					1
<i>Fourth Amendment (search and seizure)</i>	5	1	4			10
CBP detention or CBP deferred inspection	1					1
DHS law enforcement activity	1		4			5
Port of entry/CBP checkpoint	1	1				2
Unaccompanied minor	2					2
<i>Human rights</i>		4				4
DHS-supported activity (not 287(g))		4				4

*Multi-Component or DHS Headquarters unit

Table 4 continued, Investigations closed 3Q and 4Q 2016 (as of September 30, 2016)

<i>Total by issue</i>	Component					
	CBP	DHS *	ICE	TSA	USCIS	Total
<i>Subtotal by situation</i>						
<i>Inappropriate questioning/inspection conditions</i>	2	1				3
Federal government building or area		1				1
Port of entry/CBP checkpoint	2					2
<i>Inappropriate touch/search of person (non-TSA)</i>	1					1
Unaccompanied minor	1					1
<i>Intimidation/threat/improper coercion</i>	5					5
CBP detention or CBP deferred inspection	1					1
Unaccompanied minor	4					4
<i>Language access</i>		1			1	2
Federal government building or area		1				1
Visa processing					1	1
<i>Legal access</i>			5		1	6
Immigration detention			5		1	6
<i>Medical/mental health care</i>	20	3	205			228
DHS law enforcement activity	1					1
Immigration detention		3	204			207
Port of entry/CBP checkpoint	5					5
Unaccompanied minor	14		1			15
<i>Privacy</i>			2		1	3
DHS public messaging/websites			1			1
Immigration benefit application processing			1			1
Visa processing					1	1
<i>Religious accommodation</i>			7	2		9
Immigration detention			7			7
Screening (non-watchlist)				2		2
<i>Retaliation</i>	1		4			5
Immigration detention			4			4
Port of entry/CBP checkpoint	1					1
<i>Sexual assault/abuse</i>	4		12			16
CBP detention or CBP deferred inspection	1					1
Immigration detention			12			12
Port of entry/CBP checkpoint	2					2
Unaccompanied minor	1					1
Grand Total	96	22	348	3	45	514

*Multi-Component or DHS Headquarters unit

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
TRIP	Traveler Redress Inquiry Program
TSA	Transportation Security Administration
USCG	U.S. Coast Guard
USCIS	U.S. Citizenship and Immigration Services
USSS	U.S. Secret Service