



Department of Homeland Security Office for Civil Rights and Civil Liberties

Semiannual Report to Congress

First and Second Quarters, FY 2021 (October 1, 2020 – March 30, 2021)

November 8, 2021



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 first and second quarters of Fiscal Year (FY) 2021. 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 website, <http://www.dhs.gov/privacy>.

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

The Honorable Chris Murphy

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

The Honorable Shelly Moore Capito

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

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 Appropriations Subcommittee on Homeland Security

The Honorable Chuck Fleischmann

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

The Honorable Bennie G. Thompson

Chairman, U.S. House Committee on Homeland Security

The Honorable John Katko

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

The Honorable Adam Schiff

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

The Honorable Devin Nunes

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

The Honorable Jerry Nadler

Chairman, U.S. House Committee on the Judiciary

The Honorable Jim Jordan

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

The Honorable Carolyn Maloney

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

The Honorable James Comer

Ranking Member, U.S. House 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: www.dhs.gov/crcl. Please direct inquiries regarding this Report to the DHS Office of Legislative Affairs at 202-447-5890.

Yours very truly,



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). This Report includes information on CRCL’s investigative work during the first and second quarters of FY 2021.

The majority of complaint investigations opened during this time period focused on allegations made against U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE). The largest portion of complaints opened concerned ICE’s alleged inadequate medical and/or mental health care for detainees in ICE custody, but CRCL also opened several complaints related to due process and other aspects of the conditions of confinement in ICE immigration detention facilities. Regarding CBP, CRCL opened a number of complaints concerning medical care and issues related to unaccompanied minors in CBP custody (outlined in the table below). 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 many of these claims and make recommendations.

Table 1: Allegations of Investigations Opened

Component	Issue	Situation	Total
CBP	Due process	Unaccompanied minor	24
CBP	Medical/mental health care	CBP OFO port of entry or USBP checkpoint	9
ICE	Conditions of detention	Immigration detention	24
ICE	Due process	Immigration detention	22
ICE	Medical/mental health care	Immigration detention	149



DHS Office for Civil Rights and Civil Liberties FY 2021 First and Second 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.

II. 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 first and second quarters of Fiscal Year 2021.

III. 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 “situations” 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 non-governmental organizations. Allegations may be submitted 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 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 complaints to the DHS Office of Inspector General (OIG).¹ 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.

¹ Under the former ICE Secure Communities initiative, and under its successor the Priority Enforcement Program (PEP), complaints directed to CRCL that involve the activities of state or local law enforcement agencies acting under state law may only be initially referred to OIG if they involve allegations of DHS employee misconduct. Otherwise, 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 the fiscal year, in process as of the last day of the quarter.² 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,³ 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 taken in response.

Table 4 includes data about investigations closed during the first and second quarters, by issue, situation, and Component principal involved.

² 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’s practice, these investigations remain officially “in process” until CRCL has completed its review and response to the ROIs.

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.

Table 2. Investigations opened, 1Q and 2Q 2021 (as of March 30, 2021)

<i>Total by issue</i>	Component					
	CBP	DHS*	FEMA	ICE	USCIS	Total
Subtotal by situation						
<i>Abuse of authority/misuse of official position</i>	9	2		5	1	17
CBP OFO port of entry or USBP checkpoint	2					2
DHS law enforcement activity	1			1		2
DHS program or initiative	5	1				6
Immigration benefit application processing					1	1
Immigration detention				4		4
Political demonstration/rally		1				1
Watchlist/aviation security list	1					1
<i>Conditions of detention</i>	3			27		30
CBP OFO port of entry or USBP checkpoint	1					1
Immigration detention				24		24
Unaccompanied minor	2			3		5
<i>Disability discrimination</i>	4		2	4	1	11
CBP OFO port of entry or USBP checkpoint	4					4
DHS law enforcement activity			1			1
DHS program or initiative			1			1
Federal government building or area					1	1
Immigration detention				4		4
<i>Discrimination/profiling</i>	9	1	1		1	12
CBP OFO port of entry or USBP checkpoint	8					8
DHS law enforcement activity	1					1
DHS program or initiative			1			1
Federal government building or area		1				1
Immigration benefit application processing					1	1
<i>Due process</i>	30	9		24	1	64
CBP detention	1	1				2
CBP OFO port of entry or USBP checkpoint	1					1
DHS program or initiative	2					2
Immigration benefit application processing	1	2			1	4
Immigration detention	1	1		22		24
Protection screening		1				1
Unaccompanied minor	24	4		2		30
<i>Excessive force or inappropriate use of force</i>	7			10		17
CBP OFO port of entry or USBP checkpoint	4					4
DHS law enforcement activity				1		1
Immigration detention				9		9
Unaccompanied minor	3					3
<i>First Amendment (free speech/association)</i>		4				4
DHS program or initiative		1				1
Political demonstration/rally		3				3

Table 2 continued, Investigations opened 1Q and 2Q 2021 (as of March 30, 2021)

Total by issue	Component					
	CBP	DHS*	FEMA	ICE	USCIS	Total
Subtotal by situation						
<i>Fourth Amendment (search and seizure)</i>	6					6
CBP OFO port of entry or USBP checkpoint	3					3
DHS supported activity	1					1
Screening (non-watch list)	1					1
Unaccompanied minor	1					1
<i>Human rights</i>	1	1				2
CBP detention	1					1
DHS supported activity		1				1
<i>Inappropriate questioning/ inspection conditions</i>	1					1
CBP OFO port of entry or USBP checkpoint	1					1
<i>Inappropriate touch/search of person (non-TSA)</i>	1					1
CBP OFO port of entry or USBP checkpoint	1					1
<i>Intimidation/threat/improper coercion</i>	1	1		1		3
DHS law enforcement activity		1				1
Immigration detention				1		1
Unaccompanied minor	1					1
<i>Language access</i>				2		2
Immigration detention				2		2
<i>Legal access</i>		1		2	1	4
Immigration benefit application processing					1	1
Immigration detention		1		2		3
<i>Medical/mental health care</i>	16			149		165
CBP detention	4					4
CBP OFO port of entry or USBP checkpoint	9					9
DHS law enforcement activity	1					1
DHS program or initiative	1					1
Immigration benefit application processing				1		1
Immigration detention	1			148		149
<i>Privacy⁴</i>	1			1		2
CBP OFO port of entry or USBP checkpoint	1					1
DHS law enforcement activity				1		1
<i>Retaliation</i>				3		3
Immigration detention				3		3
<i>Sexual assault/abuse</i>	3			3		6
CBP OFO port of entry or USBP checkpoint	3					3
Immigration detention				3		3
Grand Total	92	19	3	231	5	350

*Multi-Component or DHS Headquarters unit

⁴ This category involves claims about the unauthorized disclosure of private information and will generally arise in the context of unauthorized sharing of medical and mental health information, and breaches of confidentiality of information.

Table 3. Investigations in process 1Q and 2Q 2021 (as of March 30, 2021)

	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	27	8		4	10		5
Conditions of detention	81	7	4	34	25		11
Disability discrimination	23	4			18		1
Discrimination/profiling	33	8		4	19		2
Due process	128	36	4	30	57		1
Excessive force or inappropriate use of force	39	4	12	6	10		7
First Amendment (free speech/association)	12	2	5	1	4		
Fourth Amendment (search and seizure)	12	2	1	1	8		
Human rights	29	1			28		
Inappropriate questioning/inspection conditions	6				5		1
Inappropriate touch/search of person (non-TSA)	2	1	1				
Intimidation/threat/improper coercion	3	1					2
Language access	4		1	1	2		
Legal access	7		1	2	4		
Medical/mental health care	291	46	13	37	189		6
Privacy	6	2	1		3		
Retaliation	3	1		1	1		
Sexual assault/abuse	19	2	1	2	10		4
Total by issue	725	125	44	123	393	0	40

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 2021 (as of March 30, 2021)

	Grand Total	Under Review	OIG Retained	CRCL Retained		Joint Investigation	CRCL Referred
				Full Investigation	Short Form		
By situation							
CBP detention	34	2	2	9	19		2
CBP OFO port of entry or USBP Checkpoint	136	22	11	18	77		8
DHS law enforcement activity	22	3	6		10		3
DHS program or initiative	12	9	1		1		1
DHS public messaging/websites	1				1		
DHS regulatory/rule processing	1				1		
DHS supported activity	14	1			13		
Federal government building or area	8		1		7		
ICE 287(g) program	1				1		
Immigration benefit application processing	10	1	1	1	7		
Immigration detention	383	60	20	68	220		15
Political demonstration/ rally	8	2			6		
Protection screening	1	1					
Screening (non-watch list)	1				1		
Unaccompanied minor	92	24	2	27	29		10
Watchlist/aviation security list	1						1
Total by situation	725	125	44	123	393		40
By Component							
CBP	263	56	18	47	120		22
DHS	46	8	3	10	25		
FEMA	5	1	23		3		1
ICE	399	60		66	233		17
USCIS	9				9		
USSS	3				3		
Total by Component	725	125	44	123	393	0	40

Table 4. Investigations closed, 1Q and 2Q 2021 (as of March 31, 2021)

<i>Total by issue</i>	Component						
	CBP	DHS*	ICE	TSA	USCIS	USSS	Total
Subtotal by situation							
<i>Abuse of authority/misuse of official position</i>	4	1	3	1	2	1	12
CBP OFO port of entry or USBP checkpoint	2						2
DHS law enforcement activity	1					1	2
Federal government building or area	1						1
Immigration benefit application processing					2		2
Immigration detention			3				3
Political demonstration/rally		1					1
Screening (non-watch list)				1			1
<i>Conditions of detention</i>			19				19
Immigration detention			19				19
<i>Disability discrimination</i>	1		3		2		6
CBP OFO port of entry or USBP checkpoint	1						1
DHS supported activity					2		2
Immigration detention			3				3
<i>Discrimination/profiling</i>	3	2	3		2		10
CBP OFO port of entry or USBP checkpoint	2	1					3
DHS law enforcement activity	1						1
Federal government building or area		1					1
Immigration benefit application processing					2		2
Immigration detention			3				3
<i>Due process</i>	9	2	9				20
CBP OFO port of entry or USBP checkpoint	1	1	1				3
Immigration detention			7				7
Unaccompanied minor	8	1	1				10
<i>Excessive force or inappropriate use of force</i>	2	1	4			1	8
CBP OFO port of entry or USBP checkpoint	1						1
DHS law enforcement activity			1			1	2
Federal government building or area		1					1
Immigration detention			3				3
Unaccompanied minor	1						1
<i>First Amendment (free speech/association)</i>		1					1
Political demonstration/rally		1					1
<i>Fourth Amendment (search and seizure)</i>	4		2				6
CBP OFO port of entry or USBP checkpoint	4						4
DHS law enforcement activity			2				2
<i>Human rights</i>	1						1
CBP OFO port of entry or USBP checkpoint	1						1
<i>Inappropriate questioning/ inspection conditions</i>	1	1					2
CBP OFO port of entry or USBP checkpoint	1						1
Federal government building or area		1					1

*Multi-Component or DHS Headquarters unit

Table 4 continued, Investigations closed 1Q and 2Q 2021 (as of March 31, 2021)

Total by issue	Component						
	CBP	DHS*	ICE	TSA	USCIS	USSS	Total
Subtotal by situation							
Intimidation/threat/improper coercion		<i>1</i>					<i>1</i>
DHS law enforcement activity		1					1
Legal access					<i>1</i>		<i>1</i>
Immigration benefit application processing					1		1
Medical/mental health care	<i>3</i>		<i>124</i>				<i>127</i>
CBP OFO port of entry or USBP checkpoint	2						2
Immigration detention			124				124
Unaccompanied minor	1						1
Retaliation			<i>1</i>				<i>1</i>
Immigration detention			1				1
Sexual assault/abuse	<i>1</i>		<i>3</i>				<i>4</i>
CBP OFO port of entry or USBP checkpoint	1						1
Immigration detention			3				3
TSA AIT and TSA pat-downs				<i>1</i>			<i>1</i>
Screening (non-watch list)				1			1
Grand Total	29	9	171	2	7	2	220

*Multi-Component or DHS Headquarters unit

IV. Appendix: Acronyms

CBP	U.S. Customs and Border Protection
CISA	Cybersecurity and Infrastructure Security Agency
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
OFO	CBP Office of Field Operations
OIG	DHS Office of Inspector General
PEP	Priority Enforcement Program
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