



Department of Homeland Security Office for Civil Rights and Civil Liberties

Semiannual Report to Congress

First and Second Quarters, FY 2016 (October 1, 2015 – March 31, 2016)

June 30, 2016



Homeland Security

Foreword



I am pleased to present this Quarterly 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 first and second 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 Chairman, 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 quarterly 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,

A handwritten signature in blue ink that reads "Megan H. Mack". The signature is fluid and cursive, with a long horizontal stroke at the end.

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

Executive Summary

This Semiannual Report details activities of the Department of Homeland Security Office for Civil Rights and Civil Liberties, 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 first and second quarters of FY 2016.

The majority of complaint investigations opened during this time period focused on allegations made against two DHS components, 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). CRCL uses contract subject matter experts when investigating medical care detention issues to evaluate these claims and make recommendations regarding appropriate medical treatment. A large number of the complaints concerning CBP alleged inadequate conditions of detention for juveniles in CBP custody.

Table 1: CBP and ICE Investigations Opened

Component	Issue	Situation	Total
			1Q and 2Q
CBP	Conditions of detention	Unaccompanied minor	8
CBP	Discrimination/profiling	Port of entry/CBP checkpoint	7
CBP	Use of force or inappropriate use of force	Port of entry/CBP checkpoint	6
ICE	Conditions of detention	Immigration detention	25
ICE	Sexual assault/abuse	Immigration detention	6
ICE	Medical/mental health care	Immigration detention	141



DHS Office for Civil Rights and Civil Liberties FY 2016 First and Second Quarter Semiannual 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 first and second 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)¹. Incidents that might merit investigation can be received from other sources, including the news media, other offices at DHS, and other government agencies. **Table 2** indicates investigations opened during the first and second 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).² 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

¹ DHS TRIP serves as the U.S. Government’s “one-stop-shop” assisting those who seek resolution for screening difficulties they experience at U.S. transportation hubs (such as airports and train stations) or crossing U.S. borders. DHS TRIP is available to any traveler, from any country, regardless of citizenship, and is a single point of contact within the U.S. Government, relieving the traveler from the burden of seeking redress on an agency-by-agency basis.

² 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.

(*CRCL referred*). Retained cases may be subject to a *full investigation* or *short-form* resolution.³ 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*.⁴ **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 first and second quarters, by issue, situation, and Component principally involved.

³ 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.

⁴ 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, 1Q and 2Q 2016 (as of March 31, 2016)

<i>Total by issue</i>	Component							
	CBP	DHS*	FEMA	ICE	TSA	USCIS	USSS	Total
<i>Subtotal by situation</i>								
<i>Abuse of authority/misuse of official position</i>	6	2		3				11
CBP detention or CBP deferred inspection	1							1
DHS law enforcement activity				1				1
Federal government building or area		1						1
Immigration detention		1		2				3
Port of entry/CBP checkpoint	5							5
<i>Conditions of detention</i>	9	1		25				35
CBP detention or CBP deferred inspection	1							1
Immigration detention				25				25
Unaccompanied minor	8	1						9
<i>Disability accommodation (Section 504)</i>		2		2	2	12		18
DHS public messaging/websites						1		1
DHS supported activity (not 287(g))						11		11
Federal government building or area		1						1
Immigration detention		1		2				3
Screening (non-watch list)					2			2
<i>Discrimination/Profiling</i>	8	1		1	1			11
DHS law enforcement activity	1							1
Federal government building or area		1						1
Immigration detention				1				1
Port of entry/CBP checkpoint	7							7
Screening (non-watch list)					1			1
<i>Due Process</i>	3	1		18		2		24
DHS law enforcement activity				1				1
Federal government building or area				1				1
Immigration benefit application processing						2		2
Immigration detention				16				16
Port of entry/CBP checkpoint	2							2
Unaccompanied minor	1	1						2
<i>Excessive force or inappropriate use of force</i>	6			6	1		1	14
Immigration detention				6				6
Political demonstration/rally							1	1
Port of entry/CBP checkpoint	5							5
Screening (non-watch list)					1			1
Unaccompanied minor	1							1
<i>Fourth Amendment (search and seizure)</i>	2			4				6
DHS law enforcement activity	1			4				5
Port of entry/CBP checkpoint	1							1
<i>Human rights</i>	1	5						6
DHS supported activity (not 287(g))		5						5
Port of entry/CBP checkpoint	1							1

*Multi-Component or DHS Headquarters unit

Table 2 continued, Investigations opened 1Q and 2Q 2016 (as of March 31, 2016)

<i>Total by issue</i>	Component							Total
	CBP	DHS*	FEMA	ICE	TSA	USCIS	USSS	
Subtotal by situation								
<i>Inappropriate questioning/inspection conditions</i>	3							3
Port of entry/CBP checkpoint	2							2
Unaccompanied minor	1							1
<i>Inappropriate touch/search of person (non-TSA)</i>				1				1
Immigration detention				1				1
<i>Intimidation/Threat/Improper coercion</i>	4			6				10
Immigration detention				6				6
Port of entry/CBP checkpoint	1							1
Unaccompanied minor	3							3
<i>Language access</i>	1		1	1		1		4
DHS law enforcement activity	1							1
DHS supported activity (not 287(g))			1					1
Immigration detention				1				1
Visa processing						1		1
<i>Legal access</i>				4				4
Immigration detention				4				4
<i>Medical/mental health care</i>	9	2		142				153
CBP detention or CBP deferred inspection	2	1						3
Immigration benefit application processing				1				1
Immigration detention		1		141				142
Port of entry/CBP checkpoint	5							5
Unaccompanied minor	2							2
<i>Privacy</i>				1		1		2
Immigration benefit application processing				1		1		2
<i>Religious accommodation</i>				4	1	2		7
Federal government building or area						1		1
Immigration benefit application processing						1		1
Immigration detention				4				4
Screening (non-watch list)					1			1
<i>Retaliation</i>				1				1
Immigration detention				1				1
<i>Sexual assault/abuse</i>	3	1		6				10
CBP detention or CBP deferred inspection	1							1
Federal government building or area		1						1
Immigration detention				6				6
Port of entry/CBP checkpoint	1							1
Unaccompanied minor	1							1
<i>TSA AIT and TSA pat-downs</i>					1			1
Screening (non-watch list)					1			1
Grand Total	55	15	1	225	6	18	1	321

*Multi-Component or DHS Headquarters unit

Table 3. Investigations in process 1Q and 2Q 2016 (as of March 31, 2016)

	Grand Total	Under Review ⁵	OIG Retained	CRCL Retained		Joint Investigation	CRCL Referred
				Full Investigation	Short Form		
<i>By issue</i>							
Abuse of authority/misuse of official position	32	10	1	2	11		8
Conditions of detention	126	29	1	37	48		11
Disability accommodation (Section 504)	20	16			4		
Discrimination/profiling	46	15	1	14	11		5
Due process	69	26	1	19	23		
Excessive force or inappropriate use of force	65	17	7	8	27		6
Fourth Amendment (search and seizure)	14	6	1		7		
First Amendment (free speech/association)	7			2	4		1
Human rights	6	2			4		
Inappropriate questioning/inspection conditions	10	4			3		3
Inappropriate touch/search of person (non-TSA)	6	1	2	1	1		1
Intimidation/threat/improper coercion	20	8		2	7		3
Language access	7	3	1	1	2		
Legal access	11	2		2	6		1
Medical/mental health care	242	51	15	48	123		5
Privacy	10	1			9		
Religious accommodation	15	3		3	8		1
Retaliation	7	1		3	2		1
Sexual assault/abuse	26	6		6	13		1
TSA AIT and TSA pat-downs	1				1		
Total by issue	740	201	30	148	314	0	47

⁵ 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.

Table 3 continued, Investigations in process 1Q and 2Q 2016 (as of March 31, 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	17	7	2	3	5		
DHS law enforcement activity	57	13	4	17	19		4
DHS public messaging/websites	2	2					
DHS regulatory/rule processing	1			1			
DHS supported activity (not 287(g))	19	12		1	6		
Federal government building or area	19	5	1	2	6		5
Immigration benefit application processing	17	3			14		
Immigration detention	414	103	13	84	192		22
Political demonstration/rally	4	1	1		1		1
Port of entry/CBP checkpoint	86	33	7	10	26		10
Screening (non-watchlist)	6	4			1		1
Unaccompanied minor	94	16	2	30	42		4
Visa processing	3	1			2		
Watchlist/aviation security	1	1					
Total by situation	740	201	30	148	314	0	47
By Component							
DHS (multi-Component or Headquarters unit)	53	16	1	8	23		5
CBP	204	60	14	37	77		16
FEMA	1				1		
ICE	450	108	14	103	200		25
TSA	4	3			1		
USCG	1				1		
USCIS	26	14			11		1
USSS	1		1				
Total by Component	740	201	30	148	314	0	47

Table 4. Investigations closed, 1Q and 2Q 2016 (as of March 31, 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>	4	1	4	1		10
DHS law enforcement activity	1		3			4
Federal government building or area		1				1
Immigration detention			1			1
Port of entry/CBP checkpoint	2			1		3
Unaccompanied minor	1					1
<i>Conditions of detention</i>	9		20			29
CBP detention or CBP deferred inspection	2					2
Immigration detention			20			20
Unaccompanied minor	7					7
<i>Disability accommodation (Section 504)</i>		1	5	2	1	9
Federal government building or area		1				1
Immigration benefit application processing					1	1
Immigration detention			5			5
Screening (non-watch list)				2		2
<i>Discrimination/Profiling</i>	9		2	1		12
DHS law enforcement activity			1			1
Immigration detention			1			1
Port of entry/CBP checkpoint	8					8
Screening (non-watch list)	1			1		2
<i>Due Process</i>	9		8			17
CBP detention or CBP deferred inspection	1					1
DHS law enforcement activity	1		2			3
Immigration benefit application processing	1					1
Immigration detention			6			6
Unaccompanied minor	6					6
<i>Excessive force or inappropriate Use of Force</i>	10	4	11	1		26
CBP detention or CBP deferred inspection	1	1				2
DHS law enforcement activity	1					1
Federal government building or area		3				3
Immigration detention			10			10
Port of entry/CBP checkpoint	2					2
Screening (non-watch list)				1		1
Unaccompanied minor	6		1			7
<i>First Amendment (free speech/ association)</i>	1					1
Port of entry/CBP checkpoint	1					1
<i>Fourth Amendment (search and seizure)</i>	1		5			6
DHS law enforcement activity	1		5			6
<i>Hate speech</i>	1					1
Port of entry/CBP checkpoint	1					1
<i>Human Rights</i>		5				5
DHS supported activity (not 287(g))		5				5

*Multi-Component or DHS Headquarters unit

Table 4 continued, Investigations closed 1Q and 2Q 2016 (as of March 31, 2016)

Total by issue	Component					
	CBP	DHS *	ICE	TSA	USCIS	Total
Subtotal by situation						
<i>Inappropriate questioning/inspection conditions</i>	3	1				4
Port of entry/CBP checkpoint	2					2
Screening (non-watch list)	1					1
Unaccompanied minor		1				1
<i>Inappropriate touch/search of person (non-TSA)</i>	4		1			5
Immigration detention			1			1
Port of entry/CBP checkpoint	4					4
<i>Intimidation/threat/improper coercion</i>	2	1	1		1	5
CBP detention or CBP deferred inspection	1					1
Federal government building or area		1				1
Immigration benefit application processing					1	1
Immigration detention			1			1
Unaccompanied minor	1					1
<i>Language access</i>	2					2
CBP detention or CBP deferred inspection	1					1
Port of entry/CBP checkpoint	1					1
<i>Legal access</i>			5			5
Immigration detention			5			5
<i>Medical/mental health care</i>	6	1	207			214
DHS law enforcement activity	2					2
Immigration benefit application processing			1			1
Immigration detention		1	206			207
Port of entry/CBP checkpoint	2					2
Unaccompanied minor	2					2
<i>Privacy</i>			2			2
DHS regulatory/rule processing			1			1
Immigration detention			1			1
<i>Religious accommodation</i>		1	5		1	7
Federal government building or area		1				1
Immigration benefit application processing					1	1
Immigration detention			5			5
<i>Retaliation</i>			1			1
Immigration detention			1			1
<i>Sexual assault/abuse</i>	1		3			4
Immigration detention	1		3			4
<i>TSA AIT and TSA pat-downs</i>				2		2
Screening (non-watch list)				2		2
Grand Total	62	15	280	7	3	367

*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
USCIS	U.S. Citizenship and Immigration Services
USCG	U.S. Coast Guard
USSS	U.S. Secret Service