



Homeland
Security

August 22, 2012

Melissa Crow
Director, Legal Action Center
American Immigration Council
1331 G Street NW, Suite 200
Washington, DC 20005-3141

Re: **CRCL 12-039**

Dear Ms. Crow:

This is the final response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties (CRCL), dated May 31, 2012, and received by this office on June 7, 2012. You are seeking records regarding the actual or purported use of U.S. Customs and Border Protection (CBP) personnel to provide interpretation and/or translation services to other law enforcement agencies.

A search of CRCL for documents responsive to your request produced a total of 89 pages. As a result of discussion between agency personnel and a members of my staff, as a matter of administrative discretion I have determined that 5 pages of the records are releasable in their entirety, 42 pages are partially releasable, and 42 pages are withheld in their entirety pursuant to Title 5 U.S.C. § 552 (b)(5) and (b)(6).

Enclosed are 89 pages with certain information withheld for the following reasons.

FOIA Exemption 5 protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. After carefully reviewing the responsive documents, I determined that portions of the responsive documents qualify for protection under the:

- **Deliberative Process Privilege**

The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

- **Attorney Work-Product Privilege**

The attorney work-product privilege protects documents and other memoranda prepared by an attorney in contemplation of litigation.

- **Attorney-Client Privilege**

The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice. It applies to facts divulged by a client to his attorney, and encompasses any opinions given by an attorney to his client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect client-supplied information. The attorney-client privilege is not limited to the context of litigation.

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right privacy. *[The types of documents and/or information that we have withheld may consist of birth certificates, naturalization certificates, driver license, social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal.]* The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: Associate General Counsel (General Law), U.S. Department of Homeland Security, Washington, D.C. 20528, following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge. 6 CFR § 5.11(d)(4).

If you need to contact our office again about this matter, please refer to **CRCL 12-039**. This office can be reached at 202-357-7672.

Sincerely,
**Fernando
Pineiro Jr.**

Fernando Pineiro Jr.
FOIA Officer

Digitally signed by Fernando Pineiro Jr.
DN: cn=Fernando Pineiro Jr., o=Department
of Homeland Security, ou=Office for Civil
Rights and Civil Liberties,
email=Fernando.Pineiro@dhs.gov, c=US
Date: 2012.08.22 11:14:05 -04'00'

Enclosure(s): 1 PDF 89 pages

(b) (6)

From: (b) (6)
Sent: Wednesday, April 18, 2012 6:01 PM
To: (b) (6)
Subject: CBP translation advice
Attachments: CBP translation advice request.docx

(b) (6)

I've been talking to Tamara about getting OGC involved in the translation questions, and threw together the attached memo to OGC setting forth the legal questions we'd want to know the answers to. Can you please let me know what you think? I'd love to simplify it, but it seems to me there are really distinct questions along two dimensions — (b) (6)

Thanks,

(b) (6)



Homeland
Security

[Date]

MEMORANDUM FOR: Audrey Anderson
Deputy General Counsel

FROM: Tamara Kessler
Acting Officer for Civil Rights and Civil Liberties

SUBJECT: Request for advice on CBP translation issues

As the result of an investigation by the CRCL Compliance Branch, and from press accounts and anecdotal information collected by the CRCL Community Engagement staff, it has come to our attention that Border Patrol officers in some parts of the country routinely provide Spanish interpretation services, in the field, to state and local law enforcement agency (LEA) officers. These incidents often involve no federal interest—are routine matters for local law enforcement, such as traffic stops—apart from the fact that, while on site, the Border Patrol officers may develop cause to believe a subject is without lawful immigration status and may initiate an immigration investigation on that basis. We understand that CBP generally defends the practice of making its officers available to assist local law enforcement in this matter as a relationship-building tool, rather than in itself a significant means for pursuing federal law enforcement interests.

In order to fulfill CRCL's mission to understand and provide advice on the civil rights and civil liberties implications of CBP's practice in this regard, we would appreciate your advice on whether the practice, so described, may place CBP, or the local law enforcement agencies requesting CBP translation assistance, at legal risk. In particular, we would appreciate your thoughts on the following questions (or whatever versions of them you would deem most significant):

- (b) (5) [REDACTED]
- (b) (5) [REDACTED]

(b) (5) [REDACTED]

- (b) (5) [REDACTED]

- (b) (5) [REDACTED]

- (b) (5) [REDACTED]

Should you have any questions about what we are asking, please contact Senior Advisor (b) (6) [REDACTED] or Policy Analyst (b) (6) [REDACTED] on the CRCL staff.

(b) (6)

From: (b) (6)
Sent: Thursday, April 19, 2012 1:50 PM
To: (b) (6)
Subject: CBP translation advice request.docx
Attachments: CBP translation advice request.docx

Second draft. I'll come by to discuss in a few if that's ok.



Homeland Security

[Date]

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Deputy General Counsel

FROM: Tamara Kessler
Acting Officer for Civil Rights and Civil Liberties

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We understand that CBP generally defends the practice of making its officers available to assist local law enforcement in this manner as a relationship-building tool, rather than in itself a significant means for pursuing federal law enforcement interests.

In order to fulfill CRCL's mission to understand and provide advice on the civil rights and civil liberties implications of CBP's practice in this regard, I am requesting your advice on whether the practice, so described, may place CBP, or the local law enforcement agencies requesting CBP translation assistance, at legal risk. In particular, we would appreciate your thoughts on the following questions (or whatever versions of them you would deem most significant):

Concerns Regarding CBP Conduct

1. (b) (5)



2. (b) (5) [REDACTED]

3. (b) (5) [REDACTED]

4. (b) (5) [REDACTED]

Concerns Regarding LEA Conduct

5. (b) (5) [REDACTED]

6. (b) (5) [REDACTED]

Should you have any questions about what we are asking, please contact Senior Advisor (b) (6) [REDACTED] or Policy Analyst (b) (6) [REDACTED] on the CRCL staff.

(b) (6)

From: (b) (6)
Sent: Thursday, April 19, 2012 3:09 PM
To: Kessler, Tamara
Cc: (b) (6) (b) (6) (b) (6)
Subject: CBP translation legal advice request (draft)
Attachments: CBP translation advice request.docx

Tamara,

Per your request, attached is a draft memo, styled from you to Audrey, requesting legal advice on the CBP translation issues. It's a bit longer and more comprehensive than I'd set out to draft, and we could cut it back, but as (b) (6) and I discussed the issues it came to seem that there are a lot of different questions we would want OGC to examine.

(b) (6)

Senior Advisor
Office for Civil Rights & Civil Liberties
Department of Homeland Security

(b) (6) (c)
(b) (6) (c)
(b) (6) hq.dhs.gov



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[Date]

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Deputy General Counsel

FROM: Tamara Kessler
Acting Officer for Civil Rights and Civil Liberties

SUBJECT: Request for advice on CBP translation issues

As the result of an investigation by the CRCL Compliance Branch, and from press accounts and anecdotal information collected by CRCL Community Engagement staff, it has come to our attention that Border Patrol officers in some parts of the country routinely provide Spanish interpretation services, in the field, to state and local law enforcement agency (LEA) officers and to other federal law enforcement agencies. Where an LEA is involved, the incidents may involve no federal interest—they are usually routine matters for local law enforcement, such as traffic stops. While on site to interpret, however, the Border Patrol officers may develop cause to believe a subject is without lawful immigration status and may initiate an immigration investigation, either as a result of the interpretation or because the CBP officers themselves ask the individuals being detained by the LEA (or victims or witnesses being interviewed) questions about their birthplace or immigration status. A series of incidents fitting this pattern, all but one of which come from public accounts, are set forth at the end of this memo.

We understand that CBP generally explains the practice of making its officers available to assist local law enforcement in this manner as a relationship-building tool, rather than in itself a significant means for pursuing federal law enforcement interests.

In order to fulfill CRCL's mission to understand and provide advice on the civil rights and civil liberties implications of CBP's practice in this regard, I am requesting your advice on whether the practice, so described, may place CBP, or the local law enforcement agencies requesting CBP translation assistance, at legal risk. In particular, we would appreciate your thoughts on the following questions (or whatever versions of them you would deem most significant):

Concerns Regarding CBP Conduct

1. (b) (5)



2. (b) (5) [REDACTED]

3. (b) (5) [REDACTED]

4. (b) (5) [REDACTED]

Concerns Regarding LEA Conduct

5. (b) (5) [REDACTED]

6. (b) (5) [REDACTED]

Should you have any questions about what we are asking, please contact Senior Advisor (b) (6) [REDACTED] or Policy Analyst (b) (6) [REDACTED] on the CRCL staff.

Appendix: Examples of CBP Providing Field Interpretation

- 1) Jefferson County, Washington (2008): A local police officer from the Jefferson County Sheriff's office called border patrol for interpretation services during a routine traffic stop as the Sheriff's office does "not have any trained law enforcement personnel that speak Spanish."¹ The County Sheriff noted that border patrol agents are known as useful resources due to their bilingual ability: "...[W]e will utilize any trained law enforcement language resources, from whatever police agency that may be in the vicinity, if and when needed by our deputies in the field."² Border patrol arrived to the scene of the traffic stop, interviewed the driver, and further determined that the driver was in the country illegally and detained the individual. The Sheriff also stated: "Requests for translation assistance is not intended, and will not be used, as a pretext to investigate possible violation of federal immigration laws."³
- 2) Kitsap County, Washington (2010): Deputies from the Kitsap County Sheriff's office requested border patrol agents from Port Angeles to assist with interpretation after stopping a vehicle containing four individuals. The border patrol agent arrived at the scene, identified himself as border patrol, and directly began questioning the individuals about their citizenship status rather than limiting his participation to interpreting the individual's responses alone. As none of the individuals could produce valid immigration documents allowing them to be legally present in the United States in response to the questioning by border patrol, removal proceedings were initiated.⁴
- 3) Oroville, Washington (2010): An Oroville police officer responded to the scene of a domestic violence dispute. Upon being advised that the 911-caller did not speak English, the police officer requested Central Dispatch to send border patrol to interpret. In this instance, the border patrol agent first interpreted the individuals' responses to the officer's questions.⁵ At some point after providing interpretation services, border patrol then placed a detainer on the domestic violence survivor who had initially called 911; she was later taken to a detention facility.⁶
- 4) Forks, Washington (2011): ^{(b) (6)} a forest worker and out of status alien, was seen in his SUV with a female companion near highly valuable plants. According to a U.S. Forest Service spokeswoman, a U.S. Forest Service agent approached the vehicle and suspected that the two individuals had been picking the plants without a permit and called border patrol to interpret. When border patrol arrived, ^{(b) (6)} ran from the vehicle

¹ Erik Hidle & Paige Dickerson, *Jefferson County Sheriff Sets Rules for Work with Border Patrol*, PENINSULA DAILY NEWS, Oct. 8, 2008, available at <http://www.peninsuladailynews.com/article/20081010/news/310109996>.

² *Id.*

³ *Id.*

⁴ Email from Jorge L. Baron, Executive Director, Northwest Immigrants Right Project, to Kareem Shora, Senior Policy Advisor, Section Lead, Community Engagement Section, Office for Civil Rights and Civil Liberties, Dept. of Homeland Security (June 6, 2011).

⁵ *Id.*

⁶ *Id.*

and jumped into a river. (b) (6) body was found more than three weeks after the stop.⁷

- 5) Montana, Havre Sector (2010): A Montana Highway Patrol officer stopped a vehicle containing 5 individuals for speeding. None of the individuals spoke English, and border patrol was called to assist with interpretation. Two agents arrived to assist with the interpretation and determined that all 5 individuals were out of status. Furthermore, the border patrol agents followed the individuals home where they found 11 other individuals without proper immigration documentation. Border patrol initiated removal proceedings against all 16 individuals.⁸
- 6) California, El Centro Sector (2009): The El Centro Border Patrol Sector created a pilot program called BP Alert that envisioned a closer partnership between border patrol agencies and local law enforcement agencies in Inland California. The program involved border patrol offering greater "assistance in translation, identifying suspects in local crimes and providing other types of backup."⁹ A four-day test of BP Alert commencing on January 29, 2008 resulted in 130 immigration-related arrests; all individuals were initially stopped by local law enforcement on suspicion of other crimes prior to border patrol involvement. "Eleven of the local police arrests were . . . for relatively minor offenses such as riding a bicycle on a sidewalk and trespassing on private property."¹⁰ 71 of the 130 individuals arrested had previously been convicted or arrested of crimes. Border patrol agents had also been brought from other border patrol sectors to assist with the BP Alert test efforts. A national border patrol spokesman stated that BP Alert was undergoing evaluation for nationwide use; further research is necessary to find out whether BP Alert was adopted on national scale.
- 7) Louisiana, New Orleans Sector (2008): Louisiana State Police called border patrol agents to assist in interpreting a conversation between themselves and a group of 31 Spanish speaking individuals in their search "for a fugitive wanted in Texas for homicide."¹¹ Though the fugitive was not found among the group, border patrol agents determined that 29 of the subjects were without documentation and were detained and processed for removal. This incident was publicized in a U.S. Customs and Border Patrol News Release praising "how the Border Patrol works closely with state and local agencies protecting communities and the nation's borders."¹²

⁷ Manuel Valdes, 'Twilight' Town Death Sparks Border Patrol Debate, Komonews.com, http://www.komonews.com/news/local/124131889.html#13088624136041&f_height=279 (last visited June 29, 2011).

⁸ KQCD.com, Border Patrol Agents Arrest 16 Illegal Immigrants in NE Montana, http://www.kqcd.com/News_Stories.asp?news=38913 (last visited June 29, 2011).

⁹ David Olson, *Cooperation Between Border Patrol, Local Police Raises Concerns*, THE PRESS-ENTERPRISE, March 2, 2009, PE.com available at http://www.pe.com/localnews/inland/stories/PE_News_Local_S_borderpolice03.3f2b88f.html.

¹⁰ *Id.*

¹¹ Customs and Border Patrol Newsroom, Border Patrol Assists Louisiana Police, 29 Aliens Arrested, http://www.cbp.gov/xp/cgov/newsroom/news_releases/archives/2008_news_releases/december_2008/12042008.xml (last visited June 29, 2011).

¹² *Id.*

(b) (6)

From: (b) (6)
Sent: Wednesday, April 25, 2012 5:02 PM
To: (b) (6)
Subject: Re: CBP translation legal advice request (draft)

Surely she has that! Tamara sent it to (b) (6)

From: (b) (6)
Sent: Wednesday, April 25, 2012 04:55 PM
To: (b) (6)
Subject: RE: CBP translation legal advice request (draft)

Hi (b) (6)

Tamara asked me to brainstorm with (b) (6) on the T6 issues relating to CBP providing interpretation assistance to local/state law enforcement. She sent me the memo in which you outlined the issues and questions. Do you mind if I forward to (b) (6)

Thanks,

(b) (6)

From: Kessler, Tamara
Sent: Friday, April 20, 2012 2:16 PM
To: (b) (6) (b) (6)
Subject: FW: CBP translation legal advice request (draft)

fyi

From: (b) (6)
Sent: Thursday, April 19, 2012 3:09 PM
To: Kessler, Tamara
Cc: (b) (6) (b) (6) (b) (6)
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Tamara,

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(b) (6)

Senior Advisor
Office for Civil Rights & Civil Liberties
Department of Homeland Security

(b) (6) (o)

(b) (6)

(c)

(b) (6)

hq.dhs.gov

(b) (6)

From: (b) (6)
Sent: Wednesday, April 25, 2012 5:07 PM
To: (b) (6)
Subject: RE: CBP translation legal advice request (draft)

Yes, that's the one.

From: (b) (6)
Sent: Wednesday, April 25, 2012 5:05 PM
To: (b) (6)
Subject: RE: CBP translation legal advice request (draft)

I mean, if she doesn't, do send it to her – you mean the memo that's from Tamara to David and Audrey?

From: (b) (6)
Sent: Wednesday, April 25, 2012 5:03 PM
To: (b) (6)
Subject: RE: CBP translation legal advice request (draft)

Ohhh, Ok. I wasn't sure.

From: (b) (6)
Sent: Wednesday, April 25, 2012 5:02 PM
To: (b) (6)
Subject: Re: CBP translation legal advice request (draft)

Surely she has that! Tamara sent it to (b) (6)

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Cc: (b) (6) (b) (6) (b) (6)
Subject: CBP translation legal advice request (draft)

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(b) (6)

(b) (6)
Senior Advisor
Office for Civil Rights & Civil Liberties
Department of Homeland Security

(b) (6) (o)
(b) (6) (c)
(b) (6) hq.dhs.gov

(b) (6)

From: (b) (6)
Sent: Thursday, April 19, 2012 10:03 AM
To: (b) (6)
Subject: Re: CBP translation advice

Sure - we can break that out separately in the authorities question. I will change them from bullets to paragraphs with thematic titles.

I'm out at meetings all morning but will swing by this afternoon.

I hear those emails USDA had are doozies.

From: (b) (6)
Sent: Thursday, April 19, 2012 09:56 AM
To: (b) (6)
Subject: RE: CBP translation advice

(b) (6)

Your approach seems right to me, even though it is not as simple as you would like. I think one issue that we might want to tack on (b) (5)

I'll take another look through this, but in the interest of responding quickly, I wanted to get you my initial thoughts.

(b) (6)

From: (b) (6)
Sent: Wednesday, April 18, 2012 6:01 PM
To: (b) (6)
Subject: CBP translation advice

(b) (6)

I've been talking to Tamara about getting OGC involved in the translation questions, and threw together the attached memo to OGC setting forth the legal questions we'd want to know the answers to. Can you please let me know what you think? I'd love to simplify it, but it seems to me there are really distinct questions along two dimensions - (b) (5)

Thanks,

(b) (6)

(b) (6)

From: Kessler, Tamara
Sent: Thursday, May 03, 2012 12:32 PM
To: (b) (6)
Subject: RE: translation assistance

I think that's right. thanks

From: (b) (6)
Sent: Thursday, May 03, 2012 12:21 PM
To: Kessler, Tamara
Subject: RE: translation assistance

All but the first sentence refers to formal detainees. (b) (5)

From: Kessler, Tamara
Sent: Thursday, May 03, 2012 12:19 PM
To: (b) (6)
Subject: translation assistance

Hey, Just reread the request for legal advice re translation assistance.

(b) (5)

(b) (6)

From: Kessler, Tamara
Sent: Tuesday, May 01, 2012 10:55 AM
To: (b) (6); (b) (6); (b) (6); (b) (6); (b) (6)
Subject: Shora, Kareem; Gersten, David; (b) (6)
Attachments: FW: Civil Rights Complaint
Unredacted Complaint to USDOJ and DHS Final Package 05-01-2012.pdf

This is a pretty thorough complaint re NW border and language assistance from Jorge Baron. It requests that both DOJ and DHS make policy changes/issue directives on this issue.

From: Fong, Ivan
Sent: Tuesday, May 01, 2012 10:28 AM
To: Kessler, Tamara
Cc: Anderson, Audrey; Palmer, David; Chuang, Theodore; Grossman, Seth; Sandweg, John
Subject: FW: Civil Rights Complaint

Tamara - FYSA. Please work with your usual OGC contacts for legal support.

From: Jorge Baron [<mailto:jorge@nwirp.org>]
Sent: Tuesday, May 01, 2012 6:08 AM
To: Olavarria, Esther; Fong, Ivan; Grossman, Seth; CRCL@dhs.gov
Subject: Civil Rights Complaint

Please find attached a carbon copy of a complaint being submitted to DHS and the Department of Justice. Please do not hesitate to contact me if you have any questions. My contact information is below.

Sincerely,

Jorge L. Baron
Northwest Immigrant Rights Project

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Jorge L. Barón | Executive Director | Northwest Immigrant Rights Project
615 Second Ave., Suite 400, Seattle, WA 98104 | email: jorge@nwirp.org
Direct: (206) 957-8609 | Fax: (206) 587-4025 | www.nwirp.org

May 1, 2012

Hon. Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Hon. Janet Napolitano
Secretary
Department of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

Re: Complaint Regarding Violations of Title VI of the Civil Rights Act and Executive Order
13166 Due to the Actual or Purported Use of Border Patrol Agents as Interpreters

Attorney General Holder and Secretary Napolitano,

We are writing on behalf of the individuals listed below to file a formal complaint with the Department of Justice and the Department of Homeland Security regarding the actual or purported use of U.S. Border Patrol agents for interpretation assistance during routine matters by local and federal law enforcement agencies. As outlined more fully below, this practice violates both the substance and the spirit of civil rights protections that your two agencies are charged with enforcing.

A. Factual Background

Over the past few years, community members and organizations have reported to us a number of instances in which local, and in some cases federal, law enforcement agencies had apparently contacted U.S. Border Patrol agents purportedly to provide interpretation assistance during routine law enforcement matters. Although it has not always been easy to document these cases, and, in some situations, individual community members have not been willing to file complaints, the following incidents, which are thoroughly documented in the appendices attached to this complaint, provide an illustration of what is a widespread practice in Washington State:

1. (b) (6)

(b) (6) is a resident of Mount Vernon, Washington and has been residing in the area for approximately four years. (b) (6) is a monolingual Mixteco speaker and does not speak English or Spanish. On Sunday morning, February 12, 2012, (b) (6)

was a passenger in a vehicle traveling near Bellingham, Washington, when the vehicle was pulled over by a trooper from the Washington State Patrol (WSP) because the vehicle was speeding. (b) (6) husband was the driver of the vehicle. According to a report (I-213 form) later prepared by a U.S. Border Patrol agent, the WSP trooper contacted the Bellingham Border Patrol Station and reported that the trooper "required translation assistance to explain to the driver of the vehicle . . . that he was being arrested for a warrant issued out of Bellingham, Washington." Despite the fact that the only individual charged or suspected of any kind of legal violation was the driver of the vehicle, upon their arrival, the Border Patrol agents proceeded to question the other occupants of the vehicle about their immigration status. According to the report, one of the agents questioned (b) (6) without the assistance of an interpreter, even though (b) (6) speaks no English and no Spanish, and even though the agent does not speak Mixteco.

(b) (6) attorney was able to obtain a dashboard camera video recording of the incident from the WSP vehicle through a public records request. An excerpted version of the video is being made available publicly and we ask that it be made part of this complaint (it can be found at the following link: <http://youtu.be/uwruoJqbGPc>). A full version will be made available for download through NWIRP's website at www.nwirp.org. Among other things, the video makes clear that the Border Patrol agents who came to the scene to provide interpretation assistance for the driver of the vehicle used the opportunity to attempt to initiate an immigration enforcement action against all the occupants of the vehicle (other than the driver) even though there was no reason to suspect they had violated any law. The video also makes it clear that the Border Patrol agents were quite aware of the fact that the occupants of the vehicle other than the driver did not speak Spanish and could not communicate with them. At one point, the WSP trooper notes to the Border Patrol agent: "They don't understand anything you're saying, heh?" When another Border Patrol vehicle arrives to take (b) (6) and the other passengers into custody, one of the Border Patrol agents is overheard telling a colleague: "None of these guys speak Spanish." Despite this lack of communication, one of the agents had earlier reported to his colleague that the occupants are "all wet," an apparent reference to the fact that he thought the occupants were in the country without permission. Notably, as the Border Patrol agents are preparing to depart, the WSP trooper thanks them and has the following exchange with the agents:

- WSP Trooper: "Well, I appreciate you coming out."
- BP Agent: "No problem, give us a call anytime."
- WSP Trooper: "Oh yeah, well, we like to, we just have to do it in a roundabout sort of way."
- BP Agent: "That's fine, that's great, we have no problem with that. We appreciate the calls."

As a result of the immigration enforcement action triggered by the request for interpretation assistance by the WSP trooper, (b) (6) was taken into custody by the U.S. Border Patrol and transferred to the Northwest Detention Center (NWDC) in Tacoma, Washington. (b) (6) and her husband (who was taken into custody by WSP and was also later

placed in immigration custody) are the parents of two U.S. citizen children, ages 4 and 1. At the time she was detained, (b) (6) was also fourteen weeks pregnant. When (b) (6) and her husband were both taken into custody during this incident, their two children were left to be cared by other community members. (b) (6) husband was deported and (b) (6) spent approximately two weeks in detention and away from her children before U.S. Immigration and Customs Enforcement (ICE) agreed to release her on an order of supervision on humanitarian grounds. (b) (6) remains in removal proceedings. (b) (6) has no prior criminal or immigration history.

2. (b) (6) (b) (6)

(b) (6) is a resident of Bellingham, Washington and has been residing in the area since approximately 2008. In March 2010, (b) (6) was a passenger in a vehicle traveling in Whatcom County, Washington. She was travelling with her husband and her two young children (ages 2 and 1 at the time) and her husband's brother (who was driving the car), when it was pulled over by a Whatcom County Sheriff's officer. The vehicle stop occurred at approximately 6 P.M. The officer asked to see the driver's license and then began to ask (b) (6) and her husband (who were passengers in the vehicle) for identification. The officer indicated that he was going to be calling for someone who spoke Spanish. According to the I-213 form later prepared by the U.S. Border Patrol, a Border Patrol agent "was dispatched to assist the Whatcom County Sheriff's Office with translation on a traffic stop." The I-213 states that the agent "arrived on the scene and interpreted for the Deputy and became suspicious that the occupants maybe in the country illegally." The I-213 does not indicate any reasons for why the agent "became suspicious" that the individuals in the vehicle might be undocumented. The agent questioned the occupants of the vehicle regarding immigration status and eventually took (b) (6), her husband, and their two U.S. citizen children into custody and transported them to the Sumas Border Patrol Station. At the time of this incident, (b) (6) was 40 weeks pregnant and was expecting to deliver her baby within days of her arrest.

(b) (6), her husband and their two very young children were held at the station for approximately 7 hours. According to the I-213 report later prepared by the Border Patrol, Border Patrol contacted Immigration and Customs Enforcement, Detention and Removal Operations (DRO),ⁱⁱ to request detention space for (b) (6) and her husband. However, the I-213 report notes that ICE DRO "would not authorize space because of the family unit and because of (b) (6) delicate medical condition." The family was then released from custody around 2 A.M, approximately eight hours after the initial traffic stop. (b) (6) remains in removal proceedings at this time. Besides the incident described above, (b) (6) had no prior immigration or criminal history. Our office attempted to obtain records from this incident from the Whatcom County Sheriffs' Office, but we were told that no records could be found from their agency regarding this incident, and it appears that no traffic citation was issued during this incident.

3. (b) (6)

(b) (6) is a resident of Okanogan County, Washington, and has been residing in the area for approximately four years. (b) (6) is married to a U.S. citizen and has a young U.S. citizen child. On March 2011, (b) (6) was traveling with his wife south of Oroville, WA, when he was pulled over by a trooper from the Washington State Patrol (WSP). According to the report later filed by the trooper, he stopped the vehicle because he observed a "cracked windshield and only one working taillight." The WSP report of the incident indicates that although (b) (6) spoke limited English, the trooper was able to communicate with him sufficiently to obtain needed information. The WSP report makes no mention of the trooper contacting anyone for interpretation assistance or of Border Patrol being involved in the incident in any way. At least two Border Patrol agents did, however, come to the scene of the traffic stop. According to the I-213 subsequently filed by the Border Patrol, the WSP trooper had "contacted the Oroville, Washington Border Patrol Station and requested language translation." Two Border Patrol agents responded to the scene. According to the I-213, the agents proceeded to assist the trooper "by providing the requested language translation," and then "upon completion of the vehicle stop," the agents proceeded to engage in questioning about immigration status.

(b) (6) was subsequently arrested by WSP for the traffic offense of driving without a license and taken to the Okanogan County Jail. Based on the questioning that had occurred during the traffic stop, Border Patrol had placed an immigration detainer form preventing his release from local custody. (b) (6) is currently facing removal proceedings. Besides the incident described above, (b) (6) has no other criminal history.

4. (b) (6)

(b) (6) is a resident of Burlington, WA, and has been residing in the area for approximately 12 years. In June 2011, (b) (6) was driving in the city of Anacortes, Washington, when he was pulled over by an officer with the Anacortes Police Department (APD). The officer alleged that (b) (6) had failed to signal when making a left hand turn and on that basis initiated a traffic stop. According to the APD officer's report, the officer decided to contact U.S. Border Patrol because he noted that (b) (6) driving record did not show a social security number. It should be noted that a social security number is not required in Washington State to obtain a driver's license and that an individual may be in lawful immigration status without having a social security number.

According to the APD officer's report, a Border Patrol agent called the APD officer back via cell phone and asked to speak to (b) (6). The officer handed the phone to (b) (6) who indicated to the Border Patrol agent by phone that he was not going to answer any questions without talking to a lawyer. Despite this, the Border Patrol agent directed the APD officer by telephone to detain (b) (6). The agent directed the APD officer to meet a Border Patrol unit "at APD." According to the APD report, the APD officer took Mr.

(b) (6) into custody, advising him that "he was not under arrest for any crime [the officer] was investigating but that he was being detained based on US Border Patrol's request." The APD officer then transported (b) (6) to Anacortes Police Department headquarters, where (b) (6) was later taken into custody by the U.S. Border Patrol. According to both (b) (6) and the APD officer's report, at no time did a Border Patrol agent physically arrive at the scene of the traffic stop. Cell phone records obtained from APD corroborate (b) (6) and the APD officer's version of events. It bears noting that, while the APD officer noted in his report that (b) (6) "spoke broken English and was hard to understand," the report also makes clear that the officer was able to communicate with G.H. to the extent necessary to conduct a traffic stop and the report makes no mention of any necessity for interpretation assistance.

The I-213 report that was prepared by a Border Patrol agent and filed in (b) (6) case tells a substantially different story. According to the I-213, the Border Patrol agent had been notified by a supervisor "of a translation assistance request by Anacortes Police Department." According to the Border Patrol version of events (as set out in the I-213 report), the responding agent physically arrived at the scene of the traffic stop to provide assistance in translating for the APD officer. Again, according to the I-213, the Border Patrol agent then proceeded to question (b) (6) about his citizenship status and (b) (6) made statements about his country of birth. According to the Border Patrol version of events, (b) (6) was taken into custody by Border Patrol at the scene of the traffic stop: no mention is made of his having been transported to APD headquarters.

After he was taken into custody by the Border Patrol, (b) (6) was initially taken to the Bellingham Border Patrol station and subsequently to the Northwest Detention Center in Tacoma, Washington, where he spent 10 weeks in detention. (b) (6) was subsequently released on bond but remains in removal proceedings. (b) (6) has no prior criminal or immigration history.

5. (b) (6)

(b) (6) is a resident of Spokane, Washington and has been living in the Spokane area for the past five years. (b) (6) has a four-year-old U.S. citizen daughter who has had substantial health problems, requiring several operations and ongoing therapy.

In April 2012, (b) (6) was driving near his home in Spokane, Washington. His daughter was in the car with him when (b) (6) was pulled over by a Spokane Police Department officer. The officer explained that he had pulled (b) (6) over for speeding. (b) (6) provided a valid license, registration and insurance to the officer and was able to communicate with him. The officer told him he was getting a verbal warning about speeding and did not issue a citation. However, despite the fact that the officer was able to sufficiently communicate with (b) (6), the officer contacted U.S. Border Patrol for interpretation assistance. According to the I-213 later prepared by a Border Patrol agent, two agents responded to a request for "help with translation on a vehicle stop."

The Border Patrol report goes on to note that after completing the assistance with interpretation for the officer, and "based on a reasonable suspicion gained while providing translation services," the two agents began to ask questions about immigration status of Mr. (b) (6). The I-213 report does not explain exactly what they had a "reasonable suspicion" about, and it also does not explain what factors or information led to them having a "reasonable suspicion."

The Border Patrol agents decided to take (b) (6) into custody, which they did in front of (b) (6) four-year-old daughter. (b) (6) was able to contact an aunt to pick up his daughter, who was distraught at seeing her father being taken away. (b) (6) was initially held at the Spokane County Jail and was later transferred to the Northwest Detention Center in Tacoma, Washington, where he remains detained as of the date of this complaint. He is still facing removal proceedings. (b) (6) has no prior criminal history and, as noted earlier, was not even cited for a traffic violation in the incident that led to his detention.

6. (b) (6)

(b) (6) is a resident of Forks, Washington and has been living in the area since approximately 2006. She is the mother of two young children, both of whom are United States citizens. In May 2011, (b) (6) was traveling as a passenger in a vehicle on Highway 101 in the Olympic Peninsula region of Washington State, when the vehicle was pulled over by a law enforcement officer of the U.S. Forest Service (USFS). The USFS officer began to question (b) (6) and her partner, who was driving the vehicle, about permits for harvesting salal. Shortly after the vehicle stop, a Border Patrol vehicle arrived on the scene. (b) (6) partner exited the vehicle and ran away, eventually falling into the Sol Duc River and drowning. (b) (6) was detained by the U.S. Border Patrol and was subsequently transferred to the Northwest Detention Center. Her U.S. citizen children were left to be cared by other community members. ICE subsequently agreed to release (b) (6) on humanitarian grounds, and also agreed not to proceed with removal proceedings against Ms. (b) (6).

According to a statement released by the public affairs officer of the U.S. Border Patrol, Blaine Sector,ⁱⁱⁱ the Border Patrol agents had arrived on the scene as a result of receiving "a call from a U.S. Forest Service (USFS) Officer requesting translation assistance with two individuals that were encountered during a vehicle stop on Highway 101 near milepost 214." However, the incident report filed by the USFS officer makes clear that the officer called a U.S. Border Patrol agent prior to making contact with the occupants of the vehicle. The officer did not specify the exact reason for contacting the Border Patrol agent, but did note the following: "I routinely contact Border Patrol to assist me with translation assistance and to provide backup when I am doing salal enforcement. Based on my experience, the majority of the salal harvesters in the Forks area are Hispanic and speak little to no English."

* * *

Our review of records in the U.S. Census Bureau's Single Audit Database indicates that each of the entities involved in the incidents just described is either a recipient of federal funding or a federal agency (in the case of the U.S. Forest Service).^{iv} As such, each agency is covered by the requirements of Title VI and/or Executive Order 13166.

B. Violations of Title VI and Executive Order 13166

Title VI of the Civil Rights Act of 1964 and Executive Order 13166 ("EO 13166") require that individuals who are limited English proficient (LEP) have meaningful access to federally-conducted and federally-funded programs and activities. This requirement flows from Title VI's prohibition against national origin discrimination. See Lau v. Nichols, 414 U.S. 563 (1974). Both the Department of Justice (DOJ) and the Department of Homeland Security (DHS) have issued extensive guidance for their own agencies and recipients of federal funds about the language access obligation under both Title VI and the Executive Order. Although this guidance emphasizes that the requirements of Title VI and the Executive Order are dependent on specific circumstances, the guidance also makes clear that the overarching goal is to ensure that LEP individuals are not discriminated against in the provision of services by entities covered by these requirements.

The practice of Border Patrol agents actually or purportedly providing interpretation assistance in routine local law enforcement matters as described above violates the intent behind both Title VI and Executive Order 13166 of ensuring that LEP individuals have meaningful access to services provided by law enforcement agencies. This practice constitutes discrimination in its clearest form in a number of ways. First, the use of Border Patrol agents as interpreters in these situations results in the imposition of a significant burden on LEP individuals in order to obtain interpretation assistance from a law enforcement agency. Specifically, those individuals are required to undergo questioning about their citizenship and immigration status as the effective "price" of interpretation assistance. For many LEP community members, this may result in detention and removal proceedings. But even for those LEP community members who are not placed in removal proceedings, this is going to mean that, in order to obtain interpretation assistance, they will have to endure questioning and demands for identification that are not the case for non-LEP individuals.

Second, as illustrated by the cases of the individuals filing this complaint, it is only individuals who are Spanish speakers, or who are perceived to be Spanish speakers, who are subjected to questioning about their citizenship and immigration status as a result of Border Patrol agents being called in for interpretation assistance. Although the population in Washington State includes speakers of many different languages, each of the cases we have identified involves an individual who was either a Spanish speaker or was perceived to be so. We appreciate that the reason for this is that Border Patrol agents are supposed to have a certain level of Spanish-language proficiency, but the result is still discriminatory, since it is only one segment of the LEP population that is subjected to questioning regarding immigration status when accessing services.

Third, the use of Border Patrol agents is impermissible under Title VI and EO 13166 because the agents are not serving as independent and neutral actors during these incidents. As documented in the I-213 reports and the video being submitted with this complaint, to the extent they are actually acting as interpreters, the agents are also utilizing these opportunities to engage in enforcement activities. There is therefore an inherent conflict of interest when Border Patrol agents are called in to provide this type of assistance because their role will not be simply to facilitate communication but to also investigate the individuals needing language assistance. The use of Border Patrol agents in these circumstances is not equivalent to the use of bilingual staff within a law enforcement agency that is contemplated by the DOJ LEP guidance. Instead, it is more akin to the use of a third-party with an undisclosed conflict of interest, a situation that clearly violates the requirements of Title VI and EO 13166.

Fourth, even putting aside all other concerns, Border Patrol agents are not adequate interpreters in many of the situations presented. Community members report that the level of Spanish of many of the agents is very limited and therefore whatever value they have for interpretation purposes is clearly inadequate. Moreover, in many circumstances, such as the situation involving (b) (6) described above, the individual who is being provided "interpretation assistance" by a Border Patrol agent is not even a Spanish speaker, but is simply perceived to be so, presumably because of their ethnicity.

Finally, it is apparent both from the experiences of the individuals on whose behalf this complaint is being submitted and from the reports of other community members, that the involvement of Border Patrol agents in many of these situations is frequently not at all about providing language access to individuals encountered by law enforcement agencies but simply a pretext to initiate an immigration enforcement action against those individuals. The fact that, in at least some instances, such as the incident involving (b) (6) described above, the Border Patrol agents were called in to the scene even before an officer had had an opportunity to interact with the occupants of the vehicle indicates that the true rationale for enlisting Border Patrol assistance was to ensure the occupants would be questioned about their immigration status. In the case of (b) (6), the officer's report makes clear that the rationale for contacting Border Patrol had nothing to do with interpretation assistance, but was a result instead of the officer's unfounded suspicions. The disturbing pattern from these cases is that, despite the fact that the calls for Border Patrol involvement often have nothing to do with actual interpretation assistance, the Border Patrol reports routinely indicate that their presence at the scene of a traffic stop was as a result of a call for "translation assistance." We therefore believe that the interpretation/translation assistance justification is being used to cover a pattern of discriminatory enforcement activity that the agents themselves appear to realize is problematic. Hence, they report that their involvement was as a result of a request for interpretation assistance.

The inescapable conclusion is that the actual or pretextual use of Border Patrol agents for interpretation assistance by law enforcement agencies is resulting in outright discrimination in one of two ways: 1) to the extent that it is really about language access, it constitutes

impermissible discrimination because the price of such access for a segment of the LEP population is enduring questioning about citizenship and immigration status (and detention and deportation for some); or 2) to the extent that it is simply a pretext in cases where law enforcement agencies are calling in Border Patrol without justification, it is of course a different, but no less pernicious, form of discrimination. In either case, the practice violates civil rights protections.

C. Policy Considerations

Although, as outlined above, the practice of using Border Patrol agents as interpreters for routine law enforcement matters violates civil rights protections and should be eliminated on that basis, there are also strong policy considerations that weigh against this practice.

First, reliance on immigration enforcement agents as interpreters is likely to result in poor interpretations for the law enforcement agencies involved: individuals who are undocumented or whose family members are undocumented are likely to be very hesitant to be as forthcoming with information when the individual facilitating the conversation is a Border Patrol agent. Critical information may therefore not be conveyed to an investigating officer simply because the witness was reluctant to be candid to a Border Patrol agent.

Second, widespread knowledge in the community about the fact that Border Patrol agents routinely respond to routine law enforcement calls, and that they routinely initiate immigration enforcement as a result, is going to make it less likely that immigrant and refugee communities access public safety services. DHS has recently begun the "Blue Campaign" to highlight protections available to immigrant victims of crime and human trafficking. In a recent article covering this campaign, the lead paragraph read "Fear of deportation stops many immigrants who are victims of crimes or trafficking from reporting to authorities what happened."^v DHS's practice of allowing Border Patrol agents to serve as interpreters will completely undermine its efforts for more victims to come forward and report abuse they have suffered, as those victims will be reluctant to do so if they know they will risk coming into contact with Border Patrol agents in the process.

Third, the use of Border Patrol agents as interpreters is not an efficient way to provide interpretation assistance. In many cases, Border Patrol agents take substantial amounts of time to respond to the scene. In the case of (b) (6), it took 40 minutes. In other cases, it took even longer. In many of these circumstances, the use of alternative sources of interpretation, such as telephonic language services would allow the interpretation to take place within a few minutes. This would not only save time as far as the law enforcement agency was concerned, but also for the individuals who are subjected to a traffic stop and then have to wait for hours for a Border Patrol agent to arrive on the scene.

Finally, and perhaps most importantly, the use of Border Patrol agents for interpretation assistance in these situations runs completely counter to the stated priorities of the Department of Homeland Security. According to DHS, its focus in terms of immigration

enforcement is on individuals with serious criminal convictions, immigration fugitives and recent entrants. In virtually all of the cases we have identified, the resulting enforcement actions result in the apprehension of individuals who are very low enforcement priorities. This was certainly the situation in the six cases identified above, five of which involve individuals who are still facing removal proceedings. In fact, we will be pursuing prosecutorial discretion requests in each of these cases, as we believe each falls under the parameters set out by Assistant Secretary John Morton's memos of June 2011. We therefore have to ask why DHS would waste enforcement resources on matters which are very likely to not even be pursued in immigration court.

D. Misleading Public Statements

In addition to the problems identified above, we are deeply concerned about the fact that local Border Patrol officials have made public statements regarding the practice of agents providing interpretation assistance that are, at best, misleading. Following an advocacy report issued in early April 2012, a U.S. Border Patrol spokesperson from the Blaine Sector provided a response to a public radio reporter regarding the use of Border Patrol agents as interpreters. The relevant portion of the public radio report is as follows:

Richard Sinks is a spokesman for the border patrol in Blaine. He explains local police often call in border patrol to help with Spanish translation. But the limitations are clear.

Sinks: "We will not arrest or even seek immigration status of a victim or a witness. We're strictly there for translation in that type of request."^{vi}

The WSP video being submitted with this complaint, and the attached documentation in several other incidents, make clear that Border Patrol agents in fact do engage in questioning and detention of individuals during these requests for assistance and are not "strictly there for translation." This is true for both individuals who might be being cited for a traffic offense, as well as for witnesses and bystanders who are not suspected of any violation of law. It is deeply troubling that Border Patrol officials would make public statements that would suggest something different is occurring.

E. Remedies Sought

Because the violations of civil rights protections outlined above involve actions by a number of agencies over which both DOJ and DHS have jurisdiction, we are requesting that both DOJ and DHS jointly take steps to eliminate this practice and issue directives to local agencies about their responsibilities when complying with their Title VI and EO 13166 obligations.

Specifically, we ask that your agencies take the following steps:

- DOJ should issue a directive to local law enforcement agencies in Washington State that are subject to the requirements of Title VI and EO 13166 that using Border Patrol agents

as interpreters in routine law enforcement matters constitutes a violation of their obligations under those provisions.

- DOJ should issue guidance to federal law enforcement agencies operating in Washington State that using Border Patrol agents as interpreters in routine law enforcement matters constitutes a violation of the requirements of EO 13166.
- DHS should issue a directive to U.S. Border Patrol that prohibits its agents from providing interpretation assistance to local law enforcement agencies during routine matters.
- DOJ and DHS should make public the guidance outlined above.
- DHS should immediately move to terminate removal proceedings for individuals who were identified as a result of a request for interpretation assistance by a local or federal law enforcement agency, including the five individuals submitting this complaint who are still facing removal proceedings.

F. Information About Entities Submitting this Complaint

Northwest Immigrant Rights Project (NWIRP) is the only nonprofit organization providing comprehensive immigration legal services to low-income individuals and families in Washington State. NWIRP was founded in 1984 and currently operates offices in Seattle, Granger, Tacoma and Moses Lake. Each year, we serve over 9,000 individuals with legal assistance including direct representation, brief services and advice and counsel. NWIRP is the only organization on the list of Free Legal Service Providers for Washington State that is distributed to unrepresented individuals facing deportation proceedings by the local immigration court. NWIRP also serves the community by providing community education and through advocacy on behalf of immigrant and refugee communities.

Elizabeth Hawkins is a private immigration attorney with the law firm of Bean Porter Hawkins PLLC and a member of the American Immigration Lawyers Association (AILA). Ms. Hawkins represents (b) (6), one of the complainants whose case is described above.

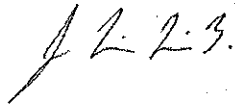
Wendy Hernandez is a private immigration attorney in Walla Walla, Washington, and a member of the American Immigration Lawyers Association (AILA). Ms. Hernandez represents Mr. (b) (6) one of the complainants whose case is described above.

G. Conclusion

Title VI and Executive Order 13166 are critical civil rights protections that promote a cherished American value of equal treatment regardless of national origin and language ability. Despite the fact that these are federal norms, which the federal government makes a condition of receiving federal funds, it is a federal agency that is complicit in violating both the substance and the spirit of these protections. The practice of local and federal law enforcement agencies relying on U.S. Border Patrol agents as interpreters in routine matters is untenable as a matter of Title VI and Executive Order 13166, but also simply as a matter of public policy. We ask you to immediately take the steps outlined above.

Please do not hesitate to contact us if you have any further questions. You may reach us through Jorge L. Barón at Northwest Immigrant Rights Project at (206) 957-8609 or via email at jorge@nwirp.org.

Sincerely,



Jorge L. Barón
Executive Director
Northwest Immigrant Rights Project



Elizabeth Hawkins
Attorney
Bean Porter Hawkins PLLC

/s/

Wendy Hernandez
Attorney at Law
Hernandez Immigration Law

Cc: Senator Patty Murray
Senator Maria Cantwell
Rep. Norm Dicks
Rep. Rick Larsen
Rep. Cathy McMorris Rodgers
Cecilia Munoz, Director of the Domestic Policy Council, The White House
Felicia Escobar, Senior Policy Advisor, The White House
Thomas Perez, Assistant Attorney General for the Civil Rights Division, DOJ
David V. Aguilar, Acting Commissioner, U.S. Customs and Border Protection (CBP), DHS
Jenny Durkan, United States Attorney, Western District of Washington, DOJ
Michael C. Ormsby, United States Attorney, Eastern District of Washington, DOJ
Deena Jang, Chief, Federal Coordination and Compliance, Civil Rights Division, DOJ
Michael J. Fisher, Chief, Office of the Border Patrol, DHS
Tamara Kessler, Acting Officer for Civil Rights and Civil Liberties, DHS
Ivan Fong, General Counsel, DHS
John Sandweg, Counselor to the Secretary and Deputy Secretary, DHS
Esther Olavarria, Counsel to the Secretary, DHS
Seth Grossman, Chief of Staff, Office of the General Counsel, DHS
Anna Hinken, Non-Government Organization Liaison, CBP, DHS
Raphael Sanchez, Office of Chief Counsel, Seattle, U.S. Immigration and Customs Enforcement, DHS
John Bates, Chief, U.S. Border Patrol, Blaine Sector, DHS
Gloria I. Chavez, Chief, U.S. Border Patrol, Spokane Sector, DHS

ⁱ The I-213 form is known as a "Record of Deportable/Inadmissible Alien" and is prepared by immigration enforcement agencies, including the Border Patrol.

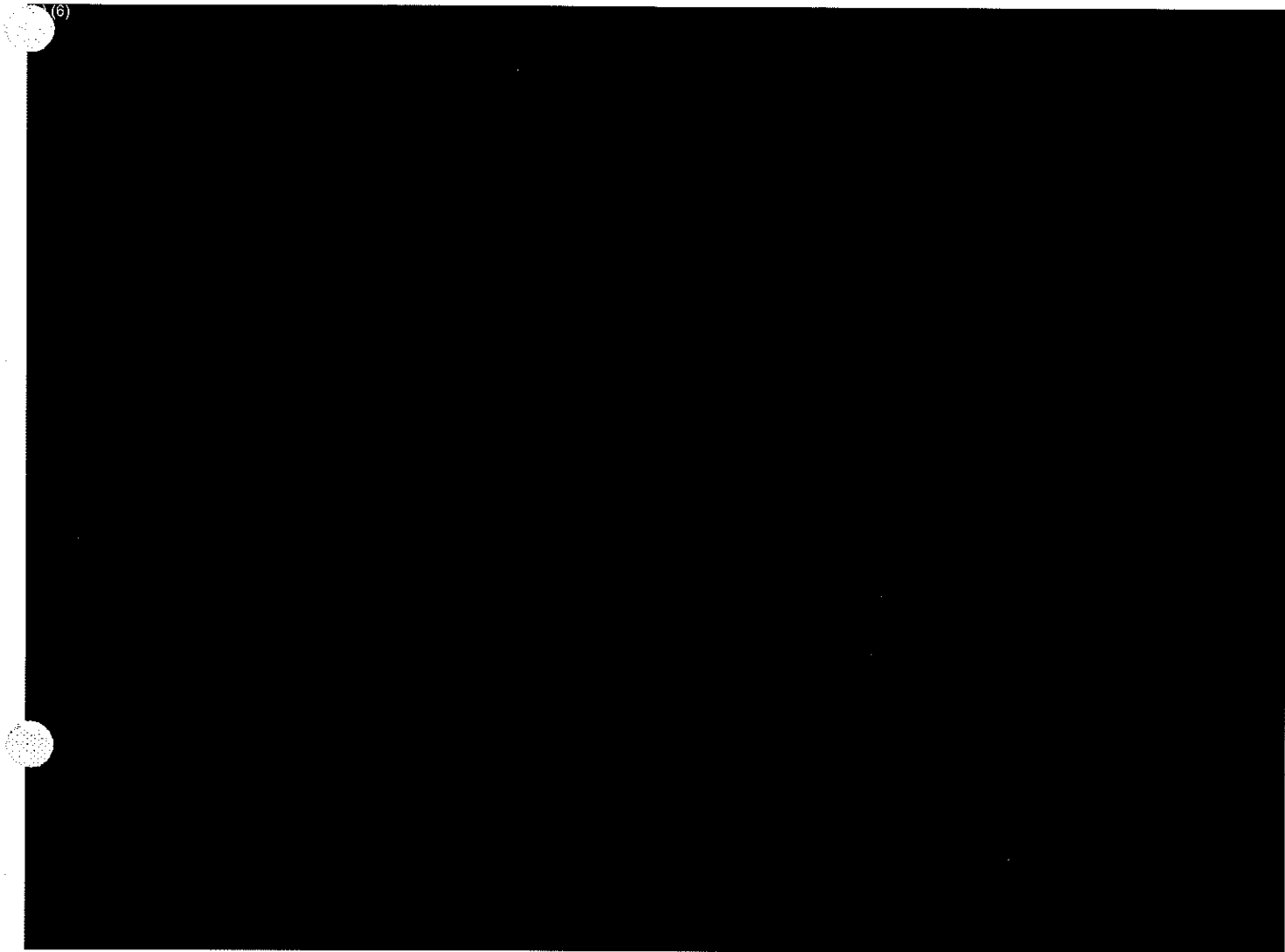
ⁱⁱ ICE DRO is now known as Enforcement and Removal Operations.

ⁱⁱⁱ Our office has attempted to obtain the I-213 report from this incident but has been unable to secure a copy as of this date.

^{iv} Our review of the single audit database reveals that the State of Washington, Whatcom County, the City of Spokane and the City of Anacortes each received federal funding in recent years. While the database does not specify whether federal funds were directed to the agencies involved in the incident described in the complaint, the types of grants listed in the database strongly suggest that the funding was in fact directed to law enforcement agencies.

^v Erica Pearson, "Deportation fear stops trafficking victims from reporting crimes," NY Daily News, March 28, 2012, available at: http://articles.nydailynews.com/2012-03-28/news/31251866_1_u-visas-immigrant-victims-trafficking-victims (last visited April 15, 2012).

^{vi} Liz Jones, Report Raises Human Rights Concerns On Washington-British Columbia Border, KUOW, April 17, 2012, available at: <http://kuow.org/program.php?id=26517>.



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Feb. 27. 2012 1:36PM

ICE CHIEF COUNSEL

No. 2453 P. 4

(b) (6)



Feb. 27. 2012 1:36PM

ICE CHIEF COUNSEL

No. 2453 P. 5

(b) (6)



Feb. 27. 2012 1:36PM

ICE~~Y~~CHIEF COUNSEL

No. 2453 P. 6

(b) (6)



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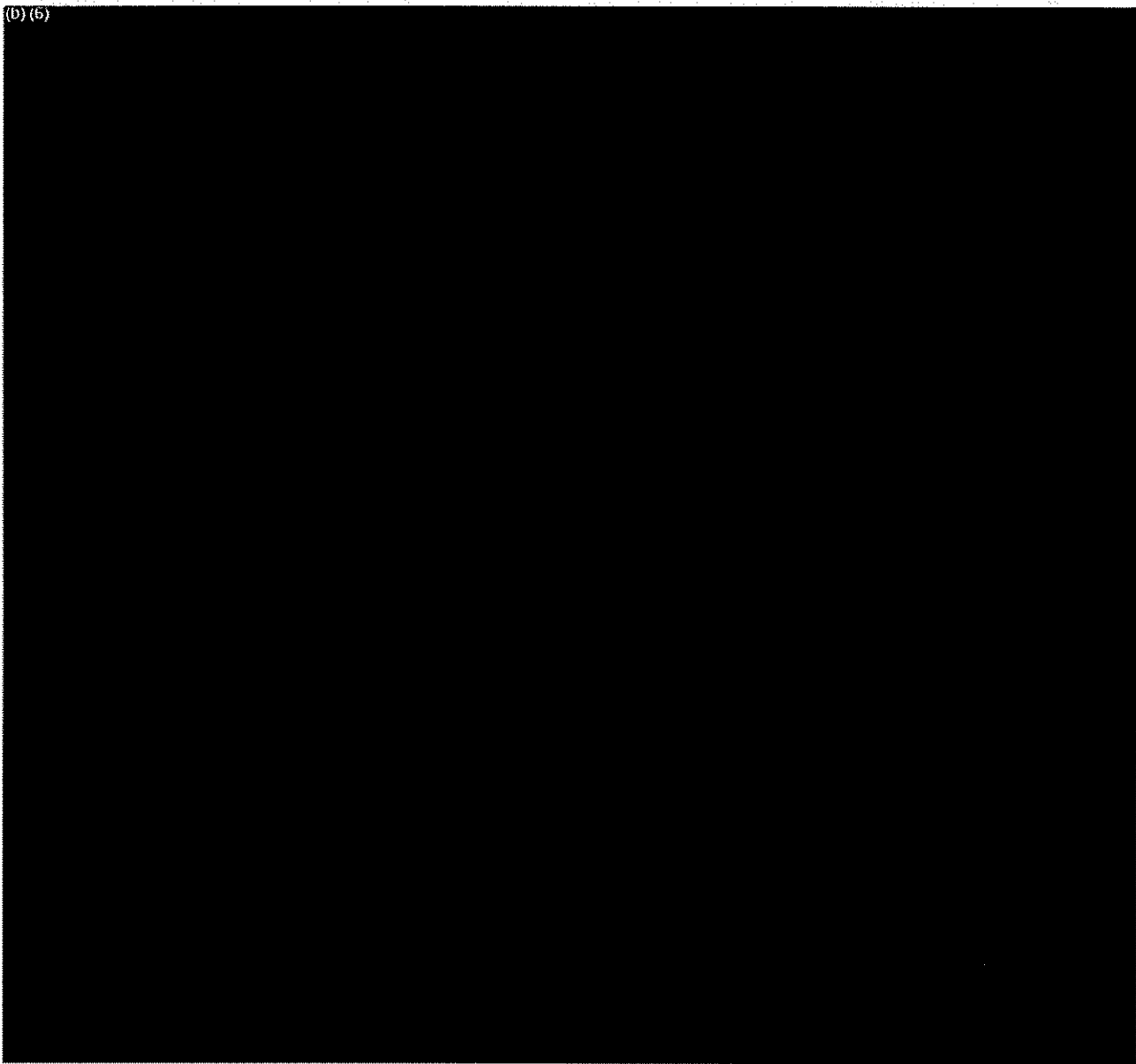
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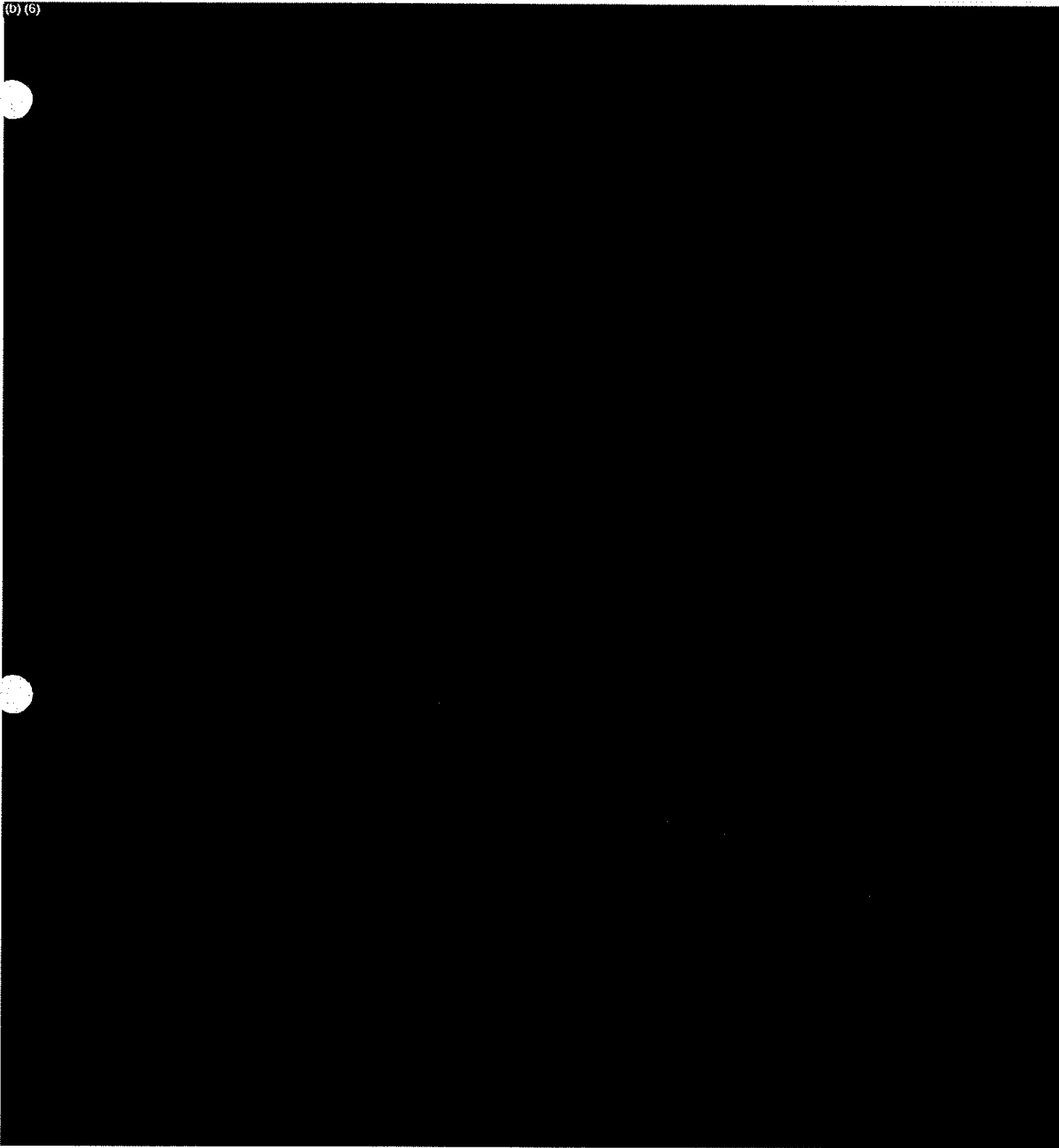


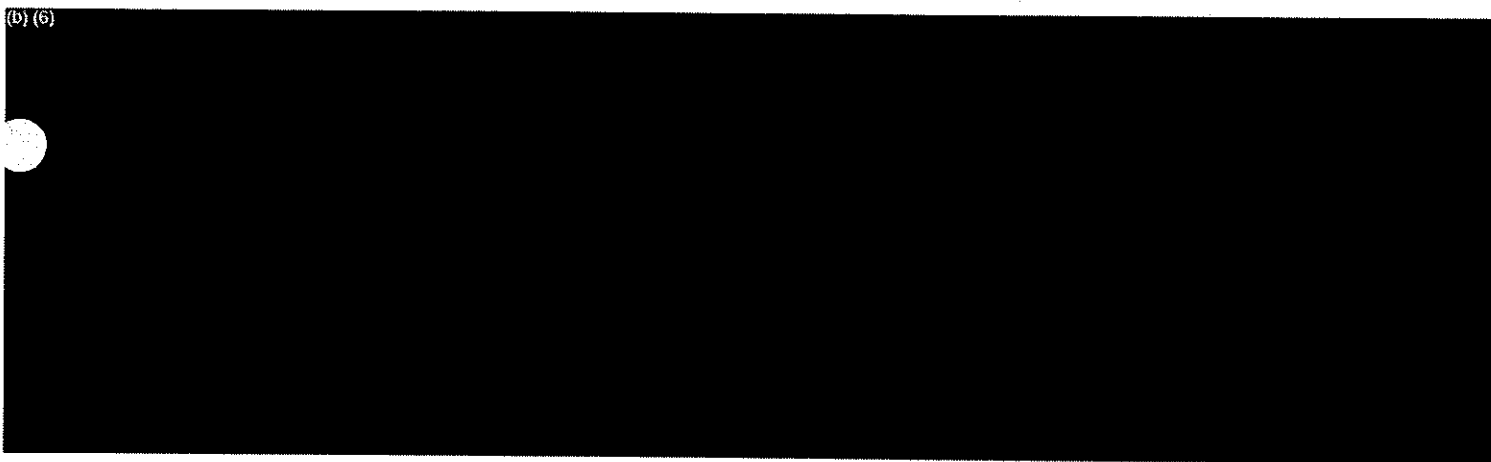
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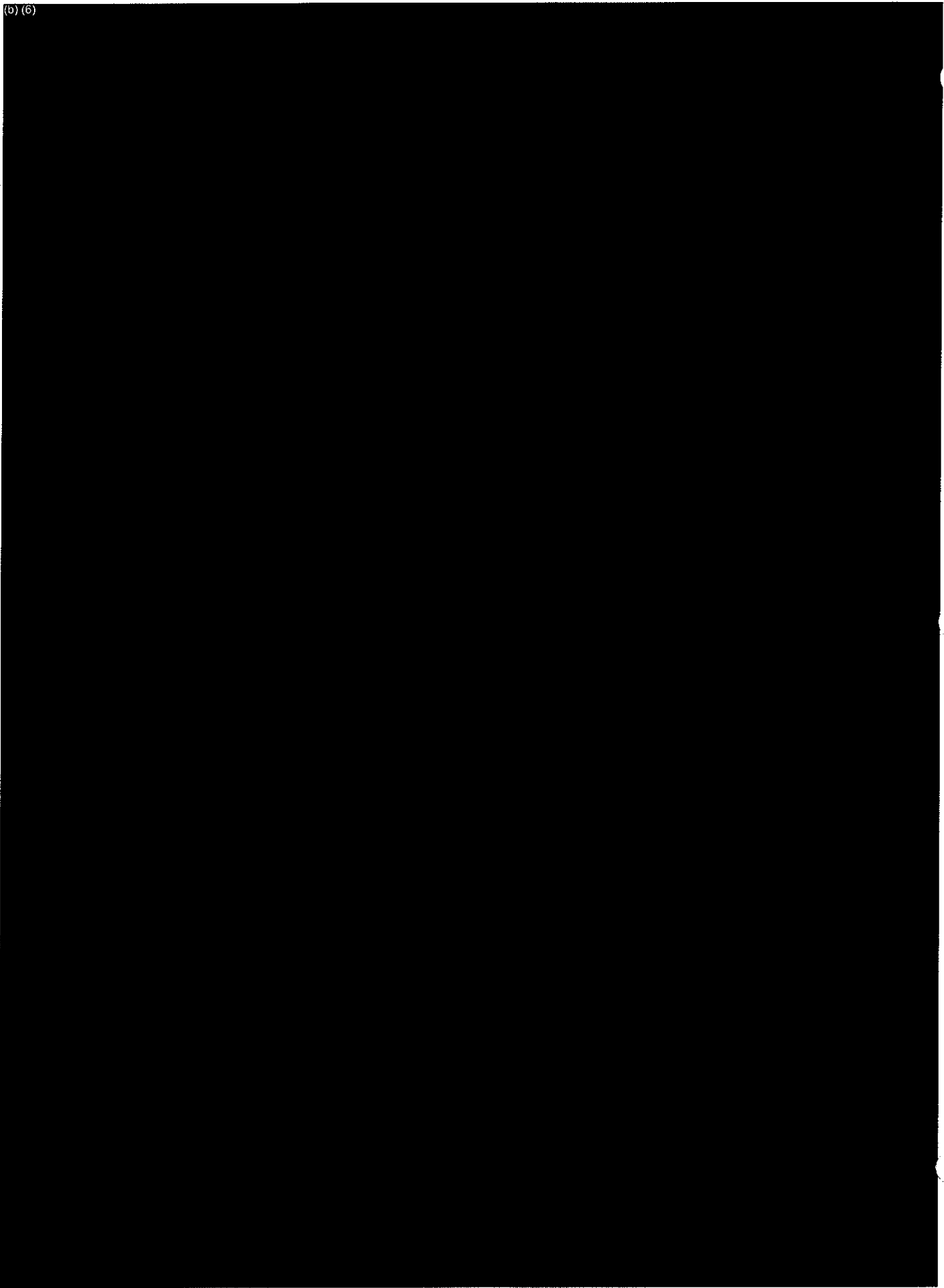
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(b) (6)







**Homeland
Security**

June 28, 2011

MEMORANDUM FOR: Margo Schlanger
Officer for Civil Rights and Civil Liberties

FROM: (b) (6)
Section Lead, Impact Assessment Section
Office for Civil Rights and Civil Liberties

SUBJECT: PRELIMINARY IMPACT ASSESSMENT –
Use of Border Patrol for Interpretation Assistance

Summary and Recommendations

The Impact Assessment section was brought into discussions with the Community Engagement, Immigration, and LEP sections for the purpose of determining whether an impact assessment on this topic would be warranted. (b) (6) one of the Impact Assessment interns, has done some preliminary research on this subject, summarized below. We are submitting this memo now because we know you are meeting with CBP on this topic Wednesday – if after reading this memo you think an impact assessment is a good idea, that fact may inform your discussions on Wednesday; if not, we will set aside our research on this topic and move on to some of the other topics we're exploring.

(b) (5)

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Background

As you know, some community groups have been complaining about law enforcement's use of border patrol to interpret ordinary law enforcement encounters with undocumented individuals and then use those encounters as opportunities to conduct immigration enforcement activities. As you probably also know, this issue has arisen most publicly in the Blaine sector, which

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encompasses western Washington and Oregon. The number of border patrol agents in the Blaine sector has increased over the last decade. Following the September 11, 2001 attacks, President Bush directed an increase in border patrol presence along the US-Canadian border, which is twice as long as the US-Mexico border.¹ The increase in border patrol agents in the Blaine sector might also be attributed to a 1999 plot to bomb Los Angeles International Airport; the plan was foiled when U.S. Customs Agents apprehended the suspect after he crossed the US-Canada border on a ferry to Port Angeles, Washington.² Following these developments, the number of border patrol agents in the area increased; in 2006, 4 agents worked in the Port Angeles Border Patrol headquarters whereas in May 2011, the number was 25.³ Allegations regarding four encounters in Blaine are described below:

- 1) Jefferson County, Washington (2008): A local police officer from the Jefferson County Sheriff's office called border patrol for interpretation services during a routine traffic stop as the Sheriff's office does "not have any trained law enforcement personnel that speak Spanish."⁴ The County Sheriff noted that border patrol agents are known as useful resources due to their bilingual ability: "...[W]e will utilize any trained law enforcement language resources, from whatever police agency that may be in the vicinity, if and when needed by our deputies in the field."⁵ Border patrol arrived to the scene of the traffic stop, interviewed the driver, and further determined that the driver was in the country illegally and detained the individual. The Sheriff also stated: "Requests for translation assistance is not intended, and will not be used, as a pretext to investigate possible violation of federal immigration laws."⁶
- 2) Kitsap County, Washington (2010): Deputies from the Kitsap County Sheriff's office requested border patrol agents from Port Angeles to assist with interpretation after stopping a vehicle containing four individuals. The border patrol agent arrived at the scene, identified himself as border patrol, and directly began questioning the individuals about their citizenship status rather than limiting his participation to interpreting the individual's responses alone. As none of the individuals could produce valid immigration

¹ U.S. BORDER PATROL, DEPARTMENT OF HOMELAND SECURITY, NATIONAL BORDER PATROL STRATEGY (2004) available at

http://www.cbp.gov/linkhandler/cgov/border_security/border_patrol/border_patrol_oahs/national_bp_strategy.ctt/national_bp_strategy.pdf. The numbers of Border Patrol agents along the US-Canada border increased from 350 agents in 2001 to 1,000 agents the year 2004. *Id.* at 6.

² Manuel Valdes, *An Atmosphere of Fear: Forks-Area Death Rekindles Border Patrol Debate*, PENINSULA DAILY NEWS, June 19, 2011, available at <http://www.peninsuladailynews.com/article/20110619/NEWS/306199988/-8216-an-atmosphere-of-fear-forks-area-death-rekindles-border>.

³ Paul Gottlieb, *Work to Begin this Month on New Border Patrol Headquarters in Port Angeles*, PENINSULA DAILY NEWS, May 1, 2011, available at <http://www.peninsuladailynews.com/article/20110501/news/305019987/work-to-begin-this-month-on-new-border-patrol-headquarterfs-in-port>.

⁴ Erik Hidle & Paige Dickerson, *Jefferson County Sheriff Sets Rules for Work with Border Patrol*, PENINSULA DAILY NEWS, Oct. 8, 2008, available at <http://www.peninsuladailynews.com/article/20081010/news/310109996>.

⁵ *Id.*

⁶ *Id.*

documents allowing them to be legally present in the United States in response to the questioning by border patrol, removal proceedings were initiated.⁷

- 3) Oroville, Washington (2010): An Oroville police officer responded to the scene of a domestic violence dispute. Upon being advised that the 911-caller did not speak English, the police officer requested Central Dispatch to send border patrol to interpret. In this instance, the border patrol agent first interpreted the individuals' responses to the officer's questions.⁸ At some point after providing interpretation services, border patrol then placed a detainer on the domestic violence survivor who had initially called 911; she was later taken to a detention facility.⁹
- 4) Forks, Washington (2011): (b) (6) a forest worker and out of status alien, was seen in his SUV with a female companion near highly valuable plants. According to a U.S. Forest Service spokeswoman, a U.S. Forest Service agent approached the vehicle and suspected that the two individuals had been picking the plants without a permit and called border patrol to interpret. When border patrol arrived, (b) (6) ran from the vehicle and jumped into a river. (b) (6) body was found more than three weeks after the stop.¹⁰

If the problem is limited to Blaine, a full impact assessment may not be a good use of CRCL resources. However, there is reason to believe the problem may not be limited to Blaine. Shilpa has uncovered the following additional encounters, each of which occurred outside the Blaine sector:

- 1) Montana, Havre Sector (2010): A Montana Highway Patrol officer stopped a vehicle containing 5 individuals for speeding. None of the individuals spoke English, and border patrol was called to assist with interpretation. Two agents arrived to assist with the interpretation and determined that all 5 individuals were out of status. Furthermore, the border patrol agents followed the individuals home where they found 11 other individuals without proper immigration documentation. Border patrol initiated removal proceedings against all 16 individuals.¹¹
- 2) California, El Centro Sector (2009): The El Centro Border Patrol Sector created a pilot program called BP Alert that envisioned a closer partnership between border patrol agencies and local law enforcement agencies in Inland California. The program involved border patrol offering greater "assistance in translation, identifying suspects in local

⁷ Email from Jorge L. Baron, Executive Director, Northwest Immigrants Right Project, to (b) (6) Senior Policy Advisor, Section Lead, Community Engagement Section, Office for Civil Rights and Civil Liberties, Dept. of Homeland Security (June 6, 2011).

⁸ *Id.*

⁹ *Id.*

¹⁰ Manuel Valdes, 'Twilight' Town Death Sparks Border Patrol Debate, Komonews.com, http://www.komonews.com/news/local/124131889.html#13088624136041&if_height=279 (last visited June 29, 2011).

¹¹ KQCD.com, Border Patrol Agents Arrest 16 Illegal Immigrants in NE Montana, http://www.kqcd.com/News_Stories.asp?news=38913 (last visited June 29, 2011).

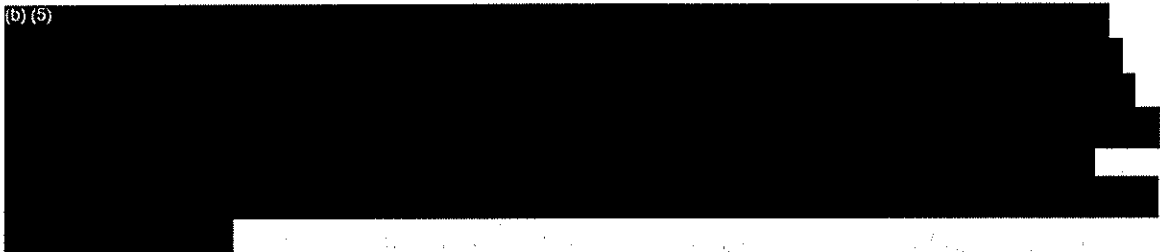

crimes and providing other types of backup.”¹² A four-day test of BP Alert commencing on January 29, 2008 resulted in 130 immigration-related arrests; all individuals were initially stopped by local law enforcement on suspicion of other crimes prior to border patrol involvement. “Eleven of the local police arrests were . . . for relatively minor offenses such as riding a bicycle on a sidewalk and trespassing on private property.”¹³ 71 of the 130 individuals arrested had previously been convicted or arrested of crimes. Border patrol agents had also been brought from other border patrol sectors to assist with the BP Alert test efforts. A national border patrol spokesman stated that BP Alert was undergoing evaluation for nationwide use; further research is necessary to find out whether BP Alert was adopted on national scale.

- 3) Louisiana, New Orleans Sector (2008): Louisiana State Police called border patrol agents to assist in interpreting a conversation between themselves and a group of 31 Spanish speaking individuals in their search “for a fugitive wanted in Texas for homicide.”¹⁴ Though the fugitive was not found among the group, border patrol agents determined that 29 of the subjects were without documentation and were detained and processed for removal. This incident was publicized in a U.S. Customs and Border Patrol News Release praising “how the Border Patrol works closely with state and local agencies protecting communities and the nation’s borders.”¹⁵

Shilpa discovered these incidents using information available in the public domain. It seems possible, if not likely, that additional similar encounters have occurred but have not been reported publicly.

Discussion

(b) (5)

¹² David Olson, *Cooperation Between Border Patrol, Local Police Raises Concerns*, THE PRESS-ENTERPRISE, March 2, 2009, PE.com available at http://www.pe.com/localnews/inland/stories/PE_News_Local_S_borderpolice03.3f2b88f.html.

¹³ *Id.*

¹⁴ Customs and Border Patrol Newsroom, *Border Patrol Assists Louisiana Police, 29 Aliens Arrested*, http://www.cbp.gov/xp/cgov/newsroom/news_releases/archives/2008_news_releases/december_2008/12042008.xml (last visited June 29, 2011).

¹⁵ *Id.*

(b) (5)



Legal & Policy Issues

Race/ethnicity/national origin discrimination by law enforcement

(b) (5)





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(b) (5)



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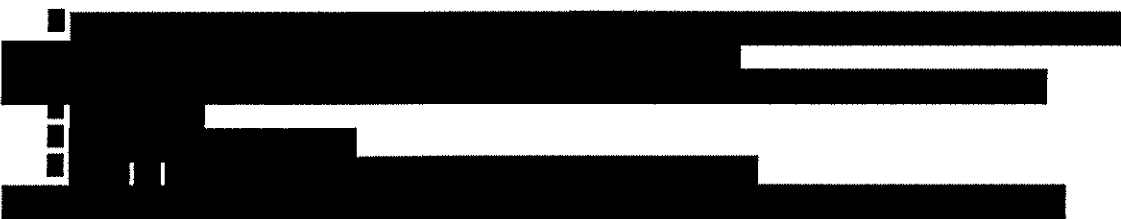
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(b) (5)



Title VI/LEP

(b) (5)



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(b) (5)



(b) (5)



Advantages/Disadvantages of Conducting an Impact Assessment

(b) (5)



Recommendation

(b) (5)



Copies to:

Tamara Kessler, Deputy for Programs and Compliance

David Gersten, Director of Programs

(b) (5) Section Lead, Immigration Section

(b) (5) Senior Advisor, Detention & LEP

(b) (5) Section Lead, Community Engagement Section

(b) (5) Policy Advisor, Immigration Section

(u) (v) Policy Advisor, Title VI

(b) (5) Intern, Impact Assessment Section

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(b) (6)

From: Jorge Baron [jorge@nwirp.org]
Sent: Tuesday, May 01, 2012 6:27 PM
To: Shora, Kareem
Subject: Complaint on interpretation issues

Kareem,

I hope you're doing well. I sent this to the general CRCL email address, but I wanted to make sure and flag this for you. I had discussed this with Anna Hinken when she was here and, as you know, this issue has come up here many times.

Although the focus on the complaint is on the language access violations, I also hope your office will take note of the overall discriminatory practices highlighted by our complaint. In particular, I hope you and others in the office will take note of the video that we obtained through a public records request. We have made an excerpt available at this site: <http://youtu.be/uwrUoJqbGPc> <<http://youtu.be/uwrUoJqbGPc>> But you can also download the full, raw, unedited video here: https://www.dropbox.com/sh/5e4pj6tbawodo4z/kT_uFLWfyu

One particular issue of note is the fact that the Border Patrol agents can be heard on the video using the word "wet" to refer to community members. As I am sure you know, this is shorthand for "wetback"

(b) (6)

From: Kessler, Tamara
Sent: Tuesday, May 01, 2012 10:55 AM

To: (b) (6) (b) (6) (b) (6) (b) (6) (b) (6)
Shora, Kareem; Gersten, David; (b) (6) (b) (6)
Subject: FW: Civil Rights Complaint

This is a pretty thorough complaint re NW border and language assistance from Jorge Baron. It requests that both DOJ and DHS make policy changes/issue directives on this issue.

From: Fong, Ivan
Sent: Tuesday, May 01, 2012 10:28 AM
To: Kessler, Tamara
Cc: Anderson, Audrey; Palmer, David; Chuang, Theodore; Grossman, Seth; Sandweg, John
Subject: FW: Civil Rights Complaint

Tamara - FYSA. Please work with your usual OGC contacts for legal support.

From: Jorge Baron [<mailto:jorge@nwirp.org>]
Sent: Tuesday, May 01, 2012 6:08 AM
To: Olavarria, Esther; Fong, Ivan; Grossman, Seth; CRCL@dhs.gov
Subject: Civil Rights Complaint

Please find attached a carbon copy of a complaint being submitted to DHS and the Department of Justice. Please do not hesitate to contact me if you have any questions. My contact information is below.

Sincerely,

Jorge L. Baron

Northwest Immigrant Rights Project

--

Jorge L. Barón | Executive

(b) (5)

From: Jorge Baron [jorge@nwirp.org]
Sent: Thursday, June 07, 2012 12:15 AM
To: Shora, Kareem
Subject: Fwd: Invitation: DHS Office for Civil Rights and Civil Liberties Seattle Roundtable Meeting

Kareem,

I hope you're doing well. I will be attending the next Roundtable meeting on July 19th and look forward as always to the discussion.

I will probably have additional topics to submit before the deadline of July 5th but wanted to send the questions below ahead of time to give your office and, if necessary CBP, plenty of time to formulate a response. I thought the questions were particularly relevant given that the individual in charge of the LEP guidance will be one of the presenters at the session.

My questions are in reference to a decision that we received last week from the Office of the Assistant Secretary for Civil Rights (OASCR) of the U.S. Department of Agriculture (USDA). I suspect that your office is familiar with this ruling but I'm attaching it here for your reference. As you probably know, this 39-page decision was handed down as a result of a civil rights complaint that our office filed on behalf of a community member in the Olympic Peninsula of Washing

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From: (b) (6)
Sent: Thursday, May 03, 2012 1:30 PM
To: (b) (6); (b) (6); (b) (6); Kessler, Tamara; (b) (6)
Gersten, David; (b) (6); Shora, Kareem
Subject: NWIRP CRCL complaint in the news

HUFFINGTON POST LATINO VOICES: Immigration Attorneys File Civil Rights Complaint Against Border Patrol Agents Acting As Interpreters

By Christina Costantini

May 2, 2012

http://www.huffingtonpost.com/2012/05/01/immigration-attorneys-cha_n_1468884.html

<<http://org2.democracyinaction.org/dia/track.jsp?v=2&c=0cwuGGq55b%2FYUI8o2LTSLqHpF5YZp7CU>>

A Seattle-based immigrant advocacy nonprofit filed a formal civil rights complaint against the U.S. Department of Justice and the U.S. Department of Homeland Security, challenging the practice of local police departments calling in border patrol agents to act as interpreters in routine matters. As part of the complaint, the Northwest Immigrant Rights Project (NWIRP) also released a damning video which they claim was recorded last February. It allegedly depicts border patrol agents calling undocumented immigrants "all wet," (at the 2:25 mark in the below video) a derogatory term used to describe those who have crossed the border illegally, accor

(b) (6)

From: (b) (6)
Sent: Wednesday, July 11, 2012 9:59 AM
To: Shora, Kareem; (b) (6) (b) (6)
Cc: Kessler, Tamara; Gersten, David; Venture, Veronica; (b) (6)
Subject: RE: More CBP Seattle Questions.

Looping in (b) (6) ☺

From: Shora, Kareem
Sent: Wednesday, July 11, 2012 9:57 AM
To: (b) (6) (b) (6)
Cc: Kessler, Tamara; Gersten, David; (b) (6) Venture, Veronica
Subject: FW: More CBP Seattle Questions.
Importance: High

(b) (6)

We received the following set of questions from Jorge Baron at NWIRP for our upcoming Seattle roundtable meeting next week. I've already contacted Anna Hinken to ensure that the CBP officials who will be joining us are prepared to help address from the CBP side; but can you please send me any talking points or appropriate response to use from CRCL? He also attached the USDA's Civil Rights redacted decision for release but I know you've already seen it. Any responsive talking points or appropriate answers to the below are greatly appreciated:

My questions are in reference to a decision that we received last week from the Office of the Assistant Secretary for Civil Rights (OASCR) of the U.S. Department of Agriculture (USDA). I suspect that your office is familiar with this ruling but I'm attaching it here for your reference. As you probably know, this 39-page decision was handed down as a result of a civil rights complaint that our office filed on behalf of a community member in the Olympic Peninsula of Washington State who was stopped by a Forest Service officer who called in Border Patrol, allegedly to provide interpretation and backup assistance.

The decision is very thorough and my question is primarily related to the ruling's findings about the civil rights implications of Border Patrol agents being used as interpreters. OASCR analyzed this issue quite thoroughly and I believe this might be the first time that a government adjudicator has made a decision on this particular issue. I would certainly commend you and others in your office to read the full decision, but appreciating that it's quite detailed, I would focus your attention to pages 26-29 of the ruling and particularly to the following passage of the decision:

"Given these statements, coupled with the witness statements obtained during this investigation, it is apparent to OASCR that BP routinely questions individuals about their immigration status when providing interpretation assistance. OASCR finds that, given the increased risk of being questioned about immigration status during an interaction with [Border Patrol], the policy of using [Border Patrol] for interpretation assistance is problematic in all situations because it places a burden on LEP individuals that non-LEP individuals do not experience. Because LEP individuals are more likely to be national origin minorities, this policy has a disparate impact on people based on their national origin. Due to the systemic nature of this problem, OASCR finds that the use by [the Forest Service] of [Border Patrol] for interpretation assistance is discriminatory on its face, and not solely in the circumstances of this case."

My questions then, for OCRCL and CBP, are as follows:

- 1) Does OCRCL and CBP agree with USDA OASCR's assessment that the use of Border Patrol agents for interpretation assistance is discriminatory in all circumstances?
- 2) If so, what steps is OCRCL and/or CBP taking to ensure that Border Patrol is not an accessory to the violation of civil rights?
- 3) If OCRCL and/or CBP do not agree with USDA's assessment, can you explain how your legal analysis differs from the detailed analysis of the USDA decision?
- 4) Finally, I was quite impressed both by the investigation and the analysis that OASCR displayed in responding to this complaint. I realize that OASCR is different from OCRCL, but I am curious as to what reasons (if any) prevent OCRCL from doing this type of analysis and issuing this type of ruling in response to complaints. In particular, as you might note, the ruling in this case made a very specific finding of discrimination by this particular officer and ordered the officer and his supervisor to undergo civil rights training.

Those are my questions, but let me know if you need any clarification on these issues. Also, on a separate note, I wanted to make sure that you and the office were aware of some of the press coverage that some of the issues we have discussed have received recently, including this article which appeared on the front page of the New York Times last week: http://www.nytimes.com/2012/05/29/us/hard-by-canada-border-fears-of-crackdown-on-latino-immigration.html?_r=1&pagewanted=all

And then, there's this editorial on the interpretation
issue: http://seattletimes.nwsources.com/html/editorials/2018362165_edit06ruling.html



Homeland Security

Kareem W. Shora, JD, LL.M.
Senior Policy Advisor / Section Lead
Community Engagement Section
Office for Civil Rights and Civil Liberties (CRCL)
Office of the Secretary
US Department of Homeland Security (DHS)

(b) (6) [redacted] (Office)
(b) (6) [redacted] (Mobile)
(u) (v) [redacted] hq.dhs.gov
<http://www.dhs.gov/crcl>

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