



Department of Homeland Security Office for Civil Rights and Civil Liberties

Quarterly Report to Congress

First and Second Quarters, FY 2014 (October 1, 2013 – March 31, 2014)

December 3, 2014



**Homeland
Security**

Foreword



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

This Report includes information on the first and second quarters of Fiscal Year (FY) 2014. The DHS Chief Privacy Officer provides separate quarterly reports under the 9/11 Commission Act concerning privacy advice and complaints, available at the Privacy Office's web site, <http://www.dhs.gov/privacy>.

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

The Honorable Barbara Mikulski
Chairwoman, U.S. Senate Committee on Appropriations

The Honorable Richard Shelby
Ranking Member, U.S. Senate Committee on Appropriations

The Honorable Thomas R. Carper
Chairman, U.S. Senate Committee on Homeland Security and Governmental Affairs

The Honorable Tom Coburn
Ranking Member, U.S. Senate Committee on Homeland Security and Governmental Affairs

The Honorable Dianne Feinstein
Chairman, U.S. Senate Select Committee on Intelligence

The Honorable Saxby Chambliss
Vice Chairman, U.S. Senate Select Committee on Intelligence

The Honorable Patrick J. Leahy
Chairman, U.S. Senate Committee on the Judiciary

The Honorable Charles Grassley
Ranking Member, U.S. Senate Committee on the Judiciary

The Honorable John Boehner
Speaker of the House, U.S. House of Representatives

The Honorable Hal Rogers
Chairman, U.S. House of Representatives Committee on Appropriations

The Honorable Nita M. Lowey

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

The Honorable Michael McCaul

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

The Honorable Bennie G. Thompson

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

The Honorable Mike Rogers

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

The Honorable C.A. "Dutch" Ruppertsberger

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

The Honorable Bob Goodlatte

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

The Honorable John Conyers, Jr.

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

The Honorable Darrell Issa

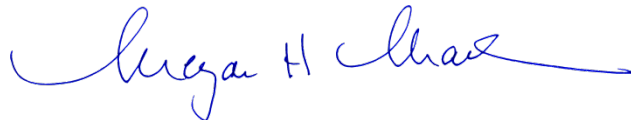
Chairman, U.S. House of Representatives Committee on Oversight and Government Reform

The Honorable Elijah E. Cummings

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

Additional information, including our prior quarterly and annual reports and our civil rights complaint contact information, are available at www.dhs.gov/crcl. Please direct inquiries regarding this Report to the Office for Civil Rights and Civil Liberties at 866-644-8360 (TTY 866-644-8361) or crcl@dhs.gov.

Yours very truly,



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

Executive Summary

This Quarterly Report details activities of the Department of Homeland Security Office for Civil Rights and Civil Liberties, as required by section 803 of the Implementing Recommendations of the *9/11 Commission Act of 2007*, 42 U.S.C. § 2000ee-1(f). This Report includes information on CRCL’s investigative work during the first and second quarters of FY 2014.

The majority of complaints investigations focused on allegations made against two DHS components, U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP). A significant portion of the ICE complaints alleged inadequate medical attention for detainees being held in ICE custody (outlined in the table below). CRCL utilizes contract subject matter experts in medical care detention issues to evaluate these claims and make recommendations regarding appropriate medical treatment. A number of the CBP complaints alleged excessive use of force by CBP officers and agents. During the first and second quarters of FY 2014, CRCL provided input and worked effectively in collaboration with CBP staff and leadership to assist in the development of CBP’s [revised Use of Force Policy](#).

Component	Issue	Situation	Total
CBP	Excessive force or innappropriate use of force	Unaccompanied children	13
CBP	Conditions of detention	Unaccompanied children	5
ICE	Discrimination/profiling	DHS law enforcement activity	1
ICE	Conditions of detention	Immigration detention	8
ICE	Sexual assault/abuse	Immigration detention	5
ICE	Medical/mental health care	Immigration detention	36

Most CRCL complaints are investigated and closed without the issuance of recommendations. This occurs in various instances, such as when allegations are unsubstantiated, when existing policy, procedures, and training are found to be sufficient, and when the component has already addressed the concerns that we have identified through the complaint. When appropriate, CRCL concludes its investigation of a complaint through informal resolutions, which consist of real-time communications to components on pending issues and proposed resolutions. During the first and second quarters, CRCL transmitted informal resolutions to U.S. Immigration and Customs Enforcement and the Federal Protective Service to resolve issues arising in four complaints.



DHS Office for Civil Rights and Civil Liberties FY 2014 First and Second Quarter Report

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I. Legislative Language

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

Implementing Recommendations of the *9/11 Commission Act of 2007*, Pub. L. No. 110-53, sec. 803, 121 Stat. 266, 360-362.

(a) Designation and functions

...

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

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

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

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

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

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

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

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

(b) Exception to designation authority

...

(2) Civil liberties officers

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

(c) Supervision and coordination

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

- (1)** report to the head of the department . . . ; and
- (2)** coordinate their activities with the Inspector General of such department . . . to avoid duplication of effort.
- (d) Agency cooperation**

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

- (1)** has the information, material, and resources necessary to fulfill the functions of such officer;
- (2)** is advised of proposed policy changes;
- (3)** is consulted by decision makers; and
- (4)** is given access to material and personnel the officer determines to be necessary to carry out the functions of such officer.

. . .

(f) Periodic reports

(1) In general

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

- (A)(i)** to the appropriate committees of Congress, including the Committee on the Judiciary of the Senate, the Committee on the Judiciary of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives;
- (ii)** to the head of such department, agency, or element; and
- (iii)** to the Privacy and Civil Liberties Oversight Board; and
- (B)** which shall be in unclassified form to the greatest extent possible, with a classified annex where necessary.

(2) Contents

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

- (A)** information on the number and types of reviews undertaken;
- (B)** the type of advice provided and the response given to such advice;

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

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

(g) Informing the public

Each privacy officer and civil liberties officer shall—

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

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

(h) Savings clause

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

II. Civil Rights and Civil Liberties Impact Assessments

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

III. Investigations Data and Analysis

CRCL investigates complaints concerning:

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

Under these authorities, CRCL reviews and assesses civil rights and human rights complaints. These matters arise in a variety of contexts, which are designated in the tables that follow as “situations,” and raise one or more issues. The tables set forth here identify investigations by the primary situation and issue involved.

CRCL initiates investigations based on complaints received from the general public and non-governmental organizations by U.S. mail, email, and fax, and the CRCL telephone hotline, as well as through the DHS Traveler Redress Inquiry Program (TRIP). Incidents that might merit investigation are also forwarded to CRCL from other offices at DHS and other government agencies. **Table 1**, below, indicates investigations opened during the first and second quarters by the primary civil rights *issue* raised, the *situation* in which the investigation arose, and the DHS *Component* that was the primary subject of the investigation.

Pursuant to 6 U.S.C. § 345(a)(6) and internal DHS policies, CRCL begins the investigation process by referring all matters involving the conduct of DHS employees to the DHS Office of Inspector General (OIG).¹ OIG then determines whether or not it will investigate the case. In this report, such cases are designated *OIG retained*. If OIG declines to investigate the complaint, it is referred back to CRCL for appropriate action, at which point CRCL determines whether the case should be retained for CRCL’s own investigation (*CRCL retained*) or referred to the relevant DHS Component(s) (*CRCL referred*). Retained cases may be subject to a *full investigation* or *short-form* resolution.² A small number of cases are subject to a *joint*

¹ Complaints involving the activities of state or local law enforcement agencies, acting under state law, that come to CRCL via the Secure Communities complaint protocol are not initially referred to OIG, because they do not involve the conduct of ICE employees. CRCL notifies the Department of Justice, which has jurisdiction to investigate violations of civil rights by state and local officers of all investigations undertaken. The Secure Communities complaint protocol is posted on the ICE Secure Communities website, http://www.ice.gov/secure_communities.

² CRCL has implemented “short-form” complaint processing procedures to facilitate swift action on urgent complaints and expeditious resolution of allegations that are narrowly focused and require limited investigation. The short-form process makes it easier to open and close complaints, allowing speedier resolution. Cases that subsequently require additional work are converted to standard investigations.

investigation, combining CRCL's investigative resources with those of the relevant Component(s). Investigations at any other stage are noted as *in process*.³ **Table 2** describes all investigations, including those initiated prior to FY 2014, in process as of the last day of the quarter, under these categories. In cases where the OIG retains a complaint, once the OIG investigation is complete, the matter is returned to CRCL for consideration. CRCL may then close the matter or retain it for our own investigation. As **Tables 3a** and **3b** indicate, there were no such matters retained in the first quarter, and a total of two such matters retained in the second quarter.

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

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

Table 1. Investigations opened, 1Q and 2Q 2014 (as of March 31, 2014)

<i>Total by issue</i>	Component				
	CBP	DHS*	ICE	TSA	Total
Subtotal by situation					
<i>Abuse of authority/misuse of official position</i>	3		1		4
DHS regulatory/rule processing	1				1
Immigration detention			1		1
Port of entry/CBP checkpoint	1				1
Unaccompanied minor	1				1
<i>Conditions of detention</i>	6	1	8		15
CBP detention or CBP deferred inspection	1				1
Immigration detention			8		8
Unaccompanied minor	5	1			6
<i>Disability accommodation (Section 504)</i>				1	1
Screening (non-watch list)				1	1
<i>Discrimination/profiling</i>	3	2	2		7
DHS law enforcement activity		1	1		2
Immigration detention			1		1
Port of entry/CBP checkpoint	2	1			3
Screening (non-watch list)	1				1
<i>Due process</i>	5	2	8		15
CBP detention or CBP deferred inspection	1				1
DHS law enforcement activity			5		5
DHS regulatory/rule processing		1			1
DHS supported activity (not 287(g))	1				1
Federal government building or area		1			1
Immigration detention			3		3
Port of entry/CBP checkpoint	3				3
<i>Excessive force or inappropriate use of force</i>	17	1	8		26
DHS law enforcement activity	2				2
Federal government building or area		1			1
Immigration detention			8		8
Port of entry/CBP checkpoint	2				2
Unaccompanied minor	13				13
<i>Fourth Amendment (search and seizure)</i>	1	1	3		5
DHS law enforcement activity	1		3		4
Port of entry/CBP checkpoint		1			1
<i>First Amendment (free speech/association)</i>			1		1
DHS regulatory/rule processing			1		1
<i>Inappropriate questioning/inspection conditions</i>	7	2			9
Federal government building or area		1			1
Port of entry/CBP checkpoint	7				7
Unaccompanied minor		1			1

*Multi-Component or DHS Headquarters unit

Table 1 continued, Investigations opened 1Q and 2Q 2014 (as of March 31, 2014)

	Component				
	CBP	DHS*	ICE	TSA	Total
<i>Inappropriate touch/search of person (non-TSA)</i>	1		1		2
Immigration detention			1		1
Port of entry/CBP checkpoint	1				1
<i>Intimidation/threat/improper coercion</i>	2				2
Unaccompanied minor	2				2
<i>Legal access</i>			5		5
Immigration detention			5		5
<i>Medical/mental health care</i>	8	2	36		46
DHS law enforcement activity	3				3
Immigration detention		2	36		38
Port of entry/CBP checkpoint	2				2
Unaccompanied minor	3				3
<i>Privacy</i>			2		2
DHS law enforcement activity			1		1
Immigration detention			1		1
<i>Religious accommodation</i>			1		1
Immigration detention			1		1
<i>Retaliation</i>			1		1
DHS supported activity (not 287(g))			1		1
<i>Sexual assault/abuse</i>		1	5		6
Immigration detention		1	5		6
<i>TSA AIT and TSA pat-downs</i>				1	1
Screening (non-watch list)				1	1
Grand Total by Issue	53	12	82	2	149

*Multi-Component or DHS Headquarters unit

Table 2. Investigations in process as of March 31, 2014

	Grand Total	Under Review ⁴	OIG Retained	CRCL Retained		Joint Investigation	CRCL Referred
				Full Investigation	Short Form		
<i>By issue</i>							
Abuse of authority/misuse of official position	14	1		1	9		3
Conditions of detention	53	7		17	23		6
Disability accommodation (Section 504)	2			1	1		
Discrimination/profiling	32	10		3	13	2	4
Due process	22	13	1	1	6		1
Excessive force	68	8	4	5	40		11
First Amendment (free speech/association)	5	2			2		1
Fourth Amendment (search and seizure)	8	5	1		1		1
Human rights	1	1					
Inappropriate questioning/inspection conditions	11	4	1		1		5
Inappropriate touch/search of person (non-TSA)	4		2		1		1
Intimidation/threat/improper coercion	8	1			6		1
Legal access	8	2		1	4		1
Medical/mental health care	136	33	6	27	65		5
Privacy	9	2			6		1
Religious accommodation	6			1	5		
Retaliation	2				2		
Sexual assault/abuse	13	5		3	5		
TSA AIT and TSA pat-downs	1	1					
Total by issue	403	95	15	60	190	2	41

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

Table 2 continued (Investigations in process as of March 31, 2014)

	Grand Total	Under Review	OIG Retained	CRCL Retained		Joint Investigation	CRCL Referred
				Full Investigation	Short Form		
By situation							
287(g)	1				1		
CBP detention/hold room/CBP deferred inspection site	10	4			3		3
DHS law enforcement activity	35	15	3	1	15		1
DHS public messaging/websites	1	1					
DHS regulatory/rule processing	5	3		1	1		
DHS supported activity (not 287(g))	3	2			1		
Federal government building or area	18	2	2	3	8		3
Immigration benefit application processing	3				3		
Immigration detention	217	51	2	52	104	1	7
Political demonstration/rally	1						1
Port of entry/CBP checkpoint	47	11	8	1	18		9
Screening (non-watch list)	8	1		2	2	1	2
Secure Communities	1				1		
Unaccompanied minor	51	5			31		15
Visa processing	1				1		
Watch list/aviation security	1				1		
Total by situation	403	95	15	60	190	2	41
By Component							
DHS (Multi-Component or Headquarters unit)	28	11	2	1	10		4
CBP	120	23	10	3	58	1	25
ICE	248	60	3	55	117	1	12
TSA	3	1		1	1		
USCIS	4				4		
Total by Component	403	95	15	60	190	2	41

Table 3a. There were no matters previously retained by OIG returned during 1Q 2014.

Table 3b. Matters previously retained by OIG returned during 2Q 2014

	Received from OIG	Closed by CRCL	Retained for CRCL investigation
<i>By issue</i>			
Abuse of authority/misuse of official position	1		1
Medical/mental health care	1		1
Total by issue	2	0	1
<i>By situation</i>			
DHS law enforcement activity	1		1
Immigration detention	1		1
Total by situation	2	0	2
<i>By Component</i>			
ICE	2		2
Total by Component	2	0	2

Table 4. Investigations closed, 1Q and 2Q 2014 (as of March 31, 2014)

<i>Total by issue</i>	Component						
Subtotal by situation	CBP	DHS *	ICE	TSA	USCG	USCIS	Total
<i>Abuse of authority/misuse of official position</i>	1		5				6
DHS law enforcement activity	1		3				4
Federal government building or area			1				1
Immigration detention			1				1
<i>Conditions of detention</i>	2		23				25
CBP detention or CBP deferred inspection	1		1				2
Immigration detention			22				22
Unaccompanied minor	1						1
<i>Disability accommodation (Section 504)</i>	2			1			3
DHS law enforcement activity	1						1
Screening (non-watch list)				1			1
Watchlist/aviation security	1						1
<i>Discrimination/profiling</i>	5		2			1	8
DHS law enforcement activity	1		1				2
Immigration benefit application processing						1	1
Immigration detention			1				1
Port of entry/CBP checkpoint	2						2
Unaccompanied minor	1						1
Visa processing	1						1
<i>Due process</i>	1	2	1				4
DHS law enforcement activity		1	1				2
Immigration detention	1	1					2
<i>Excessive or inappropriate use of force</i>	7	1	9				17
CBP detention or CBP deferred inspection	1						1
DHS law enforcement activity			1				1
Federal government building or area		1	1				2
Immigration detention			7				7
Port of entry/CBP checkpoint	3						3
Unaccompanied minor	3						3
<i>Fourth Amendment (search and seizure)</i>	1		2				3
DHS law enforcement activity			1				1
Secure Communities			1				1
Port of entry/CBP checkpoint	1						1
<i>First Amendment (free speech/association)</i>					1		1
DHS regulatory/rule processing					1		1

*Multi-Component or DHS Headquarters unit

Table 4 continued, Investigations closed 1Q and 2Q 2014 (as of March 31, 2014)

	Component						Total
	CBP	DHS *	ICE	TSA	USCG	USCIS	
<i>Inappropriate questioning/inspection conditions</i>	3	1					4
Port of entry/CBP checkpoint	1						1
Screening (non-watch list)	1						1
Unaccompanied minor	1						1
Watchlist/aviation security		1					1
<i>Intimidation/threat/improper coercion</i>	1		2				3
Immigration detention			2				2
Port of entry/CBP checkpoint	1						1
<i>Language access (limited English proficiency)</i>	1						1
Port of entry/CBP checkpoint	1						1
<i>Legal access</i>			1				1
Immigration detention			1				1
<i>Medical/mental health care</i>	6	1	29				36
DHS law enforcement activity	1						1
Immigration detention		1	29				30
Port of entry/CBP checkpoint	5						5
<i>Breach of confidentiality</i>			1				1
Immigration detention			1				1
<i>Religious accommodation</i>	1						1
Port of entry/CBP checkpoint	1						1
<i>Sexual assault/abuse</i>			2				2
Immigration detention			2				2
Grand Total by Issue	31	5	77	1	1	1	116

*Multi-Component or DHS Headquarters unit

IV. Appendix: Acronyms

AIT	Advanced Imaging Technology
CBP	U.S. Customs and Border Protection
CRCL	DHS Office for Civil Rights and Civil Liberties
DHS	Department of Homeland Security
FEMA	Federal Emergency Management Agency
ICE	U.S. Immigration and Customs Enforcement
OIG	DHS Office of the Inspector General
ROI	Reports of Investigation
TRIP	Traveler Redress Inquiry Program
TSA	Transportation Security Administration
USCG	U.S. Coast Guard
USCIS	U.S. Citizenship and Immigration Services