

DEPARTMENT OF HOMELAND SECURITY OFFICE OF
CIVIL RIGHTS AND CIVIL LIBERTIES AUTHORIZATION
ACT

NOVEMBER 19, 2019.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. THOMPSON of Mississippi, from the Committee on Homeland
Security, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 4713]

The Committee on Homeland Security, to whom was referred the bill (H.R. 4713) to amend the Homeland Security Act of 2002 to make certain improvements in the Office for Civil Rights and Civil Liberties of the Department of Homeland Security, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Department of Homeland Security Office of Civil Rights and Civil Liberties Authorization Act”.

SEC. 2. OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES.

(a) IN GENERAL.—Section 705 of the Homeland Security Act of 2002 (6 U.S.C. 345) is amended—

- (1) in the section heading, by striking “**ESTABLISHMENT OF**”; and
- (2) by striking subsections (a) and (b) and inserting the following new subsections:

“(a) IN GENERAL.—There is established within the Department an Office for Civil Rights and Civil Liberties. The head of such Office is the Officer for Civil Rights and Civil Liberties, who shall report directly to the Secretary.

“(b) RESPONSIBILITIES.—The Officer for Civil Rights and Civil Liberties shall carry out the following responsibilities:

“(1) Oversee compliance with constitutional, statutory, regulatory, policy, and other requirements relating to the civil rights and civil liberties of individuals affected by the programs and activities of the Department.

“(2) Integrate civil rights and civil liberties protections into all programs and activities of the Department.

“(3) Conduct civil rights and civil liberties impact assessments, as appropriate.

“(4) Conduct periodic reviews of policies, procedures, and activities of the Department relating to civil rights and civil liberties.

“(5) Provide policy advice, recommendations, and other technical assistance relating to civil rights and civil liberties to the Secretary and to heads of components, directorates, and offices and other personnel within the Department.

“(6) Review, assess, and investigate complaints, including complaints filed by members of the public, and information indicating possible abuses of civil rights or civil liberties at the Department, unless the Inspector General of the Department determines that any such complaint or information should be investigated by the Inspector General.

“(7) Initiate reviews, assessments, inspections, and investigations of the administration of the programs and activities by the Department relating to civil rights and civil liberties, as the Officer determines necessary.

“(8) Coordinate with the Privacy Officer to ensure that—

“(A) programs, policies, and procedures involving civil rights, civil liberties, and privacy considerations are addressed in an integrated and comprehensive manner; and

“(B) Congress receives appropriate reports regarding such programs, policies, and procedures.

“(9) Lead the equal employment opportunity programs of the Department, including complaint management and adjudication, and promote workforce diversity and merit system principles.

“(10) Make publicly available through accessible communications channels, including the website of the Department—

“(A) information on the responsibilities and functions of, and how to contact, the Officer; and

“(B) reports that are issued by the Officer upon completion of investigations carried out pursuant to paragraph (6) or (7).

“(11) Engage with individuals and communities whose civil rights and civil liberties may be affected by programs and activities of the Department, including by informing such individuals and communities about report and redress processes and advising the Secretary and heads of components, directorates, offices, and other personnel within the Department of any concerns raised by such individuals and communities.

“(c) COORDINATION WITH INSPECTOR GENERAL.—

“(1) AUTHORITY TO INVESTIGATE POSSIBLE ABUSES.—The Officer for Civil Rights and Civil Liberties may investigate any matter referred to in paragraph (6) or (7) of subsection (b) after fulfilling the coordination requirements under paragraph (2) with respect to such matter.

“(2) COORDINATION REQUIREMENTS.—

“(A) REFERRAL OF MATTERS TO INSPECTOR GENERAL.—Before initiating any investigation described under paragraph (1), the Officer for Civil Rights and Civil Liberties shall refer the matter and all related complaints, allegations, and information to the Inspector General of the Department.

“(B) INSPECTOR GENERAL RESPONSIBILITIES.—

“(i) DETERMINATION AND NOTIFICATION.—Not later than 30 days after the receipt of a matter referred under subparagraph (A), the Inspector General shall—

“(I) make a determination regarding whether the Inspector General intends to initiate an audit or investigation of the matter referred under subparagraph (A); and

“(II) notify the Officer of such determination.

“(ii) AUDITS AND INVESTIGATIONS.—If the Inspector General notifies the Officer for Civil Rights and Civil Liberties that the Inspector General intends to initiate an audit or investigation, the Inspector General shall—

“(I) initiate such audit or investigate by not later than 90 days after providing such notification; or

“(II) not later than three days after the end of the 90-day period specified in subclause (I), notify the Officer that such audit or investigation was not initiated.

“(C) PROVISION OF ASSISTANCE.—At the request of the Inspector General, the Officer for Civil Rights and Civil Liberties may provide assistance to the Inspector General on any investigation or audit initiated by the Inspector General based on a referral under subparagraph (A).

“(D) INVESTIGATION BY OFFICER.—The Officer for Civil Rights and Civil Liberties may investigate a matter referred to the Inspector General under subparagraph (A) only if—

“(i) the Inspector General notifies the Officer for Civil Rights and Civil Liberties that the Inspector General does not intend to initiate an audit or investigation relating to that matter; or

“(ii) the Inspector General provides notification under subparagraph (B)(ii)(II) that an audit or investigation was not initiated.

“(d) TRANSPARENCY.—

“(1) COMPLAINTS.—In the case of a complaint made concerning allegations of abuses of civil rights and civil liberties under paragraph (6) of subsection (b), the Officer for Civil Rights and Civil Liberties shall—

“(A) provide to the individual who made the complaint notice of the receipt of such complaint within 30 days of receiving the complaint; and

“(B) inform the complainant of the determination of the Officer regarding the initiation of a review, assessment, or investigation within the Office, a referral to the Inspector General of the Department, or any other action taken.

“(2) INVESTIGATIONS.—In the case of an investigation initiated by the Officer pursuant to paragraph (6) or (7) of subsection (b), upon the conclusion of the investigation, the Officer shall produce a report on the investigation which—

“(A) shall include the findings and recommendations of the Officer;

“(B) shall be made publicly available;

“(C) shall not include any personally identifiable information related to any individual involved in such investigation; and

“(D) may include a classified appendix, as the Officer determines appropriate.

“(3) SUBMITTAL TO HEADS OF OPERATIONAL COMPONENTS.—The Officer shall transmit a copy of each report produced under paragraph (2) to the Secretary and to the relevant head of each relevant operational component of the Department.

“(4) REPORTS TO CONGRESS.—Upon the conclusion of any investigation conducted by the Officer for Civil Rights and Civil Liberties under paragraph (6) or (7) of subsection (b), the Officer shall submit to Congress a report on the investigation, which shall be prepared and submitted without any prior comment or amendment by the Secretary, Deputy Secretary, or any other officer or employee of the Department, unless the Officer seeks such comment.

“(e) COMPONENT CIVIL RIGHTS AND CIVIL LIBERTIES OFFICER.—The head of each of the operational components of the Department shall designate a career appointee (as such term is defined in section 3132 of title 5, United States Code) from such component as the Officer for Civil Rights and Civil Liberties of that component. The Officer for Civil Rights and Civil Liberties of each such component shall coordinate with and provide information to the Officer for Civil Rights and Civil Liberties of

the Department on matters related to civil rights and civil liberties within the components.

“(f) ACCESS TO INFORMATION.—The Officer for Civil Rights and Civil Liberties of the Department—

“(1) shall have access to all records, reports, audits, reviews, documents, papers, recommendations, and other materials available to the Department that relate to programs and operations with respect to the responsibilities of the Officer under subsection (b); and

“(2) may, to the extent the Officer determines necessary, and subject to the approval of the Secretary—

“(A) issue a subpoena to require the production, by any person other than a Federal agency, of all information, documents, reports, answers, records, accounts, papers, and other documentary evidence necessary in the performance of the responsibilities of the Officer under this section; and

“(B) administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the responsibilities of the Officer under this section.

“(g) ANNUAL REPORT.—Not later than March 31 of each year, the Officer for Civil Rights and Civil Liberties of the Department shall submit directly to the President, the President of the Senate, the Speaker of the House of Representatives, and the appropriate committees and subcommittees of Congress, a report on the implementation of this section during the year preceding the year during which the report is submitted. Each such report shall include, for the year covered by the report—

“(1) any allegations of abuse described under subsection (b)(6) and any actions by the Department or a component, directorate, or office of the Department that the Officer identifies as responsive to such allegations;

“(2) a list of Department programs and activities for which civil rights and civil liberties impact assessments were conducted, or policy advice, recommendations, or other technical assistance was provided;

“(3) any recommendations issued by the Officer to the Secretary or the head of a component, directorate, or office, together with information on the status of the implementation of such recommendations;

“(4) information on the diversity and equal employment opportunity activities of the Department, including information on complaint management and adjudication of equal employment opportunity complaints and efforts to ensure compliance throughout the Department with equal employment opportunity requirements;

“(5) a description of any efforts to engage with individuals and communities whose civil rights and civil liberties may be affected by activities carried out by the Department, including public meetings; and

“(6) information on total staffing for the Office of Civil Rights and Civil Liberties, including—

“(A) the number of full-time, part-time and contract support personnel; and

“(B) information on the number of employees whose primary responsibilities include supporting the Officer in carrying out paragraph (9) of subsection (b).”.

(b) CLERICAL AMENDMENT.—The item relating to section 705 in section 1(b) of the Homeland Security Act of 2002 is amended to read as follows:

“Sec. 705. Officer for civil rights and civil liberties.”.

SEC. 3. COMPTROLLER GENERAL REVIEW.

Not later than 180 days after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on subsection (b)(11) of section 705 of the Homeland Security Act of 2002 (6 U.S.C. 345), as amended by section 2.

PURPOSE AND SUMMARY

H.R. 4713, the “Department of Homeland Security Office of Civil Rights and Civil Liberties Authorization Act,” was introduced to strengthen the role of the Office for Civil Rights and Civil Liberties (CRCL) within the Department of Homeland Security (DHS or Department) as it works to ensure the protection of individual rights for those affected by DHS programs and activities. This bill authorizes CRCL to integrate civil rights and civil liberties into all Department programs and activities by reviewing Departmental poli-

cies, procedures, and activities; reviewing, assessing, and investigating complaints and information indicating possible abuses of civil rights and civil liberties; conducting civil rights and civil liberties impact assessments; and providing recommendations and other technical assistance to the Secretary of Homeland Security (Secretary) and heads of the operational components of the Department, among other functions. The bill seeks to improve the effectiveness of CRCL within the Department by granting the DHS CRCL Officer authority to access all Department records necessary to carry out the Officer's work and to issue subpoenas, as necessary and subject to the approval of the Secretary, to non-federal entities. Additionally, the bill requires the head of each operational component to designate a CRCL officer within its respective component to coordinate with and provide information to the DHS CRCL Officer on matters related to civil rights and civil liberties. To improve transparency regarding CRCL findings, at the conclusion of any investigation conducted by CRCL, the investigatory report is required to be submitted to Congress without any prior comment or amendment by the Secretary, Deputy Secretary, or any other officer or employee of the Department, unless the DHS CRCL Officer seeks such comment.

BACKGROUND AND NEED FOR LEGISLATION

DHS personnel interact with millions of people from across the country and around the world every day. Therefore, it is imperative that the DHS Office for Civil Rights and Civil Liberties be better integrated in the policymaking process and Departmental operations. Under current law, the DHS CRCL Officer is authorized to assist the Secretary, directorates, and offices of the Department in developing and implementing Department policies and procedures to ensure that the protection of civil rights and civil liberties is appropriately incorporated into programs and activities, but in practice, CRCL has not always been provided an opportunity to weigh in on DHS' programs and policies that clearly impact individuals' and communities' civil rights and civil liberties. Specifically, the Committee learned that CRCL received no information from the Department before the controversial travel ban was implemented in January 2017.¹ A former CRCL official has reported that CRCL was also not consulted when DHS instituted family separation at the southern border.²

The "Department of Homeland Security Office of Civil Rights and Civil Liberties Authorization Act" seeks to enhance CRCL operations within DHS by clarifying that the DHS CRCL Officer is charged with integrating civil rights and civil liberties into all Department programs and activities and by establishing CRCL officers within each of the Department's operational components. The designation of component-level CRCL officers should improve coordination among the components and CRCL Office at DHS Head-

¹ Letter to Rep. Yvette D. Clarke from DHS Inspector General John Roth (March 20, 2017), <https://www.documentcloud.org/documents/3522287-DHS-Investigation.html>. The letter states that CRCL attempted to initiate an investigation into the implementation of Executive Order (EO) #13769, indicating that CRCL was not involved prior to the implementation.

² Shuchart, Scott, "Careless cruelty: Civil servants said separating families was illegal. The administration ignored us," *The Washington Post* (Oct. 25, 2018), <https://www.washingtonpost.com/news/posteverything/wp/2018/10/25/feature/civil-servants-said-separating-families-was-illegal-the-administration-ignored-us/>.

quarters on matters with CRCL implications. The Committee is concerned that components may fail to share information with CRCL in a timely manner whether the requested information is regarding an investigation of a complaint or compliance with Equal Employment Opportunity (EEO) requirements. Components are not required to respond to CRCL information requests or recommendations for remedial actions within any set timeframes. CRCL and DHS components often negotiate turnaround times, but these agreements may be ignored, which could lead to lengthy delays in resolving complaints. When CRCL and a component disagree, there is currently no formal method for escalating and resolving the dispute at the secretarial level. H.R. 4713 attempts to rectify this issue by authorizing CRCL access to all Department records necessary to carry out its work and to issue subpoenas, as necessary and subject to the approval of the Secretary, to non-federal entities.

Finally, for the work of CRCL to be effective, increased transparency and independence is necessary. Presently, CRCL's annual reports contain summaries of the investigations conducted within that year but do not contain any of the recommendations made by CRCL. Additionally, the Committee has learned that the annual reports are far less informative than are the reports written at the conclusion of a review, assessment, inspection or investigation, which are not made public.³ H.R. 4713 seeks to enhance CRCL's effectiveness and ensure accountability by requiring that investigative reports and reviews of Department programs be made publicly available and submitted to Congress without any prior comment or amendment by the Secretary, Deputy Secretary, or any other officer or employee of the Department, unless the CRCL Officer seeks such comment.

HEARINGS

For the purposes of section 103(i) of H. Res 6. of the 116th Congress, the following hearings were used to develop H.R. 4713:

- On March 26, 2019, the Committee held a hearing entitled "The Department of Homeland Security's Family Separation Policy: Perspectives from The Border." The Committee received testimony from Jennifer Podkul, Director of Policy, Kids in Need of Defense; Michelle Brané, Director for Migrant Rights and Justice, Women's Refugee Commission; Julie M. Linton, Co-Chair, Immigrant Health Special Interest Group, American Academy of Pediatrics; and Tim Ballard, Founder and CEO, Operation Underground Railroad.

- On April 30, 2019, the Committee held a hearing entitled "The Impacts of Trump Policies on Border Communities." The Committee received testimony from Jon Barela, Chief Executive Officer, The Borderplex Alliance; Efrén Olivares, Racial and Economic Justice Director, Texas Civil Rights Project; Mark Seitz, Most Reverend Bishop, Catholic Diocese of El Paso, Texas, U.S. Conference of Catholic Bishops; and Mark Napier, Sheriff of Pima County, Southwestern Border Sheriff's Coalition.

³ Shuchart, Scott, "Building Meaningful Civil Rights and Liberties Oversight at the U.S. Department of Homeland Security," *The Center for American Progress* (April 2019), <https://cdn.americanprogress.org/content/uploads/2019/03/28064808/DHS-Civil-Rights-Oversight-report1.pdf>.

- On June 4, 2019, the Committee held a hearing entitled “Perspectives on TSA’s Policies to Prevent Unlawful Profiling.” The Committee received testimony from W. William Russell, Acting Director, Homeland Security and Justice Team, U.S. Government Accountability Office; Sim J. Singh, Senior Manager of Policy & Advocacy, The Sikh Coalition; and Janai Nelson, Associate Director-Counsel, NAACP Legal Defense and Educational Fund, Inc.

- On July 10, 2019, the Committee held a hearing entitled “About Face: Examining the Department of Homeland Security’s Use of Facial Recognition and Other Biometric Technologies.” The Committee received testimony from John Wagner, Deputy Executive Assistant Commissioner, Office of Field Operations, U.S. Customs and Border Protection, U.S. Department of Homeland Security; Austin Gould, Assistant Administrator, Requirements and Capabilities Analysis, Transportation Security Administration, U.S. Department of Homeland Security; Joseph R. DiPietro, Chief Technology Officer, United States Secret Service, U.S. Department of Homeland Security; and Charles H. Romine, Director, Information Technology Laboratory, National Institute of Standards and Technology, U.S. Department of Commerce.

COMMITTEE CONSIDERATION

The Committee met on October 23, 2019, with a quorum being present, to consider H.R. 4713 and ordered the measure to be reported to the House with a favorable recommendation, with amendments, by unanimous consent.

The following amendments were offered:

An amendment offered by Mr. Rogers.

Page 2, line 21, insert “protections” after “civil liberties”.

Page 2, line 25, insert “, procedures,” after “policies”.

Page 2, line 26, insert “relating to civil rights and civil liberties” after “Department”.

Page 3, line 2, insert “relating to civil rights and civil liberties” after “technical assistance”.

Page 3, line 8, insert “at the Department” after “civil liberties”.

Page 3, line 12, insert “inspections,” after “assessments,”.

Page 3, line 14, insert “relating to civil rights and civil liberties” after “Department”.

Page 4, line 18, insert “report and” before “redress”.

Page 4, after line 22, insert the following:

“(c) COORDINATION WITH INSPECTOR GENERAL.—

(1) AUTHORITY TO INVESTIGATE POSSIBLE ABUSES.—

The Officer for Civil Rights and Civil Liberties may investigate any matter referred to in paragraph (6) or (7) of subsection (b) after fulfilling the coordination requirements under paragraph (2) with respect to such matter.

(2) COORDINATION REQUIREMENTS.—

(A) REFERRAL OF MATTERS TO INSPECTOR GENERAL.—Before initiating any investigation described under paragraph (1), the Officer for Civil Rights and Civil Liberties shall refer the matter

and all related complaints, allegations, and information to the Inspector General of the Department.

(B) INSPECTOR GENERAL RESPONSIBILITIES.—

(i) DETERMINATION AND NOTIFICATION.—Not later than 30 days after the receipt of a matter referred under subparagraph (A), the Inspector General shall—(I) make a determination regarding whether the Inspector General intends to initiate an audit or investigation of the matter referred under subparagraph (A); and (II) notify the Officer of such determination.

(ii) AUDITS AND INVESTIGATIONS.—If the Inspector General notifies the Officer for Civil Rights and Civil Liberties that the Inspector General intends to initiate an audit or investigation, the Inspector General shall—(I) initiate such audit or investigate by not later than 90 days after providing such notification; or (II) not later than three days after the end of the 90-day period specified in subclause (I), notify the Officer that such audit or investigation was not initiated.

(C) PROVISION OF ASSISTANCE.—At the request of the Inspector General, the Officer for Civil Rights and Civil Liberties may provide assistance to the Inspector General on any investigation or audit initiated by the Inspector General based on a referral under subparagraph (A).

(D) INVESTIGATION BY OFFICER.—The Officer for Civil Rights and Civil Liberties may investigate a matter referred to the Inspector General under subparagraph (A) only if—(i) the Inspector General notifies the Officer for Civil Rights and Civil Liberties that the Inspector General does not intend to initiate an audit or investigation relating to that matter; or (ii) the Inspector General provides notification under subparagraph (B)(ii)(II) that an audit or investigation was not initiated.

Page 4, line 23, strike “(c)” and insert “(d)”.

Page 5, line 11, strike “Office or” and insert “Office,”.

Page 5, line 12, insert “, or any other action taken” before the period.

Page 5, line 20, strike “and”.

Page 5, after line 20, insert the following: (C) shall not include any personally identifiable information related to any individual involved in such investigation; and

Page 5, line 21, strike “(C)” and insert “(D)”.

Page 5, line 24, strike “COMPOENENTS” and insert “COMPO-NENTS”.

Page 6, after line 2, insert the following:

(4) REPORTS TO CONGRESS.—Upon the conclusion of any investigation conducted by the Officer for Civil

Rights and Civil Liberties under paragraph (6) or (7) of subsection (b), the Officer shall submit to Congress a report on the investigation, which shall be prepared and submitted without any prior comment or amendment by the Secretary, Deputy Secretary, or any other officer or employee of the Department, unless the Officer seeks such comment.

Page 6, line 3, strike “(d)” and insert “(e)”.

Page 6, line 10, strike “report” and insert “coordinate with and provide information”.

Page 6, line 11, insert “on matters related to civil rights and civil liberties within the components”.

Page 6, line 12, strike “(e)” and insert “(f)”.

Page 6, line 13, strike “shall”.

Page 6, line 14, insert “shall” before “have access”.

Page 6, line 18, insert “and” after the semicolon.

Page 6, beginning on line 19, strike paragraphs (2) and (3) and insert the following:

(2) may, to the extent the Officer determines necessary, and subject to the approval of the Secretary—
 (A) issue a subpoena to require the production, by any person other than a Federal agency, of all information, documents, reports, answers, records, accounts, papers, and other documentary evidence necessary in the performance of the responsibilities of the Officer under this section; and (B) administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the responsibilities of the Officer under this section.

Page 7, line 7, strike “(f)” and insert “(g)”.

Page 7, beginning on line 12, strike “without any prior comment or amendment by the Secretary, Deputy Secretary, or any other officer or employee of the Department,”.

An amendment offered by Ms. Jackson Lee.

Add at the end of the bill the following:

SEC. 3. COMPTROLLER GENERAL REVIEW.

Not later than 180 days after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on subsection (b)(11) of section 705 of the Homeland Security Act of 2002 (6 U.S.C. 345), as amended by section 2.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

No recorded votes were requested during consideration of H.R. 4713.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activi-

ties under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

CONGRESSIONAL BUDGET OFFICE ESTIMATE, NEW BUDGET
AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office.

FEDERAL MANDATES STATEMENT

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 4713 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 4713, as amended, seeks to improve the effectiveness of CRCL to ensure DHS preserves individual's rights and liberties, fairness, and equality while carrying out its mission. The bill will enhance CRCL's operations by requiring a CRCL officer to be designated within each operational component to coordinate with and provide information to the DHS CRCL Officer on matters related to civil rights and civil liberties and grant the DHS CRCL Officer more authority to investigate potential civil rights and civil liberties abuses. H.R. 4713 also directs CRCL to provide to any individual who makes a complaint notice of the receipt of such a complaint within 30 days and requires direct reporting to Congress on completed investigations and publication of such reports.

ADVISORY ON EARMARKS

In compliance with rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of the rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides that the bill may be cited as the “Department of Homeland Security Office of Civil Rights and Civil Liberties Authorization Act.”

Sec. 2. Officer for Civil Rights and Civil Liberties

This section amends section 705 of the Homeland Security Act of 2002 to authorize an Office for Civil Rights and Civil Liberties (CRCL) within the Department of Homeland Security and clarify that the head of such office is the Officer for Civil Rights and Civil Liberties, who shall report directly to the Secretary of Homeland Security.

This section requires the Officer to carry out the following responsibilities:

(1) oversee compliance with constitutional, statutory, regulatory, policy, and other requirements relating to the civil rights and civil liberties of individuals affected by the programs and activities of the Department;

(2) integrate civil rights and civil liberties protections into all programs and activities of the Department;

(3) conduct civil rights and civil liberties impact assessments, as appropriate;

(4) conduct periodic reviews of policies, procedures, and activities of the Department relating to civil rights and civil liberties;

(5) provide policy advice, recommendations, and other technical assistance relating to civil rights and civil liberties to the Secretary and to heads of components, directorates, and offices and other personnel within the Department;

(6) review, assess, and investigate complaints, including complaints filed by members of the public, and information indicating possible abuses of civil rights or civil liberties at the Department, unless the Inspector General of the Department determines that any such complaint or information should be investigated by the Inspector General;

(7) initiate reviews, assessments, inspections, and investigations of the administration of the programs and activities by the Department relating to civil rights and civil liberties, as the Officer determines necessary;

(8) coordinate with the Privacy Officer of the Department to ensure that programs, policies, and procedures involving civil rights, civil liberties, and privacy considerations are addressed in an integrated and comprehensive manner and that Congress receives appropriate reports regarding such programs, policies, and procedures;

(9) lead the equal employment opportunity programs of the Department, including complaint management and adjudication, and promote workforce diversity and merit system principles;

(10) make publicly available through accessible communications channels, including the website of the Department, information on the responsibilities and functions of, and how to contact, the Officer and reports that are issued by the Officer upon completion of investigations; and

(11) engage with individuals and communities whose civil rights and civil liberties may be affected by DHS programs and activities, including by informing such individuals and communities about report and redress processes and advising Department leadership and personnel on concerns raised by such individuals and communities.

For the officer to adequately carry out these responsibilities, the Committee expects Department and component leadership to consult with CRCL prior to the adoption and issuance of policies, directives, or regulations and provide the DHS CRCL Officer adequate time to properly advise on potential civil rights and civil liberties impacts of such policies, directives, or regulations. The Committee expects the same of Department and component leadership prior to the establishment of Department programs and activities. Consequently, the Committee expects more frequent issuance of CRCL impact assessments of the activities undertaken by DHS and its components.

The Committee expects the DHS CRCL Officer to proactively self-initiate reviews, assessments, inspections, and investigations of the administration of programs and activities by the Department to assess civil rights and civil liberties implications in addition to being responsive to complaints filed or concerns raised by members of the public. As CRCL experienced a 20 percent increase in complaints received during Fiscal Year 2018, the Committee expects CRCL to identify and track trends in complaints and adequately respond to such trends.⁴ Regarding onsite visits and inspections conducted by CRCL, the Committee expects CRCL to have the capacity to do follow-on visits and inspections to ensure compliance with recommendations issued at the conclusion of initial visits and inspections. The Committee expects the Department to submit a budget request to provide adequate resources to ensure that CRCL achieves and maintains such oversight capacity.

This section clarifies that before the DHS CRCL Officer initiates any investigation relating to any matter regarding complaints filed by members of the public, information indicating possible abuses of civil rights or civil liberties at the Department, and the administration of the programs and activities by the Department relating to civil rights and civil liberties, the CRCL Officer must refer the matter and all related complaints, allegations, and information to the Inspector General of the Department. This section requires the Inspector General, not later than 30 days after the receipt of a referred matter, to make a determination regarding whether the Inspector General intends to initiate an audit or investigation of the referred matter and notify the CRCL Officer of such determination. If the Inspector General notifies the CRCL Officer that the Inspector General intends to initiate an audit or investigation, the Inspector General is required to initiate such audit or investigate by not later than 90 days after providing such notification or notify, not later than three days after the end of the 90-day period, the CRCL Officer that such audit or investigation was not initiated. If the Inspector General provides the latter notification or notifies the CRCL Officer that the Inspector General does not intend to initiate

⁴DHS CRCL Budget Briefing Documents provided to Committee Staff (April 4, 2019).

an audit or investigation relating to a referred matter, the CRCL Officer is authorized to investigate such matter.

This section also authorizes the CRCL Officer to assist the Inspector General, upon request, on any investigation or audit initiated by the Inspector General based on a referral from CRCL.

The Committee believes that there are opportunities for the Inspector General to involve CRCL in investigations of shared interest and that such investigations would benefit from such collaboration.

Additionally, this section directs CRCL to provide to any individual who makes a complaint notice of the receipt of such a complaint within 30 days and inform the complainant of the determination of the CRCL Officer regarding the initiation of a review, assessment, or investigation within CRCL, a referral to the Inspector General of the Department, or any other action taken.

This section requires that, in the case of any investigation initiated by the CRCL Officer, the CRCL Officer produce a report that includes findings and recommendations. The report shall be made publicly available and shall not include any personally identifiable information related to any individual involved in such investigation. The report may include a classified appendix, as the CRCL Officer determines appropriate. The CRCL Officer is required to transmit a copy of each report produced at the conclusion of an investigation to the Secretary, head(s) of the relevant operational component(s), and to Congress. The reports to Congress shall be prepared and submitted without any prior comment or amendment by the Secretary, Deputy Secretary, or any other officer or employee of the Department, unless the Officer seeks such comment.

The Committee expects that, in the case of findings or recommendations, Department and component leadership may wish to issue responses to such findings or recommendations. However, the Committee expects CRCL to maintain and exert operational independence and therefore expects that findings and recommendations are not influenced or amended in any shape or form by any non-CRCL officer or employee of the Department.

This section requires the head of each operational component to designate a CRCL officer within its respective component to coordinate with and provide information to the CRCL Officer of the Department on matters related to civil rights and civil liberties. Additionally, this section authorizes the CRCL Officer to access all Department records necessary to carry out the CRCL Officer's work and to issue subpoenas, as necessary and subject to the approval of the Secretary, to non-federal entities and administer to or take from any person an oath, affirmation, or affidavit, when necessary. Lastly, this section requires the CRCL Officer to submit to the President and Congress an annual report setting forth the activities of CRCL for the prior year, including information on diversity and Equal Employment Opportunity (EEO) activities. The report must, among other items, include a description of all recommendations the CRCL Officer made to senior DHS leadership in the prior year, along with the status of each recommendation.

Regarding the CRCL Officer's authorization to access to information, the Committee expects such access to include, as appropriate, legal analyses related to civil rights and civil liberties implications of programs and policies of the Department produced within the

Department. As it relates to the annual report, the Committee expects the inclusion of Department diversity demographic data and expects such data to be made publicly available on the website of the Department.

Sec. 3. Comptroller General review

This section requires the Comptroller General of the United States to submit a report to Congress on DHS CRCL’s efforts to carry out the responsibility of engaging with individuals and communities whose civil rights and civil liberties may be affected by DHS programs and activities, including by informing such individuals and communities about report and redress processes and advising Department leadership and personnel on concerns raised by such individuals and communities.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Homeland Security Act of 2002”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

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TITLE VII—MANAGEMENT

Sec. 701. Under Secretary for Management.

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[Sec. 705. Establishment of Officer for Civil Rights and Civil Liberties.]

Sec. 705. Officer for civil rights and civil liberties.

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TITLE VII—MANAGEMENT

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SEC. 705. [ESTABLISHMENT OF] OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES.

[(a) IN GENERAL.—The Officer for Civil Rights and Civil Liberties, who shall report directly to the Secretary, shall—

(1) review and assess information concerning abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion, by employees and officials of the Department;

【(2) make public through the Internet, radio, television, or newspaper advertisements information on the responsibilities and functions of, and how to contact, the Officer;

【(3) assist the Secretary, directorates, and offices of the Department to develop, implement, and periodically review Department policies and procedures to ensure that the protection of civil rights and civil liberties is appropriately incorporated into Department programs and activities;

【(4) oversee compliance with constitutional, statutory, regulatory, policy, and other requirements relating to the civil rights and civil liberties of individuals affected by the programs and activities of the Department;

【(5) coordinate with the Privacy Officer to ensure that—

【(A) programs, policies, and procedures involving civil rights, civil liberties, and privacy considerations are addressed in an integrated and comprehensive manner; and

【(B) Congress receives appropriate reports regarding such programs, policies, and procedures; and

【(6) investigate complaints and information indicating possible abuses of civil rights or civil liberties, unless the Inspector General of the Department determines that any such complaint or information should be investigated by the Inspector General.

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

(a) IN GENERAL.—There is established within the Department an Office for Civil Rights and Civil Liberties. The head of such Office is the Officer for Civil Rights and Civil Liberties, who shall report directly to the Secretary.

(b) RESPONSIBILITIES.—The Officer for Civil Rights and Civil Liberties shall carry out the following responsibilities:

(1) Oversee compliance with constitutional, statutory, regulatory, policy, and other requirements relating to the civil rights and civil liberties of individuals affected by the programs and activities of the Department.

(2) Integrate civil rights and civil liberties protections into all programs and activities of the Department.

(3) Conduct civil rights and civil liberties impact assessments, as appropriate.

(4) Conduct periodic reviews of policies, procedures, and activities of the Department relating to civil rights and civil liberties.

(5) Provide policy advice, recommendations, and other technical assistance relating to civil rights and civil liberties to the Secretary and to heads of components, directorates, and offices and other personnel within the Department.

(6) Review, assess, and investigate complaints, including complaints filed by members of the public, and information indicating possible abuses of civil rights or civil liberties at the De-

partment, unless the Inspector General of the Department determines that any such complaint or information should be investigated by the Inspector General.

(7) Initiate reviews, assessments, inspections, and investigations of the administration of the programs and activities by the Department relating to civil rights and civil liberties, as the Officer determines necessary.

(8) Coordinate with the Privacy Officer to ensure that—

(A) programs, policies, and procedures involving civil rights, civil liberties, and privacy considerations are addressed in an integrated and comprehensive manner; and

(B) Congress receives appropriate reports regarding such programs, policies, and procedures.

(9) Lead the equal employment opportunity programs of the Department, including complaint management and adjudication, and promote workforce diversity and merit system principles.

(10) Make publicly available through accessible communications channels, including the website of the Department—

(A) information on the responsibilities and functions of, and how to contact, the Officer; and

(B) reports that are issued by the Officer upon completion of investigations carried out pursuant to paragraph (6) or (7).

(11) Engage with individuals and communities whose civil rights and civil liberties may be affected by programs and activities of the Department, including by informing such individuals and communities about report and redress processes and advising the Secretary and heads of components, directorates, offices, and other personnel within the Department of any concerns raised by such individuals and communities.

(c) COORDINATION WITH INSPECTOR GENERAL.—

(1) AUTHORITY TO INVESTIGATE POSSIBLE ABUSES.—The Officer for Civil Rights and Civil Liberties may investigate any matter referred to in paragraph (6) or (7) of subsection (b) after fulfilling the coordination requirements under paragraph (2) with respect to such matter.

(2) COORDINATION REQUIREMENTS.—

(A) REFERRAL OF MATTERS TO INSPECTOR GENERAL.—Before initiating any investigation described under paragraph (1), the Officer for Civil Rights and Civil Liberties shall refer the matter and all related complaints, allegations, and information to the Inspector General of the Department.

(B) INSPECTOR GENERAL RESPONSIBILITIES.—

(i) DETERMINATION AND NOTIFICATION.—Not later than 30 days after the receipt of a matter referred under subparagraph (A), the Inspector General shall—

(I) make a determination regarding whether the Inspector General intends to initiate an audit or investigation of the matter referred under subparagraph (A); and

(II) notify the Officer of such determination.

(ii) AUDITS AND INVESTIGATIONS.—If the Inspector General notifies the Officer for Civil Rights and Civil

Liberties that the Inspector General intends to initiate an audit or investigation, the Inspector General shall—

(I) initiate such audit or investigate by not later than 90 days after providing such notification; or

(II) not later than three days after the end of the 90-day period specified in subclause (I), notify the Officer that such audit or investigation was not initiated.

(C) PROVISION OF ASSISTANCE.—At the request of the Inspector General, the Officer for Civil Rights and Civil Liberties may provide assistance to the Inspector General on any investigation or audit initiated by the Inspector General based on a referral under subparagraph (A).

(D) INVESTIGATION BY OFFICER.—The Officer for Civil Rights and Civil Liberties may investigate a matter referred to the Inspector General under subparagraph (A) only if—

(i) the Inspector General notifies the Officer for Civil Rights and Civil Liberties that the Inspector General does not intend to initiate an audit or investigation relating to that matter; or

(ii) the Inspector General provides notification under subparagraph (B)(ii)(II) that an audit or investigation was not initiated.

(d) TRANSPARENCY.—

(1) COMPLAINTS.—In the case of a complaint made concerning allegations of abuses of civil rights and civil liberties under paragraph (6) of subsection (b), the Officer for Civil Rights and Civil Liberties shall—

(A) provide to the individual who made the complaint notice of the receipt of such complaint within 30 days of receiving the complaint; and

(B) inform the complainant of the determination of the Officer regarding the initiation of a review, assessment, or investigation within the Office, a referral to the Inspector General of the Department, or any other action taken.

(2) INVESTIGATIONS.—In the case of an investigation initiated by the Officer pursuant to paragraph (6) or (7) of subsection (b), upon the conclusion of the investigation, the Officer shall produce a report on the investigation which—

(A) shall include the findings and recommendations of the Officer;

(B) shall be made publicly available;

(C) shall not include any personally identifiable information related to any individual involved in such investigation; and

(D) may include a classified appendix, as the Officer determines appropriate.

(3) SUBMITTAL TO HEADS OF OPERATIONAL COMPONENTS.—The Officer shall transmit a copy of each report produced under paragraph (2) to the Secretary and to the relevant head of each relevant operational component of the Department.

(4) REPORTS TO CONGRESS.—Upon the conclusion of any investigation conducted by the Officer for Civil Rights and Civil Liberties under paragraph (6) or (7) of subsection (b), the Offi-

cer shall submit to Congress a report on the investigation, which shall be prepared and submitted without any prior comment or amendment by the Secretary, Deputy Secretary, or any other officer or employee of the Department, unless the Officer seeks such comment.

(e) **COMPONENT CIVIL RIGHTS AND CIVIL LIBERTIES OFFICER.**—The head of each of the operational components of the Department shall designate a career appointee (as such term is defined in section 3132 of title 5, United States Code) from such component as the Officer for Civil Rights and Civil Liberties of that component. The Officer for Civil Rights and Civil Liberties of each such component shall coordinate with and provide information to the Officer for Civil Rights and Civil Liberties of the Department on matters related to civil rights and civil liberties within the components.

(f) **ACCESS TO INFORMATION.**—The Officer for Civil Rights and Civil Liberties of the Department—

(1) shall have access to all records, reports, audits, reviews, documents, papers, recommendations, and other materials available to the Department that relate to programs and operations with respect to the responsibilities of the Officer under subsection (b); and

(2) may, to the extent the Officer determines necessary, and subject to the approval of the Secretary—

(A) issue a subpoena to require the production, by any person other than a Federal agency, of all information, documents, reports, answers, records, accounts, papers, and other documentary evidence necessary in the performance of the responsibilities of the Officer under this section; and

(B) administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the responsibilities of the Officer under this section.

(g) **ANNUAL REPORT.**—Not later than March 31 of each year, the Officer for Civil Rights and Civil Liberties of the Department shall submit directly to the President, the President of the Senate, the Speaker of the House of Representatives, and the appropriate committees and subcommittees of Congress, a report on the implementation of this section during the year preceding the year during which the report is submitted. Each such report shall include, for the year covered by the report—

(1) any allegations of abuse described under subsection (b)(6) and any actions by the Department or a component, directorate, or office of the Department that the Officer identifies as responsive to such allegations;

(2) a list of Department programs and activities for which civil rights and civil liberties impact assessments were conducted, or policy advice, recommendations, or other technical assistance was provided;

(3) any recommendations issued by the Officer to the Secretary or the head of a component, directorate, or office, together with information on the status of the implementation of such recommendations;

(4) information on the diversity and equal employment opportunity activities of the Department, including information on complaint management and adjudication of equal employment opportunity complaints and efforts to ensure compliance

throughout the Department with equal employment opportunity requirements;

(5) a description of any efforts to engage with individuals and communities whose civil rights and civil liberties may be affected by activities carried out by the Department, including public meetings; and

(6) information on total staffing for the Office of Civil Rights and Civil Liberties, including—

(A) the number of full-time, part-time and contract support personnel; and

(B) information on the number of employees whose primary responsibilities include supporting the Officer in carrying out paragraph (9) of subsection (b).

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ADDITIONAL VIEWS

H.R. 4713 reauthorizes and expands the authorities of the Office of Civil Rights and Civil Liberties (CRCL) at the Department of Homeland Security (DHS). The bill outlines the responsibilities of the CRCL, including ensuring compliance by DHS and its components with the Constitution, as well as implementing laws and regulations related to civil rights and civil liberties.

The bill, as amended, is intended to give CRCL authorities that are comparable to the authorities of the DHS Privacy Office. The amendment offered by Ranking Member Mike Rogers (R-AL) and adopted in Committee included several provisions to ensure that the authority granted CRCL was not more expansive than that of the DHS Privacy Office.

The Rogers amendment included a provision to ensure that the new authority granted CRCL would not be used to engage in duplicative activities or investigations. DHS has numerous offices engaged in investigating violations of the civil rights of individuals. To ensure these offices coordinate to avoid wasteful duplicative investigations, the Rogers amendment requires CRCL to inform the Office of the Inspector General (OIG) prior to starting an investigation and receive confirmation that OIG will not conduct its own investigation on the matter.

H.R. 4713 also grants CRCL access to DHS documents on programs and operations, provides it with subpoena powers, and the authority to administer an oath or take an affidavit. The Rogers amendment requires the Secretary to approve the use of subpoena authority and the authority to administer oaths. Committee Republicans believe these authorities should be exercised only in the rarest of circumstances and only after approval by the Secretary. We expect that DHS and its components would view cooperation with CRCL as standard operating procedure and provide relevant documents when requested. However, in utilizing the authority provided, CRCL must respect generally accepted exceptions to document production.

Finally, the bill also requires the issuance of a report after an investigation and an annual report on the activities of CRCL. The Rogers amendment requires that personally identifiable information be protected in the report of an investigation. It also allows for comment by the Secretary and the components on the activity report of CRCL. Although an investigative report does not require comment from DHS or its components, we expect CRCL would seek the guidance of the Secretary and the components whenever possible during an investigation to ensure it is conducted in a fair and equitable manner.

The Committee received informal views and technical drafting assistance on H.R. 4713 from DHS, but not with sufficient time to fully adjudicate them. While the Rogers amendment addresses

most of the issues raised by DHS, Committee Republicans encourage the majority to work with the Department to address outstanding issues.

This legislation, as amended, is not intended to significantly broaden the authority of CRCL. It is merely intended to grant CRCL the authorities necessary to conduct meaningful inquiries into abuses of civil rights and civil liberties within DHS.

MIKE ROGERS.

