



# Homeland Security

February 28, 2007

Dear Mr. Vice President, Speaker Pelosi, and Members of Congress:

In accordance with 6 U.S.C. § 345, I submit to the President of the Senate, the Speaker of the House of Representatives, and the appropriate congressional committees and subcommittees a report on the activities of the Department of Homeland Security's Office for Civil Rights and Civil Liberties.

Since September 11, 2001, the challenge of our generation has been to defend our country against terrorism while honoring our fundamental commitment to civil rights and civil liberties. Working together, the employees of the Department of Homeland Security are helping to preserve an America that is safe, secure, and free. The challenge of enhancing security and preserving civil rights and civil liberties at the same time is complex, but we are meeting that challenge by searching for innovative solutions that ensure security and civil liberties do not need to compete with one another.

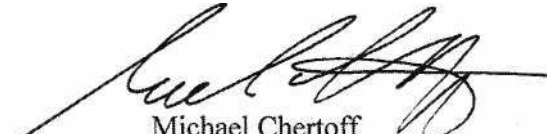
This report highlights many of the areas in which the Department has worked to ensure our goal of protecting America while preserving our civil rights and civil liberties. For instance, the Department has taken rigorous steps to prohibit racial profiling by training our personnel to pursue suspicions that are based on observable and concrete behaviors instead of race. We are also developing cooperative relationships with leaders of the American Arab and Muslim communities, both in our Nation's capital and in cities throughout the country. We are working hard to enforce this Nation's immigration laws and ensuring that these enforcement efforts are consistent with the Constitution and Federal law. At the same time, we are committed to America's tradition of being a welcoming Nation for legal immigrants. We strongly believe that America can both enforce its laws and fully respect our fundamental freedoms.

In a related incident, Hurricane Katrina exposed many faults in the Nation's emergency preparedness, response and recovery capabilities, and this Department has worked energetically to put new solutions in place. Through our Office for Civil Rights and Civil Liberties, we are leading a cross-government effort to improve preparedness among people with disabilities and their families, and have made many improvements to the response and recovery system that will benefit these communities.

I encourage you to review this report documenting the Department's innovative efforts to respond to the challenges found at the intersection of homeland security and civil rights and civil liberties. A copy of this report can also be obtained at [www.dhs.gov/civilliberties](http://www.dhs.gov/civilliberties).

The Department of Homeland Security looks forward to working with Congress and the people of the United States on the fundamental issues of security, civil rights, and civil liberties.

Sincerely,



Michael Chertoff

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## **BACKGROUND AND SUMMARY**

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Whether responding to the emergency conditions presented by Hurricane Katrina, implementing new statutory mandates, achieving critical milestones in equal employment opportunity programs, creating training programs to meet 21<sup>st</sup> century law enforcement needs, or developing cooperative relationships with ethnic and religious communities, the work of the Office for Civil Rights and Civil Liberties (CRCL) underscores the Department of Homeland Security's (DHS) commitment to enhance both the security of the American people and their fundamental rights and liberties.

### **Roles and Responsibilities**

In accordance with 6 U.S.C. § 345, the mission of the Office for Civil Rights and Civil Liberties is to assist the dedicated men and women of this Department in securing our country while preserving our freedoms and our way of life. CRCL assists its colleagues in four ways:

1. It provides proactive advice on a wide range of issues, helping the Department to shape policy in ways that are mindful of civil rights and civil liberties;
2. It investigates and facilitates the resolution of complaints filed by the public regarding Departmental policies or actions taken by Departmental personnel;
3. It provides leadership to the Department's equal employment opportunity programs, seeking to make this Department the model Federal agency; and,
4. It serves as an information and communications channel with the public regarding these issues.<sup>1</sup>

When Congress enacted the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA)<sup>2</sup>, it expanded the role and responsibilities of CRCL in several areas. IRTPA clarified that the President appoints the Officer for Civil Rights and Civil Liberties and that the Officer reports directly to the Secretary of Homeland Security. In addition, IRTPA expanded the role of CRCL by providing that the Officer: has oversight authority to ensure that DHS programs and activities comply with constitutional, statutory, regulatory, policy, and other requirements related to civil rights and civil liberties; must investigate complaints indicating possible abuses of civil rights or civil liberties, unless the DHS Inspector General (IG) determines that any such complaint or information should be investigated by the IG; and may investigate a matter even though he has not received a formal complaint.

### **Review and Compliance**

This new statutory authority required a reorganization and expansion of CRCL. This reorganization resulted in the addition of 10 new full-time career professional staff to CRCL and the creation of a "Review and Compliance" unit within CRCL. This group is responsible for handling complaints filed by the public alleging an abuse of civil rights or civil liberties. While

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<sup>1</sup> Department of Homeland Security, Office for Civil Rights and Civil Liberties Mission Statement.

<sup>2</sup> Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Pub. L. No. 108-458, 118 Stat. 3638 (2004).

the statute provides no legal remedies for individuals, CRCL uses its investigative findings as a basis for recommendations, where appropriate, to the Secretary of Homeland Security and to the DHS components. In carrying out these responsibilities, CRCL has worked collaboratively with all DHS components, helping to identify areas for improvement and, in many situations, resolving individual complaints at an early stage. Areas of concern addressed by CRCL as a result of the complaints process include: the use of aviation watch lists by the Transportation Security Administration (TSA); the appropriate health and medical requirements imposed by DHS components on contract employees; the treatment and conditions of detention for immigration detainees in a variety of settings; accessibility to Federal facilities by persons with disabilities and persons whose faith requires them to wear head coverings or carry a religious symbol such as a *kirpan*; and, the use of census data by Customs and Border Protection (CBP).

### **Equal Employment Opportunity Programs**

Another core responsibility of CRCL is to ensure that the promise of equal employment opportunity is a reality for all DHS employees. When DHS stood up in March 2003, it inherited a massive inventory of employment discrimination complaints, totaling over 2,200 complaints. CRCL established a goal to reduce the inventory of cases by the end of fiscal year 2005, while giving each and every complaint full and fair consideration. CRCL's Equal Employment Opportunity (EEO) Program achieved this ambitious goal, and has maintained an inventory of fewer than 300 cases throughout 2006.

Systems that meet and serve our expanding needs are critical to a successful EEO program. CRCL has developed and implemented an enterprise-wide EEO database covering all DHS components with the capability to provide snapshots of employee representation across relevant categories – commonly referred to by the Equal Employment Opportunity Commission (EEOC) Management Directive 715 (MD 715). As part of this process, CRCL issued requirements and functionality needs for two process management systems: a system for complaint tracking and a system for collecting and analyzing personnel transaction data by relevant subgroup. These systems will allow CRCL to meet efficiently and accurately a variety of information requirements established by the EEOC. CRCL has been able to produce for the senior leadership an accurate snapshot of the Department's workforce. This data has led to the development of cross-functional teams that are attempting to identify the various barriers to employment that certain categories of people are facing and propose innovative steps to increase equal employment opportunity.

### **Commitment to Hiring People with Disabilities**

Since February 2004, CRCL has led the Department's headquarters elements in an effort to provide equal employment opportunities to Americans with disabilities. In a July 25, 2005 memorandum to the senior leadership, Secretary Michael Chertoff directed that DHS renew and strengthen efforts to integrate persons with disabilities and their talents into the homeland security effort and this Department's workforce.<sup>3</sup> CRCL was tasked to oversee these

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<sup>3</sup> See Appendix A, *Secretary Chertoff's Memorandum Regarding Progress and Expectations with regard to Increasing the Employment of People with Disabilities*, July 25, 2005. This memorandum renewed DHS's commitment to increasing employment opportunities for qualified candidates with disabilities, as previously expressed by former Secretary Tom Ridge in a memorandum dated February 17, 2004.

Departmental efforts, and, as a result, between February 2004, and October 2006, the number of people with disabilities at DHS headquarters increased from 50 people to 174 people – an improvement of 248 percent. Further removal of barriers to employment remains a priority.

Additionally, a number of DHS headquarters elements have been committed to the Defense Department “Operation War Fighter” initiative, which provides internship opportunities to veterans disabled in recent conflicts.

### **Emergency Preparedness for Individuals with Disabilities**

On July 22, 2004, President Bush signed Executive Order 13347, “Individuals with Disabilities in Emergency Preparedness.”<sup>4</sup> CRCL was instrumental in the development of this Executive Order. The Executive Order directs that agencies must strengthen emergency preparedness with respect to individuals with disabilities. It then establishes an Interagency Coordinating Council (ICC) on Emergency Preparedness and Individuals with Disabilities, and places the Secretary of Homeland Security as the chair. The Secretary has delegated that role to the Officer for Civil Rights and Civil Liberties. In its first year, the Council delivered a number of innovative and important products – a guidebook laying out guidance on improving workplace evacuations (led by the Department of Labor’s Office of Disability Employment Policy), an Internet-based “resource center” with dozens of technical assistance materials (led by the Department of Justice’s (DOJ) Civil Rights Division), and a report to the President in July 2005 on the first anniversary of the Executive Order.

When Hurricane Katrina made landfall, the ICC began to work tirelessly on behalf of the disability community of the Gulf Coast region. According to United States Census Bureau data, approximately 20 percent of the Gulf Coast region consisted of people with disabilities.<sup>5</sup> The Council formed an Incident Management Team to respond to the multitude of requests for assistance and offers of help. The interagency partnerships allowed the Council to resolve issues across the spectrum – from facilitating the delivery of needed durable medical equipment, to responding to the need for guidance on Medicaid policies, to issuing reminders to local media outlets that emergency information should be provided in formats that allow deaf and hearing impaired individuals to respond.

In the year following Hurricane Katrina, CRCL contributed strongly to DHS’s efforts to improve the emergency preparedness, response and recovery process. For example, CRCL participated in the Department’s Nationwide Plan Review. CRCL secured 11 disability subject matter experts from both non-government organizations and Federal agencies to review selected emergency operations plans for the purpose of assessing the level to which State and urban areas are taking actions to integrate people with disabilities into the planning process. This ground-breaking work yielded important results included in the Nationwide Plan Review report, which serves as an important mechanism for Congress, Federal agencies, and State and local officials to further improve in the Nation’s emergency management process.<sup>6</sup> In April 2006, Daniel W. Sutherland, the Officer for Civil Rights and Civil Liberties, had an opportunity to highlight these issues, as

<sup>4</sup> See Appendix B, Executive Order 13347, *Individuals with Disabilities in Emergency Preparedness*, July 22, 2004.

<sup>5</sup> *United States Census 2000*, available at <http://www.census.gov/main/www/cen2000.html>.

<sup>6</sup> *Nationwide Plan Review: Phase 2 Report*, Department of Homeland Security, February 13, 2006, and June 16, 2006.

well as the Department's work on these issues in the weeks after Hurricane Katrina, in a keynote address to the National Hurricane Conference.<sup>7</sup>

### **Implementing the DOJ Guidance on Racial Profiling and DHS Training**

President Bush has stated that racial profiling "is wrong and we will end it in America."<sup>8</sup> To achieve this goal, the DOJ released its "Guidance Regarding the Use of Race By Law Enforcement Agencies" (DOJ Guidance).<sup>9</sup> In June 2004, former DHS Secretary Ridge issued a memorandum underscoring DHS's commitment to race neutrality in all law enforcement activities.<sup>10</sup> In the wake of the London bombings in July 2005, Secretary Chertoff reiterated DHS's commitment to ensuring full implementation of the DOJ Guidance. In furtherance of these commitments by the President and the Secretary, CRCL has worked with the Federal Law Enforcement Training Center (FLETC) to restructure and strengthen the curriculum taught to law enforcement officers on this topic. CRCL has also developed training in this area: "Guidance Regarding the Use of Race for Law Enforcement Officers," a tutorial on the DOJ Guidance and the DHS policy. These materials are now available to DHS law enforcement employees in CD-ROM or via on-line web-based training formats.

CRCL created "Civil Liberties University" to provide high-quality training on a wide range of topics, and to deliver training in a cost-effective manner to the widest possible DHS audience through advanced distributed learning (ADL) methods. The training implementing the DOJ Guidance is an example of the educational tools developed and then deployed to field offices across the country. Through Civil Liberties University, CRCL also developed: training to commemorate Constitution Day in 2005 and 2006; posters that provide guidance to DHS personnel on how to screen and, if necessary, search individuals who wear common Muslim and Sikh head coverings;<sup>11</sup> in conjunction with the Immigration and Customs Enforcement Detention and Removal Office, training that emphasizes certain elements of the National Detention Standards; and, a CD titled, "The First Three to Five Seconds: Arab and Muslim Cultural Awareness Training for Law Enforcement."<sup>12</sup> CRCL has also developed an educational poster on how to screen those of the Sikh faith who carry a *kirpan*, or ceremonial religious dagger.<sup>13</sup> Through Civil Liberties University, CRCL has also produced an intensive training DVD for DHS personnel who interact with Arab Americans, Muslim Americans, and people from the broader Arab and Muslim world. The training includes insights from four national and international experts – an Assistant United States Attorney who is Muslim, a member of the National Security Council who is Muslim, a scholar of Islamic studies, and a civil rights attorney who advocates on issues of concern to Arab American and Muslim American communities.

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<sup>7</sup> Daniel W. Sutherland, *Keynote address to the National Hurricane Conference*, April 14, 2006, available at [http://www.disabilitypreparedness.gov/Ds04\\_14\\_06.htm](http://www.disabilitypreparedness.gov/Ds04_14_06.htm).

<sup>8</sup> President George W. Bush, *Address of the President to the Joint Session of Congress*, February 27, 2001.

<sup>9</sup> *Guidance Regarding the Use of Race by Law Enforcement Agencies*, United States Department of Justice, available at [http://www.usdoj.gov/crt/split/documents/guidance\\_on\\_race.htm](http://www.usdoj.gov/crt/split/documents/guidance_on_race.htm), June 2003.

<sup>10</sup> *The Department of Homeland Security's Commitment to Race Neutrality in Law Enforcement Activities*, June 1, 2004.

<sup>11</sup> See Appendix C, DHS Poster on Common Muslim and Sikh head coverings.

<sup>12</sup> This CD was developed by the United States Department of Justice's Community Relations Service. The Director of the Community Relations Service, Sharee Freeman, graciously allowed DHS to repackage and distribute the CD to its thousands of employees.

<sup>13</sup> See Appendix D, DHS *Kirpan* poster.



### **Working with Non-Governmental Organizations**

Since its inception, CRCL has worked to help the Department cement positive relationships with non-governmental organizations (NGOs), that represent a variety of ethnic, religious, and interest groups. These relationships are rooted in the commitment of this Department's senior leadership to establish constructive two-way communication as the best means to improve public policy. It is important for the communities to know they have access to senior officials within DHS. It is just as important for DHS to understand how these communities view activities and policies. Secretary Chertoff and other senior leaders have met on a number of occasions with representatives of civil rights, immigration, and ethnic advocacy organizations, and will continue to seek their insight on how we can make improvements. CRCL meets regularly with these groups and key community leaders, developing solid lines of communication between NGOs and the government.

In particular, the Department believes that the homeland security effort will be most successful if it develops, cultivates, and maintains cooperative relationships and an open dialogue with American Arab, Muslim, Sikh and South Asian communities. CRCL fosters, promotes, and develops these relationships in a number of ways. First, it helps to lead substantive meetings between DHS agencies and these communities in key cities such as Detroit, Los Angeles, Houston, Chicago, Buffalo, and Washington, D.C. Second, it works with colleagues in other Federal agencies, such as the Department of State and DOJ, to address issues of concern raised by members of these communities. It also addresses policy issues and complaints forwarded by members of these communities. The DHS Officer for CRCL, Daniel W. Sutherland, was honored to present the keynote address at the American-Arab Anti-Discrimination Committee's (ADC) Silver Anniversary National Convention on May 28, 2005.<sup>14</sup> This occasion presented Mr. Sutherland with an opportunity to talk about the present-day civil rights struggles faced by these communities in America, the need to work together in the future, and our mutual optimism that the community and government will tackle and resolve these issues. In recent months, CRCL has led an Incident Management Team that seeks to connect government officials with key leaders of these communities in the aftermath of a significant natural or man-made disaster. This Incident Management Team convened after the arrests in London in August 2006, and laid a strong foundation for communications after future disasters.

### **Working Together to Protect America and Preserve our Freedom**

By working closely with every DHS component both in Washington, D.C., and in field offices across the country, CRCL has a unique vantage point. Moreover, because of its mission, CRCL is able to provide a different perspective on many issues. The Office's leadership is able to use this perspective to assist the Department in many ways. For example, the Office's leadership played key roles in Secretary Chertoff's Second Stage Review of the Department. Mr. Sutherland served as the co-chair of one of the working groups established by Secretary Chertoff, and Timothy J. Keefer, the Office's Deputy for Civil Rights and Civil Liberties Programs and Compliance, served on another of the working groups. Carmen Walker, the Office's Deputy for Equal Employment Opportunity Programs, serves on a variety of working

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<sup>14</sup> Daniel W. Sutherland, *Keynote Address at American-Arab Anti-Discrimination Committee's (ADC) Silver Anniversary National Convention*, May 28, 2005.

groups focusing on human capital issues, ensuring equal employment opportunity is built into the Department's human capital system and assisting in the selection of personnel to fill key senior leadership positions.

CRCL has been involved in nearly all aspects of the critical issues facing the homeland security effort – from the Hurricane Katrina recovery, to the government's relationship with Muslim Americans, to the operation of watch lists, to immigration law and policy, to the training of our workforce. The Office's work has been supported by other DHS elements because it provides constructive advice that allows the dedicated men and women of the Department to complete their mission at the highest level of effectiveness. The Office's work has also been welcomed by its colleagues outside of government, as demonstrated by two awards presented to the Officer for Civil Rights and Civil Liberties from civil rights organizations. CRCL plays a uniquely valuable role within DHS, and will continue to assist its colleagues to tackle complex issues in innovative and constructive ways.

## LEADERSHIP, LEGISLATION, AND THE OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES

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Michael Chertoff, Secretary of Homeland Security, has a long and distinguished record of protecting civil rights and civil liberties. As a former prosecutor, United States Attorney, and Federal judge, Secretary Chertoff has dedicated his career to the rule of law. In the 1990s, Secretary Chertoff worked aggressively to assist officials of his home State, New Jersey, to address the difficult issue of racial profiling that confronted the State's law enforcement community. While serving on the bench, he issued notable written opinions on the rights of those seeking to escape oppression in their home countries. In the aftermath of Hurricane Katrina, Secretary Chertoff has worked diligently to ensure that the needs of people with disabilities in the region have been addressed. With this background, Secretary Chertoff's leadership has set the stage for the Department in this area by emphasizing the importance of preserving America's strong tradition of civil rights, while at the same time protecting our country from its enemies.

On April 16, 2003, President George W. Bush appointed Daniel W. Sutherland to serve as the Department's first Officer for Civil Rights and Civil Liberties. Mr. Sutherland has broad experience in the civil rights area, serving for 14 years as a trial attorney with DOJ's Civil Rights Division, and nearly two years with the Office for Civil Rights at the United States Department of Education. His litigation experience was focused primarily in the areas of employment discrimination against immigrants and Americans with Disabilities Act litigation. Mr. Sutherland has co-authored a book on religious discrimination in the workplace. With this background, Mr. Sutherland brings a career of commitment to civil rights and civil liberties advocacy for all persons.



In this role, Mr. Sutherland has addressed dozens of groups about the complex issues at the intersection of homeland security and civil rights and civil liberties. *Vital Speeches of the Day*, which recognizes leaders of public opinion that best express contemporary thought in America, has published Mr. Sutherland's speech on the need for the government to partner with Arab American and Muslim American communities to most effectively defend our country.<sup>15</sup> Mr. Sutherland has also published several articles explaining the Department's views on these complex issues, and regularly appears at conferences, seminars, and in the media.<sup>16</sup>

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<sup>15</sup> *Cementing Positive Relationships: Arab Americans and Muslim Americans and the War on Terror*, Vol. LXXI No. 16, VITAL SPEECHES OF THE DAY (June 1, 2005).

<sup>16</sup> *Homeland Security and Civil Liberties: Preserving America's Way of Life*, 19 NOTRE DAME J.L. ETHICS AND PUB. POL'Y 289 (2005) and *Our Essential Liberties*, LEGAL TIMES (January 19, 2004).

In addition, the Officer for Civil Rights and Civil Liberties, pursuant to 6 U.S.C. § 345, reports directly to Secretary Chertoff.<sup>17</sup> At this level, the Officer is able to assist senior leadership in shaping Departmental policy in ways that protect, rather than diminish, the personal liberties of all persons protected by our laws.

CRCL staff also have substantial experience in civil rights litigation, the intelligence community, immigration issues, disability policy, and equal employment opportunity policy. The experienced CRCL staff have served in advocacy organizations, at State and local governments, and in other Federal agencies. Under Mr. Sutherland's leadership, CRCL has developed into an integrated office dedicated to the core mission of assisting the Department in securing our country while preserving our freedoms and our way of life.

CRCL has two deputies – one for Equal Employment Opportunity (EEO) and one for Civil Rights and Civil Liberties Programs and Compliance (CRCL Programs and Compliance).<sup>18</sup> The EEO group oversees both complaints by DHS employees alleging discrimination in the workplace, and the development of policies that will ensure the excellence of the DHS workforce. The CRCL Programs and Compliance group has two units. The first is the Review and Compliance unit, which investigates complaints filed under 6 U.S.C. § 345. The second is the Programs unit, which provides proactive advice to the Department on a wide variety of civil rights and civil liberties issues. This group leads the Department's interactions with Arab Americans and Muslim Americans and its efforts to integrate people with disabilities into the emergency management process. It also provides advice on issues in immigration law and policy, biometrics, screening, and technology. On civil rights issues concerning legal review, CRCL maintains an Office of the Chief Counsel, which reports to the DHS Office of General Counsel.

As originally enacted, Section 705 of the Homeland Security Act of 2002 created and defined the role of the Officer for Civil Rights and Civil Liberties. In December 2004, Congress passed and President Bush signed the Intelligence Reform and Terrorism Prevention Act, Public Law 108-458 (IRTPA).<sup>19</sup> This statute included the "Homeland Security Civil Rights and Civil Liberties Protection Act," which amended Section 705 of the Homeland Security Act by codifying responsibilities given to CRCL in DHS Management Directives and giving CRCL additional investigative and compliance functions.<sup>20</sup> The new section of law can be found at 6 U.S.C. § 345.

The IRTPA codified a number of steps that the Secretary of the Department of Homeland Security had already taken. Specifically, it:

- Expressly added to DHS's statutory mission by inserting language that requires it to "ensure that the civil rights and civil liberties of persons are not diminished by efforts, activities, and programs aimed at securing the homeland." IRTPA, § 8302(3). Congress viewed this revision as important to ensure that the protection of civil liberties remains a

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<sup>17</sup> See Appendix E, *Organizational Chart for the Department of Homeland Security*.

<sup>18</sup> See Appendix F, *the Office for Civil Rights and Civil Liberties Organization Chart*.

<sup>19</sup> Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Pub. L. No. 108-458, 118 Stat. 3638 (2004).

<sup>20</sup> See Appendix G, 6 U.S.C. § 345 (as amended by IRTPA). Originally enacted under the Homeland Security Act of 2002, Pub. L. No. 107-296, § 705, 116 Stat. 2135 (2002).

priority of the Department. S. Rep. No. 108-350, at 4-5. This concept is also included in the Department's Strategic Plan.<sup>21</sup>

- Deleted a portion of § 705 that previously stated that “[t]he Secretary shall appoint in the Department an Officer for Civil Rights and Civil Liberties.” This deleted provision was at odds with § 103(d) of the Homeland Security Act, which states that the President is to appoint the Officer for CRCL. The deletion of this inconsistency made clear that the Administration's current practice of having the President appoint the Officer for CRCL will continue.
- Provided that the Officer for CRCL “shall report directly to the Secretary,” thus codifying that the person in this position is a member of the senior leadership team. This also codified the Department's existing practice. IRTPA, § 8303(1).
- Provided that the Officer “shall assist the Secretary, directorates,” and other leaders within DHS “to develop, implement, and periodically review Department policies and procedures” to ensure the protection of civil rights and civil liberties. IRTPA, § 8303(4). This also codified the Officer's role in providing advice to senior DHS leadership.

IRTPA also changed the authorizing language for the Officer for Civil Rights and Civil Liberties in the following ways:

- Provided that the Officer for CRCL “shall **oversee compliance** with constitutional, statutory, regulatory, policy, and other requirements relating to the civil rights and civil liberties of individuals affected by the programs and activities of the Department.” IRTPA, § 8303(4) (emphasis added). In contrast to providing advice as policy is shaped, this statutory authority requires the Officer for CRCL to oversee that programs currently in place are in compliance with the Constitution, Federal law, regulations, and DHS policies.
- Added a separate provision that instructs the Officer for CRCL to “**investigate** complaints and information indicating possible abuses of civil rights or civil liberties, unless the Inspector General” determines that it should retain and investigate the complaint or information itself. IRTPA, § 8303(4) (emphasis added). CRCL has created a Review and Compliance Unit within the Office, and has created DHS Management Directive 3500. This directive established procedures for CRCL to provide DHS leadership with confidential, internal, constructive reports as a result of complaints filed by members of the public.
- Changed the original language of the Homeland Security Act that directed CRCL to “review and assess information alleging abuses....” Homeland Security Act (HSA) § 705(a)(1). First, IRTPA added profiling on the basis of “religion” as a topic of abuse subject to review. This should not change CRCL's current practices because CRCL has always interpreted “civil rights” and “civil liberties” to include religion. Moreover, the

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<sup>21</sup> *Securing Our Homeland, United States Department of Homeland Security Strategic Plan*, at 7, available at [http://www.dhs.gov/interweb/assetlibrary/DHS\\_StratPlan\\_FINAL\\_spread.pdf](http://www.dhs.gov/interweb/assetlibrary/DHS_StratPlan_FINAL_spread.pdf).

addition of “religion” to the list of subjects that CRCL should review did not create a new right for private citizens under Federal law; it merely stated that this Office should review issues that relate to the intersection of homeland security and religious freedoms. Second, the statutory language stated that the Officer for CRCL is to “review and assess information *concerning*” abuses rather than merely “review and assess information *alleging*” these abuses (emphasis added). According to IRTPA’s legislative history, this language removed doubt as to whether the filing of a specific allegation with DHS is a prerequisite before CRCL can conduct a review and assessment of an issue within its jurisdiction. S. Rep. No. 108-350, at 4. This clarified that CRCL may open a review or investigation regardless of how it acquires the underlying information.

IRTPA also affected the way CRCL interacts with two DHS components:

- It required the Inspector General (IG) to appoint a senior official to coordinate CRCL activities “with respect to investigations of abuses of civil rights or civil liberties.” IRTPA, § 8304. Section 8304 requires that this senior official consult with, and provide information to, the CRCL Office on a number of matters.
- It requires the Officer for CRCL “coordinate with the [DHS] Privacy Officer to ensure that programs, policies, and procedures involving civil rights, civil liberties, and privacy considerations are addressed in an integrated and comprehensive manner.” IRTPA, § 8303(4).<sup>22</sup> Congress intended that DHS Officer for CRCL and Privacy Officer coordinate on issues of mutual jurisdiction. S. Rep. No. 108-350, at 4. CRCL has periodically coordinated with the Privacy Office on a number of matters, such as Homeland Security Presidential Directive (HSPD) 11. To fulfill this statutory obligation, CRCL has and will continue to work with the Privacy Office to communicate and discuss overlapping matters. IRTPA also requires that both offices coordinate “to ensure that Congress receives appropriate reports” regarding these issues. IRTPA, § 8303(4).

Overall, the legislative changes under the “Homeland Security Civil Rights and Civil Liberties Protection Act of 2004” strengthen the role of CRCL within DHS. Under these new provisions, CRCL has a larger role in investigating particular allegations and in overseeing compliance among Departmental programs. CRCL will continue to report to Congress with respect to steps taken to implement these new statutory provisions.

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<sup>22</sup> There is a companion provision requiring that the Privacy Office coordinate with CRCL; that provision is found in Section 8305(4) of IRTPA.

# PROACTIVE ADVICE AND THE OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES PROGRAMS

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A key role of CRCL is to provide DHS senior leadership with advice on a wide range of issues. In carrying out its responsibilities, CRCL is committed to being *constructive* – providing advice that will enable policy-makers to achieve their national security or law enforcement goals in ways that also protect civil rights and civil liberties. This constructive approach requires the office to be *proactive* – acting to shape policy before problems occur. The office is also determined to be *innovative* – recognizing that we are in a new century and a new security context.

CRCL’s work spans the horizon of issues that confront DHS, from immigration policy, to technology, to law enforcement. The following is a brief description of some of the areas in which CRCL has made contributions to DHS in fulfilling its mission.

## A. Disability Policy

On July 26, 2005, Secretary Chertoff spoke at a national conference marking the 15<sup>th</sup> anniversary of the passage of the Americans with Disabilities Act (ADA). In his speech, the Secretary reiterated DHS’s commitment to hiring people with disabilities and leading the government-wide effort to address the needs of persons with disabilities in the emergency management process. As the Secretary noted in his speech, “we need the best and brightest of America – all Americans – to join us in our work. We need people with excellent minds, innovative ideas, and a strong work ethic. And we cannot afford to exclude whole categories of people based on outdated and outmoded stereotypes.”<sup>23</sup>

DHS has established a four part agenda to address the concerns of the disability community: strengthening the emergency management process as it relates to the needs of the disability community; ensuring that electronic and information technology is accessible; enhancing employment opportunities; and providing appropriate airport screening of travelers with disabilities.

## Emergency Preparedness

DHS has made enormous progress toward integrating persons with disabilities into the Nation’s emergency preparedness effort. On July 22, 2004, President George W. Bush marked the 14th anniversary of the Americans with Disabilities Act by signing Executive Order (EO) 13347, “Individuals with Disabilities in Emergency Preparedness.” This EO established the Interagency Coordinating Council on Emergency Preparedness and People with Disabilities (ICC) to integrate people with disabilities at all levels of emergency planning.<sup>24</sup>

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<sup>23</sup> Remarks by the Secretary of Homeland Security Michael Chertoff at the National Council on Disability Seminar on the Americans With Disabilities Act, July 26, 2005, available at [http://www.dhs.gov/xnews/speeches/speech\\_0257.shtm](http://www.dhs.gov/xnews/speeches/speech_0257.shtm)

<sup>24</sup> See Appendix B, Executive Order 13347, *Individuals with Disabilities in Emergency Preparedness*.

The ICC, chaired by the Secretary of Homeland Security, coordinates emergency preparedness activities among over 20 Federal agencies; identifies gaps; addresses and resolves issues that arise; and stimulates emergency preparedness activities impacting people with disabilities at the Federal, State and local levels, and in the private sector. The Secretary has delegated leadership of the ICC to CRCL.



*Secretary Chertoff meets with members of the ICC on March 10, 2006*

The work of the ICC is accomplished through eight subcommittees, each of which works with relevant departments and agencies to address major concerns and issues. The eight subcommittees are: Emergency Communications; Emergency Preparedness in the Workplace; Emergency Transportation; Health; Private Sector Coordination; Research; State, Local and Tribal Government Coordination; and Technical Assistance and Outreach. CRCL has direct oversight over two of the eight subcommittees:

- **The Private Sector Coordination Subcommittee** initiates activities through the National Citizen Corps Council Subcommittee on Individuals with Disabilities in Emergency Preparedness, which promotes the exchange of expertise between the disability community and the ICC, as well as the participation of members of the disability community in emergency preparedness planning and training.
- **State, Local and Tribal Government Coordination Subcommittee** encourages State and local government emergency planners to integrate people with disabilities in all



aspects of their emergency mitigation, preparedness, response, and recovery efforts. This subcommittee assists the State and local planners by providing technical assistance and information.

On July 21, 2005, the Department released the ICC's first annual report to the President announcing the completion of many initiatives that will better integrate persons with disabilities into the national preparedness effort.<sup>25</sup> This report documented the significant progress Federal agencies have made to better prepare the disability community and raise awareness of these issues among emergency management officials. The report also included eight recommendations that represent coordination-based solutions which the ICC believes will better integrate people with disabilities into the nation's disaster and emergency mitigation, preparedness, response and recovery efforts. The full report can be found at [www.dhs.gov/disabilitypreparedness](http://www.dhs.gov/disabilitypreparedness).



*From left: Claudia Gordon, CRCL Senior Policy Advisor, Secretary Chertoff, and Daniel W. Sutherland, Officer for CRCL.*

As CRCL continues to advance this issue, one of the key themes will be that people with disabilities have not been and will not be passive consumers in this process. People with disabilities have much to offer all Americans because they and their families have thought a great deal about how to overcome vulnerabilities in times of crisis. They bring innovation and determination to solving problems. By addressing this specific population's needs, the entire emergency preparedness effort will be significantly improved. Hurricanes Katrina and Rita will

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<sup>25</sup> *Individuals with Disabilities in Emergency Preparedness Annual Report*, July 2005, available at [http://www.dhs.gov/xlibrary/assets/CRCL\\_IWDEP\\_AnnualReport\\_2005.pdf](http://www.dhs.gov/xlibrary/assets/CRCL_IWDEP_AnnualReport_2005.pdf)

be remembered for their destructive force and their real life consequences for residents of the Gulf Coast region of our country. For DHS and CRCL, these natural disasters provided a stark reminder of the need for better preparation in emergency preparedness for people with disabilities. In the aftermath of these storms, many asked the question, “Why didn’t people leave ahead of the storm when they had a chance?” DHS has since learned the answer: 45 percent were either physically unable to leave or had to care for someone who was unable to leave.<sup>26</sup> The demographics underlying this answer bear witness to its accuracy:

- In Biloxi, Mississippi, 10,700 people (25 percent of the residents) are classified in the 2000 Census as people with disabilities;<sup>27</sup>
- In Mobile, Alabama, 43,000 people (24 percent of the residents) are people with disabilities according to the 2000 Census; and,<sup>28</sup>
- Almost 250,000 (21.3 percent of the residents) of the New Orleans metropolitan area described themselves as disabled in the 2000 Census.

According to the 2000 Census data for the City of New Orleans:<sup>29</sup>

- 23,467 people stated that they had “long-lasting conditions” of “blindness, deafness, or a severe vision or hearing impairment;”
- 107,883 people stated that they had a “condition that substantially limits...basic physical activities such as walking, climbing stairs, reaching, lifting or carrying;”
- 64,016 people were categorized as having a “mental disability;” and,
- 54,014 people stated that because of a long-lasting condition, they have difficulty dressing, bathing, or moving around inside their homes.

Through its work with the ICC, CRCL played an important role in the Hurricanes Katrina and Rita disaster relief efforts. Immediately after Katrina made landfall, CRCL and its partners on the ICC began to learn of critical problems affecting people with disabilities:

- Many people with disabilities were unable to evacuate;
- Expensive durable medical equipment such as wheelchairs, crutches and walkers, were lost in the evacuation;
- People were often prohibited from bringing their service animals into shelters;

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<sup>26</sup> These results are derived from poll done by The Kaiser Family Foundation, *the Washington Post* and Harvard University of people from New Orleans who were evacuated to the Astrodome and other large facilities in Houston, September 2005. THE WASHINGTON POST/KAISER FAMILY FOUNDATION/HARVARD UNIVERSITY, *Survey of Hurricane Katrina Evacuees* (September 2005), available at <http://www.kff.org/newsmedia/upload/7401.pdf>

<sup>27</sup> See *United States Census 2000*, available at <http://www.census.gov/main/www/cen2000.html>

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

- Communications were difficult, as assistive technology— such as teletypewriters for the deaf and hard of hearing and communication boards for individuals with speech disabilities— were not present in recovery centers; and,
- Critical support service networks were disrupted.



*Hurricane Katrina evacuees at the Houston Astrodome.  
(Photo/Andrea Booher).*

Throughout the crisis created by these storms, the ICC provided advice to Secretary Chertoff and other senior government officials. In fact, on September 23, 2005, Secretary Chertoff announced that he was relying on CRCL to make continued recommendations for assisting special needs evacuees, specifically noting the following accomplishments of the ICC:

- Establishment of an “Incident Management Team” that included senior representatives of nine Federal departments and agencies. This team resolved many complex issues and coordinated with the broader recovery efforts at the Federal, State and local levels to ensure that the many urgent and unique needs of individuals with disabilities were adequately addressed;
- Regular communications with disability service providers in the affected region, both in person and by teleconferences. These contacts were beneficial in assisting members of the disability community and their service providers to communicate issues and needs directly to Federal departments and agencies responsible for the recovery effort;
- Facilitation of the supply of critical equipment to the affected region, including mobility aids such as wheelchairs, crutches and walkers, medical supplies, hearing aids and hearing assistive technologies;
- Partnership with the United States Department of Health and Human Services’ (HHS) Centers for Medicaid and Medicare Systems to issue guidance stating that pharmacies should honor out-of-state Medicaid cards. This allowed people to purchase necessary medications; and,
- Revision of the DHS donations website, [www.swern.gov](http://www.swern.gov), so that donation categories in the searchable database would include durable medical equipment, hearing assistive technology, and communication access/interpreters for the deaf and hard of hearing.

The work of the ICC Incident Management Team continued for several weeks and included critical contributions to the disaster recovery effort, including:

- Placement of a subject matter expert on disability issues at Joint Field Offices in Baton Rouge and Austin;
- Touring shelters to get first-hand perspectives (Houston, Dallas, Tulsa, Louisiana, Dallas, and Mississippi);
- Federal Communications Commission (FCC) reminders to local TV stations regarding the need to provide closed captioning and/or American Sign Language interpretations during emergency programming;
- Coordination with teams of Disability Program Navigators (DPNs), funded by the United States Department of Labor's Employment and Training Administration and Office of Disability Employment Policy, and the Social Security Administration (SSA). These DPNs were deployed to Mississippi and Louisiana;
- Collaboration with the United States Department of Transportation's (DOT) Federal Transit Administration to address the lack of accessible transportation in the region;
- Collaboration with the DOJ Civil Rights Division, the Department of Housing and Urban Development (HUD) Office of Fair Housing and Equal Opportunity, and the United States Access Board in setting technical specifications for the Federal Emergency Management Agency's (FEMA) purchase of accessible trailers for use by displaced people with disabilities;
- Coordination with officials from the Health and Human Services Administration on Developmental Disabilities, who traveled to the region to assist people with disabilities; and,
- Facilitation of meetings between DOT representatives and disability advocates in Houston to evaluate the difficulties people with disabilities encounter when navigating disaster assistance and obtaining benefits.



*Tanisha Blevin, 5, holds the hand of fellow Hurricane Katrina victim Nita LaGarde, 105, as they are evacuated from the Convention Center in New Orleans on September 3, 2005. (AP Photo/Eric Gay)*

Throughout 2006, CRCL and the ICC have made important contributions to the reforms being made to our Nation's response and recovery system. These contributions include:

- **JFO SOP (Joint Field Office Standard Operating Procedure) Liaison Position.** The JFO SOP Annex now directs CRCL to assign liaison staff to the JFO to provide guidance and policy advice on issues relating to people with disabilities and ethnic and religious communities. Therefore, in future disasters, a representative of CRCL will be automatically deployed to the staff of the JFO.
- **Nationwide Plan Review – Emergency Operations Plans.** The DHS Preparedness Directorate sought the expertise of CRCL for the “special needs” component of the first Nationwide Plan Review. In response, CRCL secured disability subject matter experts from both non-government organizations and Federal agencies to review selected Emergency Operations Plans for the purpose of assessing the level to which State and urban areas are taking actions to address requirements associated with integrating people with disabilities into the planning process. CRCL submitted its findings to the Preparedness Directorate for inclusion in the Nationwide Plan Review Phase II report that was submitted to the President and Congress in June 2006. The Nationwide Plan Review will serve as a mechanism at all levels of government to improve our Nation's response and recovery systems.
- **Collaboration with American Red Cross, Salvation Army, and other NGOs.** CRCL is collaborating with the American Red Cross (ARC) on several initiatives relating to people with disabilities. Such initiatives include the development of new shelter operating procedures that better serve people with disabilities, and the development of training for ARC staff and volunteers to strengthen ARC's ability to serve people with disabilities during disasters. CRCL is also collaborating with the Salvation Army USA in the development of a simple yet innovative program entitled *Planning Together* to assist individuals with disabilities and senior citizens with personal preparedness efforts. This grassroots concept has the potential of reaching many people who may not be receptive to traditional outreach methods such as advertisement campaigns, web-based information, or community meetings.
- **Emergency Support Function (ESF) #6 Mass Care.** CRCL is actively engaged with FEMA ESF 6 support agencies for pre-event planning and relationship building to ensure that disability populations are considered in the planning process for Mass Care, Human Services, and Temporary Housing. CRCL is collaborating with FEMA, ARC, HHS and HUD on various related projects that support this effort.
- **Target Capabilities – Sheltering.** CRCL has provided input and guidance in the development of the sheltering portion of the Mass Care Capability within the Target Capabilities List that accompanies the National Preparedness Goal to ensure the inclusion of appropriate language regarding people with disabilities. In addition, CRCL is working with HHS, State and local government representatives, ARC, and disability advocacy groups to define the parameters of a new level of sheltering. This Functional and

Medical Support Sheltering Capability fulfills needs unmet by the general population shelter, but not to the level of acute care offered in a medical shelter.

- **Working Conference on Emergency Management and Individuals with Disabilities and the Elderly.** DHS and HHS jointly sponsored a three-day conference on June 28-30, 2006, that brought together governor-appointed State delegations of emergency management officials and key disability and aging experts to work toward integration of efforts within their jurisdiction's emergency management framework; to facilitate cooperative planning within each FEMA region; and to identify and institute measurable outcomes and systems for tracking results.
- **Exercises.** CRCL worked with the DHS Preparedness Directorate's Office of Grants and Training, on the Top Officials Exercise (TOPOFF 4) development to ensure the inclusion of disability issues in planning, play, and execution of the exercise. Moreover, we provided disability subject matter expertise during four FEMA Hurricane Preparedness Exercises designed to assist Federal agencies, States, and territories with their preparation for the 2006 hurricane season. Finally, CRCL staff participated in a senior level pandemic influenza tabletop exercise to determine strengths and gaps in the Nation's preparedness efforts.
- **Conferences, Meetings, and Presentations.** Part of CRCL's responsibility is to increase public awareness about these issues among emergency managers and the disability community. Both have responsibilities for improving the system and for avoiding disasters in the future. CRCL participated in and/or presented at national conferences, forums, and meetings including, but not limited to:
  - National Preparedness Month, Tulsa Citizen Corps, Tulsa, Oklahoma, September 2005;
  - *Accessible Emergency Notification and Communication: State of the Science Conference*, Gallaudet University, November 2005;
  - *We Can Do Better: Promising Practices for Protecting Older Persons in Disasters*, AARP Brickfield Center, December 2005;
  - *Considerations in Emergency Preparedness: A Two-Track Conference*, Columbia University, National Center for Disaster Preparedness, December 2005;
  - Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities Meetings, November 2005, and July 2006;
  - National Emergency Management Agency (NEMA) Mid-Year Conference, Alexandria, Virginia, February 2006;
  - National Hurricane Conference 2006, Orlando, Florida, April 2006;
  - National Voluntary Organizations Active in Disaster Annual Conference, Raleigh, North Carolina, May 2006;
  - National Citizen Corps Annual Meeting, Washington, D.C., June 2006;
  - Alabama/Mississippi Hurricane Conference 2006, Mobile, Alabama, July 2006; and,
  - *Tribal Leaders' Conference on Homeland Security and Domestic Preparedness*, Santa Fe, New Mexico, August 2006.

CRCL and its partners in the ICC have developed a “Disability Preparedness Resource Center” located at [www.disabilitypreparedness.gov](http://www.disabilitypreparedness.gov). This website serves as a repository of information and resources relating to individuals with disabilities in emergency preparedness. Resource Center topics include: personal preparedness; information for emergency managers and first responders; information for service and care providers; and information on individuals and community involvement. The Resource Center includes more depth on many of the topics outlined in this report.

### *Section 508 Compliance: Accessibility of Electronic and Information Technology*

Section 508 of the Rehabilitation Act of 1973,<sup>30</sup> as amended, requires the Federal government to ensure that its information and data are accessible to persons with disabilities. DHS is committed to ensuring that the electronic and information technology (EIT) it develops, procures, maintains, and uses is accessible to DHS employees and consumers with disabilities. This legislation affects the full range of EIT addressed by the Clinger-Cohen Act of 1996.<sup>31</sup>

The Officer for CRCL and the DHS Chief Information Officer (CIO) are working together to fully implement and enforce the provisions of Section 508 throughout the Department. The two offices worked in concert to establish a Department-wide Section 508 program.

In April 2005, DHS created the Section 508 Program Management Office, now the DHS Office on Accessible Systems and Technology (OAST). The Director of OAST is part of the senior leadership teams for both the CIO and CRCL. DHS’s Section 508 efforts have focused on assembling the team, creating appropriate policy, and implementing appropriate controls at key “gatekeeper” information technology (IT) checkpoints, including enterprise architecture, acquisition, web, and commercial/government off-the-shelf software selection/ deployment. Additionally, the program has advocated for improved EIT accessibility through inclusion in existing and new EIT projects to provide subject matter expertise and education. Some of the major accomplishments of the Section 508 program include:

- **Developing and implementing Section 508 Management Directive.** Developed and adopted the Section 508 Program Management Office (PMO) and Electronic and Information Technology Accessibility Management Directive (Section 508 MD), which identifies the roles and responsibilities of all Section 508 stakeholders across DHS. The Section 508 MD was adopted in October 2005.
- **Developing and implementing the Section 508 review criteria and associated educational/instructional materials for the Enterprise Architecture Center of Excellence (EACOE).** To date, seven of 32 reviews resulted in significant changes related to Section 508 compliance.
- **Developing Section 508 acquisition form.** Developed a process and associated form to document Section 508 compliance for acquisitions of EIT to supplement the previously

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<sup>30</sup> 29 U.S.C. § 794d.

<sup>31</sup> 40 U.S.C. § 11101 (6).

approved Management Directive. Final implementation of the process is expected to take place during Fiscal Year 2007. Implemented the General Services Administration (GSA)-developed Buy Accessible Wizard expert system to facilitate accurate Section 508 analysis for EIT purchases and systems.

- **Producing guidance documents for Web and software project managers and testers to determine the Section 508 compliance of deliverables.** Utilized the guidance materials to improve Section 508 compliance of projects such as: DHS Disaster Help, DHS Online, EEO Eagle, www.fema.gov, www.dhs.gov, CBP's Automated Commercial Environment, and the DHS Learning Management System Advanced Distributed Learning via advocacy and technical assistance efforts.
- **Establishing a common/government off the shelf (COTS/GOTS) software testing lab.** Began utilizing the previously mentioned software testing guidance to evaluate Section 508 compliance for new software products destined for DHS workstations, including Word Queue, and AccRepair (a Web assessment and remediation tool). These evaluations are done in concert with existing and mandatory image and security testing requirements.
- **Developed and implemented an outreach and awareness program. Supporting all efforts.** One thousand fourteen DHS employees were trained on one or more of the following topics: Introduction to Section 508; Section 508 Coordinator Roles & Responsibilities; How to Use the DHS Determinations and Findings Form; How to Create Accessible Web Content; Using Job Access with Speech (JAWS) as a Testing Tool, Creating Accessible Documents using Adobe 7.0 and Common Look (a plug-in for making forms accessible), and Evaluating Web Accessibility Using AccRepair.

#### *Providing Equal Employment Opportunities to Persons with Disabilities*

In addition to CRCL's work to ensure that the special needs and talents of people with disabilities in the emergency preparedness effort is a national priority, we are working diligently to provide equal employment opportunities to all persons, including those with disabilities. In July 2005, Secretary Chertoff acknowledged the progress DHS has made in removing barriers to employment of persons with disabilities and personally committed the Department to fulfilling the goal of fully recognizing and utilizing their skills and abilities.

All of this work has yielded concrete results. Since the foundation was laid for equal opportunity, the results have been dramatic, particularly for DHS Headquarters. CRCL witnessed a 248 percent increase in employment of people with disabilities at DHS Headquarters since this initiative began in February 2004. Consequently, people with disabilities comprise nearly six percent of the headquarters workforce.

The Headquarters initiative served as a catalyst for similar initiatives in the component agencies. The Federal Law Enforcement Training Center (FLETC) and the United States Secret Service (USSS) also realized impressive net changes in the employment of individuals with disabilities. Further, DHS Headquarters, FEMA, FLETC, and USCG exceeded the government-wide



participation rate for the employment of people with disabilities at the GS 13, 14 and 15 grade levels. DHS Headquarters also distinguished itself at the SES level with a 9.09 percent participation rate for employees with disabilities compared to the government-wide and DHS-wide participation rate of 3.93 percent, and 2.66 percent, respectively.

This represents tremendous progress from the beginning days of DHS, and is also significant for an agency that has such a large segment of law enforcement and military positions. These results are not happenstance. They have been achieved because DHS has addressed the issue of employing persons with disabilities on a variety of fronts, including managerial training, intern recruitment and hiring, mentoring activities, outreach to veterans, computer electronic workplace accommodation, publicizing the program, and leadership support, to name a few.

For the past two years, CRCL has persistently encouraged people with disabilities to seek employment with CRCL, and, more importantly, encouraged DHS managers to seriously consider applications from people with disabilities. During this time, more than 7,300 managers in DHS's offices in Washington, D.C., and around the country have completed training sessions on this initiative. The training consisted of disability awareness, recruiting, hiring, promoting, and accommodating employees with disabilities. CRCL also provided additional training on reasonable accommodation procedures through a web-cast made available to all managers and employees.

To enhance the skills of the component specialists with responsibilities for recruiting and placing employees with disabilities, CRCL has provided guidance and direction through bi-weekly meetings and training. Twenty-seven component employees participated in *Windmills Attitudinal Train the Trainers* program. The *Windmills* program is designed to increase awareness of the role that attitudes play in the employment of people with disabilities. As a result, CBP, USCIS and the United States Coast Guard (USCG) have incorporated elements of the program into their training programs. Experts in the employment of individuals with disabilities from the Office of Personnel Management (OPM), the EEOC and State rehabilitation offices were also brought in to discuss best practices and resources with component staffs.

Remembering those who have given so much for this Nation, DHS has made tremendous strides in reaching out to disabled veterans, particularly those returning from Afghanistan and Iraq. DHS components provided job announcements directly to disabled veterans through the local Veteran's Affairs offices and vocational rehabilitation centers, military installations, and veteran's organizations, such as the Disabled American Veterans, Paralyzed Veterans of America, Veterans of Foreign Wars, Military Order of the Purple Heart, as well as organizations serving minority and women veterans. DHS components participated in over 100 job fairs nationwide targeting veterans, including the Non-Commissioned Officer's Association, USO of Metropolitan Washington, Military Stars Career Expo, and Fort Hood Army Career & Alumni Program.

DHS is among the first Federal agencies to participate in the Department of Defense's Operation Warfighter (OWF), a temporary assignment program placing severely wounded service members with Federal agencies. This new and exciting Department of Defense (DOD) internship program was designed to assign temporarily wounded service members currently in the military and undergoing rehabilitative services at Walter Reed Army Hospital, to Federal agencies within the

greater Washington, D.C., area. The program provides wounded service members— many returning from Iraq and Afghanistan— with opportunities, and provides DHS with an important new pipeline of disabled veterans with skills, talents, and abilities needed to support its mission. Since its inception, DHS has placed over 25 OWFs in components.

### Security Screening

Persons with disabilities represent a significant portion of the traveling public and yet, prior to the creation of TSA, there were no specific or consistent procedures for screening members of this community. Not surprisingly, various nationwide procedures for screening persons with disabilities were sometimes ineffective, inconsistent and insensitive. In March 2002, TSA established a program for the screening of persons with disabilities and their associated equipment, mobility aids, and devices. The program covers all categories of disabilities (mobility, hearing, visual, and hidden). As part of this program, TSA established a coalition of over 50 disability-related groups and organizations to help TSA understand the concerns of persons with disabilities. To date, all 45,000 checkpoint security screeners have been trained in the security screening procedures designed specifically to meet TSA's security mission while integrating the specific needs of persons with disabilities and those with medical conditions.

Program goals include preventing: security vulnerabilities; adverse medical consequences; civil rights allegations/cases; costly litigation; congressional inquiries; and, citizen complaints/inquiries. Current initiatives include: the production of an illustrative screener training disability video; computer-based disability training; website tips for persons with disabilities; customer outreach products (Z-Card) for ticket counters, travel agencies, and security checkpoints; customer satisfaction survey related to the screening of persons with disabilities; and, coordination with DOD to assist with injured members of the military coming through security checkpoints nationwide.

Under this latter initiative, TSA will participate in efforts by DOD to establish and staff an operations center designed to assist injured troops and their families. The Military Severely Injured Joint Support Operations Center (MSIJSOC), which will be available to assist service members and their families 24 hours a day, seven days a week, was officially opened on February 1, 2005, by Paul Wolfowitz, former Deputy Secretary of Defense. A team of six TSA liaison staff will represent the agency at the DOD center, answering questions from service personnel and their families about how to facilitate travel through the commercial aviation system. The TSA representatives are on hand to explain applicable TSA security procedures for severely injured service members and to otherwise assist our military heroes. More specifically, once a caseworker receives a call from severely injured military personnel or their family members, the MSIJSOC coordinates with the TSA liaison at the center, and together they coordinate the trip through the airport with the Federal Security Director (FSD) and his/her staff. TSA then ensures the soldier is escorted from the curb, through the checkpoint (after screening), and onto the plane. The goal is to ensure that each severely injured service man or woman receives sensitive, dignified, respectful, and appropriate screening to avoid any adverse medical consequences or humiliation, and for their families to know we are using the utmost care. Ongoing initiatives include: development and maintenance of training curriculum for basic, remedial, and recurrent screener training; research of new disability equipment and devices going through checkpoints; research and identification of security vulnerabilities associated with

disability-related equipment and devices (prosthetic devices, casts, support braces, oxygen, augmentation devices, etc.); development of checkpoint standard operating procedures for persons with disabilities; support of events where large groups of persons with disabilities travel through checkpoints (special and deaf Olympics, disability conferences, prosthetic devices kids camps, etc.); development and conduct of targeted disability training to correct systemic, geographical, and disability problems; and, partnering with stakeholders (airlines, airports, disability community, disability equipment manufacturers, and government agencies) to facilitate and solve disability problems related to TSA security and customer service goals.

**B. Engagement with American Arab, Muslim, Sikh, South Asian and Other Ethnic and Religious Communities**

DHS's senior leadership believes it is wise to invest time communicating with the public, providing information, and hearing and responding to concerns. CRCL is convinced its first function – helping to shape policy in ways mindful of the United States Constitution and Federal civil rights laws – is much more effective when it listens to the reactions and concerns of the American people. Good policy and good communications with the public are inherently connected.

Specifically, CRCL strongly believes public outreach and engagement are integral parts of an effective homeland security program. Both its enabling statute, 6 U.S.C. § 345, as well as our open system of government require CRCL to respond to inquiries; educate and share information on our programs and policies; and provide a platform for the community to air grievances, thoughts, and opinions. CRCL does this in a variety of ways, including: developing educational materials; responding to correspondence; reaching out to community groups directly; and making senior Department officials available to answer questions and provide information.

In this regard, CRCL officials have sustained dialogues with numerous American communities. For example, CRCL representatives meet with leaders of the disability community to discuss emergency preparedness, particularly in the context of natural disasters. CRCL personnel also meet with immigration advocacy groups, concerned with border security and naturalization policies. Representatives from the Arab American and Muslim American communities regularly meet with CRCL leaders to discuss ways to protect the homeland while maintaining civil rights in a post September 11 context. CRCL staff have also met several times with leaders of the Amish community, who are concerned about increasing requirements for photo identification, as being photographed violates Amish beliefs.

Building and maintaining open lines of communications with the American Arab, Muslim, Sikh, and South Asian communities continues to be a priority for CRCL. In addition to meetings in Washington, D.C., CRCL now actively leads or participates in regularly-scheduled meetings with leaders from these communities in Houston, Los Angeles, Detroit, Chicago, and Buffalo. Additionally, CRCL officials travel nationwide to attend conferences, give talks, and meet with members of local community groups. Beyond cementing relationships, these meetings have proven extremely valuable in surfacing issues of concern, and highlighting ways government agencies and the American Arab, Muslim, Sikh, and South Asian communities can work together.

These interactions afford an opportunity to demonstrate the steps CRCL is taking to protect the civil rights and civil liberties of all Americans, including Arab, Muslim, Sikh, and South Asian Americans. Many of the issues CRCL addresses, such as the operation of watch lists and allegations of racial profiling, are of prime importance to these communities. CRCL also listens to concerns and discusses possible solutions to perceived problems. During the past year, based largely on discussions during these gatherings, CRCL has facilitated meetings with senior Department officials and community leaders to discuss specific issues of concern, such as: ways to improve protocols for border encounters; aviation watch list redress procedures; improving immigration services; and the National Security Entry Exit Registration System (NSEERS) special registration program.



*Daniel W. Sutherland, Officer for Civil Rights and Civil Liberties, speaks at an event hosted by the American-Arab Anti-Discrimination Committee*

Based on recommendations from these communities, CRCL has also worked to improve the cultural awareness of Department personnel. The Office widely distributed its training posters on common types of Muslim and Sikh American head coverings, developed a training video on basic aspects of Arab and Muslim cultures, and recently completed a poster on Sikh articles of faith. CRCL's experience has shown that these training products have helped DHS employees do their jobs better and further the DHS goals to protect America while preserving our freedom. CRCL has found that when officers and agents engage in communication with community members, they obtain cultural, religious, and linguistic insights that aid both in crime prevention and effective policing.

Meetings and community discussions are of course important, but they are only first steps. For DHS to succeed in its mission, we need to establish relationships with all Americans, including Arab, Muslim, Sikh, and South Asian Americans. CRCL has taken a significant step in this regard by establishing an Incident Management Team, which creates a framework for United States Government agencies to engage with community leaders in the hours and days after an incident of particular interest to the Arab, Muslim, Sikh, and South Asian American communities. Senior government officials and community leaders have signed on to this program, which was activated in the hours after the London arrests were announced in August 2006. CRCL is hopeful that the Incident Management Team will help government officials and community leaders work together to exchange information and resolve issues that arise in the aftermath of any future terrorist incident.

While there is still undoubtedly room for improvement, CRCL is enthusiastic about the impact that these relationships have already had on the Department's work and its perspective on security issues. In turn, these communities have been extremely supportive of CRCL's work.

More explicitly, CRCL officials have been publicly recognized for their work with and on behalf of these communities. In June 2006, Officer for CRCL, Daniel W. Sutherland, received the American-Arab Anti-Discrimination Committee's Annual "Friend in Government Award." Also in June 2006, Shaarik H. Zafar, a CRCL Senior Policy Adviser received the North American South Asian Bar Association's "Access to Justice Award."

### **C. Immigration Policy**

On August 11, 2004, DHS published a *Federal Register* notice expanding its authority to apply Expedited Removal (ER) proceedings to certain aliens in the United States.<sup>32</sup> That expansion of ER applies to certain aliens who are apprehended within 100 air miles of the border and within 14 days of illegal entry. Following delivery of comprehensive training for border patrol agents and supervisors, DHS began using the expanded authority in the Tucson and Laredo border patrol sectors in September 2004. Since that time, the Department has continued to expand the use of ER.

CRCL and the then-directorate of Border and Transportation Security (BTS) informed immigration, civil rights, and civil liberties groups of DHS plans to expand the use of ER, the reasons for such expansion, and the safeguards to ensure that the expanded authority is used properly. CRCL and BTS also informed the groups that DHS would monitor the new ER authority through on-site reviews, including monitoring by CRCL. DHS relied on CRCL's leadership to review and ensure compliance with safeguards that afford asylum seekers the opportunity to state their fears and be granted access to USCIS asylum officers.

CRCL has worked closely with DHS components in a number of areas. For example, CRCL recommended the formation of an ER working group, an inter-agency group with representatives of the various components that have a role in ER, including USCIS, ICE Detention and Removal Office (DRO), CBP, and CRCL. While in operation, the group provided oversight of ER at the headquarters level to ensure that ER is properly implemented in the field and that asylum-seekers are not adversely impacted. CRCL brought the immigration, civil rights, and civil liberties groups' concerns and questions to the ER Working Group.

The goal of monitoring the expedited removal process is to ascertain whether the training provided is being followed and carried out fully in the field. In particular, the monitoring focused on whether border patrol agents are following requirements and processes related to the referral to credible fear interviews. CBP invited CRCL to observe the expedited removal process, review relevant documents, and survey border patrol agents and supervisors about the process.

In March 2005, CRCL convened a monitoring team from among the ER working group representatives and initiated monitoring of the expedited removal authority at the Border Patrol's Tucson Sector. The team used a monitoring instrument to record observations and facilitate discussions among team members. It contained questions drawn from the training developed for

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<sup>32</sup> See *Federal Register*, Vo. 69 No. 154, 48877-48881, August 11, 2004.

Border Patrol agents and supervisors, including questions related to credible fear interview referral, communicating with non-English speakers, and supervisory review and approval.

CRCL submitted a preliminary report with observations and recommendations to CBP leadership and the ER working group. A final report was submitted to the Under Secretary of BTS. The report contained information on what steps CBP was taking to implement recommendations and improve processing. The report also encouraged CBP to implement mechanisms for periodic monitoring and self-assessment.

Similar to the review conducted in Tucson, a team composed of CRCL and other members of the ER Working Group reviewed the Laredo Sector in June 2005. They made similar findings and again forwarded recommendations to the leadership of the immigration components within DHS.

Additionally, CRCL contributed to the curriculum that CBP Office of Border Patrol developed to train border patrol agents and supervisors. The training includes detailed instructions on how to carry out their authority and to whom it can and cannot be applied. The training enables agents to recognize when it is necessary to refer an alien to a USCIS asylum officer for a credible fear interview. It also includes detailed instruction on required safeguards such as credible fear and asylum, use of interpreters for non-English speakers, consular notification, and supervisory review. USCIS and the DHS Office of General Counsel also contributed to the development of the training. Only agents who attend the course are authorized to process aliens for expedited removal. CRCL observed the delivery of training to a class of border patrol agents and supervisors.

CRCL remains involved on a number of immigration law and policy issues within the Department. The Office's work on ER illustrates the kind of assistance the Office provides to DHS components.

#### ***D. Civil Liberties University***

Based on discussions held with Secretary Chertoff and other DHS senior leaders, consultations with the DHS Training Leaders Council, and a review of complaints received by DHS components, CRCL concluded that high quality, Department-wide training on issues at the intersection of homeland security and civil rights and civil liberties would be valuable to our colleagues across the Department in a number of competency areas relating to civil rights and civil liberties. Such training would provide DHS law enforcement officers with the skills necessary to perform their jobs more safely and effectively. Moreover, high quality, in-service training would make it easier for DHS to effectively and efficiently implement important policy changes protecting civil liberties.

To provide such training within DHS, CRCL is meeting three major challenges. First, while law enforcement personnel have always been trained on specific constitutional standards relating to law enforcement activities, the integration of civil rights and civil liberties protections into the core mission of DHS requires DHS personnel to attain a heightened awareness of broader civil liberties issues as they affect daily operations, planning, and policy. The Department has become a leader in this law enforcement arena: DHS is modifying existing training and

developing new training from the ground up to inculcate awareness of and respect for civil liberties in the DHS culture. Second, as DHS is geographically dispersed and involved in diverse core missions involving more than 180,000 full-time Federal employees, and tens of thousands of contract personnel. Similarly, centralized classroom training is neither practical nor cost effective. Third, the diverse missions of the DHS components pose challenges in identifying common issues of concern and developing common solutions.

To overcome these barriers and to meet this identified need, CRCL developed the “Civil Liberties University” concept. The goal is to provide high-quality training on a range of the most important civil rights and civil liberties topics, and deliver the training in a cost-effective



*DHS Chief Learning Officer, George Tanner, and Daniel W. Sutherland, Officer for Civil Rights and Civil Liberties, speak at an event introducing a DHS educational poster on how to screen those of the Sikh faith who carry a kirpan.*

manner to the widest possible DHS audience via advanced distributed learning (ADL) methods. These include both computer-based and web-based training, as well as the production of training aids. This takes advantage of the existing ADL infrastructure within the DHS components. Technical subject matter expertise for curriculum development is provided by the CRCL Office of Chief Counsel, other technical experts within DHS, other government agency personnel, private sector experts, and non-profit organizations, as appropriate. CRCL is leading working groups of subject-matter

experts and partnering with various components to develop the instructional curriculum. CRCL has been assisted by the components’ training and policy offices, through consultation with the Training Leaders Counsel ADL subgroup and the trainers at FLETC. CRCL also works closely with the Department’s new Chief Learning Officer, George Tanner, whose leadership on these issues will be significant in the months and years to come. CRCL has worked closely with component agencies such as ICE and CBP on a number of training projects.

These training relationships illustrate the link between training and DHS’s goal of protecting civil rights and civil liberties. Both CBP and ICE have implemented sound policies regarding the subject matter areas to be trained. CRCL and operational leaders acknowledge that without high quality and readily available training, there is an “implementation gap” between the policy and the practices followed by law enforcement officers in the field. Officers must cope with complex, daily law enforcement decisions, while keeping up with an ever-increasing list of missions and policies. High quality, accessible training is required to make civil rights and civil liberties an integral element of an officer’s daily decision-making.

The Civil Liberties University “library” includes products such as the following:

- In November 2004, CRCL repurposed a CD entitled “The First Three to Five Seconds” in cooperation with the DOJ’s Community Relations Service. The instructional curriculum is a 12-minute web and computer-based training video introducing law enforcement officers to basic principles of the Arab American and Muslim American cultures. The goal of the video is to assist these officers in working safely and effectively with members of these communities. The training has been deployed to field personnel across DHS via CD-ROM, Internet, and Intranet delivery systems.<sup>33</sup>
- Training to commemorate Constitution Day in 2005 and 2006. In 2006, CRCL and the DHS Chief Learning Officer encouraged all DHS employees to take a 25-minute tutorial that reminds employees about the historical context in which the United States Constitution was written, its basic framework, a description of the Bill of Rights, and inspiring quotes from significant American leaders on the importance of the U.S. Constitution;
- Two posters that provide guidance to DHS personnel on how to screen and, if necessary, search individuals who wear common Muslim and Sikh head coverings;<sup>34</sup>
- Online training that emphasizes certain elements of the National Detention Standards in conjunction with the ICE DRO;
- An educational poster on how to screen those of the Sikh faith who carry a *kirpan*, or ceremonial religious dagger;<sup>35</sup>
- An hour-long training session for DHS personnel who interact with Arab Americans, people from the Arab world, Muslim Americans, and people from the Muslim world. The training includes insights from four national and international experts – an Assistant United States Attorney who is a practicing Muslim, a member of the National Security Council who is a practicing Muslim, an Islamic studies scholar, and a civil rights attorney who advocates on issues of concern to Arab American and Muslim American communities; and,
- Finally, CRCL has funded several TSA projects dealing with appropriate airport screening of individuals with disabilities. With CRCL support, TSA developed an in-depth training video for screeners who interact with travelers with disabilities. The



<sup>33</sup> This CD was developed by the U.S. DOJ’s Community Relations Service. The Director of the Community Relations Service, Sharee Freeman, graciously allowed DHS to repackage and distribute the CD to its thousands of employees.

<sup>34</sup> See Appendix C, DHS Posters on Common Muslim and Sikh head coverings.

<sup>35</sup> See Appendix D, DHS Kirpan poster.



training has been extremely helpful for screeners and has generated strong support from the disability community. TSA also developed a “Z card” of basic instructions for screeners as they interact with travelers with disabilities. The pocket-sized card provides quick reference points for screeners who interact with travelers in wheelchairs, travelers with service animals, and travelers with various complex medical conditions. The “Z cards” were also developed with CRCL support.

The goal of all training produced by the Civil Liberties University initiative is to build a DHS culture that respects civil rights and civil liberties. A highly professional law enforcement agency with a reputation for respecting individual rights and basic human dignity will engender public cooperation and respect to ensure smooth and safe interactions.

### **E. Law Enforcement Issues -- Racial Profiling**

On February 27, 2001, in his first State of the Union address, President Bush stated that racial profiling “is wrong and we will end it in America.”<sup>36</sup> On June 16, 2003, DOJ issued the guidance President Bush had called for— *Guidance Regarding the Use of Race By Federal Law Enforcement Agencies* (“DOJ Guidance”).<sup>37</sup> The Guidance is important as it defines the concept of “racial profiling,” directs law enforcement officers not to engage in racial profiling, and provides practical instructions on how to avoid doing so. The Guidance is illustrated through 14 hypothetical fact patterns that officers can easily understand. The Guidance also establishes binding Federal policy governing the conduct of all Federal law enforcement officers.

On June 17, 2003, DHS adopted the Guidance as DHS policy. On June 1, 2004, former DHS Secretary Ridge, with CRCL assistance and advice, issued a memorandum announcing DHS’s policy on the use of race in law enforcement and national security activities, reiterating the Department’s adherence to the DOJ Guidance and providing a concise statement of DHS policy. The memorandum directed the inclusion of a policy statement in all training manuals “in which the use of race or ethnicity may arise.” The policy states:

*“Racial profiling” concerns the invidious use of race or ethnicity as a criterion in conducting stops, searches and other law enforcement activities. It is premised on the erroneous assumption that any particular individual of one race or ethnicity is more likely to engage in misconduct than any particular individual of another race or ethnicity. DHS explicitly adopts the Department of Justice’s “Guidance Regarding the Use of Race by Federal Law Enforcement Agencies,” issued in June 2003. It is the policy of the Department of Homeland Security to prohibit the consideration of race or ethnicity in our daily law enforcement activities in all but the most exceptional instances, as defined in the DOJ Guidance. DHS personnel may use race or ethnicity only when a compelling governmental interest is present. Rather than relying on race or ethnicity, it is permissible and indeed advisable to consider an individual’s connections to countries that are associated with significant terrorist activity. Of course, race- or*

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<sup>36</sup> President George W. Bush, *Address of the President to the Joint Session of Congress*, February 27, 2001.

<sup>37</sup> *Guidance Regarding the Use of Race by Law Enforcement Agencies*, United States Department of Justice, available at [http://www.usdoj.gov/crt/split/documents/guidance\\_on\\_race.htm](http://www.usdoj.gov/crt/split/documents/guidance_on_race.htm), June 2003.

*ethnicity-based information that is specific to particular suspects or incidents, or ongoing criminal activities, schemes or enterprises, may be considered, as stated in the DOJ Guidance.*

In the wake of the London bombings in July 2005, Secretary Chertoff reaffirmed this commitment to ensure full implementation of the DOJ Guidance. Consequently, CRCL has been tasked with ensuring DHS's full implementation of the DOJ Guidance. In furtherance of this goal, CRCL has worked with the FLETC Legal Training Division to update and strengthen the training provided to initial entry-level law enforcement trainees on this subject. CRCL has also worked to explain the racial profiling guidance to the public. For example, Mr. Sutherland spoke at the National Association of Muslim Lawyers Convention on the topic, along with attorneys and academics who explored other angles of the racial profiling issue.

#### **F. Central Redress**

DHS personnel interact with the public millions of times each day. In the course of those interactions, particularly in airports and at border crossings, misunderstandings, errors, disagreements, and conflicts sometimes occur. Such situations may arise when a DHS employee directs a member of the public to some form of secondary screening or search, or even detains the individual, as a result of information contained in a list or database, or through random selection. Sometimes the member of the public believes that the information contained in the list or database is factually incorrect, that there has been a misidentification, or that there is no proper basis for the information to be in the system. In addition, some individuals believe they are the victims of racial, ethnic, or religious profiling. In some cases, these matters have received the attention of the news media, Members of Congress and the courts. CRCL receives many of these complaints pursuant to its authority under 6 U.S.C. § 345 to review and assess information concerning abuses of civil rights, civil liberties, and racial, ethnic, and religious profiling.

CRCL has been actively involved since the earliest stages in providing advice and recommendations for a centralized redress process. Beginning with Homeland Security Presidential Directive (HSPD) 11, "Comprehensive Terrorist-Related Screening Procedures,"<sup>38</sup> CRCL worked with DHS components and others to draft a proposal to implement a Central Public Redress Process to address the public's screening incident concerns. As originally proposed, this central redress system would coordinate with CRCL and interact with the existing CRCL Case Management System used to process public complaints in this area. Picking up from this effort, CRCL was a member of the working group that recommended the creation of a central redress system as part of Secretary Chertoff's Second-Stage Review, which examined all aspects of DHS structure and function. The Second-Stage Review called for the establishment of a Screening Coordination Office (SCO) with a central redress function.

On January 17, 2006, the Department of State and DHS announced an initiative on "Secure Borders and Open Doors in the Information Age," otherwise known as the Rice-Chertoff Initiative. One part, "Smarter Screening," includes a "One Stop" Redress for Travelers. Its

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<sup>38</sup> HSPD 11, Comprehensive Terrorist-Related Screening Procedures, August 27, 2004, available at <http://www.whitehouse.gov/news/releases/2004/08/20040827-7.html>

purpose is to establish a redress process to address perceived problems in international and domestic traveler pre-screening. Secretary Chertoff made it a goal to establish this process so those with complaints or legitimate issues can resolve them with greater efficiency. CRCL is working to move this initiative forward.

How this redress initiative will operate within an overarching Federal redress process has been a topic of interagency discussion. The White House Privacy and Civil Liberties Oversight Board is coordinating discussion among the relevant Federal agencies engaged in the redress process concerning their relationship with the Federal Bureau of Investigation's (FBI) Terrorist Screening Center (TSC), and other related matters including the intersection between that effort and the Rice-Chertoff Initiative.

While the proposed central redress system is being reviewed, we continue to coordinate responses to these concerns from the public through DHS Components such as TSA, CBP, and ICE, as well as other entities such as the Department of State, the DOJ's Office of Inspector General, and the TSC.

#### **G. Review of DHS's Regulatory Efforts**

CRCL is working with the DHS Office of General Counsel to review proposed regulations to ensure that new rules do not adversely impact civil rights or civil liberties. CRCL has reviewed and commented on a number of regulatory proposals.

#### **H. Subject Matter Opinions**

In addition to the many issues discussed already, CRCL provides DHS with advice concerning a wide variety of issues, including proposed laws, executive orders and directives, regulations, procedures, programs, and congressional testimony of senior DHS officials.

## COMPLAINT INVESTIGATIONS

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CRCL investigates complaints under 6 U.S.C. § 345, which requires the Officer for CRCL to:

- Review and assess information alleging abuses of civil rights, civil liberties, and racial, ethnic, or religious profiling, 6 U.S.C. § 345(a)(1);
- Oversee compliance with constitutional, statutory, regulatory, policy, and other requirements relating to the civil rights and civil liberties of individuals affected by the programs and activities of the Department, 6 U.S.C. § 345(a)(4); and,
- Investigate complaints and information indicating possible abuses of civil rights or civil liberties, unless the Inspector General of the Department determines that any such complaint or information should be investigated by the Inspector General, 6 U.S.C. § 345(a)(6).

CRCL reviews matters that arise under a variety of Federal civil rights statutes such as Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, and Title IX of the Education Amendments of 1972. To carry out this mission, CRCL has established a process for receiving, assigning, investigating, referring, and concluding reviews of allegations falling under these statutes.<sup>39</sup>

### ***A. Department of Homeland Security Management Directive 3500***

In close cooperation with the Office of the Inspector General (IG), the Office of General Counsel, and senior DHS leadership, CRCL developed a Management Directive that establishes a process for handling allegations of civil rights and civil liberties abuses, and racial, ethnic, or religious profiling. Since this Management Directive was issued, CRCL has created a “Review and Compliance” unit dedicated to investigating and resolving these complaints.

Complaints filed with CRCL under 6 U.S.C. § 345 are entered into an internal computer-based tracking system. CRCL has provided this tracking system to the IG, and all new complaints that are filed with CRCL are reviewed by the IG. All complaints received by CRCL are reviewed by the Inspector General for allegations of abuse that may reflect systemic concerns of fraud, waste, or abuse, or criminal violations. The IG determines whether to pursue the allegations within five days of notification by CRCL; if the IG declines to investigate the allegation is referred back to CRCL. CRCL then either retains the complaint for investigation – that is, assigns it within the Review and Compliance unit – or CRCL refers the investigation to the appropriate DHS component for review and a report back to CRCL.

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<sup>39</sup> CRCL’s role in many of these investigations is different than the role of other Federal civil rights agencies that investigate civil rights complaints. Most federal civil rights agencies investigate complaints filed against entities outside of the Federal government. For example, the Department of Education Office for Civil Rights often investigates complaints against a public school district or a college. By contrast, CRCL is responsible for investigating complaints filed *against its own agency*. For example, CRCL may receive a letter alleging that a DHS law enforcement officer subjected an individual to increased scrutiny because of her perceived race, ethnicity or religion. Because CRCL is within the same agency of government, it advises the complainant that CRCL’s role is to investigate the matter from inside the agency and make recommendations to the agency’s leadership regarding any actions that should be taken as a result of the allegations.

Given the small size of the CRCL staff and that DHS Components have existing mechanisms for handling certain complaints, approximately two-thirds of complaints received by CRCL are referred to the Components for review. The Components are asked to provide a report to CRCL on each review or investigation.

**B. Other DHS Components that Receive Complaints from the Public**

DHS's methods for receiving, investigating, and resolving complaints are varied. In addition to the Office for Civil Rights and Civil Liberties, more than a dozen different DHS components also receive and attempt to resolve complaints from members of the public. CRCL will work to strengthen these efforts. The following highlights other DHS efforts to address civil rights and civil liberties concerns:

**Office of Inspector General (IG)**

The IG has independent responsibility under the Homeland Security Act to report to Congress on a semi-annual basis. It accepts reports of suspected criminal violations, misconduct, and wasteful activities through a hotline, 1-800-323-8603, an e-mail address, [DHSOIGHOTLINE@dhs.gov](mailto:DHSOIGHOTLINE@dhs.gov), and a mailing address, Department of Homeland Security, Office of Inspector General, Attention: Office of Investigations, 245 Murray Drive, S.W., Building 410, Washington, D.C. 20528. In addition to matters the IG receives directly, it also receives matters from CRCL or by referral from other DHS components.

CRCL and the IG have entered into a Memorandum of Understanding pursuant to which all civil rights, civil liberties, and racial and ethnic profiling matters received by CRCL are in the first instance reviewed by the IG. Within five days, the IG either accepts the matter for review or returns the matter to CRCL.

Most of the civil rights and civil liberties issues sent to the IG concern allegations of excessive force, conditions of detention, and allegations of unprofessional conduct. Upon receipt of these issues, the IG decides whether to retain the matter for investigation, or refer it elsewhere within DHS. For those matters that are referred to DHS Components, CRCL receives a report when matters are referred to the Components so that it can track them or, for more serious matters, elect to review them itself. Those matters originally referred to the IG by CRCL are returned to CRCL for disposition. The IG tracks matters referred back to CRCL or to an internal Component.

**Customs and Border Protection (CBP)**

At CBP, several offices respond to complaints from the public, including those that have some relevance to civil rights and civil liberties. For example, the Office of Field Operations handles complaints primarily through the Customer Satisfaction Unit and the Customs Comment Card. Congress mandated that the United States Customs Service track and compile statistics on the number and types of complaints from the traveling public. On March 15, 1999, the Customer Satisfaction Unit was established to perform this function. This Customer Satisfaction Unit centralized within Customs the processing of complaints from the general public, travelers,

industry, other government agencies, and the United States Congress. The CBP Customer Satisfaction Unit (CSU) developed an automated Complaint/Compliment Tracking System in March 2002. This tracking system allows field offices to input complaint and compliment information, monitor the status of each record, develop reports, and conduct analysis. Examples of the conduct categorized by the CSU in its intake process include, but are not limited to: rude/unprofessional behavior; recurrent examination of a passenger; excessive use of authority; judgmental conduct; secondary examination; allegations of racial profiling; sexual harassment; delay; damage to property; seizure and penalty; inefficiency; refused entry; and, violation of sanctions.

All persons entering the United States at ports of entry are subject to screening by CBP personnel. While most travelers pass through CBP with a brief interview, some are required to undergo a “secondary examination.” Such an examination can range from a single luggage examination up to and possibly including a body search. CBP requires that every person subjected to a secondary examination be provided a stamped, self-addressed comment card. If the information alleges improper conduct such as racial profiling or sexual harassment, the card is forwarded for further review.

#### *Immigration and Customs Enforcement’s (ICE) Office of Professional Responsibility*

The Office of Professional Responsibility (OPR) within ICE has delegated authority to investigate serious misconduct committed by employees of ICE and CBP. In accordance with DHS Management Directive 0810.1, all allegations of criminal and serious administrative misconduct by an employee must be referred to the IG for acceptance or declination of the allegation. Most of the civil rights and civil liberties matters pending at OPR fall into the categories of allegations of excessive use of force, physical abuse, denial of rights, and unlawful/unnecessary detention. The Office of Professional Responsibility has jurisdiction for matters involving both ICE and CBP officials.

#### *Transportation Security Administration (TSA)*

At TSA, several offices handle complaints related to civil rights and civil liberties. The Office of Aviation Operations has responsibility for oversight of operations at 463 airports located throughout the United States. When there is an issue at the airport level, it can be handled in a variety of ways, including raising the matter directly with a customer service representative or a screening supervisor.

The mission of TSA’s Office of Civil Rights and Liberties’ External Compliance Division is to ensure that TSA’s programs, including security screening operations, comply with the applicable constitutional standards, civil rights laws, regulations, Executive Orders, and TSA policies. Among its responsibilities, the division collaborates with different offices within TSA to review and offer civil rights guidance on various programs, procedures, and initiatives. The Division translates vital documents which explain the security screening procedures, changes to those procedures, and the prohibited items list for passengers with limited English proficiency. The division is developing compliance mechanisms to ensure nondiscrimination in TSA’s federally assisted programs or activities. The division receives, reviews, and responds, as appropriate, to complaints from members of the traveling public who believe they have been discriminated

against, harassed, or retaliated against by a TSA employee or program. The complaint process for the traveling public is described on TSA’s website at [www.tsa.gov](http://www.tsa.gov).

Finally, the TSA Office of Redress handles complaints from individuals who believe that they have been incorrectly placed on an aviation watch list, or misidentified with an individual who is on an aviation watch list. The Office of Redress gathers additional information from the individual. Based on the additional information gathered, the Office of Redress is often able to assure the traveler that no further difficulties in traveling should be experienced. The procedures for filing a claim with the Office of Redress are on the agency’s web site, [www.tsa.gov](http://www.tsa.gov).

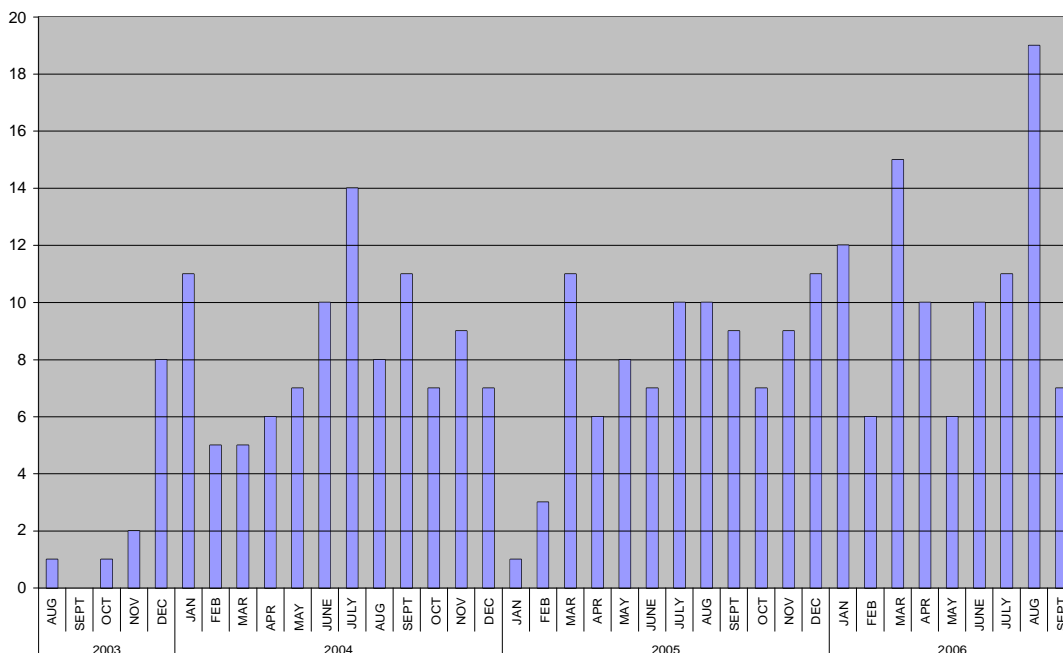
***C. Summary of Complaints Received Under 6 U.S.C. § 345***

As of September 30, 2006, the Office for Civil Rights and Civil Liberties has received 300 complaints under 6 U.S.C. § 345:

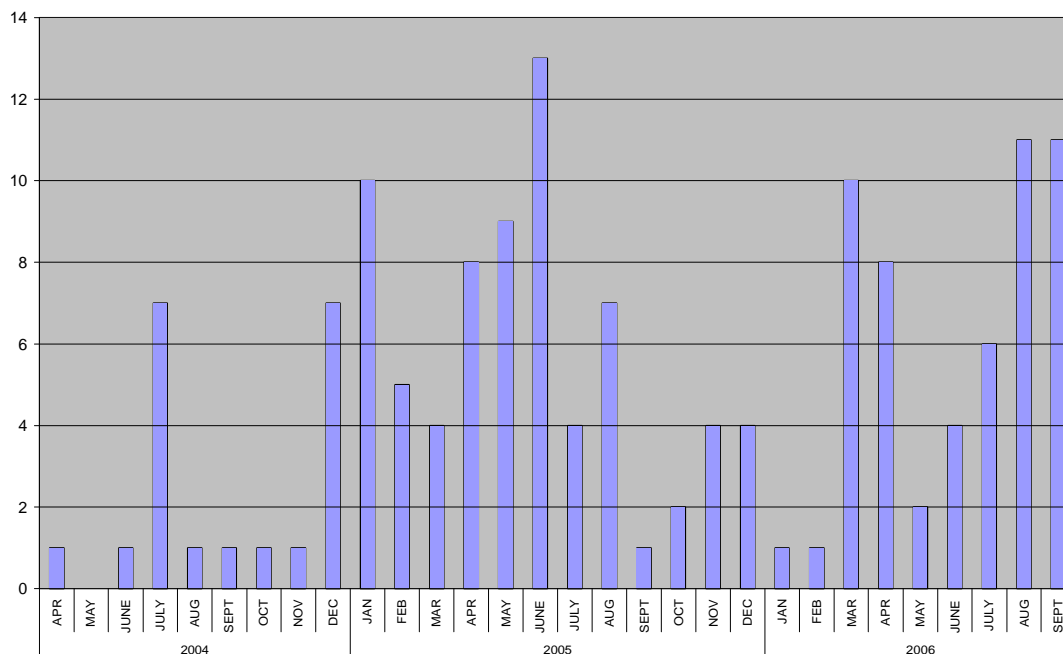
Approximately one-third of the complaints received have been retained -- that is, the staff of CRCL has investigated the complaints. Approximately two-thirds of the complaints have been referred – that is, sent to a Component for investigation.

Of the 300 complaints filed, 145 have been investigated and closed, and 155 complaints remain open, either at CRCL or with a DHS Component.

**CRCL Complaints Opened - August 1, 2003 to September 30, 2006**



**Closed Complaints**



CRCL has received complaints that involve officials or employees, or policies or actions regarding all DHS Components. However, the majority of complaints received involved the Department’s components that have responsibility for immigration and border enforcement. Approximately three-fourths of all complaints involved either CBP or ICE. Just over 10 percent of the complaints involve TSA, and the remainder of complaints involve a variety of other DHS Components.

Approximately 50 percent of all complaints filed with CRCL involve complainants who are Arab, Muslim, Sikh, or South Asian, many of whom are United States citizens or lawful permanent residents of the United States.

The most common allegations in the complaints are: profiling on the basis of national origin, race, ethnicity, and religion; conditions of detention; abuse of authority by DHS personnel; discrimination based on national origin and race; allegations related to government watch lists, including aviation watch lists; and, disability-based discrimination.

***D. Complaints Resolved by CRCL***

***Religious Accommodation for a DHS Employee***

A Muslim employee of a DHS Component asked for an accommodation to that agency’s personal appearance standard. The individual sought an accommodation to wear a beard of three to four inches in length, because of his religious convictions. The Component originally denied the request, and issued a notice of disciplinary action. CRCL worked with the Component to provide all of the relevant legal and policy guidance on such issues. In addition, CRCL brought



an expert from another Federal agency to the component to provide them a full explanation of the background for such requests for accommodation. The Component agency decided to grant the accommodation to the employee.

#### *Discrimination Against Contract Employees*

A Federal employee allegedly discriminated against contract employees based on race by directing the employees' contractor to, in effect, terminate their employment. In addition, it was alleged that a favorable contract assignment awarded by the same Federal employee was based on race. The contractor filed a complaint with CRCL containing these allegations. CRCL accepted these allegations under 6 U.S.C § 345, which authorizes CRCL to investigate allegations of abuses of civil rights and civil liberties by employees and officials of DHS.

After conducting an investigation, CRCL found that the contract employees had engaged in conduct that was a legitimate basis for termination, and that the favorable assignment was set in motion before any inference of racial animus could have arisen. Despite these findings, CRCL recommended that the Component conduct a further investigation of issues that did not fall within CRCL's jurisdiction.

#### *Hearing Standards for Federal Contract Employees*

A DHS contract employee was deemed ineligible by a DHS Component to perform work under the contract because of the use of a hearing aid. Until the new "no hearing aid requirement" was imposed, the contract employee had successfully performed under the contract for several years. The employer followed the instructions of the DHS Component and terminated the employee. CRCL accepted the complaint of the contract employee under both Section 504 of the Rehabilitation Act of 1973 and 6 U.S.C. § 345.

The contract employee, who had also filed a complaint in Federal district court, settled his Section 504 claim before CRCL concluded its investigation. Nevertheless, CRCL made finding and recommendations to the component. The Component eliminated the language from its contracts prohibiting the use of hearing aids for contract security guards.

#### *Allegation of Religious Discrimination During Detention*

The spouse of a DHS detainee filed a complaint with CRCL to review her husband's detention, alleging racial and religious discrimination. The husband was arrested in 2002 and continued to be detained pending deportation proceedings, which he opposes in ongoing litigation.

CRCL accepted the complaint under 6 U.S.C. § 345. CRCL confined the scope of review to the allegation that the husband's detention and treatment by DHS was based on his race (Arab), or religion (Islam). The review did not examine the length of the husband's detention because it was based on his opposition to deportation, which has been fully litigated by counsel in a number of appeals and is the subject of ongoing litigation.

CRCL coordinated with a number of DHS component offices, reviewed the complex facts of the case and concluded that the husband's initial arrest and detention were based on domestic

violence charges and the ongoing interest of the FBI. Therefore, the husband's arrest and subsequent detention were not based on religion or race. CRCL, however, did make procedural recommendations to the DHS Component on matters unrelated to the CRCL's religious and race findings.

#### *Vision Licensing Requirements*

Two individuals were each denied a license to operate a vessel by the USCG, on the grounds that they had monocular vision. The applicants alleged they met all other criteria for the license. CRCL accepted the complaints under both Section 504 of the Rehabilitation Act of 1973 and 6 U.S.C. § 345.

CRCL conducted its investigation in cooperation with the USCG. During the investigation the USCG waived its standards involving monocular vision in these two instances and invited each applicant to reapply. Upon reapplication, each complainant was granted a license and the complaints were closed. The USCG is undertaking a review of these requirements.

#### *Use of Census Data by Customs and Border Protection*

A newspaper article received national attention when it reported that CBP collected census data pertaining to people of Arabic descent, and that this practice constituted racial profiling. CRCL investigated this matter under 6 U.S.C. § 345.

CRCL determined that the census data collected was not obtained for the purpose of racial profiling, but was instead used to determine which languages the agency would use in a public education campaign. CRCL made other recommendations to the Component, including: training for DHS employees on race neutrality in law enforcement activities; continuing to publish government brochures and posters in a variety of languages; and communicating with minority communities so that they are not misled by inaccurate media reports.

#### *Health Care for Female Asylum Seekers*

CRCL received a complaint concerning female asylum seekers detained at a DHS facility. The complaint alleged: detainees are denied timely and effective healthcare; the personal beliefs of staff interfere with the ability to provide an effective and safe environment; few detainees receive mental health counseling despite their unique needs as asylum seekers; and most do not receive counseling in their native language. CRCL accepted the complaint under 6 U.S.C. § 345. CRCL coordinated with the DHS Component to review the provisions of medical care, mental health care, and language services provided to the female detainees.

CRCL reviewed the detention facility's compliance with the National Detention Standard on Medical Care and made several recommendations in this area. Moreover, CRCL recommended that the review of mental health care should continue with a subject matter mental health expert who will examine the population of female asylum seekers to assess whether their needs are being met.

### Access to Federal Buildings by Persons Wearing a Kirpan

CRCL received a complaint from a mother and daughter who alleged that they were verbally harassed, and denied entry to a Federal building by DHS Federal contract guards. At the security checkpoint, the daughter offered to the guards her *kirpan*, a Sikh ceremonial religious dagger, for clearance. According to the beliefs of this individual, the Rehat Maryatah, a religious code of conduct adhered to by many Sikh Americans, mandates that she wear of the *kirpan* at all times.

CRCL accepted the complaint under 6 U.S.C. § 345. CRCL concluded that the contract security officer had been disrespectful to the mother and mishandled her *kirpan*. As a result of CRCL's investigation, the Component reviewed its policies relating to the *kirpan* and it has worked with CRCL in the development of a training focused on the Sikh to help prevent similar incidents from occurring in the future.

### Proper Training in Arab and Muslim Culture

The American-Arab Anti-Discrimination Committee (ADC) filed a complaint with CRCL concerning a course on Arab and Muslim culture being taught a by a DHS Component. According to the complaint, the instructor of the course made several inflammatory statements involving Muslims and the Arab world. The complaint alleged that the instructor painted a picture in which all Arab Americans and Muslim Americans are potential terrorists. CRCL accepted the complaint under 6 U.S.C. § 345. CRCL coordinated with the leadership of the DHS Component in question, reviewed documents related to the course, and interviewed several people who attended the class.

CRCL concluded that the course was poorly conceived and that it reinforced erroneous stereotypes of Arab and Muslim cultures and values. As a result of CRCL's investigation, DHS officials suspended the course. The instructor was also prohibited from teaching such courses in the future. DHS leaders are now working with CRCL on more specific long-term steps to develop new training in this area that is credible, accurate, and relevant.

### Children and "No Fly" Lists

The ADC filed several complaints with CRCL concerning cases in which children were prevented from traveling because their names appeared on the "No Fly" list. CRCL investigated these complaints pursuant to 6 U.S.C. § 345. In reviewing the issues raised by these complaints, CRCL worked closely with TSA.

CRCL met on numerous occasions with TSA regarding aviation watch lists. CRCL received information on how decisions are made to add names to these lists and how airlines use the information provided by TSA. TSA informed CRCL that it had provided improved directions to the airlines for the proper handling of these lists. Airlines have been directed to use sound judgment as they determine whether a passenger is the individual named on the list; obviously, sound judgment will lead the airlines to recognize that a young child should not be confused with an individual listed on a government screening list.

CRCL informed the ADC of actions that were being undertaken by TSA on several fronts. TSA has taken affirmative steps to address the problems presented by their complaints by issuing security directives to the airlines. For the future, TSA is developing the Secure Flight system which will remove administration of the lists from the airlines and place this responsibility with TSA. As part of this program, TSA is also developing a redress system to address complaints from the traveling public as a result of interactions with the Secure Flight program. ADC acknowledged the efforts of CRCL in these matters in a press release issued on April 27, 2005.

#### *Age Determinations for Persons in Detention*

CRCL received thousands of letters from the public concerning the detention of an individual who is seeking asylum in this country. The individual allegedly has a diminished mental capacity, and is allegedly a juvenile. The allegations centered on whether DHS treated this person in detention in accordance with his age and mental capacity.

While this matter was under review by DHS, former Under Secretary of Border and Transportation Security, Asa Hutchinson, instructed the Component to release the individual from detention and grant custody of the individual to a community-based organization that could provide housing.

CRCL undertook a formal review of this matter, but did not conduct a review of the merits of the complainant's asylum claim, or attempt to address questions that were previously litigated in the immigration courts. CRCL did, however, conduct a comprehensive review of the following issues:

- The process for determining the person's age;
- The services that DHS provided to the individual who was alleged to have limited mental capacity;
- The length of his pre-hearing detention; and,
- Allegations of physical abuse against him while in DHS custody.

Following CRCL review, the office submitted a report to the Component involved, including recommendations aimed at strengthening policies relating to the range of issues raised by this case. Actions taken by the Component include: revised standards, and procedures for making age determinations; implementation of detention standards in the Component's facilities; procedures for ensuring that charging documents are issued to applicants in a timely manner; and, the application of detention standards concerning legal access and other detention standards in a way that is meaningful for detainees.

#### *Frequent Flyer Questions Placement On TSA No-Fly List*

CRCL received a complaint from a frequent-flyer stating that he was required to have airline agents call TSA to clear him to fly on many occasions. The individual alleged that he was

placed on an aviation watch list, because of his political beliefs. CRCL conducted an investigation on the matter. CRCL concluded that, after a review of all the circumstances, TSA's use of its "No-Fly" list in this case was appropriate. CRCL made no recommendations to TSA concerning the use and maintenance of its "No-Fly" list.

### **E. Ongoing Issues Being Reviewed by CRCL**

#### **Treatment of Juveniles in Hold Status**

CRCL received a complaint concerning the treatment of unaccompanied minors in DHS custody. The allegations concerned physical and verbal abuse, inadequate food and bedding, and inadequate medical attention in Border Patrol facilities. CRCL accepted the complaint under 6 U.S.C. § 345 and conducted an investigation into the allegations concerning food, bedding, and medical attention.

DHS is bound by the terms of a settlement agreement, commonly referred to as the *Flores* agreement.<sup>40</sup> This agreement requires DHS to hold minors following arrest in facilities that are safe and sanitary until they can be transferred to licensed facilities. Facilities must provide all of the following:

- access to toilets and sinks;
- drinking water and food;
- medical assistance in an emergency;
- adequate temperature control and ventilation;
- adequate supervision to protect minors from others; and,
- separation from unrelated adults where possible.

CRCL conducted on-site reviews of facilities holding juveniles and interviewed DHS personnel in the field. After its review, CRCL met with the DHS components responsible for juveniles and discussed the *Flores* conditions that needed to be addressed. The components are undertaking significant steps to address the needs of juveniles who are in custody for short periods of time and CRCL will continue to work with ICE, CBP and ORR to address these issues.

#### **Conditions of Detention at Facilities Used for Adults Detained by Immigration and Customs Enforcement (ICE)**

CRCL has retained several complaints alleging violations of the National Detention Standards at facilities used to house ICE adult detainees. CRCL is working with ICE DRO to investigate the allegations at each of these facilities. CRCL has retained the services of experts in the field of corrections to assist with these investigations.

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<sup>40</sup> *Stipulated Settlement Agreement, Flores v. Reno*, No. CV 85-4544-RJK (Px) (C.D. Cal. Jan. 17, 1997).

*Access to Sign Language Interpreters for U.S. Citizenship and Immigration Services (USCIS) Interviews and Appointments*

CRCL has received numerous complaints alleging that USCIS fails to provide sign language interpreters to individuals with a hearing impairment to access USCIS services and benefits in violation of Section 504 of the Rehabilitation Act of 1973. CRCL staff has been working closely with USCIS, which has notified CRCL of a plan to disseminate policies and procedures to ensure that all USCIS district office personnel are aware of the legal requirements under Section 504, and that members of the public have readily available information on how to request a sign language interpreter.

## **EQUAL EMPLOYMENT OPPORTUNITY**

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In accordance with DHS Management Directive 3095, CRCL directs the Department's Equal Employment Opportunity (EEO) programs, including the development and implementation of Departmental EEO policy. The Deputy Officer for EEO Programs is a member of the Senior Executive Service and reports directly to the Officer for Civil Rights and Civil Liberties.

Guided by EEOC regulations, CRCL is constantly working to ensure that DHS meets the requirements for a Model EEO Program as required under both Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000(e) *et seq.*, and Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791 *et seq.*

### **A. Background for an Effective Equal Employment Opportunity Program**

DHS is committed to developing an EEO program where all employees and applicants for employment enjoy equality of opportunity regardless of race, sex, national origin, color, religion or disability. Linking strategic EEO and diversity objectives to the DHS Strategic Plan and Human Capital Strategic Plan (HCSP) is key to positioning DHS as a model employer. Both the DHS Strategic Plan and the HCSP emphasize organizational excellence and recruitment of a diverse workforce to meet the Department's mission.

The chief objectives for the EEO program include:

- Providing leadership to DHS Headquarters and component EEO and Civil Rights offices;
- Integrating principles of equal employment opportunity into DHS leadership training;
- Establishing a model DHS Title VII and Rehabilitation Act Program;
- Collaborating closely with the Office of the Chief Human Capital Officer (CHCO) to develop innovative, state-of-the-art solutions for building and maintaining a high quality workforce;
- Working with the CHCO, General Counsel, and DHS Components to create a Departmental approach to Alternative Dispute Resolution; and,
- Establishing proactive measures to reduce EEO complaints.

The EEO Program provides direction to the nine Component EEO and Civil Rights Directors. Bi-weekly meetings are held with the Component Directors to provide updated program information, facilitate an integrated approach to program requirements, and to leverage resources.

Because DHS was created from 22 different organizations, CRCL has had the challenging task of creating enterprise-wide EEO databases not only for its use, but also for use by DHS Components. During the past year, CRCL completed development of two systems.

The first system is the Department's enterprise-wide complaints management and tracking system, *EEO Eagle*. The system is a comprehensive complaints database that tracks over 500

data fields, auto-generates the EEOC Form 462 Report and is accessible from any computer via DHS Interactive Plus based on pre-defined user roles and permissions. The deployment eliminated the planned development of multiple systems by DHS Components. The second is a system for monitoring and analyzing personnel transaction data by race, national origin, sex, and disability status as required by 5 U.S.C. § 7201, 5 CFR Part 720, subpart B and EEOC Management Directive MD 715. CRCL has worked with the Privacy Office to ensure that privacy requirements are met and appropriate notices are made to the public regarding the Eagle database. Information from these systems will be used to develop the Department's Model Title VII and Rehabilitation Act Program, the Federal Equal Opportunity Recruitment Program, and CRCL support of the President's Management Agenda's Strategic Management of Human Capital initiative.<sup>41</sup> Both systems have been deployed for use by DHS Components and are available through the DHS Interactive Web system.

### **B. Training**

CRCL has provided training to the Component EEO and Civil Rights, CHCO, and General Counsel staff in the areas of model EEO program development and disability awareness. The Office worked with the CHCO to integrate principles of equal employment opportunity into the leadership course for the introduction of the new Human Resource system.

CRCL developed and deployed training as required by the Notification and Federal Employee Antidiscrimination and Retaliation Act (No Fear Act) Pub. L. No. 107-174 (2002). The training included Equal Employment Opportunity and Whistle Blowing Protection provisions. The training was deployed as a Web cast available throughout DHS. Alternative formats were also made available for those DHS employees who do not have access to DHS Online. The development by CRCL was an example of an efficiency that saved the component EEO and Human Capital offices the time and money involved with the development of individual solutions to meet the requirement.

### **C. Model Title VII and Rehabilitation Act Programs**

Equal Employment Opportunity Management Directive (MD) 715 requires Federal agencies to establish and maintain effective affirmative programs of equal employment opportunity under Section 717 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and effective affirmative action programs under Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791 *et seq.* The ultimate objective of this MD is to ensure that Federal agencies work proactively to make certain that all employees and applicants for employment have equal access to employment opportunities regardless of their race, sex, national origin, color, religion, disability, or their engaging in a prior protected activity. In implementing MD 715, CRCL has:

- Provided implementation guidance to DHS Components;

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<sup>41</sup> See *President's Management Agenda, Strategic Management of Human Capital Initiative*, available at <http://www.whitehouse.gov/omb/budget/fy2002/mgmt.pdf>



- Partnered with the EEOC to provide MD 715 training to approximately 150 DHS EEO Component and Human Capital Managers;
- Developed systems to provide baseline employee data in accordance with the provision of Title VII, Section A of the Civil Rights Act of 1964, as amended and section 501 of the Rehabilitation Act of 1973, as amended;
- Analyzed the Components' self assessments of their EEO programs to develop the Department's overall EEO Program posture relative to the MD 715 six essential elements for the creation and maintenance of a model EEO program. The six elements, which are composed of approximately 122 separate measures, are (1) demonstrated commitment from agency leadership, (2) integration of EEO into the agency's strategic mission, (3) management and program accountability, (4) proactive prevention of unlawful discrimination, (5) efficiency, and (6) responsiveness and legal compliance;
- Presented feedback to the Components in the development of their Model EEO Program Status Reports; and,
- Developed the Department's Model EEO Program Status Reports.

***D. Identifying and Overcoming Barriers to Equality of Opportunity***

The Department recognizes that successful accomplishment of its unique mission is inextricably linked to its most valuable resource—its people. As such, the CRCL EEO Program is collaborating with CHCO on many of the barrier identification activities outlined in MD 715 to ensure that DHS employees are provided the maximum opportunity to advance, and to perform at their highest potential, and that all employees and applicants have equal access to employment opportunities.

CRCL established an Inter-Agency Agreement with the United States Office of Personnel Management (OPM), Division for Human Resources Products and Services, Training and Management Assistance Program, to develop an Applicant Flow Database for the Department. Since this activity was initially planned, CRCL has partnered with the CHCO staff to integrate EEO requirements for an applicant flow process into the DHS e-Recruitment system. The e-Recruitment system covers five major areas: (1) workforce planning, (2) requisitioning, (3) talent searching and candidate acquisition, (4) applicant tracking, and (5) reporting analytics. This system will assist CRCL and CHCO in meeting OPM and EEOC requirements for tracking applicants by race, sex, national origin, and disability status and evaluating recruitment sources.

CRCL collaborated with the CHCO staff during Fiscal Year 2005 on nearly every CHCO-lead initiative or project that supported effective recruitment, development, compensation, succession management and leadership of a diverse workforce, including the assignment of a staff member to the DHS Workforce Planning Council, the Corporate Recruitment/Branding initiative, and the e-Recruitment system. In furtherance of the Department's strategic goal of Organizational Excellence, CRCL partnered with the CHCO staff in developing the performance Leadership Training for managers and supervisors and the MAX<sup>HR</sup>—Maximizing Leadership Conference for

senior executives and officers. CRCL also worked with the CHCO staff in developing EEO standards that measure managers' and supervisors' performance in several key areas, including the identification and removal of barriers that impede access and free and open competition in the workplace.

The CHCO is in the process of finalizing the Department's Recruitment Plan. The purpose of this plan is to establish a program to identify effective and expeditious mechanisms to provide DHS vacancy announcements directly to a diverse applicant pool. The recruitment plans will support the Department's MD 715 EEO Program Status Report.

While awaiting the final recruitment plan, CRCL has participated in a variety of recruitment activities aimed at increasing the diversity of the applicant pool. Some of these proactive efforts have included:

- Meeting with key Arab American human services organizations, including the ADC and the Arab Community Center for Economic and Social Services (ACCESS), to cultivate relationships and open a dialogue about recruiting opportunities within the Arab American community; and,



*Left: Carmen Walker, Deputy CRCL Officer for Equal Employment Opportunity Programs, at the American-Arab Anti-Discrimination Committee's Annual Martin Luther King Scholarship Dinner*

- Widely disseminating the Department's job openings to hundreds of professional associations, colleges, and universities. CRCL is continuously expanding that network of associations and educational institutions.

Other recruitment activities included:

- The Headquarters EEO office increased the number of organizations on its listServ to further expand its weekly outreach efforts to over 1,000 universities and associations;
- DHS Headquarters also contracted with a company to access the untapped workforce of qualified individuals with disabilities at the GS-12 and above level; and,
- A partial list of national conferences at which DHS was represented by one or more Component recruitment teams and/or conference and workshop presenters include the following:

- Federal Asian Pacific American Council
- National Image Training Conference
- American-Arab Anti-Discrimination Committee (ADC)
- National Council of La Raza
- Women in Federal Law Enforcement
- National Association for Equal Opportunity in Higher Education
- League of United Latin American Citizens
- Federally Employed Women
- National Urban League
- Blacks in Government
- Hispanic Association of Universities and Colleges
- Historically Black Colleges and Universities
- Alliance of National Minority Law Enforcement Association
- Hispanic American Police Command Officers Association
- National Association of Asian American Law Enforcement Commanders
- National Asian Peace Officers Association
- National Black Police Association
- National Latino Police Officers Association
- National Native American Law Enforcement Association
- National Organization of Black Law Enforcement Executives
- President's Committee for People with Intellectual Disabilities
- OPM's Federal Workforce Conference
- National Black Deaf Advocates, Inc.
- National Citizen Corps Conference
- National Association of the Deaf Bi-annual Conference
- World Institute on Disability & Proyecto Visión
- Islamic Society of North America

***E. Effective Processing of EEO Complaints***

CRCL has made considerable progress in reducing the inventory of cases inherited from the 22 agencies that formed the Department. CRCL established a complaint adjudication section which is managed by an individual with extensive experience in discrimination complaint processing. The section consists of two units: one unit processes Final Actions on complaints and the other unit manages the complaints process, providing advice and guidance to the Components and coordinating compliance issues with EEOC. The Complaint Adjudication section has developed an effective process for issuing Final Actions by hiring subject-matter experts, having a multi-tier quality control process, utilizing contractor support and exercising strong project management controls. The first priority of this section has been addressing the oldest cases received from DHS's legacy organizations. The oldest case pre-dated DHS by 16 years. As of October 1, 2006, CRCL had received over 3676 EEO complaints of discrimination for final agency action and over 3473 decisions had been issued. Challenges remain despite the achievement as an average of 100 new cases have been received each month from DHS, EEOC Administrative Judges, and the EEOC Office of Federal Operations.

CRCL has worked closely with the legacy agencies and has established a partnership with the

EEOC Office of Federal Operations. Uniform complaint procedures have been issued to Component EEO, Civil Rights, and General Counsel offices for the processing and tracking of complaints. EEOC Administrative Judges have worked with the DHS Complaint Adjudication section to ensure proper service of the Administrative Judges decisions.

In addition, CRCL is also developing alternative methods of resolving conflicts. The objectives of the conflict resolution program include: increasing the use of Alternative Dispute Resolution (ADR) throughout the EEO complaint process; recognizing that settlement can be reached at any stage; improving morale and increasing productivity of employees as a result of their ability to resolve difficulties at an early stage; reducing costs and disruption in the workplace; and, reducing reliance on the EEO complaint process or ensuing litigation as the only means to deal with EEO concerns.

Measures taken by CRCL include:

- Participation in the drafting of a Management Directive, stressing early intervention and conflict resolution using ADR;
- Development of a DHS-wide shared neutrals program to train approximately 24 mediators from various DHS Components to perform mediation services;
- Formation of a centralized mediation service for complainants who would otherwise have to wait for Final Actions on pending EEO complaints; and
- Implementation of a pilot settlement project in conjunction with EEOC Administrative Judges.

## COMMUNICATING WITH THE PUBLIC

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CRCL serves as an information and communication channel with the public regarding issues at the intersection of homeland security and civil rights and civil liberties. CRCL is committed to maintaining open lines of communication with the public for two reasons. First, under 6 U.S.C. § 345(a)(2), CRCL is required to “make public through the Internet, radio, television, or newspaper advertisements information on the responsibilities and functions of, and how to contact the Officer.”

Second, we believe that outreach to affected communities is vital to the Department’s ability to effectively carry out its mission. Consistent communication and engagement with the American public is an essential part of the Federal government’s work. Our open system of governance requires that we respond to inquiries; educate and share information on our programs, policies, and initiatives; and provide a platform for the community to air grievances, thoughts, and opinions. Community outreach is particularly important in the context of law enforcement and homeland security, where the focus has shifted towards intelligence driven police work. Indeed, public interaction and relationship building are widely-acknowledged as essential tools in a post-September 11 environment. The Police Executive Research Forum concluded that, “When law enforcement demonstrates an awareness of cultural and religious sensitivities and traditions, they can engender a bond of trust with those communities.”<sup>42</sup> Not surprisingly, Federal entities such as the Treasury Department, DOJ, the FBI and DHS have robust public outreach initiatives. But this engagement is not limited to law enforcement: The Department of State, the United States Agency for International Development, and the Department of Education have all benefited by regularly meeting and forging relationships with American communities.

The reality is that community outreach helps government officials do their jobs better and has proven valuable on many levels. In the law enforcement context, we have found that when officers and agents develop relationships with members of a particular community, they obtain cultural, religious, and linguistic insights that aid both in crime prevention and effective policing. In the international context, meeting with various religious and diaspora communities has helped our public diplomacy,<sup>43</sup> disaster relief efforts,<sup>44</sup> and has engendered good will both at home and abroad. Perhaps most fundamentally, in all contexts, outreach has allowed us to learn about issues of concern firsthand. Raising awareness of important cultural features of various public groups is important, and an essential step in effectively communicating with the public is just good government.

CRCL has utilized several methods to establish open lines of communication with the public, including formal meetings with community and advocacy groups, creating public speaking opportunities, making appearances in the media, and disseminating information through newsletters, a website, posters, and brochures.

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<sup>42</sup> Heather J. Davies and Gerard R. Murphy, “*Protecting Your Community from Terrorism: Strategies for Local Law Enforcement*,” Vol. 2 “*Working with Diverse Communities*,” available at <http://www.cops.usdoj.gov/mime/open.pdf?Item=1364>

<sup>43</sup> *Remarks of Karen Hughes, Under Secretary for Public Diplomacy and Public Affairs, at the Baker Institute for Public Policy* (March 29, 2006), available at <http://www.state.gov/r/us/64106.htm>

<sup>44</sup> *USAID Conference Call on the Ongoing Relief Efforts in Quake-Hit Areas*, available at [http://www.muslimsweekly.com/index2.php?option=com\\_content&do\\_pdf=1&id=1166](http://www.muslimsweekly.com/index2.php?option=com_content&do_pdf=1&id=1166)

### **A. Formal Meetings with Community and Advocacy Groups**

As mentioned before, the Department believes it is essential to establish strong cooperative relationships with American Arab, Muslim, Sikh, and South Asian communities. These communities are integral to the country, and have been for many generations. They are the keys to America's success in this new century.

Therefore, CRCL has focused on building strong relationships in several key cities: Washington, D.C. (with national leaders), Detroit, Chicago, Buffalo, Los Angeles and Houston. CRCL has also participated in meetings convened by DHS colleagues in New York, Boston, and other cities. In Detroit, Mr. Sutherland chairs the BRIDGES meeting at the request of the United States Attorney for the Eastern District of Michigan. These formal meetings lead to a great deal of informal contact between community leaders and DHS officials, including those within CRCL.

In addition to formal meetings with these ethnic, and religious communities, CRCL also meets regularly with civil rights and immigration groups. For example, a coalition of immigration and civil rights advocacy groups began meeting together prior to the launch of DHS to discuss issues as they relate to the homeland security effort. The Officer for Civil Rights and Civil Liberties has attended meetings with this coalition since the Spring of 2003, joining them on a quarterly basis.

We also believe that gathering input from community and advocacy groups is key to the Office's work on emergency preparedness issues. As described previously, the Citizen Corps has established a subcommittee consisting of disability service organizations, which CRCL chairs. This group has provided important insights into the Department's work, particularly after Hurricanes Katrina and Rita. CRCL also held a series of telephone conferences with disability service providers in the Gulf Coast region in the days and weeks after the hurricanes.

CRCL meets on a regular basis with other organizations, such as the United States Conference of Catholic Bishop's Committee on Migration; the United Nations High Commissioner for Refugees (UNHCR); the National Council of La Raza; the Association of Pakistani Physicians of North America; and many others. Some of those meetings are in Washington, D.C., but CRCL staff have also met with groups in the affected regions. For example, CRCL has met with coalitions in Arizona and Florida that are concerned about the treatment of local immigrants.

### **B. Opportunities to Speak at Public Events**

CRCL also shares its message through public speaking opportunities. The Officer and other CRCL staff have spoken at dozens of events across the country and internationally. These public forums provide an important opportunity for CRCL to explain to the public the Department's perspective on contemporary issues and reasons for instituting certain policies. Perhaps more importantly, it provides an opportunity to listen to the concerns of members of the public – to hear their comments and their ideas for how the Department can improve its work.

With respect to disability issues, CRCL made presentations at a number of conferences examining the lessons learned from Katrina, including at Columbia University, and Gallaudet University. CRCL staff participated in a training session at the 2005 National Hurricane

Conference, and then Mr. Sutherland was privileged to provide a keynote address at the 2006 National Hurricane Conference.<sup>45</sup> Mr. Sutherland and CRCL staff have also participated in important conferences held by the National Federation of the Blind and Telecommunications for the Deaf, Inc.

The Department works closely with established professional associations, and has spoken at events held by the National Association of Muslim Lawyers and the National Association of Blind Lawyers. Mr. Sutherland was honored to present a keynote address at the 2005 annual ADC convention, which was later published in the publication *Vital Speeches of the Day*.<sup>46</sup>

During the week of September 11, 2006, CRCL co-sponsored a forum to discuss the role that American Arab, Muslim, Sikh, and South Asian communities have played in the country in the five years after the tragedy of 9/11. The DOJ Assistant Attorney General for Civil Rights, Wan Kim, spoke at the panel, as well as leaders from the FBI and five community organizations. The event provided the government participants with the opportunity to highlight their extensive commitments to engage with these communities, and it provided the community representatives an opportunity to talk about their intensive efforts in the five years since 9/11.

CRCL has also been active internationally. Timothy Keefer, Deputy Officer for Civil Rights and Civil Liberties Programs and Compliance, emphasized the need for DHS to build bridges with the Arab American and Muslim American communities when he spoke at a meeting of the Organization for Security and Cooperation in Europe (OSCE) on “Human Rights and the Fight Against Terrorism” in Vienna, Austria, during July 2005. Mr. Sutherland and Mr. Keefer have both met on multiple occasions with officials of allied governments to discuss these issues. Mr. Sutherland has met with senior British Muslim leaders on a number of occasions. Other CRCL staff have presented the Department’s views on current issues at conferences in Central Asia and Europe.



CRCL’s Deputy Officer and Director of Equal Employment Opportunity Programs, Carmen Walker, has spoken at a variety of events and conferences. For instance, Ms. Walker participated in an annual Federally Employed Women conference at which DHS hosted a workshop designed to advertise DHS career opportunities for women. She also worked with the World Institute on Disability to conduct a *Proyecto Visión*

conference reaching out to Latinos with disabilities. The goal of these efforts was to connect with a target audience to inform them of possible employment opportunities within the Department. Ms. Walker made similar efforts on behalf of the Arab American and Muslim American communities. She met with career counselors at the University of Michigan at

<sup>45</sup> Daniel W. Sutherland, *Keynote address to the National Hurricane Conference*, April 14, 2006, available at [http://www.Disabilitypreparedness.Gov/Ds04\\_14\\_06.htm](http://www.Disabilitypreparedness.Gov/Ds04_14_06.htm).

<sup>46</sup> Daniel W. Sutherland, *Keynote Address at American-Arab Anti-Discrimination Committee’s (ADC) Silver Anniversary National Convention*, May 28, 2005.

Dearborn and Henry Ford Community College in the Detroit area – one of the nation’s largest Arab American and Muslim American communities – to establish a rapport with the colleges regarding employment opportunities with DHS. She also attended the opening ceremony of the Arab American National Museum (AANM).

As a reflection of the Office for Civil Rights and Civil Liberties’ work, Mr. Sutherland has received the “H. Latham Breunig Humanitarian Award,” from Telecommunications for the Deaf, Inc., and the “Friend in Government” award from the ADC.

### **C. Communications Through the Media**

Another excellent venue for communicating with the public is through the Nation’s media. The media provide a forum for members of the public to learn important information about their government and its operations. Moreover, through media appearances government officials can gain insights into the chief concerns of the American public. The questions that are asked, either by the press or by the public through call-in opportunities, offer a valuable window into the thinking of the public. Mr. Sutherland has appeared on a number of traditional media outlets, as well as on media outlets that target specific issues or specific audiences. For example, he has appeared on:

- Interviews with “Voice of America,” both the English and Urdu stations, on the subject of protecting the civil rights and civil liberties of Muslims;
- Numerous television and radio programs to discuss emergency preparedness, especially as it relates to people with disabilities;
- Several appearances on Al-Jazeera and Al-Arabiya; and,
- A Web cast on AT508.com announcing the creation of a DHS Section 508 Office.

### **D. Facilitating Communications with DHS Officials**

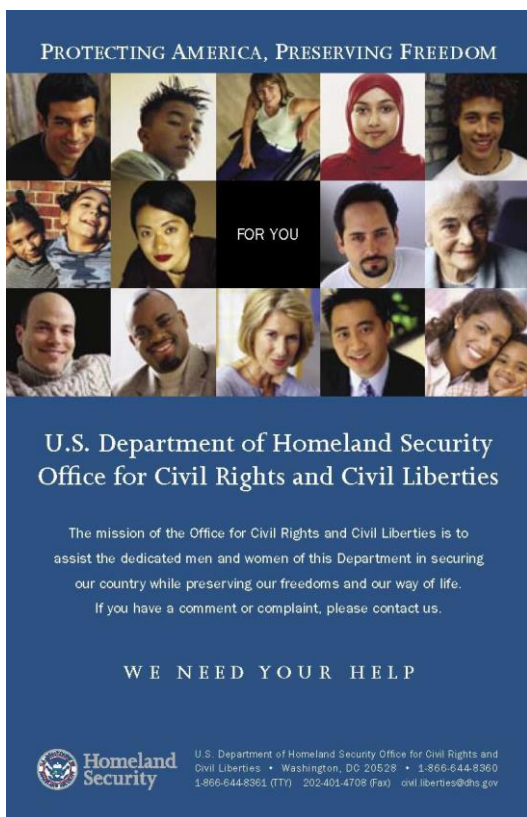
CRCL also works to ensure open lines of communication between DHS and the persons most affected by its policies. Secretary Chertoff has made community outreach a priority, reaching out to groups and organizations that have a stake in DHS’s mission. For example, Secretary Chertoff has participated in iftaars (“breaking the fast”) in both October 2005 and 2006, to highlight the Department’s commitment to engaging with the American Muslim community. The October 2005 iftaar was held during the United States – European Union Justice and Home Affairs Ministerial Troika, and featured a remarkable assembly of leaders, including the British Home Secretary, the Attorney General, the Vice President of the European Union, and the Secretary of Homeland Security. In October 2006, the Department again co-sponsored an iftaar with the British embassy. Secretary Chertoff has also met with civil rights and immigration groups, and with leaders of the Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities.



Stewart Baker, the Department's Assistant Secretary for Policy, has met with a number of immigration and civil rights groups. Mr. Baker has also appointed Igor Timofeyev to serve as his Senior Advisor on Refugee and Asylum Affairs, and Mr. Timofeyev has maintained open lines of communication with outside groups. Randy Beardsworth, the Department's former Assistant Secretary for Strategic Plans, traveled to Detroit and Chicago to meet with Arab American and Muslim American leaders. This initiative will be continued by the Office of Strategic Plans.

### ***E. Additional Methods of Communicating***

The CRCL Web page, found at [www.dhs.gov/civilliberties](http://www.dhs.gov/civilliberties), provides important information about the office, such as the CRCL's mission and information on how individuals can report civil rights, civil liberties, and racial and ethnic profiling issues. The page includes the CRCL's official mission statement, news and reports regarding civil rights and civil liberties issues, and the CRCL privacy statement. The page also informs the general public on how to file a complaint with the office. As chair of the Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities, CRCL runs an Internet-based "resource center" at [www.disabilitypreparedness.gov](http://www.disabilitypreparedness.gov).



CRCL offers the public two telephone numbers to express concerns or raise allegations: a direct line (202-401-1474) and a toll-free hotline (1-866-644-8360). The direct line is staffed by CRCL administrative staff during business hours, and callers may choose to leave a message at any other time. The toll-free hotline is available 24 hours a day, 365 days a year, and is currently available in English, Spanish, and Arabic. When called after business hours, a recording on the hotline offers callers methods of contacting staff members via regular mail, electronic mail, and fax. CRCL also has direct TTY line (202-401-0470) and a toll-free TTY hotline (1-866-644-8361).

In addition to the hotlines, CRCL has an e-mail address, [civil.liberties@dhs.gov](mailto:civil.liberties@dhs.gov), that the general public uses to communicate with the office.

Finally, the Office has developed a poster and a brochure with the goal of informing the public about CRCL's mission. This poster is now available in Arabic and Spanish and has been printed and distributed around the country.<sup>47</sup> In 2006, the Office

placed the poster in newspapers and magazines around the country that have ethnic and religious communities as the primary audience.

<sup>47</sup> See Appendix H, Office for Civil Rights and Civil Liberties Poster in English, Spanish, and Arabic.

## **CONCLUSION**

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The Department of Homeland Security has made a concerted effort to incorporate a respect for personal liberties into the work of protecting our Nation. The establishment of a robust Office for Civil Rights and Civil Liberties is evidence of that commitment. The Department looks forward to working with Congress and the public to continue to ensure that the homeland security effort meets the high calling of protecting America while also enhancing our way of life.


# **APPENDIX A**



# Homeland Security

July 25, 2005

**MEMORANDUM FOR:** Senior DHS Leadership

**FROM:** Michael Chertoff 

**SUBJECT:** Progress and Expectations with Regard to Increasing  
the Employment of People with Disabilities

The Department of Homeland Security, still in its nascent stages of development, has done a tremendous job of carrying out its responsibilities to our Nation. In spite of the breadth and challenge of our mission, our innovative and dedicated public servants have molded this Department into a robust and effective Federal agency. Oftentimes, however, the Department's notable successes are overlooked. So this month, as we recognize the 15th anniversary of the Americans with Disabilities Act, I want to call your attention to one important area where we are setting the standard—the employment of people with disabilities.

Over the past year, thanks in large part to the leadership of President George W. Bush and former Secretary Tom Ridge, we have made incredible strides toward creating a Department that fully recognizes and utilizes the skills and abilities of people with disabilities. I am personally committed to DHS fulfilling this goal. To that end, I would like to review our progress and announce some steps we will take to further this initiative.

## I. Background of Disability Employment Initiative

On February 17, 2004, Secretary Ridge issued a memorandum to the senior leadership announcing his expectations with regard to increasing employment opportunities for qualified candidates with disabilities. The purpose of the initiative was to provide DHS managers with the tools necessary to hire people with disabilities. The hope was that once a wide range of tools were in place and well-publicized, we would naturally begin to see a change in the number of people with disabilities joining our workforce.

**Each** office within DHS headquarters was required to take the following steps:

- Ensure that managers attend a training session on disability issues.
- Appoint an individual to coordinate with the Selective Placement Coordinator (the individual at headquarters responsible for identifying qualified candidates with disabilities).
- Hire at least one intern with a disability each fiscal year.
- Participate in National Disability Mentoring Day.
- Publicize our partnership with the Department of Defense's Computer/Electronic Accommodation Program (CAP), which provides assistive technologies and services to employees and applicants with disabilities (**e.g.**, teletypewriters for the deaf/hard of hearing and Braille keyboards for the blind).

Additionally, each organizational element was asked to create a customized strategy, designed specifically for that component, to increase employment opportunities for qualified individuals with disabilities. Each component also was asked to track and report on the progress of the initiative.

## 11. Progress in Implementing the Disability Employment Initiative

I am pleased to share with you the highlights of our accomplishments to date:

- 273 DHS headquarters managers and over 4,000 managers in field offices across the country have completed **training** sessions on this initiative.
- **DHS** employed 38 interns with disabilities nationwide in the past year, a dramatic improvement over the prior year. At headquarters, the number of interns with disabilities rose from zero in fiscal year 2003 to 12 in fiscal year 2004.
- On October 20, 2004, DHS participated in "National Disability Mentoring Day." **DHS** employees in Washington, **D.C.** mentored 44 students from various high **schools**, colleges, and universities, and 80 students participated in mentoring opportunities at **FLETC** and **ICE/CIS** locations nationwide.
- DHS made tremendous strides in reaching out to disabled veterans, particularly those returning from Afghanistan and Iraq. DHS recruited from 68 organizations, associations, and agencies serving veterans. DHS also worked with the Department of Veterans Affairs' Vocational Rehabilitation and Employment directorate to disseminate information on job openings across the country and to provide volunteer internship opportunities.
- DHS employees received 203 **CAP** accommodations in fiscal year 2004, a savings to DHS of almost \$85,000. **This** represents a dramatic increase in the use of CAP compared to previous years. As a result, CAP awarded **DHS** with the Model Employer for People with Disabilities Award in 2004.

All of this work has paid concrete dividends at **DHS** headquarters. Since **the** foundation **was** laid for equal **opportunity**, the results have been dramatic. There has been a 106% increase in hiring people with disabilities at DHS headquarters since this initiative began

in February 2004. Specifically, we went from 50 people with disabilities in February 2004 to 103 as of June 16, 2005.

We learned this past year that internships are worth the investment. Of the 12 interns with disabilities working at DHS headquarters in the past year, two were offered full-time employment and a third was offered part-time employment as she continued her education. One deaf college student who participated in Disability Mentoring Day advised his mentor that as a result of his exposure to DHS's work in IAP, he was going to begin pursuing an additional degree in Arabic.

### III. Next Steps

While DHS has taken significant steps toward becoming a model employer for people with disabilities, there are still several areas where we can improve. In particular, we need to redouble our efforts to offer equal employment opportunities to people classified as those with "targeted disabilities," such as those who have serious hearing or vision impairments, use wheelchairs, or have other significant mobility impairments.

To build upon our success, I am asking each office within DHS headquarters and each organizational element to take the following steps:

- Continue to stress the importance of this initiative and see that employment opportunities are afforded across the country, from senior-level to entry-level positions. We need to focus recruitment particularly on qualified persons with "targeted disabilities" at all grade levels.
- Promote use of the CAP partnership. Please explore all avenues to promote the use of this program.
- Appoint a Selective Placement Coordinator (SPC) to work with managers within your organization to provide you with qualified candidates with disabilities. The SPC can assist you in maximizing your use of the Schedule A hiring authority, which generally permits expedited hiring of individuals with disabilities on a trial or permanent basis without regard to competitive selection rules.
- For those in DHS Headquarters, please ensure that you have designated a point of contact to work with the headquarters' SPC, Kathy Lane, prior to advertising vacant positions within DHS headquarters. Ms. Lane needs to have information from and regular contact with those individuals in order to be successful in providing you with qualified candidates with disabilities. Please e-mail the name of your point of contact to Ms. Lane. She may be reached at: [kathleen.lane@dhs.gov](mailto:kathleen.lane@dhs.gov) or by phone at (202) 401-4166, (202) 401-2400 (TTY).
- Ensure that all new managers receive training on this initiative.

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<sup>1</sup>In total, people with disabilities make up 4.67% of the headquarters workforce. This represents tremendous progress from the beginning days of the Department, and is also significant for an agency that has such a large segment of law enforcement and military missions.

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- Provide additional opportunities for interns with disabilities. Offices should seek **an** opportunity to hire at least one intern with a disability in fiscal year 2005, and make these opportunities a permanent feature of your office. **You** should also plan to participate in National Disability Mentoring Day in October 2005. There are many avenues for identifying qualified interns. For example, **the** "Workforce Recruitment Program" is a database of college students and recent graduates with disabilities, including people with advanced degrees, who are ready to begin internships immediately.

I ask each organizational element head to work with his or her respective Equal Employment Opportunity office and Human Capital office on this initiative.

If you have further questions on this initiative, please contact Daniel W. Sutherland, the Department's Officer for Civil Rights and Civil Liberties **(202) 772-9816** or **daniel.sutherland@dhs.gov**).

I appreciate your continued support of this innovative endeavor. The Department will experience the benefits of it for many years to come.

# **APPENDIX B**





For Immediate Release  
Office of the Press Secretary  
July 22, 2004

## **Executive Order: Individuals with Disabilities in Emergency Preparedness**

Winnetka, Illinois

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to strengthen emergency preparedness with respect to individuals with disabilities, it is hereby ordered as follows:

Section 1. Policy. To ensure that the Federal Government appropriately supports safety and security for individuals with disabilities in situations involving disasters, including earthquakes, tornadoes, fires, floods, hurricanes, and acts of terrorism, it shall be the policy of the United States that executive departments and agencies of the Federal Government (agencies):

- (a) consider, in their emergency preparedness planning, the unique needs of agency employees with disabilities and individuals with disabilities whom the agency serves;
- (b) encourage, including through the provision of technical assistance, as appropriate, consideration of the unique needs of employees and individuals with disabilities served by State, local, and tribal governments and private organizations and individuals in emergency preparedness planning; and
- (c) facilitate cooperation among Federal, State, local, and tribal governments and private organizations and individuals in the implementation of emergency preparedness plans as they relate to

individuals with disabilities.

Sec. 2. Establishment of Council. (a) There is hereby established, within the Department of Homeland Security for administrative purposes, the Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities (the "Council"). The Council shall consist exclusively of the following members or their designees:

- (i) the heads of executive departments, the Administrator of the Environmental Protection Agency, the Administrator of General Services, the Director of the Office of Personnel Management, and the Commissioner of Social Security; and
  - (ii) any other agency head as the Secretary of Homeland Security may, with the concurrence of the agency head, designate.
- (b) The Secretary of Homeland Security shall chair the Council, convene and preside at its meetings, determine its agenda, direct its work, and, as appropriate to particular subject matters, establish and direct subgroups of the Council, which shall consist exclusively of Council members.

(c) A member of the Council may designate, to perform the Council functions of the member, an employee of the member's department or agency who is either an officer of the United States appointed by the President, or a full-time employee serving in a position with pay equal to or greater than the minimum rate payable for GS-15 of the General Schedule.

Sec. 3. Functions of Council. (a) The Council shall:

- (i) coordinate implementation by agencies of the policy set forth in section 1 of this order;
- (ii) whenever the Council obtains in the performance of its functions information or advice from any individual who is not a full-time or permanent part-time Federal employee, obtain such information and advice only in a manner that seeks individual advice and does not involve collective judgment or consensus advice or deliberation; and
- (iii) at the request of any agency head (or the agency head's designee under section 2(c) of this order) who is a member of the Council, unless the Secretary of Homeland Security declines the request, promptly review and provide advice, for the purpose of furthering the policy set forth in section 1, on a proposed action by that agency.

(b) The Council shall submit to the President each year beginning 1 year after the date of this order, through the Assistant to the President for Homeland Security, a report that describes:

- (i) the achievements of the Council in implementing the policy set forth in section 1;
- (ii) the best practices among Federal, State, local, and tribal governments and private organizations and individuals for emergency preparedness planning with respect to individuals with disabilities; and
- (iii) recommendations of the Council for advancing the policy set forth in section 1.

Sec. 4. General. (a) To the extent permitted by law:

- (i) agencies shall assist and provide information to the Council for the performance of its functions under this order; and
  - (ii) the Department of Homeland Security shall provide funding and administrative support for the Council.
- (b) Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.
- (c) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH

THE WHITE HOUSE,

July 22, 2004.

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**Return to this article at:**

<http://www.whitehouse.gov/news/releases/2004/07/20040722-10.html>

# APPENDIX C

# Common Muslim American Head Coverings



Followers of the Islamic faith are called Muslims. Some Muslim women cover their heads based on religious belief and the Islamic requirement to dress modestly. They may wear a full head covering called a hijab or a scarf over their hair. The scarf may be plain or decorated. Some Muslim men wear a skullcap called a kufi based on religious tradition.

Points to keep in mind when searching someone wearing a Muslim head covering:

- Show RESPECT
- Explain why you need to conduct search
- Offer private room for search if available
- Searches should be conducted by a screener of the same gender as the passenger being searched



**Transportation  
Security  
Administration**

# Common Sikh American Head Coverings

Sikhism is a religion that originated in South Asia during the 15th Century and is distinct from both Islam and Hinduism. For religious reasons, practicing Sikhs do not cut their hair. Sikh men wrap and knot their long hair with a turban called a *pagri* (see photo a), a practice that typically takes 10-15 minutes. Sikh boys wrap their hair in a smaller under-turban called a *patka*, with their hair knotted on top of their head (photo b). Some Sikh women also wear turbans (photo c); however, many wear a cloth called a *chunni* to cover their head (photo d).

Points to keep in mind when searching someone wearing a Sikh head covering:

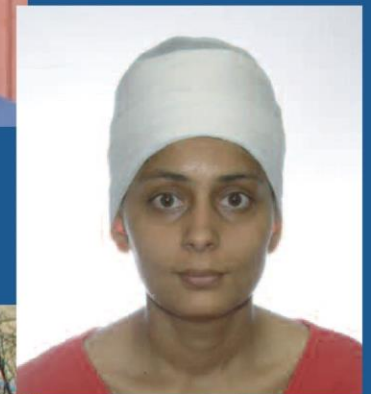
- Show RESPECT
- Explain why you need to conduct search
- Offer private room for search if available
- Searches should be conducted by a screener of the same gender as the passenger being searched



a. Man with pagri



b. Boy with patka



c. Woman with pagri



d. Woman with chunni



**Transportation  
Security  
Administration**

# APPENDIX D

# Sikh Americans and the Kirpan



## Sikhism and the Kirpan



Sikhism is a religion that originated in South Asia during the 15th Century and is distinct from both Hinduism and Islam. The *Kirpan*, a religious sword, is a Sikh article of faith (see photos A-C).



The *Kirpan* typically has a wooden or steel handle with a blade that may be blunt. Since there is no prescribed length for the blade, the size of the *Kirpan* varies by personal choice. A small *Kirpan*, resembling or appearing like a knife, has a blade that is commonly 3-6 inches in length, though some Sikhs prefer a *Kirpan* with a larger blade; while others will wear a smaller blade of 2 inches or less.



The *Kirpan* is often worn by Sikhs of both genders underneath their clothing with a shoulder sash called a *Gatra* (see photo D); however, some Sikhs wear the *Kirpan* over their clothing in public view (see photo E) or around their neck (see photo F).



## Inspections

### Points to consider when searching a Sikh:

Show respect to all variations of faith during inspections.

Respectfully ask if a Sikh is carrying a *Kirpan*. If so, request to inspect the *Kirpan*.

Searches should be conducted as discreetly as possible.

If the *Kirpan* must be confiscated, explain the reason(s) why and handle the *Kirpan* with respect and care.

Review policies and procedures for more information regarding the *Kirpan*.

Title 18 U.S.C. Section 930 generally prohibits the possession of knives, including *Kirpans*, with blades longer than 2.5 inches, in federal facilities, unless otherwise authorized. Please refer to post orders, standard operating procedures or an FPS representative for further guidance.

F e d e r a l P r o t e c t i v e S e r v i c e



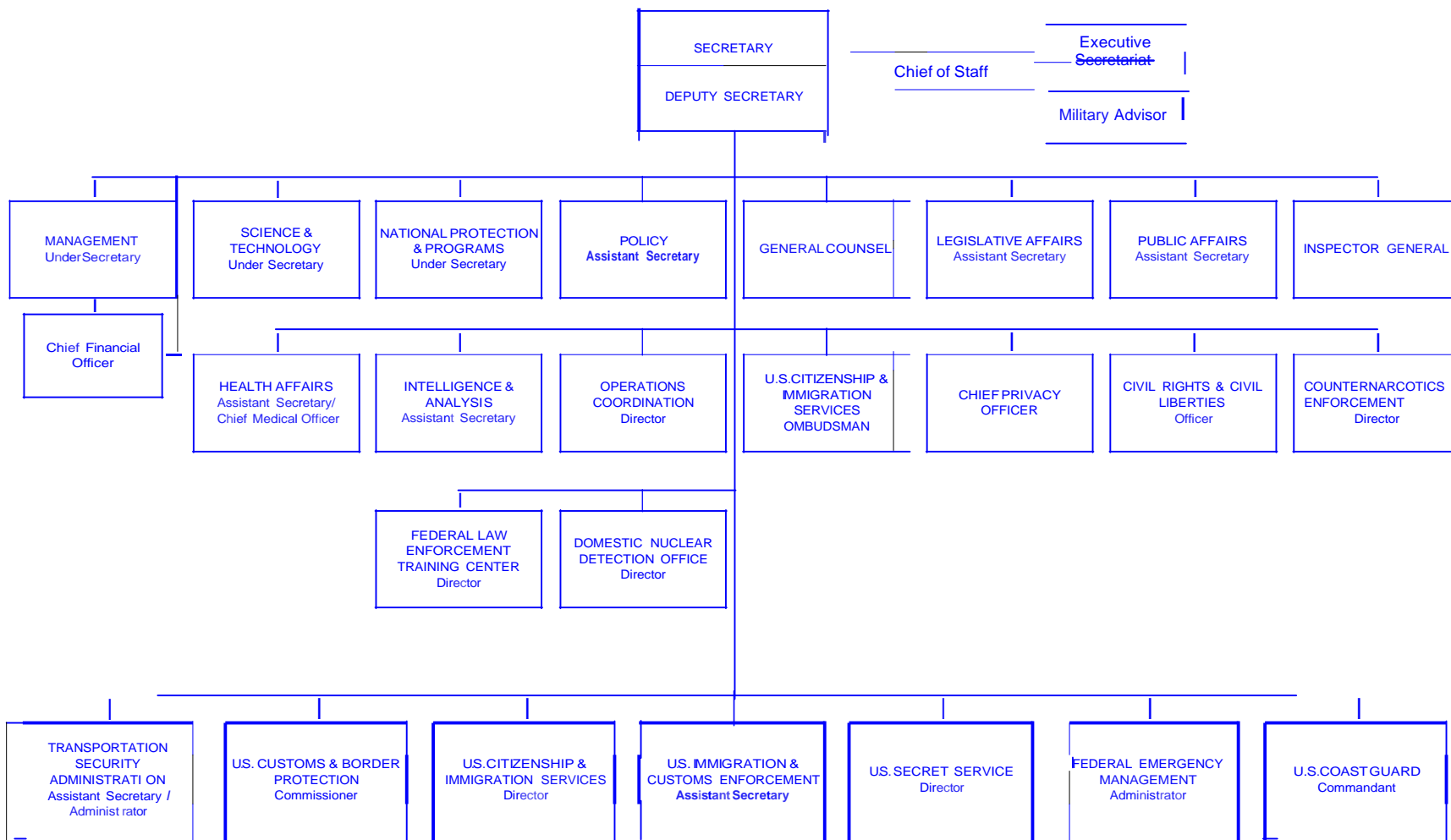
U.S. Immigration  
and Customs  
Enforcement

# **APPENDIX E**



Proposed End State  
for March 31, 2007

## U.S. DEPARTMENT OF HOMELAND SECURITY



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January 29, 2007

# APPENDIX F

# Office for Civil Rights and Civil Liberties



Daniel Sutherland  
Officer for Civil Rights  
and Civil Liberties

Deputy Officer for EEO  
Programs

Counsel for EEO  
Programs

Policy Advisor

Director for Office on  
Accessible Systems  
and Technologies

Executive Officer

Counsel for CRCL  
Programs

Deputy Officer for  
CRCL Programs and  
Compliance

Staff Assistant

508 Program  
Specialist

Administrative  
Officer

Senior EEO  
Manager

Senior EEO  
Manager

Program Evaluation  
& ADR

Complaint  
Adjudication

EEO Manager

HQ EEO Officer

Management and  
Program Analyst

Director for Review  
and Compliance

Director for CRCL  
Programs

EEO Specialist

EEO Specialist

EEO Specialist

Complaints  
Manager

Selective  
Placement  
Coordinator

Policy Advisor

Policy Advisor for  
Immigration Policy

Policy Advisor

Policy Advisor for  
Arab Muslim Issues

Policy Advisor

Policy Advisor for  
Technology

Policy Advisor for  
Arab Muslim Issues

Policy Advisor

Program Manager  
for Disability Policy

Program Manager  
for Civil Liberties  
Univ.

Compliance Officer

Policy Advisor for  
Disability Policy

Compliance Officer

Policy Advisor for  
Disability Policy

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# **APPENDIX G**

## **6 U.S.C. § 345**

### **§ 345. Establishment of Officer for Civil Rights and Civil Liberties**

#### **(a) In general**

The Officer for Civil Rights and Civil Liberties, who shall report directly to the Secretary, shall--

- (1)** review and assess information concerning abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion, by employees and officials of the Department;
- (2)** make public through the Internet, radio, television, or newspaper advertisements information on the responsibilities and functions of, and how to contact, the Officer;
- (3)** assist the Secretary, directorates, and offices of the Department to develop, implement, and periodically review Department policies and procedures to ensure that the protection of civil rights and civil liberties is appropriately incorporated into Department programs and activities;
- (4)** oversee compliance with constitutional, statutory, regulatory, policy, and other requirements relating to the civil rights and civil liberties of individuals affected by the programs and activities of the Department;
- (5)** coordinate with the Privacy Officer to ensure that--
  - (A)** programs, policies, and procedures involving civil rights, civil liberties, and privacy considerations are addressed in an integrated and comprehensive manner; and
  - (B)** Congress receives appropriate reports regarding such programs, policies, and procedures; and
- (6)** investigate complaints and information indicating possible abuses of civil rights or civil liberties, unless the Inspector General of the Department determines that any such complaint or information should be investigated by the Inspector General.

#### **(b) Report**

The Secretary shall submit to the President of the Senate, the Speaker of the House of Representatives, and the appropriate committees and subcommittees of Congress on an annual basis a report on the implementation of this section, including the use of funds appropriated to carry out this section, and detailing any allegations of abuses described under subsection (a)(1) of this section and any actions taken by the Department in response to such allegations.

# **APPENDIX H**

# PROTECTING AMERICA, PRESERVING FREEDOM



## U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties

The mission of the Office for Civil Rights and Civil Liberties is to assist the dedicated men and women of this Department in securing our country while preserving our freedoms and our way of life.

If you have a comment or complaint, please contact us.

WE NEED YOUR HELP



**Homeland  
Security**

U.S. Department of Homeland Security Office for Civil Rights and  
Civil Liberties • Washington, DC 20528 • 1-866-644-8360  
1-866-644-8361 (TTY) 202-401-4708 (Fax) [civil.liberties@dhs.gov](mailto:civil.liberties@dhs.gov)

PROTEGIENDO A LOS ESTADOS UNIDOS, PRESERVANDO LA LIBERTAD.



## El Departamento de Seguridad Nacional de los Estados Unidos La Oficina para Derechos Civiles y Libertades Civiles

La misión de la Oficina para Derechos Civiles y Libertades Civiles es apoyar a los hombres y las mujeres dedicados de este Departamento a mantener la seguridad de a nuestro país mientras preservamos libertades y nuestro modo de vida. Si tiene algun comentario o queja, por favor contáctenos.

NECESITAMOS SU AYUDA



**Homeland  
Security**

El Departamento de Seguridad Nacional de los Estados Unidos, La Oficina para Derechos Civiles y Libertades Civiles, Washington D.C., 20528  
1-866-644-8360 • 1-866-644-8361 (TTY) • 202-401-4708 (Fax)  
[civil.liberties@dhs.gov](mailto:civil.liberties@dhs.gov)



حماية أمريكا...  
صيانة الحرية...



لأجلك...

وزارة الأمن الداخلي بالولايات المتحدة الأمريكية...  
مكتب الحقوق المدنية و الحريات المدنية...

رسالتنا هي تعضيد رجالنا ونسائنا المكرسين الذين يحمون أمن بلادنا  
بينما يحافظون على قيم أمريكا الأصيلة. نحتاج لمساعدتك.

إذا كان لديك تعليق أو اهتمام أو شكاوي، من فضلك اتصل بنا...

نحن نحمي بلدنا...

مكتب الحقوق المدنية و الحريات المدنية - وزارة الأمن الداخلي -  
واشنطن، د س 20528



Homeland  
Security

