

Recommendations to DHS to Improve Complaint Processing

The following recommendations are submitted on behalf of the American Civil Liberties Union, the American Immigration Council, the American Immigration Lawyers Association, Americans for Immigrant Justice, Border Network for Human Rights, Jesuit Refugee Service/USA, Kino Border Initiative, Latin America Working Group, Lutheran Immigration and Refugee Service (LIRS), National Immigration Forum, New York Civil Liberties Union, Northwest Immigrant Rights Project, Rio Grande Valley Equal Voice Network, Southern Border Communities Coalition, the U.S. Jesuit Conference, and the Women's Refugee Commission.

As part of the Homeland Security Act of 2002, Congress ordered the Department of Homeland Security (DHS) to ensure the adequate protection of civil rights and civil liberties.ⁱ However, consistent, documented – yet avoidable - deficiencies within the DHS complaint systems have inhibited the Department's ability to identify internal civil rights concerns and take appropriate action. Specifically:

- ❖ **DHS routinely fails to respond, investigate, or provide appropriate redress to complaints.** Complainants frequently wait years, only to receive form letters, if anything at all, in response to serious complaints alleging misconduct and mismanagement. For example, between 2011 and 2013, ProBAR, a nonprofit organization representing children in South Texas, helped almost 100 children file complaints against CBP alleging mistreatment. Only about one third of the complaints even garnered a response.ⁱⁱ
- ❖ **The Department directs individuals to file complaints through many different avenues, resulting in departmental inefficiency and public confusion about where and how to file complaints.** For example, Customs and Border Protection's (CBP's) February 2014 guidance on nondiscrimination directs prospective complainants to no fewer than six different Departmental entitiesⁱⁱⁱ – none of which includes the Office of Civil Rights and Civil Liberties (OCRCL), which expressly claims jurisdiction over civil rights issues. Similarly, complaints regarding detention conditions can be filed with the individual ICE field office, Joint Intake Center, OCRCL, Office of Inspector General (OIG), or ICE Office of Professional Responsibility.
- ❖ **DHS complaint databases provide inadequate information regarding complaint trends, thereby missing an opportunity to inform Department policies, trainings, procedures, and budgets.** For example, in a recent review of use-of-force incidents and policy, the OIG found that CBP's case management system for incidents and complaints was inadequate, and that CBP should better analyze use-of-force data to inform Departmental decision-making.^{iv}
- ❖ **DHS' complaint procedures lack transparency and are inconsistent with the Administration's Open Government Initiative.** As part of the Open Government Initiative, the President directed agencies to implement policies encouraging proactive disclosure of information, both to minimize the need for Freedom of Information Act requests and to increase civil engagement.^v Despite this directive, complaint processing at DHS remains a virtual black hole. DHS does not provide public copies of complaints or resolutions, or even information regarding whether a complaint was ever investigated. As a result, the public is forced to rely on the FOIA process for information about complaints, often with inconsistent and inadequate results.
- ❖ **DHS procedures fall short of best practices for receiving, processing, and investigating complaints.** For example, despite Executive Order 12166, "Improving Access to Services for Persons with Limited English Proficiency," and subsequent DOJ guidance, DHS complaint systems still fail to ensure individuals with limited English proficiency are able to access complaint forms in their native language. For example, the current CBP online complaint form^{vi} is only available in English and is only intended for complaints about travel, leaving many without meaningful complaint access.

DHS should strengthen complaint processing by taking the following steps:

- Develop one centralized online complaint form and one supporting mobile device application, thereby permitting anyone to file *any* immigration or border-related complaint without fear of using the wrong form. Both the online system and mobile app should permit complainants to upload photo, video, documentary, or other supporting evidence. The web address should be displayed at all detention facilities, ports of entry, interior checkpoints, and on marked DHS vehicles, and permit individuals to file complaints in multiple languages.

- Create one toll-free number where anyone can file *any* immigration or border-related complaint. The number should be displayed at all detention facilities, ports of entry, interior checkpoints, and on marked DHS vehicles, and permit individuals to file complaints in multiple languages. There should be a complaint hotline that is easily accessible to detainees in every DHS detention facility. Hotline phones should be available at ICE owned and operated facilities, short-term CBP facilities, ICE contract facilities, and facilities governed by intergovernmental service agreements. Having both a toll-free hotline is important to ensure everyone has the ability to file a complaint, regardless of their access to the internet.
- Create a mechanism, both web and telephonic based, that provides individuals with timely information in multiple languages regarding the status of their complaint, including which entity within DHS is processing the complaint.
- Establish a publicly accessible national, standardized database of complaints, including written resolutions, filed with CBP, ICE, the Office for Civil Rights and Civil Liberties, or any other entity within the Department. The database should ensure appropriate privacy protections to maintain the confidentiality of complainants, witnesses, or other individuals.
- Develop a uniform process for receiving, processing, and investigating all immigration and border related complaints. The process should:
 - Provide all complainants with a written confirmation of receipt of their complaint within 90 days and a summary regarding the outcome of their complaint within one year, including findings of fact, findings of law, action taken, and available redress;
 - Include screening procedures for determining whether a complaint raises a cognizable claim under the Rehabilitation Act, the Equal Payment Act, the Age Discrimination in Employment Act, Title VII of the Civil Rights Act, or the Federal Torts Claims Act, or should be referred to an appropriate adjudicating entity outside DHS;
 - Include procedures for referring complaints to OCRCL, OIG, CIS Ombudsman, or the Department of Justice, when appropriate;
 - Incorporate publicly available disciplinary guidelines for DHS employees who engage in misconduct or violate DHS policies and procedures. In cases where a supervisor elects to depart from these written guidelines, the procedure should require the supervisor to document in writing the justification for departing from these guidelines;
 - Require complaints to be tracked in a format that permits the DHS to conduct trend analysis;
 - Ensure that all investigative entities within DHS have access to all Departmental records relevant to the investigation within 60 days following a request for information;
 - Require full investigation of all complaints by a neutral adjudicator outside of the chain of command of any DHS official who is the subject of the complaint. When relevant, the investigating entity should use investigative techniques appropriate for vulnerable populations, such as children. In addition, all complaints should be processed and investigated within one year; and
 - Develop policy guidance for DHS components on integrating analysis of complaint data into the development of training, policy, and the budget.

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ⁱ Homeland Security Act of 2002, 6 U.S.C. §705 (2002)

ⁱⁱ The Probar data cited is current as of December 24, 2013.

ⁱⁱⁱ U.S. Customs and Border Protection, "CBP Policy on Nondiscrimination in Law Enforcement Activities and all other Administered Programs," (April 2014), *available at* http://cbp.gov/linkhandler/cgov/admin/fl/eoo/funded_programs/nond_in_enf.ctt/nond_in_enf.pdf

^{iv} DHS Office of Inspector General, "CBP Use of Force Training and Actions To Address Use of Force Incidents," (September 2013), *available at* http://www.oig.dhs.gov/assets/Mgmt/2013/OIG_13-114_Sep13.pdf.

^v The White House, "The Obama Administrations' Commitment to Open Government: A Status Report," *available at* http://www.whitehouse.gov/sites/default/files/opengov_report.pdf

^{vi} <https://help.cbp.gov/>