

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

CBP DIRECTIVE NO. 2130-021

DATE: June 3, 2011

ORIGINATING OFFICE: OC: DCR

SUPERSEDES:

REVIEW DATE: June 2014

**SUBJECT: Roles and Responsibilities of U.S. Customs and Border Protection Component
Offices and Employees Regarding Civil Rights and Civil Liberties Matters**

1 PURPOSE. This directive defines the roles and responsibilities of U.S. Customs and Border Protection's (CBP) personnel with regard to civil liberties allegations filed by members of the public and individuals detained for law enforcement purposes based on interactions with CBP personnel.

2 POLICY. CBP shall treat all individuals in a non-discriminatory manner, with respect to all forms of protected status under federal law, regulation, Executive Order, or policy, with full respect for individual rights including equality under the law, due process, freedom of expression and religion, and freedom from excessive force, unreasonable searches and seizures, and unlawful intrusions into personal privacy. To exemplify these commitments, CBP will maintain an efficient and effective external civil rights and civil liberties complaint-processing program focused on gathering all the relevant facts and evidence necessary to resolve complaints. CBP shall adhere to the core premise that civil rights and civil liberties protection is not only an ethical and legal imperative but also a practical necessity to maintaining and enhancing the public's level of trust in federal law enforcement.

3 AUTHORITIES.

3.1 Homeland Security Act of 2002 (the Act), as amended, Pub. L. No. 107-296 (November 25, 2002), codified in Title 6, U.S. Code.

3.2 Delegation No. 3095, Delegation to the Officer for Civil Rights and Civil Liberties For Matters Involving Civil Rights, Civil Liberties, and Equal Employment Opportunity, (June 5, 2003).

3.3 Department of Homeland Security (DHS) Management Directive System – MD Number: 3500, Operational Roles and Responsibilities of the Officer for Civil Rights and Civil Liberties, and the Office of Chief Counsel, (May 19, 2004).

3.4 CBP Directive No. 2130-009A, Roles and Responsibilities for U.S. Customs and Border Protection Equal Opportunity Activities and Functions, (July 27, 2010).

3.5 Inspector General Act of 1978, as amended.

3.6 U.S. Department of Justice, Civil Rights Division, Guidance Regarding Use of Race by Federal Law Enforcement Agencies, June 2003.

3.7 CBP Directive No. 1440-026 – Reporting Allegations of Employee Misconduct, (April 2, 1999).

4 **SCOPE.** This directive applies to all CBP component offices and employees.

5 **DEFINITIONS.**

For the purpose of this directive, the following definitions will be used:

5.1 Civil Rights and Civil Liberties: The rights enumerated in the U.S. Constitution, Federal statutes, and regulations, including freedom from discrimination on the grounds of race, sex, religion, national origin, age, disability, or genetic information, freedom of speech, free exercise of religion, due process of law, appropriate conditions of confinement, and protection from excessive force, unreasonable searches and seizures, and unlawful intrusions into personal privacy.

5.2 Racial Profiling: As defined by the U.S. Department of Justice, the invidious use of race or ethnicity as a criterion in conducting stops, searches, and other law enforcement investigative procedures.

6 **RESPONSIBILITIES.**

6.1 DHS Office for Civil Rights and Civil Liberties (CRCL). CRCL supports the Department's mission to secure the nation while preserving individual liberty, fairness, and equality under the law. CRCL integrates civil rights and civil liberties into all of the Department activities by promoting respect for civil rights and civil liberties in policy creation and implementation by advising Department leadership and personnel, and state and local partners; communicating with individuals and communities whose civil rights and civil liberties may be affected by Department activities, informing them about policies and avenues of redress, and promoting appropriate attention within the Department to their experiences and concerns; investigating and resolving civil rights and civil liberties complaints filed by the public regarding Department policies or activities, or actions taken by Department personnel; and leading the Department's equal employment opportunity programs and promoting workforce diversity and merit system principles.

CRCL is responsible for the following:

6.1.1 Pursuant to 6 U.S.C. § 345: Establishment of Officer for Civil Rights and Civil Liberties:

6.1.1.1 reviewing and assessing 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;

6.1.1.2 making public through the Internet, radio, television, or newspaper advertisements information on the responsibilities and functions of, and how to contact, the Officer;

6.1.1.3 assisting 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;

6.1.1.4 overseeing 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;

6.1.1.5 coordinating 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;

6.1.1.6 investigating 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; and

6.1.2 Pursuant to 42 U.S.C. § 2000ee-1:

6.1.2.1 periodically investigating and reviewing Department or component actions, policies, procedures, guidelines, and related laws and their implementation to ensure that the Department or component is adequately considering civil liberties in its actions; and

6.1.2.2 ensuring that the Department and component have adequate procedures to receive, investigate, respond to, and redress complaints from individuals who allege such department, agency, or element has violated their civil liberties.

6.2 **CBP's Office of Diversity and Civil Rights (DCR).** DCR is responsible for the following:

6.2.2 Establishing policies, implementing guidelines, standards, and programs necessary to ensure compliance with policy and guidance issued by CRCL.

6.2.3 Advising the Commissioner and other senior CBP leaders, as appropriate, on issues that may adversely impact operations or require funding to implement.

6.2.4 Ensuring that CRCL receives requested information related to the implementation of guidelines, standards, and programs within the established timeframes.

6.2.5 Leading CBP's efforts to gather all information necessary, ensuring a free flow of information between CBP and CRCL to facilitate the timely and thorough completion of CRCL investigations. In particular, DCR will ensure that reports of investigation are returned to CRCL within 180 days.

6.2.6 Arranging classified briefings, when necessary, to respond to CRCL's requests for information.

6.2.7 Ensuring the implementation, when appropriate, of recommendations made in memoranda issued by CRCL to senior CBP leadership.

6.2.8 Providing notification to CRCL of actions taken or reason(s) for non-implementation of CRCL recommendations.

6.3 Office of Internal Affairs (OIA), Joint Intake Center (JIC). OIA is responsible for the following:

6.3.2 Receiving, documenting and if appropriate referring to the appropriate investigative entity all allegations concerning CBP employee misconduct, including alleged violations of civil rights, civil liberties and racial, ethnic, and/or religious profiling.

6.3.3 Receiving, documenting, tracking, and if necessary based on the facts presented, determining appropriate investigative/fact-finding jurisdiction on external matters involving allegations of abuses of civil rights, civil liberties and racial, ethnic, and/or religious profiling declined by the OIG and referred by CRCL to CBP for investigation or inquiry.

6.4 Office of Public Affairs, CBP INFO Center. The CBP INFO Center is responsible for the following:

6.4.2 Serving as the primary point of contact for the general public to ask questions, make a comment, submit a complaint or seek clarification on CBP related regulations, requirements and processes, and practices.

6.4.3 Receiving, documenting, and referring to OIA alleged abuses of civil rights, civil liberties, and racial, ethnic, and/or religious profiling received from the public through a toll-free line, email, mail, or the Internet at CBP.gov.

6.5 Assistant Commissioners, Chief, United States Border Patrol and Independent Office Directors. The Assistant Commissioners, Chief, Office of Border Patrol and Independent Office Directors, are responsible for the following:

6.5.2 Conveying to all CBP employees and members of the public CBP's commitment to fair and impartial law enforcement.

6.5.3 Ensuring that all CBP employees respect the civil rights and civil liberties of all individuals.

6.5.4 Ensuring that all civil rights and civil liberties management inquiries assigned by OIA for fact-finding are completed and submitted to OIA within the established timeframes.

6.6 Employees. All CBP employees are responsible for the following:

6.6.2 Abiding by CBP's policy to treat all individuals in a non-discriminatory manner, without regard to their protected status under federal law, regulation, Executive Order, or policy, and to respect individuals' rights to freedom of speech, free exercise of religion, due process of law, and protection from excessive force, unreasonable searches and seizures, and unlawful intrusions into personal privacy.

6.6.3 Cooperating with CRCL investigators and CBP fact-finders during the investigative process to facilitate review and resolution of civil liberties/civil rights matters.

6.6.4 Promptly reporting alleged employee misconduct, including abuse of civil rights/civil liberties, or racial, ethnic, or religious profiling, to:

6.6.4.2 OIA by calling the toll-free Joint Intake Center (JIC) Hotline at 1-877-2INTAKE (1-877-256-8253), sending a fax to (202) 344-3390, or sending an email message to Joint.Intake@dhs.gov.

6.6.4.3 Your servicing OIA Field Office (see link below for office contact information)
http://cbpnet.cbp.dhs.gov/xp/cbpnet/ia/rm/ia_contacts.xml

6.6.4.4 DHS OIG by calling 1-800-323-8603, sending an e-mail message to DHSOIGHOTLINE@dhs.gov, sending a fax to (202) 254-4292, or writing to the OIG hotline at:

DHS Office of Inspector General/MAIL STOP 2600
Attention: Office of Investigations - Hotline
245 Murray Drive, SW, Building 410
Washington, DC 20528

7 REFERRALS. DCR, CBP INFO Center, and all CBP offices shall refer all allegations of civil rights and civil liberties violations, or racial, ethnic, and/or religious profiling by DHS employees and officials to CBP's Office of Internal Affairs within a reasonable timeframe.

8 PROPOSED CORRECTIVE ACTIONS.

8.1 CRCL will issue to DCR a draft report on CRCL's findings and recommendations for corrective action or appropriate enforcement actions at the conclusion of the investigation. CBP will review and provide comments to CRCL within 15 calendar days.

8.2 Upon receipt of CRCL's final report of findings and recommendations, the Executive Director, DCR, will consult with the necessary office(s) to determine if the recommendations can be fully or partially implemented.

8.3 The Executive Director, DCR, will obtain clearance from the CBP Commissioner or Deputy Commissioner, and shall notify CRCL of CBP's concurrence or non-concurrence with each recommendation, and provide an action plan for implementation of all recommendations with which it concurs, within 30 calendar days.

9 **NO PRIVATE RIGHTS CREATED.** The procedures set forth in this directive are for CBP internal use only and create no private rights, benefits, or privileges for any private person or party. This directive does not create a private right of appeal, claim, complaint, or other cause of action on the part of any person.

A handwritten signature in cursive script that reads "Alan Bersin".

Commissioner
U.S. Customs and Border Protection