

# Report to Congress on Implementation of Section 705 of the Homeland Security Act and the Establishment of the Office for Civil Rights and Civil Liberties

June 2004



**Homeland  
Security**



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**Homeland  
Security**

June 2, 2004

Dear Mr. Vice President, Speaker Hastert, and Members of Congress:

Section 705 of the Homeland Security Act of 2002 requires the appointment of an Officer for Civil Rights and Civil Liberties within the Department of Homeland Security. In the short time since March 1, 2003, the Department has made remarkable progress in establishing an effective Office for Civil Rights and Civil Liberties. The Office has attained significant achievements in its first year of operation, and it has provided me and the senior leadership of the Department timely advice as we develop policies that both enhance our nation's security and respect our civil rights and civil liberties.

The Department of Homeland Security is strongly committed to the protection of civil rights and civil liberties in all of our work. Indeed, the Department's Strategic Plan prominently states this commitment in the vision statement, guiding principles, and goals and objectives.

Section 705(b) of the Act requires that I 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 Section 705. The report prepared by the Office for Civil Rights and Civil Liberties on the creation of the Office and the work that this Office has undertaken is enclosed. A copy of the report can also be obtained from our website at <http://www.dhs.gov/dhspublic/display?theme=9&content=2978>.

The Department of Homeland Security looks forward to working with the Congress and the people of the United States as we ensure the protection of the homeland as well as our civil rights and civil liberties.

Sincerely,

A handwritten signature in black ink that reads "Tom Ridge". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tom Ridge

## EXECUTIVE SUMMARY

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One year ago, 22 federal agencies with over 180,000 employees stood up as the Department of Homeland Security with the unique cabinet-level mission of protecting America while preserving our way of life. Today, our nation's borders are safer, our nation's infrastructure and security have been enhanced, and our nation is better prepared to react to and recover from unforeseen catastrophes. The Department has strengthened airline security, increased vigilance at our borders and ports, and forged unprecedented partnerships that have meant greater coordination with state and local authorities in cases of national emergency.

President Bush and Secretary Ridge have led these homeland security efforts while championing both security and liberty. Since the beginning of the homeland security mission, President Bush has made it clear that the protection of civil liberties would be a strong component of this nation's response to terrorism. Secretary Ridge repeatedly has rejected the false notion of enhancing security at the expense of liberty, instead committing this Department to the pursuit of both security and liberty. Indeed, these guiding principles are the bedrock of the Department's Strategic Plan.

This Department, alone among cabinet agencies, has a unique senior leadership position dedicated to the protection of personal liberties: the Officer for Civil Rights and Civil Liberties. This official assists the senior leadership of the Department to shape policies in ways that enhance security while protecting personal liberties. The Secretary's decision that this senior position will report directly to him underscores the Administration's strong commitment to the idea that the protection of civil liberties plays a prominent role in the homeland security effort.

On April 16, 2003, President Bush and Secretary Ridge appointed Daniel W. Sutherland to serve as the first Officer for Civil Rights and Civil Liberties. Secretary Ridge and Mr. Sutherland developed a broad strategic plan for CRCL, and decided that the primary mission of the Office will be to provide proactive legal and policy advice to the senior leadership of the Department on a full range of civil rights and civil liberties issues. After developing a strategic plan, budget requirements and a staffing plan, an Office for Civil Rights and Civil Liberties was established.

This report presents the three facets of CRCL's work: legal and policy review, matters warranting review, and equal employment opportunity. In the legal and policy review arena, the Office has worked on issues related to law enforcement, immigration law and policy, disability law and policy, the influence of technology on civil liberties, the effects of intelligence gathering on civil liberties, and regulatory work. In matters warranting review, the Office accepted for review matters that implicate civil rights and civil liberties under federal law and regulations, established its organizational authority within the Department, publicized information about the Office, and identified Department organizational units that are strategic partners in protecting civil rights and civil liberties. In the equal employment opportunity area (EEO), the Office has established an aggressive plan for recruitment to ensure that information about Department vacancies reaches a diverse applicant pool, has developed an effective process for issuing final agency decisions on EEO complaints, and has provided training on the basic principles of equal employment opportunity to hundreds of DHS leaders.

The Department's major accomplishments in the area of the protection of civil rights and civil liberties are set out in this report, and include:

- The appointment of the Department's first Officer for Civil Rights and Civil Liberties, and the establishment of a robust Office to support this mission;
- The clear establishment of the Department's commitment to the protection of civil liberties, both through numerous statements by Secretary Ridge and other senior leaders, as well as through the Department's Strategic Plan, which highlights strong statements regarding the priority that must be placed on these issues;
- The Office for Civil Rights and Civil Liberties' ability to serve as an entry point for civil rights, civil liberties and immigration advocacy groups to communicate with the Department;
- The Office for Civil Rights and Civil Liberties' participation in shaping the Department's response to *The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks*, a report issued by the Inspector General of the Department of Justice;
- The creation of a process for receiving, assigning, investigating, referring, and concluding reviews of allegations of abuses of civil rights, civil liberties and racial or ethnic profiling;
- Recognizing that one of the most valuable ways to implement the Department's commitment to the protection of civil rights and civil liberties is through training programs, the Office for Civil Rights and Civil Liberties has initiated work on a "Civil Liberties University," which will be a library of distributed learning courses offering top-quality civil rights and civil liberties training to Department personnel;
- The Office for Civil Rights and Civil Liberties' contributions on issues in the area of refugee and asylum law; and,
- The Office for Civil Rights and Civil Liberties' leadership with regard to Secretary Ridge's aggressive initiative to serve as a model employer for people with disabilities.

This report demonstrates that the Department has operated on many fronts to secure the homeland and protect our civil rights and civil liberties. In the coming year the Department looks forward to building on these achievements and executing the responsibilities the American public has entrusted to our care.

# OVERVIEW OF THE U.S. DEPARTMENT OF HOMELAND SECURITY

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At the Department's inception, Congress charged it with creating, developing and synthesizing 22 agencies with over 180,000 employees. In its first year, the Department's leadership structured DHS in a way that best enables us to accomplish the ongoing mission of securing the homeland.<sup>1</sup> Following the outline prescribed by the Homeland Security Act, the Department has five directorates spanning the broad disciplinary range necessary to provide a base of security operations and expertise.

The Directorate of Border and Transportation Security (BTS) maintains and secures the nation's borders, including the 7,500 miles of land border with Mexico and Canada. While undertaking these tasks, the Department simultaneously reorganized our border functions in a way that established better morale, improved service, and tightened security. The Directorate of Information Analysis and Infrastructure Protection (IAIP) has made huge strides as a newly-created entity. IAIP analyzes information pertaining to terrorist threats and maps those threats against the nation's vulnerabilities. These efforts contribute to the protection of our critical infrastructure, including the cyber infrastructure. In tandem with these efforts, the Directorate of Emergency Preparedness and Response (EPR) works both to prepare the nation for unforeseen catastrophes and to develop strategies to oversee the national response and recovery in the wake of those catastrophes.

The Science and Technology (S&T) and Management Directorates support the short and long term needs of the other directorates. S&T coordinates research and development efforts designed to produce the tools the nation will use to enhance the security of the homeland. The Management Directorate has and will continue to handle the large responsibility for managing administrative, budget, and personnel issues within the Department. Other components of the Department, such as the United States Coast Guard (USCG) and the United States Secret Service (USSS), continue to carry out their important duties and also complement all Directorates in their functions and overall mission.

The Department has made significant progress in its first year. BTS enhanced security by introducing an entry-exit system, called the United States Visitor and Immigrant Status Indicator Technology (US-VISIT). US-VISIT has had minimal impact on legitimate travel and trade while alerting the Department to those persons with prior or suspected criminal or terrorist involvement, or immigration violations, who seek to enter the country. The nation's sea ports are also more secure because the Department has completed maritime industry security rules and expanded the Container Security Initiative designed to screen for and identify high-risk oceangoing sea containers. The Department also has developed an advanced warning system – the Homeland Security Operations Center, which operates 24 hours a day, seven days a week and brings together 26 federal and local law enforcement agencies and intelligence community members. The Department also has decreased America's vulnerability to an attack through the BioWatch initiative that improves protection against bio-terrorism by deploying environmental

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<sup>1</sup> See Appendix B, *DHS Organizational Chart*.

sensors to major cities across the nation. These sensors help to quickly detect airborne pathogens, such as anthrax, in time to distribute life-saving pharmaceuticals. These efforts represent only a few of the Department's achievements over the past year, and they provide a sound footing to continue the important work ahead.

The Office for Civil Rights and Civil Liberties works across these directorates in the Department to provide advice, feedback, and analysis to help ensure that the many initiatives the Department is undertaking preserve civil liberties, while at the same time accomplishing the mission of protecting the nation.

# U.S. DEPARTMENT OF HOMELAND SECURITY'S COMMITMENT TO CIVIL RIGHTS AND CIVIL LIBERTIES

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September 11, 2001, was a turning point in American history. Following September 11th, the United States government created the Department of Homeland Security, which leads a focused, consolidated, and organized effort to improve security and prevent attacks on the United States and its people. It was clear to President Bush, his senior advisors, and members of Congress that the protection of civil liberties had to be a strong component in the creation of the Department and the country's response to terrorism.

Just weeks after the attacks, President Bush gave this charge to a conference of federal prosecutors: "We have a huge responsibility, and that [is] to defend America while protecting our great liberties."<sup>2</sup> In a December 9, 2001, Proclamation, President Bush said:

*"We have a huge responsibility, and that [is] to defend America while protecting our great liberties."*

*~President Bush*

Americans stand united with those who love democracy, justice and individual liberty. We are committed to upholding these principles, embodied in our Constitution's Bill of Rights, that have safeguarded us throughout our history and continue to provide the foundation of our strength and prosperity.<sup>3</sup>

President Bush's leadership in pursuing democracy in the Middle East also has set an important tone in the war on terror. He has stressed that the pursuit of liberty and democracy are fundamental in waging the war on terror. In a speech at the 20<sup>th</sup> anniversary of the National Endowment for Democracy on November 6, 2003, President Bush issued a call for America to defend our freedoms and our democratic principles around the world:

The advance of freedom is the calling of our time; it is the calling of our country. From the Fourteen Points to the Four Freedoms, to the Speech at Westminster, America has put our power at the service of principle. We believe that liberty is the design of nature; we believe that liberty is the direction of history. We believe that human fulfillment and excellence come in the responsible exercise of liberty. And we believe that freedom – the freedom we prize – is not for us alone, it is the right and the capacity of all mankind.<sup>4</sup>

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<sup>2</sup> President George W. Bush, "Remarks by the President to U.S. Attorneys Conference," 29 November 2001.

<sup>3</sup> President George W. Bush, "Human Rights Day, Bill of Rights Day, and Human Rights Week, 2001 by the President of the United States of America, A Proclamation," 9 December 2001.

<sup>4</sup> President George W. Bush, "Remarks at the 20<sup>th</sup> Anniversary of the National Endowment for Democracy," 6 November 2003.

In July 2002, President Bush issued *The National Strategy for Homeland Security*, a comprehensive statement of the priorities and focus for the homeland security effort. One of the pillars of *The National Strategy* was a commitment to the protection of civil liberties:

We are a Nation built on the rule of law, and we will utilize our laws to win the war on terrorism while always protecting our civil liberties.... Where we find our existing laws to be inadequate in light of the terrorist threat, we should craft new laws carefully, never losing sight of our strategic purpose for waging this war – to provide security and liberty to our people. We should guard scrupulously against incursions on our freedoms, recognizing that liberty cannot exist in the absence of governmental restraint. As we move forward in the fight, we should refrain from instituting unnecessary laws, as we remain true to our principles of federalism and individual freedom.<sup>5</sup>

When the new Department of Homeland Security was created, this commitment continued. In one of his first speeches as Secretary, Tom Ridge laid out a simple but profound charge for the new Department: “We will answer history’s call to protect America and preserve our way of life.”<sup>6</sup> Secretary Ridge has pledged that, “Our strategy and our actions [will be] consistent with the individual rights and civil liberties protected by the Constitution.”<sup>7</sup>

Secretary Ridge and other senior leaders of the new Department consistently have argued against the proposition that as America focuses on increasing security it must necessarily decrease our civil rights and civil liberties. The Department believes that it is a mistake to put the two – security and civil liberties – in competition with one another. Instead, the new Department is committed to finding ways to ensure both security and civil liberties at the same time. As Secretary Ridge stated in July 2003, “[t]o suggest that there is a trade-off between security and individual freedoms – that we must discard one protection for the other – is a false choice. We will not, as Ben Franklin once warned, trade our essential liberties to purchase temporary safety.”<sup>8</sup>

<p><i>“We will answer history’s call to protect America and preserve our way of life.” ~Secretary Ridge</i></p>
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<sup>5</sup> *The National Strategy for Homeland Security*, July 2002, 48.

<sup>6</sup> Secretary Tom Ridge, Department of Homeland Security, “Remarks by Secretary Tom Ridge at DHS Employees Event in Selfridge, MI,” 19 June 2003.

<sup>7</sup> Secretary Tom Ridge, Department of Homeland Security, “Remarks by Secretary Tom Ridge to the Association of American Universities,” 14 April 2003.

<sup>8</sup> Secretary Tom Ridge, Department of Homeland Security, “Remarks by Secretary Tom Ridge, Chautauqua Institution Address, Chautauqua Amphitheater,” 21 July 2003.

The commitment to these principles has been established in the Department's first Strategic Plan, released in February 2004.<sup>9</sup> The "vision statement" is clear: "Preserving our freedoms, protecting America ... we secure our homeland."<sup>10</sup> This statement recognizes that the Department's core mission includes not only protecting America's assets – buildings and airports and power plants – but also protecting America and our way of life.

The new "guiding principles" ask Department employees to make decisions with certain fundamental themes in mind – working hard to "integrate" with all of the new agencies that are now combined; "innovate," through a willingness to apply new and creative approaches to meet all challenges; and "be accountable" to measurable goals that will reward excellence and fix what is broken. However, the very first "guiding principle" is to "protect civil rights and civil liberties." Department employees are instructed to act along these lines:

<p><i>"Preserving our freedoms, protecting America... we secure our homeland." ~DHS Vision Statement</i></p>
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We will defend America while protecting the freedoms that define America. Our strategies and actions will be consistent with the individual rights and liberties enshrined by our Constitution and the Rule of Law. While we seek to improve the way we collect and share information about terrorists, we will nevertheless be vigilant in respecting the confidentiality and protecting the privacy of our citizens. We are committed to securing our nation while protecting civil rights and civil liberties.<sup>11</sup>

Respect for civil liberties is also integrated into the "core values" and throughout the "goals and objectives."<sup>12</sup> The leadership of this Department has been clear and unequivocal that the effort to secure our nation must include an awareness of the need to protect personal liberties, that all strategies and actions undertaken by the Department will be undertaken with civil liberties in mind, and that the Department will seek to enhance our nation's security while guaranteeing citizens' personal liberties.

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<sup>9</sup> See Appendix C, *Department of Homeland Security Vision and Mission Statements and Strategic Goals*.

<sup>10</sup> *Securing Our Homeland, U.S. Department of Homeland Security Strategic Plan*, February 2004, 4.

<sup>11</sup> *Securing Our Homeland*, 6.

<sup>12</sup> The core values, standards of behavior that will be expected of Department employees, include "integrity," "vigilance," and "respect," which is defined by the following statement: "We will value highly the relationships we build with our customers, partners and stakeholders. We will honor concepts such as liberty and democracy, for which America stands." The "goals and objectives" include these concepts in a number of ways, including goal 3, "Protection: Safeguard our people and their freedoms, critical infrastructure, property and the economy of our nation from acts of terrorism, natural disasters, or other emergencies."

## ESTABLISHMENT OF THE OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES

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One measure critical to the advancement of the principles of the Department is the creation of a unique senior leadership position – an Officer for Civil Rights and Civil Liberties. Secretary Ridge directed that this official report directly to him. This decision demonstrates the Administration’s strong commitment to ensuring that the protection of personal liberties takes a prominent role in the homeland security effort. It also creates a unique model of decision-making. For the first time in the federal government, an agency has assigned a member of the senior leadership to focus solely on how the agency’s decisions impact individual liberties. While many in the federal government are concerned about these issues, the Department of Homeland Security is the only federal agency that has assigned a senior policy advisor, reporting directly to the Cabinet Secretary, to focus on helping the senior leadership shape policy in ways that protect, rather than diminish, the personal liberties of all persons protected by our laws.

On April 16, 2003, President Bush appointed Daniel W. Sutherland to serve as the Department’s first Officer for Civil Rights and Civil Liberties. Mr. Sutherland has broad experience in the areas of civil rights and civil liberties. He served for fourteen years as a trial attorney with the Civil Rights Division of the U.S. Department of Justice, and nearly two years with the Office for Civil Rights at the U.S. Department of Education. His litigation background has been primarily in the areas of discrimination against immigrants and persons with disabilities, including cases such as the following: allegations of discrimination against a large urban police department in its dealings with people who are deaf (victims of crime, witnesses, family members, and defendants); allegations that a licensing authority would not adequately accommodate test-takers who are blind; and, allegations of discrimination against refugees from the communist governments in Vietnam and the former Soviet Union. Mr. Sutherland served as the first Executive Director of the *Brown v. Board of Education* 50<sup>th</sup> Anniversary Commission, and co-authored a book on religious discrimination in the workplace that was published by the American Bar Association. He has also served with the White House’s Domestic Policy Council.

<p><i>One measure critical to the advancement of the principles of the Department is the creation of a unique senior leadership position – an Officer for Civil Rights and Civil Liberties.</i></p>
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Section 705 of the Homeland Security Act provides that the Officer for Civil Rights and Civil Liberties shall:

- (a)(1) review and assess information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling by employees and officials of the Department; and
- (2) make public through the Internet, radio, television, or newspaper advertisements information on the responsibility and functions of, and how to contact, the Officer.

(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.<sup>13</sup>

Among federal civil rights offices, the Department of Homeland Security's Office for Civil Rights and Civil Liberties (CRCL) is unique. While other federal agencies have an office that focuses on civil rights, this is the only office that includes "Civil Liberties" in the title. This recognizes that CRCL will address issues that relate to the intersection of traditional civil rights protections and twenty-first century civil liberties questions. Moreover, the Office for Civil Rights and Civil Liberties has a unique internal function – assisting the senior leadership to develop policies and initiatives in ways that protect civil rights and civil liberties. In addition, the Office for Civil Rights and Civil Liberties also has responsibility for overseeing the Department's equal employment opportunity program (EEO). This brings all civil rights-related issues, both those with regard to the Department's own employees and those with regard to how Department programs impact the general public, under the jurisdiction of one office.

<p><i>The Office for Civil Rights and Civil Liberties has a critical internal function- assisting the senior leadership to develop policies and initiatives in ways that protect civil rights and civil liberties.</i></p>
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To create an effective Office for Civil Rights and Civil Liberties, Mr. Sutherland first worked with Secretary Ridge to create a Strategic Plan to guide the office.<sup>14</sup> The first element of the Strategic Plan is a Mission Statement:

The mission of the Office is to protect civil rights and civil liberties and to support homeland security by providing the Department with constructive legal and policy advice on the full range of civil rights and civil liberties issues the Department will face, and by serving as an information and communication channel with the public regarding all aspects of these issues.<sup>15</sup>

The Mission Statement makes clear that the purpose of the Office is to provide proactive legal and policy advice that will help the Department's senior officers carry out their duties while at the same time protecting civil rights and civil liberties. A key goal of the Office is to integrate itself into the overall work of the Department and to be constructive and proactive in offering advice.

<sup>13</sup> The Homeland Security Act of 2002, Pub.L.No. 107-296, § 705, 116 Stat. 2135 (2002) (codified at 6 U.S.C. § 345).

<sup>14</sup> See Appendix D, *The Office for Civil Rights and Civil Liberties Strategic Plan*.

<sup>15</sup> *The Office for Civil Rights and Civil Liberties Strategic Plan*, September 2003, 1.

The Mission Statement establishes a second purpose for the office: to communicate with the public regarding the Department's approaches to these issues. This involves speaking at numerous public events. However, the Department recognizes that communication is a two-way process. Senior officials throughout the Department – beginning with Secretary Ridge – are trying to be as accessible as possible to outside groups. We strongly believe that the Department gains insight by listening to the concerns of those outside our walls. CRCL assists in this critical function. CRCL meets with a wide variety of outside interest groups on issues relating to the intersection among immigration policy, disability policy, privacy and technology, and civil rights law.

The CRCL Strategic Plan established 5 key objectives for the first year of the Office's work:

*Objective 1: Establish an effective and efficient Office for Civil Rights and Civil Liberties.* This objective focuses on a number of management issues that must be resolved to properly establish the Office.

*Objective 2: In close cooperation with the General Counsel, provide legal and policy advice to the Secretary and senior officers at DHS with regard to issues and initiatives that may have an impact on civil rights or civil liberties.* The Office provides constructive advice so that policy is shaped in ways that are mindful of and consistent with civil rights and civil liberties.

*Objective 3: Develop proactive initiatives that will demonstrate the Department's commitment to civil rights and civil liberties.* In addition to reacting to issues raised by other components within DHS, the Office also takes the initiative to develop projects that will enhance civil rights and civil liberties.

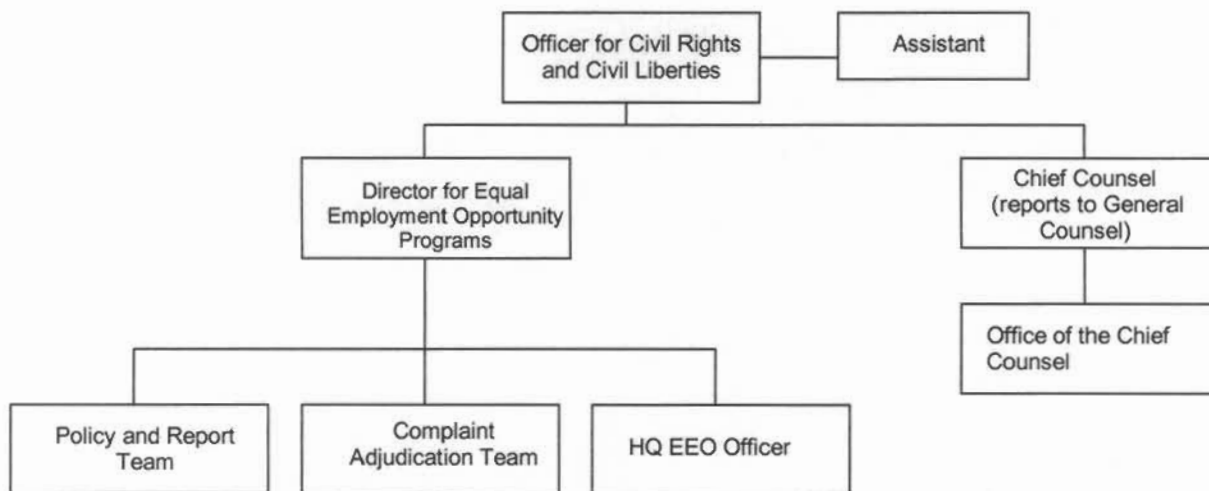
*Objective 4: Communicate with the public to explain DHS's commitment to civil rights and civil liberties.* The Office plays an active role in communicating with the public, both by listening to people's concerns and by advancing the Department's positions in public forums.

*Objective 5: Develop a state-of-the-art equal employment opportunity office within DHS.* The Office strives to make the Department's EEO program a model for the government.

The first objective was to put the infrastructure in place to establish an effective, long-term civil rights program within the Department. The Department created a staffing plan for the Office, calling for twenty full-time employees, including the Officer. There are two components within the Office – the Office of the Chief Counsel and the Director of EEO Programs. The Chief Counsel and his staff of four attorneys, who also report to the Office of General Counsel, provide proactive legal and policy advice to the Officer for Civil Rights and Civil Liberties, the Secretary and senior Department leadership on issues that relate to civil rights and civil liberties. These attorneys also investigate or assign responsibility for the investigation of allegations of

abuses of civil rights and civil liberties. The Director of EEO programs and her staff of twelve are responsible for the equal employment opportunity program of the Department's headquarters. The Director of EEO Programs also provides leadership to a working group comprised of eight EEO/civil rights offices in the Department, which seek to cooperate on joint projects. The Office's organization chart is as follows:

**OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES  
ORGANIZATION CHART**



Mr. Sutherland also worked with Janet Hale, the Under Secretary for Management, to create the Office's budget for fiscal years 2004 and 2005. The Office operates with a budget of \$12,950,141 in fiscal year 2004.

The remainder of this report will focus on Objectives 2 through 5. The report will explain CRCL's efforts in its three program areas:

- Legal and Policy Review;
- Matters Warranting Review; and
- Equal Employment Opportunity Program.

## LEGAL AND POLICY REVIEW

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A key role of the Office for Civil Rights and Civil Liberties is to provide the senior leadership of the Department with legal and policy advice on a wide range of issues. Throughout this work, the Office is determined to be *constructive* – providing advice that will enable policy-makers to achieve their national security or law enforcement goals in ways that also protect civil rights and civil liberties. This constructive approach requires the Office to be *proactive* – acting to shape policy before problems occur. The Office also is determined to be *innovative* – recognizing that this is a new century, a new security context, and a new federal agency. CRCL addresses issues that have been debated for many years with fresh approaches and a search for practical solutions.

The Office’s work spans the horizon of issues that confront the Department of Homeland Security, from immigration policy to technology to law enforcement. CRCL’s attorneys are careful to mark the distinction between law—what the Constitution, federal statutory law, and case law requires—and policy concerns. The following is a brief description of some of the areas in which CRCL has made contributions to the work of the Department.

### LAW ENFORCEMENT ISSUES

#### *Racial Profiling*

On February 27, 2001, in his first State of the Union address, President Bush stated that racial profiling “is wrong and we will end it in America.”<sup>16</sup> He directed the Attorney General to study the extent of the problem and then to issue specific guidance to federal law enforcement agencies on how to avoid engaging in this practice. Prior to President Bush’s commitment, many stated their opposition to racial profiling, but neither the courts, commentators nor the previous Administration provided a specific definition or specific guidance on how to avoid this practice.

<p><i>Racial profiling “is wrong and we will end it in America.”</i> ~President Bush</p>
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On June 16, 2003, the Department of Justice (DOJ) issued the guidance President Bush had called for – *Guidance Regarding the Use of Race By Federal Law Enforcement Agencies*.<sup>17</sup> The Guidance is important because for the first time the concept of “racial profiling” is defined with rigor; practical instructions are given about how law enforcement officers can avoid engaging in it; and, the applicability of this concept in the national security context is explained. The Guidance is illustrated through fourteen hypothetical fact patterns that officers can easily understand. The Guidance also is important because it establishes binding federal policy governing the conduct of all federal law enforcement officers.

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<sup>16</sup> President George W. Bush, “Address of the President to the Joint Session of Congress,” 27 February 2001.

<sup>17</sup> *Guidance Regarding the Use of Race by Law Enforcement Agencies*, U.S. Department of Justice, available at [http://www.usdoj.gov/crt/split/documents/guidance\\_on\\_race.htm](http://www.usdoj.gov/crt/split/documents/guidance_on_race.htm), June 2003.

On June 17, 2003, the day after the DOJ Guidance was published, Secretary Ridge sent a memorandum to the senior leadership in the Department instructing them to read the Guidance and distribute it widely throughout their organizations. The Office for Civil Rights and Civil Liberties is responsible for ensuring that the Department, at all levels, is implementing the DOJ Guidance and, therefore, fulfilling the President's commitment to eliminate unlawful racial profiling. To assist in this effort, CRCL is developing training designed to serve as an introduction to and overview of the DOJ Guidance. CRCL has also worked with the Federal Law Enforcement Training Center (FLETC) to update and strengthen the training of law enforcement cadets on racial profiling.

### *Strengthening Training on the Constitution and Civil Rights*

The Department recognizes that one of the most important ways to fully implement the Secretary's commitment to the protection of civil rights and civil liberties is through training programs.

Training in civil rights and civil liberties begins when an officer or agent joins the Department. The Department starts this training at FLETC, a state-of-the-art law enforcement academy located in Glynco, Georgia, Artesia, New Mexico, and other locations. Experienced professional law enforcement trainers prepare tens of thousands of men and women for federal law enforcement responsibilities each year. While FLETC provides basic training to all of the Department's new law enforcement officers, it also provides basic training for many other federal, state, local, and foreign law enforcement agencies. FLETC has agreements with over 70 federal partners to provide training for new law enforcement officers. It also provides a substantial amount of specialized in-service training to experienced law enforcement professionals. The training available at FLETC features a substantial legal curriculum (including extensive instruction on Constitutional law standards, as well as civil rights and civil liberties law), along with training in professionalism, behavioral sciences, fitness, firearms, and tactical driving, among other things.

The Department is also fortunate to have a number of outstanding training and information technology professionals who lead various conventional training and "e-learning" initiatives across the Department.

Based on its work with the professionals at FLETC and in the e-learning community, CRCL has initiated a project to offer top quality civil rights, civil liberties and equal opportunity training to all Department personnel. CRCL will prepare a comprehensive library of distributed learning training courses tentatively titled, "Civil Liberties University." The library's name will likely change as the Department's training infrastructure evolves. The Office also will work with the component EEO directors to establish a similar curriculum under the title, "EEO University."

“Civil Liberties University” will include courses such as:

- “Civil Liberties 101,” a basic introduction to the Department’s commitment to the protection of civil rights and civil liberties as described in the new Strategic Plan;
- an introduction to the Department’s policy prohibiting unlawful racial profiling;
- training on the Fourth Amendment requirements governing searches and seizures; and,
- various topics to develop awareness of the cultural issues facing the Department’s law enforcement and intelligence officers, such as an introduction to the Arab and Muslim communities in the United States.

The training curriculum will expand in future years to meet the needs of the Department and to cover additional topics such as the use of race or ethnicity in specific law enforcement settings; instructions for law enforcement officers who interact with people with disabilities, such as those with hearing impairments; and, introductions to the cultures of various ethnic groups in America that Department personnel frequently encounter.

The backbone of the project will be web-based training, but it will be supplemented with CD-ROMs, DVDs, classroom sessions, or printed media, as necessary. Accountability – tracking participation and results – can be built into the web-based system. Subject matter experts within and outside the Department will assist in the development of these courses. This web-based, centralized program for civil liberties training will:

- offer all Department personnel uniform, high quality, standardized training in best practices for safeguarding civil liberties;
- achieve economies of scale; and,
- be readily updated to reflect changes in law and policy.

The “EEO University” will be a project that is coordinated with all Department component EEO offices, that will provide training to meet accepted federal standards, and that will adapt to meet the needs of the Department’s innovative human capital plan. The training library will compile in one place the best training products used by the component EEO agencies on topics such as basic EEO laws; best management practices to prevent discrimination; integration of people with disabilities into the workplace; and, alternative dispute resolution as a means of resolving disagreements in the workplace at an early stage.

## IMMIGRATION LAW AND POLICY

The attacks on September 11th prompted a reexamination of the immigration process and enforcement of immigration law. This reexamination resulted in a full-scale government divestiture, merger, acquisition and startup, all at once, which included former agencies such as the Immigration and

Naturalization Service (INS) and the United States Customs Service. As a result, the Homeland Security Act established three components to handle immigration issues: Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), and Citizenship and Immigration Services (CIS). In the creation of the Department and these components, President Bush's goal was to ensure that while improving security, the United States would remain a welcoming nation to immigrants. President Bush said on January 7, 2004:

*"The very qualities that bring immigrants and refugees to this country in the thousands everyday, made us vulnerable to the attack of September 11, but those are also the qualities that will make us victorious and unvanquished in the end."*

*~ U.S. Solicitor General Theodore Olson<sup>18</sup>*

By tradition and conviction, our country is a welcoming society. America is a stronger and better nation because of the hard work and the faith and entrepreneurial spirit of immigration. Every generation of immigrants has reaffirmed the wisdom of remaining open to the talents and dreams of the world. And every generation of immigrants has reaffirmed our ability to assimilate newcomers—which is one of the defining strengths of our country.<sup>19</sup>

In turn, the Department of Homeland Security integrated this concept of remaining a welcoming nation into its Strategic Plan's mission statement:

We will lead the unified national effort to secure America. We will prevent and deter terrorist attacks and protect against and respond to threats and hazards to the Nation. We will ensure safe and secure borders, welcome lawful immigrants and visitors, and promote the free-flow of commerce.<sup>20</sup>

Within the Department, the Office for Civil Rights and Civil Liberties has been involved in providing legal and policy advice on a wide range of immigration issues, including:

### *9/11 Detainees*

The Office for Civil Rights and Civil Liberties has been an integral part of the Department's review of the recommendations of the Department of Justice Office of Inspector General (DOJ OIG) in the June 2003 report on the treatment of aliens detained in connection

<sup>18</sup> U.S. Solicitor General Theodore Olson, Speech to the Federalist Society, 16 November 2001.

<sup>19</sup> President George W. Bush, "Remarks by the President on Immigration Policy," 7 January 2004.

<sup>20</sup> *Securing Our Homeland, U.S. Department of Homeland Security Strategic Plan*, February 2004.

with the September 11th terrorism investigations.<sup>21</sup> The DOJ OIG report examined the treatment of 762 aliens detained in connection with the Department of Justice's terrorism investigation and made 21 recommendations. While these events took place before the formation of the Department of Homeland Security, many of the immigration functions that were part of the former Immigration and Naturalization Service (INS) during that critical time were assumed by the Department. CRCL has worked closely with key officials in the Department, particularly in Border and Transportation Security (BTS), ICE, and the Office of General Counsel (OGC), in carrying out a comprehensive review of immigration-related operations in the Department. As part of the Department's review, the Office hosted meetings with civil rights and civil liberties groups to listen to their concerns and recommendations about the government's handling of the investigations and detentions of aliens in the period following September 11th. Consistent with the DOJ OIG recommendations, the Department has instituted a number of measures that formalize critical procedures in Department's field office operations. These steps include:

- Guidance has been sent to all immigration officers directing that detainees be given timely notice of the charges against them- within 72 hours of the time they are detained;
- The guidance allows for an exception to the 72 hour notice requirement, but only in narrow circumstances and with reviews by multiple senior officials;
- New detention standards have been established that improve communication between detainees and immigration officials, and thereby ensure more oversight of conditions; and,
- Each time an individual is detained on immigration charges, immigration officers and attorneys will make an individualized and independent review of the matter. There will be no blanket approaches to questions of bond or closed hearings.

The Office will continue to provide leadership for the Department so that individuals who are detained are treated fairly in all circumstances.

#### *Refugee and Asylum Law and Policy*

CRCL has been involved in a number of issues relating to refugee and asylum law and policy, working with both CIS and BTS. The Office has participated in meetings regarding detention policies, and was involved in discussions with OGC regarding the Department's legal position in the gender-based asylum claim known as the *Matter of R-A*. CRCL has also been involved in reviewing policy issues that are illustrated through individual cases.

#### *Special Registration*

After the September 11th attacks, the Department of Justice instituted the National Security Entry-Exit Registration System (NSEERS). NSEERS establishes a national registry for temporary foreign visitors (non-immigrant aliens) arriving from certain countries, or who meet a combination of intelligence-based criteria, and are identified as presenting an elevated national

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<sup>21</sup> See U.S. Department of Justice, Office of the Inspector General, *The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks*, June 2003.

security concern. The program collects detailed information about the background and purpose of an individual's visit to the United States, the periodic verification of their location and activities, and departure confirmation. The NSEERS program ensures that the U.S. government has detailed information about individuals visiting our country who have been in contact with countries in which substantial terrorist activity had been identified. Although most individuals registered under the program are citizens of about 25 countries, individuals who are citizens of more than 150 countries have been registered. The responsibility to administer NSEERS passed to DHS when the new agency was created.

Consistent with our mission to communicate with the public on civil rights and civil liberties matters, the Office met with representatives of non-governmental organizations regarding their concerns about the special registration program and its impact on affected communities. CRCL has served as a communication channel between these groups and DHS representatives.

In December 2003, the Department announced that it had suspended the formal requirement for individuals previously registered with NSEERS to re-register after 30 days and one year of continuous presence in the United States. Although certain visitors may still be registered under NSEERS at their time of arrival at U.S. ports of entry, there will no longer be a mandatory requirement for all persons registered to report for interviews at a local immigration office. One of the purposes for suspending the domestic registration portion of the program was to improve security by allowing law enforcement and intelligence to focus resources on tailored, individualized considerations of risk, rather than to devote resources to broad categories of people based on geography.

NSEERS was the first step taken to comply with the Congressionally-mandated requirement for a comprehensive entry-exit program by 2005. The Department is now operating US-VISIT, a program to collect information and biometric identifiers from many visitors to the United States, and to record their departure. The Department has determined that US-VISIT and other new processes being implemented will meet the national security needs that NSEERS previously fulfilled. CRCL worked with BTS on this change in policy, and continues to work with BTS on issues surrounding NSEERS.

#### *Conditions of Detention and Access to Counsel*

CRCL has been involved in reviewing conditions of immigration detention facilities and the issue of access to counsel. The Detention and Removal Office (DRO) within ICE has primary responsibility for the implementation of the National Detention Standards, a set of 37 standards developed in collaboration with nongovernmental organizations. These standards, which cover areas such as access to counsel, religious services, and medical care, are aimed at ensuring that the highest standards are maintained in immigration detention facilities. Mr. Sutherland and a senior CRCL attorney have visited immigration detention facilities in the Detroit area and in South Florida. The Office will participate in formal reviews of facilities throughout the country and continue to work with DRO as well as with immigration and advocacy organizations to support consistent and full implementation of the detention standards.

## DISABILITY LAW AND POLICY

### *Emergency Preparedness*

Since the September 11th attacks, people with disabilities have expressed an increased awareness of their heightened vulnerability in times of crisis, disasters, and emergencies. In response to the disability community's request for action on their concerns about emergency preparedness, the Department is positioned to exercise a leadership role in this area.

CRCL is leading a collaborative effort to bring all of the Department's experience and expertise to these issues and, in particular, is working extensively with FEMA, a Department component that employs national subject matter experts on this topic. Notably, FEMA has released a number of technical assistance publications for the disability community.

*Since the September 11th attacks, people with disabilities have expressed an increased awareness of their heightened vulnerability in times of crisis, disasters, and emergencies.*

A number of federal agencies and private organizations are undertaking excellent work, from the Federal Communications Commission (FCC) to the Department of Labor's Office of Disability Employment Policy to the National Council on Disability. CRCL plans to work closely with these entities to strengthen the overall federal government's effort on this critical issue.

An important principle embraced by CRCL throughout this effort will be the emphasis that people with disabilities are not merely consumers in this context; rather, they have a great deal to offer in terms of ideas and alternatives that would benefit all Americans.

### *Section 508 Compliance*

Section 508 of the Rehabilitation Act of 1973, as amended, requires the federal government to ensure that electronic and information technology (E&IT) is accessible to persons with disabilities.<sup>22</sup> The law applies to all federal agencies when they develop, procure, maintain, or use E&IT. This includes, but is not limited to, products and services such as: computer hardware and software; telecommunications products, such as telephones and pagers; information kiosks and transaction machines, such as ticket transaction machines; web sites, including both intranet and internet information and application; multimedia, such as instructional videos and flash animations; and office equipment, such as copiers and fax machines.

While the majority of the agencies that are now a part of the Department have Section 508 programs in place, there exists a need for a Department-wide Section 508 program. CRCL is engaging in a joint project with the Department's Chief Information Office (CIO) to determine what steps are required to develop a model Section 508 program at both the headquarters level

<sup>22</sup> 29 U.S.C. § 794(d) (2004).

and across the Department. CRCL and CIO representatives are meeting with the following groups: all of the component Section 508 coordinators to learn about their Section 508 programs and activities and to gather their suggestions on the Department's overall Section 508 strategy; other federal agencies that have model programs, to identify best practices; and, persons outside the government who have expertise to share in this area. CRCL and CIO staff members will present a comprehensive set of recommendations to the CIO and the Officer for Civil Rights and Civil Liberties.

## *REGULATORY WORK*

### *Department Civil Rights Regulations*

On March 6, 2003, the Department issued interim regulations covering an array of commitments to non-discrimination by recipients of federal financial assistance and in federally-conducted activities. The interim regulations are:

- Interim Final Rule Effectuating Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance From the Department of Homeland Security, 6 C.F.R. Pt. 21, March 6, 2003;
- Interim Final Rule Effectuating Enforcement of Nondiscrimination on the Basis of Disability in the Department of Homeland Security, 6 C.F.R. Pt. 15, March 6, 2003; and,
- Interim Final Rule Effectuating Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 6 C.F.R. Pt 17, March 6, 2003.

These regulations serve to lay the foundation within the Department for the overriding commitment to equal opportunity and non-discrimination. In the next year the Department will review these regulations and undertake the process of evaluating them for final publication.

### *Review of the Department's Regulatory Efforts*

The Office is working with OGC to review proposed regulations to ensure that the civil liberties impacts of new rules are carefully considered. CRCL has reviewed and commented on a number of regulatory proposals. OGC has convened a regular meeting with individuals across the Department who are responsible for the development of proposed regulations. These individuals include attorneys and/or representatives of the policy offices from Department components. CRCL is working closely with this group.

## ADDITIONAL PROJECTS

### *Unmanned Aerial Vehicles*

CRCL has provided advice on the civil liberties effects of the Department's use of unmanned aerial vehicles (UAVs). These vehicles can present significant civil liberties issues for some of the same reasons that make UAVs a useful tool in homeland security efforts. UAVs can have relatively long endurance, allowing for continuous surveillance, and their presence can be difficult to detect from the ground. As a part of its ongoing advisory role, the Office participated in the drafting of a report to Congress concerning the Department's use of UAVs. The National Defense Authorization Act for Fiscal Year 2004<sup>23</sup> required the President to submit a report to Congress on the potential uses of UAVs for support in homeland security missions. One of the required elements of the report was a discussion of the civil liberties effects of the use of UAVs over the territory of the United States. The Office took part in an interagency effort to draft this report and the Office anticipates having an ongoing advisory role in the Department's formulation of its policies regarding the use of UAVs.

### *Limited English Proficiency*

CRCL has taken the lead in developing Departmental guidance concerning services to those with limited English proficiency (LEP). Executive Order 13166 requires federal agencies to publish guidance for recipients of federal financial assistance regarding their obligation to provide meaningful access to LEP persons. The Executive Order also requires agencies to prepare a plan for improving access for LEP persons in their own programs and activities.

*Executive Order 13166 requires federal agencies to publish guidance for recipients of federal financial assistance regarding their obligation to provide meaningful access to LEP persons.*

Prior to creation of the Department, the legacy agencies that came to make up a part of the Department made varying degrees of progress in fulfilling these requirements. CRCL is now in the process of reviewing the various circumstances in which the recipients of federal assistance from the Department's components interact with LEP persons. The Office will soon begin drafting the required recipient guidance and the Departmental plan to improve access to the Department's own programs and activities.

## INFORMATION AND COMMUNICATION CHANNEL

One of CRCL's most important responsibilities is to interact with those outside the Department who have views or questions about the civil rights or civil liberties impact of the Department's policies. The Department is committed to a paradigm of collaboration – that the

<sup>23</sup> National Defense Authorization Act for Fiscal Year 2004, Pub. L. No. 108-136, § 1034, 117 Stat. 1392, 1606-07 (2003)

homeland security effort will reach its maximum success when the Department works closely with other government agencies, with the private sector, with academia, and with community-based non-governmental organizations. The senior leadership of the Department is committed to listening to the views of those from outside the Department and is aware that these groups and individuals can help improve the Department's work.

In particular, CRCL is responsible for communicating with civil rights, immigration, and civil liberties groups, as well as with concerned individuals. CRCL's role is to understand the policy positions and concerns of these groups and others so that the Department's policy-makers can benefit from these views as decisions are being shaped. CRCL also attempts to provide these persons and groups with information they seek regarding Department policies and decisions.

CRCL meets regularly with a coalition of civil rights, immigration, and civil liberties groups. In addition to formal meetings, Mr. Sutherland and CRCL attorneys are in regular communication with a variety of organizations. CRCL has established working relationships with groups such as the National Immigration Forum, the National Organization on Disability, Amnesty International USA, the American-Arab Anti-Discrimination Committee, the American Civil Liberties Union, and Human Rights First, and many others. In addition to meeting with representatives from these groups, CRCL also has coordinated meetings between these groups and a number of senior Department leaders.

## MATTERS WARRANTING REVIEW

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Under Section 705(a)(1) of the Homeland Security Act of 2002, this Office is required to “review and assess information alleging abuses of civil rights, civil liberties and racial and ethnic profiling.” Moreover, CRCL is responsible for reviewing matters that arise under a variety of federal civil rights statutes such as Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, and Title IX of the Educational Amendments of 1972. To carry out this mission, CRCL has established a process for receiving, assigning, investigating, referring and concluding reviews of these allegations. This plan, in the form of a Management Directive issued by Secretary Ridge, establishes the authority of CRCL to review and assess civil rights and civil liberties allegations for the Department, and implements a system whereby those allegations are addressed and improvements identified, either by CRCL or another component within the Department.<sup>24</sup> The Office has initiated several investigations, and has laid the groundwork for a coherent and robust process to ensure that complaints are appropriately investigated and resolved.

<p><i>“Review and assess information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling...”</i> ~6 U.S.C. § 345 (a)(1)</p>
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### *ESTABLISHING A PROCESS FOR MATTERS WARRANTING REVIEW*

#### *Management Directive*

In close cooperation with the Office of the Inspector General (IG), the Office of General Counsel, and the senior leadership of the Department, CRCL developed a Management Directive that establishes and describes: the role of the Officer for Civil Rights and Civil Liberties as the advisor to Departmental senior leadership; the role of the Office of the Chief Counsel; and, a process for handling allegations of civil rights and civil liberties abuses, and racial and ethnic profiling.

The Management Directive establishes a procedure for reviewing and addressing allegations of abuse. The purpose of these reviews will not be to provide an individual with an opportunity to raise issues that should properly be raised in another forum (for example, an individual in deportation proceedings has an opportunity to raise arguments against deportation in immigration court.) The process takes into consideration that routine issues can be handled

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<sup>24</sup> CRCL’s role in many of these investigations is different than the role of other federal civil rights agencies that investigate civil rights complaints. Most federal civil rights agencies investigate complaints filed against entities outside of the federal government. For example, the Department of Education Office for Civil Rights often investigates complaints against a public school district or a college. By contrast, CRCL will often be responsible for investigating complaints filed *against its own agency*. For example, CRCL may receive a letter alleging that a DHS law enforcement officer subjected an individual to increased scrutiny because of racial profiling. Because CRCL is within the same agency of government, it will advise the complainant that CRCL’s role is to investigate the matter from inside the agency and make recommendations to the agency’s leadership regarding any actions that should be taken as a result of the allegations. The complainants will be advised that they should consult an attorney if they seek other remedies.

quickly and satisfactorily by on-site operational personnel. These routine incidents will be reported back to CRCL for the purpose of providing advice on policy or training improvements. More serious matters will first be reviewed by the Inspector General for abuses that may reflect systemic problems or criminal violations. Matters that do not fall into this category will be referred to CRCL to determine whether it will conduct its own examination or refer the matter to a Department component. The majority of matters will be reviewed by component internal affairs and civil rights offices with a report back to CRCL. In cases handled by component offices, CRCL will contribute in two significant ways. First, CRCL will work with components to ensure that those handling these matters are effectively trained. Second, CRCL will have an oversight or monitoring role, ensuring that these matters are given serious review.

CRCL has already begun to receive allegations and has been processing them in accordance with this procedure. As the Office continues to increase its visibility with the public, it is anticipated that the volume of reports of abuses will increase. The Office has designed an internal computer-based tracking system to handle the matters that it receives. This system will be available on desktop computers anywhere needed in the Department for the exchange of information on these matters. Notably, this is one example of the infrastructure that CRCL is implementing to handle concerns from the public.

#### *Publicizing the Office*

Under Section 705(a)(2) of the Homeland Security Act, CRCL is required to make the responsibilities and functions of the Office known to the general public through “the Internet, radio, television, or newspaper advertisements.” The Office has implemented – and is continuing to develop – a number of efforts to increase public awareness of the Office for Civil Rights and Civil Liberties. These efforts include launching an Office website; establishing and publishing a CRCL e-mail address; setting up a multi-language and TTY-capable toll-free hotline; and, setting up a toll-free automated facsimile system. In addition, the Office produced, printed, and is distributing a poster notifying the public about CRCL. Other efforts in this area involve corresponding with a number of different organizations on issues of concern and participating in meetings with various advocacy groups.

The CRCL web page, found at [www.dhs.gov](http://www.dhs.gov), provides information about the Office, such as CRCL’s mission and contact information on how individuals can report civil rights, civil liberties, and racial and ethnic profiling issues. The Office also has an e-mail address ([Civil.Liberties@dhs.gov](mailto:Civil.Liberties@dhs.gov)) where persons can submit information. In addition, the CRCL web page provides answers to eight frequently asked questions that cover topics such as the work the Office presently performs and how persons may contact CRCL. To assist persons in accessing other components within the Department that may be of help, links on the CRCL web page are available to the Office of Inspector General, if the issue is a pattern of misconduct or criminal misconduct, fraud, waste or abuse or misconduct involving a high ranking government employee, and to the Transportation Security Administration (TSA), if the matter involves baggage problems or questions about what can be carried on a flight.

The Office has established a toll-free hotline number: 1-866-644-8360. This number is available 24 hours a day, and is currently recorded in multiple languages. Through this

telephone number, callers can either leave a message or are offered three ways to contact this Office: by regular mail, electronic mail ([Civil.liberties@dhs.gov](mailto:Civil.liberties@dhs.gov)), and facsimile transmission (202-401-4708). In addition, this information can be accessed via a toll-free TTY number: 1-866-644-8361. For facsimile transmissions, the Office has installed a computer facsimile receiving terminal so that the Office is equipped to handle large volumes of facsimile transmissions and electronically handle and store correspondence received via facsimile.

The Office has printed 4,000 copies of a poster providing information about how persons can contact CRCL. See *Appendix E*. The poster will be widely disseminated through an ongoing distribution process that will include community groups and government agencies. In the near future, the poster, and similar information, will be printed in alternative languages such as Arabic and Spanish.

#### *EXAMPLES OF MATTERS WARRANTING REVIEW*

CRCL has received and reviewed over thirty different matters, and has retained for review matters that represent a variety of allegations. Some of the matters this Office has elected to retain and review include the following:

- Three matters involve allegations of discrimination, including discrimination based on disability under Section 504 of the Rehabilitation Act of 1973. The allegations concern companies that have contracts with the Department to provide security guards. It is alleged that these companies refuse to employ as security guards individuals who use hearing aids, based in part on language in a DHS contract. These matters are being handled pursuant to the Department's interim final rule regarding complaints alleging discrimination based on disability. These allegations are currently under review.
- One matter involves an airline passenger who alleges racial profiling as the basis for being subjected to a heightened search by TSA screeners. Part of the alleged profiling was a "stamp" that was placed on a boarding pass by the airline at the direction of TSA. CRCL is seeking information from TSA regarding this matter.
- One matter concerns a Sikh individual who sought to enter a federal building. The allegation is that the individual was told that entrance to the building would be denied unless the individual removed a symbol of the Sikh religion. This matter is currently under review.
- One matter concerns an individual who was seeking to fly to the Middle East to visit family, but was removed from an airplane and subjected to additional scrutiny. The individual alleges that she, and her family, missed the flight while being asked questions. This matter is currently under review.

#### *EFFORTS THROUGHOUT THE DEPARTMENT*

The Department's methods for receiving, investigating, and resolving complaints are varied. In addition to the Office for Civil Rights and Civil Liberties, more than a dozen different components within the Department also receive and attempt to resolve complaints from members

of the public. CRCL will work to strengthen these efforts. The following highlights other efforts taking place within the Department to address civil rights and civil liberties concerns:

### *Office of Inspector General*

The Office of Inspector General has independent responsibility under the Homeland Security Act to report to Congress on a semi-annual basis. It accepts reports of suspected criminal violations, misconduct and wasteful activities through a hotline, 1-800-323-8603, and E-mail address [DHSOIGHOTLINE@dhs.gov](mailto:DHSOIGHOTLINE@dhs.gov), and mailing address, Department of Homeland Security, Office of Inspector General, Attn: Office of Investigations, 245 Murray Drive, S.W., Bldg. 410, Washington, D.C. 20528. In addition to matters the IG receives directly, it also receives matters from the Office for Civil Rights and Civil Liberties, or by referral from another Department component.

On September 2, 2003, the Officer for Civil Rights and Civil Liberties entered into a Memorandum of Understanding with the Office of Inspector General pursuant to which all civil rights, civil liberties, and racial and ethnic profiling matters received by CRCL are in the first instance reviewed by the Office of Inspector General. Within five days, the IG either accepts the matter for review or returns the matter to CRCL.

Most of the civil rights and civil liberties issues put before the IG concern allegations of excessive force, the processing of various Department applications, conditions of detention, abuse of process, inappropriate threats, and unprofessional conduct. Upon receipt of these issues, the IG must decide whether to retain the matter for investigation, or refer it elsewhere within the Department. For those matters related to civil rights and civil liberties that the IG decides not to retain, almost all are referred to the Office of Professional Responsibility within Immigration and Customs Enforcement (ICE) (which has coverage of matters beyond ICE). CRCL receives a report when matters are referred to the components so that it can track them or, for more serious matters, elect to review them itself. Those matters originally referred to the IG by CRCL are returned to CRCL for disposition. The IG tracks matters referred back to CRCL or to an internal component.

### *Customs and Border Protection*

At Customs and Border Protection (CBP), two offices have systemic information related to civil rights and civil liberties: the Office of Field Operations and Internal Affairs.

#### Office of Field Operations- Customer Satisfaction Unit and the Customs Comment Card

The Office of Field Operations handles civil rights and civil liberties information primarily through the Customer Satisfaction Unit and the Customs Comment Card. Congress mandated that the United States Customs Service track and compile statistics on the number and types of complaints from the traveling public. On March 15, 1999, the Customer Satisfaction Unit was established to perform this function. This Customer Satisfaction Unit centralized within Customs the processing of complaints from the general public, travelers, industry, other government agencies and the United States Congress.

### Customer Satisfaction Unit

The Customer Satisfaction Unit developed an automated Complaint/Compliment Tracking System in March 2002. This tracking system allows field offices to input complaint and compliment information, monitor the status of each record, develop reports and conduct analysis.

Examples of the conduct categorized by the CSU in its intake process include, but are not limited to, the following: rude/unprofessional behavior, recurrent examination of a passenger, excessive use of authority, judgmental conduct, secondary examination, allegations of racial profiling, sexual harassment, delay, damage to property, seizure and penalty, inefficiency, refused entry, and violation of sanctions.

### Customs Comment Card

All persons entering the United States at ports of entry are subject to screening by CBP personnel. While most travelers pass through CBP with a brief interview, some are required to undergo a "secondary examination." Such an examination can range from a single luggage examination up to and possibly including a body search. CBP requires that every person subjected to a secondary examination be provided a stamped, self-addressed comment card. If the information alleges improper conduct such as racial profiling or sexual harassment, the card is forwarded to CBP Office of Internal Affairs for further review.

### Office of Internal Affairs

CBP Internal Affairs also reviews matters related to allegations of abuses of civil rights and civil liberties. These matters generally are referred from internal components of the Department. The civil rights and civil liberties related matters pending in this Office generally fall into the categories of excessive force, sexual harassment, unprofessional conduct/threats, and medical attention.

### *Immigration and Customs Enforcement*

#### Office of Professional Responsibility

At ICE, the Office of Professional Responsibility handles matters that typically have been reviewed by the Office of Inspector General. Most of the civil rights and civil liberties related matters in this Office fall into the categories of allegations of excessive use of force, physical abuse, denial of rights, and unlawful/unnecessary detention.

### *Transportation Security Administration*

At the Transportation Security Administration (TSA), four offices handle information related to civil rights and civil liberties: Aviation Operations, the Office of Civil Rights, the

Ombudsman (Consumer Response Center), and the Screening of Persons with Disabilities Program.

### Aviation Operations

The Office of Aviation Operations has responsibility for oversight of operations at 463 airports located throughout the United States. When there is an issue at the airport level, it can be handled in a variety of ways, including raising the matter directly with a customer service representative or a screening supervisor. Pursuant to its business process set out in Operating Instructions, inquiries alleging discrimination or involving other civil rights issues are forwarded by the Federal Security Director staff to the Consumer Response Center. The TSA Office of Ombudsman then handles the matter.

### TSA Office of Civil Rights – External Complaint and Compliance Division

The TSA Office of Civil Rights has an External Complaint and Compliance Division to help meet TSA's customer needs and to protect their rights. This division reviews allegations concerning constitutional standards, federal laws, regulations, executive orders, and policies that prohibit unlawful discrimination by TSA employees and business partners.

Federal employees work directly with air passengers when they perform security screening. The External Complaint and Compliance Division helps ensure that TSA employees work in a manner that respects the rights of the traveling public, as required by law. This division does the following:

- evaluates, investigates, and resolves complaints from TSA customers who claim that TSA has violated civil rights standards, laws, and policies while the passenger traveled through our security systems;
- advises TSA leadership about civil rights complaints from customers and works with management to respond to civil rights-related customer service concerns;
- examines operational and security policies and procedures and their potential civil rights impact on the traveling public. Where appropriate, the division proposes changes or revisions to TSA policies and procedures;
- works to develop and implement plans, guidance, and operating procedures at TSA to ensure that all people, including those with limited English proficiency, have access to TSA's federally conducted and federally assisted programs or activities;
- ensures that recipients of TSA's federally assisted programs, including private companies, corporations, and educational institutions that receive grants, comply with applicable federal grant-related nondiscrimination requirements; and,
- provides targeted civil rights training to TSA employees to address civil rights concerns affecting the traveling public and to ensure quality customer service.

## Office of the Ombudsman

The Office of the Ombudsman serves as the central point of contact for all non-media public inquiries and complaints within TSA. This Office serves as TSA's window to the traveling public by receiving inquiries and complaints, both directly and as routed through other federal organizations, the public, industry, the White House, and Congress. Another major role for the Office is to mediate conflict between external customers and the agency.

Within this Office resides the TSA Contact Center Division (TCC). The role of the Contact Center Division is to provide timely responses to inquiries and concerns received via telephone, facsimile, email, and letter. The Contact Center can be accessed at 1-866-289-9673. Persons may also e-mail TSA at [TellTSA@tsa.dot.gov](mailto:TellTSA@tsa.dot.gov). Call Center volume can range from 5,000 to 15,000 calls per week. Many of the inquiries received by the Contact Center fall into the categories of allegations of inappropriate screening, lost/stolen/damaged items, rude treatment, handling of passenger property, (dis)courteous treatment, confiscated items, random searches, suspected theft and discrimination.

## Screening Of Persons with Disabilities Program

The Screening of Persons with Disabilities Program works in concert with all Department components, other federal agencies, and with the public to improve the effectiveness of TSA's security screening program through communication, sharing of expertise, and collaboration toward meeting the challenge of fully integrating the unique needs of persons with disabilities and other medical conditions into all aspects of security screening operations. In each of these areas the Screening of Persons with Disabilities Program has made significant contributions in TSA policy development and screener training.

The Screening of Persons with Disabilities Program has identified problems that persons with disabilities encounter and the Program has responded to those problems through the development of revised TSA screener training. The Program has developed screener training materials, completed an informational film on dealing with people with disabilities, secured funding for an illustrative screener disability training video, and provided an in-house TSA disability program seminar to over 300 TSA employees.

In the area of policy development, the Screening of Persons with Disabilities Program has developed aviation-related policies and procedures, developed procedures for medical conditions, obtained approval of disability related equipment/tools on permitted list, e.g. disability related syringes, revised screener operating procedures to reflect new and improved disability related policies, and modified screening policies within TSA that would have affected the disability community adversely.

On TSA's website, travelers and others can access information for persons with disabilities and medical conditions under links entitled "Before You Go," "Do You Have a Disability," and "Do You Have a Medical Concern."

## EQUAL EMPLOYMENT OPPORTUNITY

The Officer for Civil Rights and Civil Liberties is responsible for the Department's Equal Employment Opportunity (EEO) program. The EEO Program seeks to ensure that all Department employees and applicants for employment are provided equality of opportunity. It will collaborate closely with the Office of the Chief Human Capital Officer to develop innovative, state-of-the-art solutions for creating and maintaining a healthy work environment.

In accordance with Department directives, the Office for Civil Rights and Civil Liberties (CRCL) directs the Department's EEO programs, including the development of Departmental EEO policy. As required, CRCL issues final agency decisions on allegations of employment discrimination. Additionally, the Office partners with the Office of the Chief Human Capital Officer to develop the Department's recruiting initiatives to promote a diverse workforce. Finally, the Office provides leadership to a working group comprised of the eight EEO and Civil Rights offices.

### *CHALLENGES & LEADERSHIP*

Under Secretary for Management, Janet Hale, made the establishment of an effective EEO Program a top priority in the first weeks of the new Department. Under her leadership, the plans for the office were developed in close collaboration with the component EEO Civil Rights Directors, their former Departments, the Office of the Chief Human Capital Officer, the Equal Employment Opportunity Commission (EEOC), and the U.S. Office of Personnel Management (OPM).

The Department EEO Program was in place when the Department officially opened on March 1, 2003. It confronted four major challenges from the outset:

- developing the infrastructure for a model EEO program;
- directing the timely and cost effective processing of legacy EEO complaints;
- establishing initiatives to recruit and accommodate a diverse workforce; and
- establishing external partnerships to guarantee program implementation.

The infrastructure for an effective program started with hiring an outstanding staff. Thirteen positions within the Office of Civil Rights and Civil Liberties are assigned to the EEO Program, including a position in the Senior Executive Service for the Director of the program. The EEO Program has been privileged to have as its core staff members several individuals who transferred from the Department of Treasury Office of Equal Opportunity Program (OEOP), including the former OEOP Deputy Director. Their years of experience and expertise in this field have been a great benefit to the Department.

In addition, the Officer for Civil Rights and Civil Liberties appointed a highly-qualified individual to serve as EEO officer for the Office of the Secretary and other headquarter offices. Moreover, the Officer for Civil Rights and Civil Liberties worked with the Office of General Counsel (OGC) to ensure that an attorney has been assigned to provide legal support to the

program.

The infrastructure for an effective program also included a statement from the leadership of the Department on the importance that they place on equal employment opportunity. Secretary Ridge's personal and practical statement to all Department employees challenged them to apply the principles of fair employment in all circumstances.<sup>25</sup>

Under Secretary Hale, Chief Human Capital Officer Ronald James, and Mr. Sutherland immediately convened training sessions for all Department headquarters employees. Throughout the summer and fall of 2003, sessions were held for over 300 Department employees emphasizing the importance of equal employment opportunity and the need to prevent an atmosphere of sexual harassment.

The EEO Program helps to coordinate the work carried out in the component EEO and Civil Rights offices that existed prior to the creation of the Department.<sup>26</sup> This leadership has been effective due in large part to the enormous talents of the individuals directing the component EEO and Civil Rights offices. Working together, this group has developed solutions to the complex process of moving the processing of formal discrimination complaints from the Cabinet agencies that previously served as the parents of these component offices to the new Department. The complex logistical and financial negotiations were resolved successfully, and by October 1, 2003, the new Department was responsible for essentially all EEO matters within its jurisdiction.

CRCL's EEO program has provided coordination to all EEO work within the Department by leading regular meetings with component EEO heads. This leadership team is working together to develop a unified Department program. We are engaging in regular staff coordination to enhance complementary programs and identify common projects.

#### *EFFECTIVE PROCESSING OF EEO COMPLAINTS*

To promote equal employment opportunity, CRCL has focused and will continue to focus on preventing employment discrimination through communication, training, conflict resolution, and outreach. Prevention is always preferable to remedying the results of discrimination.

<i>To promote equal employment opportunity, CRCL has focused and will continue to focus on preventing employment discrimination through communication, training, conflict resolution and outreach.</i>
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When the Department stood up on March 1, 2003, it assumed responsibility for over 2,000 formal EEO complaints in the legacy organizations. The Department established a complaint adjudication unit and entered into

<sup>25</sup> See Appendix F, *Equal Employment Opportunity and Sexual Harassment Policy Statement*.

<sup>26</sup> The component EEO and Civil Rights offices were located in the U.S. Coast Guard, the U.S. Secret Service, the Federal Emergency Management Agency, Federal Law Enforcement Training Center, U.S. Customs Service, Immigration and Naturalization Service, and Transportation Security Administration.

Memorandums of Understanding/Agreement with the former parent Departments to assist in drafting final actions to ensure seamless continued processing of the complaints and compliance with statutes and regulations.

Since March 1, 2003, CRCL's EEO Office has made considerable progress. It has:

- received over 876 of the 2,000 complaints that were in process (some over a decade old);
- issued 447 final agency decisions, 31 with findings of discrimination; and,
- developed a procedure for giving components feedback from the critical findings, for continuous process improvement and No Fear Act compliance.

The EEO Office within CRCL also is taking proactive steps to reduce conflicts prior to the filing of formal complaints. Measures CRCL is taking include:

- drafting Department policy stressing early intervention and conflict resolution using alternative dispute resolution (ADR);
- working with component staff to develop mediators to participate in a shared, neutral, mediators program; and,
- developing plans to partner with EEOC, OPM, other agencies, and private organizations dedicated to conflict resolution.

The objectives of the program to resolve conflicts include: increase the use of ADR throughout the EEO complaint process, recognizing that settlement can be reached at any stage; improve morale and increase productivity of employees as a result of their ability to resolve difficulties at an early stage; reduce costs and disruption in the workplace; and, reduce reliance on the EEO complaint process or ensuing litigation as the only means to deal with EEO concerns.

## *RECRUITMENT*

The Department is committed to having a world-class workforce. The variety of threats that America faces requires the Department to recruit top-notch, talented people with varied backgrounds and viewpoints. In the first year of the Department's existence, multiple recruitment and outreach efforts have been used to fill critical vacancies. The strategies implemented include:

- sending a joint letter from Mr. Sutherland and Mr. James, the Chief Human Capital Officer, to hundreds of professional associations, colleges and universities, asking for wide dissemination of Department job openings;
- operating a Department "listserv," an email list announcing the latest Department job openings; the listserv sends the announcements on a weekly basis to over 1,000 individuals, academic institutions, associations and organizations; and
- placing a special emphasis on welcoming applications from people with disabilities.

The listserv merits special attention. It leverages extremely cost-effective, widely

available e-mail technology to spread news on the latest job openings to campus disability coordinators throughout the nation, all independent living centers and state rehabilitation offices, bar associations, Tribal Colleges, Hispanic Serving Institutions and Historically Black Colleges and Universities, among many other institutions. The EEO Officer servicing the headquarters sends the Department vacancy announcements to these organizations approximately once a week, and this community of diverse organizations disseminates the job announcements throughout the country. CRCL continually seeks to expand the Department's recruitment network. As a result, the Department listserv currently has over one-thousand contacts nationwide, each serving a community that can add diverse talents to the Department's workforce.

CRCL's EEO Program is also partnering with the Chief Human Capital Officer and the Office of Personnel Management to produce quality Department branding and recruiting materials. These materials will be exceptionally helpful as Department employees attempt to recruit new individuals to join the applicant pool.

CRCL has also worked closely with the EEOC to examine best practices in the federal sector that can be implemented in the Department. Mr. Sutherland has met with Cari Dominguez, the Chair of the EEOC, to solicit her advice and guidance, and CRCL staff has met on numerous occasions with senior leaders within the EEOC to learn from their experiences.

To solidify the Department's efforts to recruit a diverse workforce, CRCL and the Office of the Chief Human Capital Officer will work together on a variety of recruitment projects. CRCL and the Human Capital Office will ensure that the best practices from each component agency are brought to light and implemented across the Department. It will ensure that recruiters and EEO professionals across the Department are moving forward in a coordinated way to spread the news that the Department seeks a diverse workforce.

#### *INITIATIVE TO EMPLOY PEOPLE WITH DISABILITIES*

Secretary Ridge has repeatedly stated both publicly and internally his commitment to make the Department a model employer for people with disabilities. This objective has been received with enthusiasm by senior leaders across the Department. The Secretary has met with national disability rights organizations to state his commitment and to ask for their assistance in *making the Department a model employer*. Mr. Sutherland and the EEO Program staff have met with a number of advocates and experts from other government agencies to develop options for meeting the Secretary's goals.

The Office of the Chief Human Capital Officer and CRCL have spent much of this first year of operation working diligently to provide Department managers with tools to employ successfully people with special needs. The tools include:

- the appointment of a "Selective Placement Coordinator," who identifies highly qualified people with disabilities and brings those resumes to managers with open positions;

- the creation of a “reasonable accommodation” policy, to guide managers and employees in how to deal with situations where an employee believes he or she needs a reasonable accommodation to perform successfully the essential functions of the job;
- a partnership with the Department of Defense’s Computer Electronic Accommodations Program (CAP), which provides assistive technologies that employees with disabilities may need;
- a partnership with the Employer Assistance Referral Network (EARN), a nation-wide free referral and technical assistance service for employers; and,
- a relationship with the U.S. Department of Veterans Affairs (VA), Vocational Rehabilitation and Employment Service (VRE). Upon request, the VRE will provide referrals for full-time Department Headquarters positions and “Non-Paid Work Experience Program” positions. The latter program permits managers to bring disabled veterans to the Department for a six-month, cost-free trial period, with the VA paying the veteran a small stipend. At the end of the period, the Department may encourage the veteran to compete for an open position or, under some circumstances, offer the veteran an expedited, non-competitive appointment to an open position. This initiative solicits applications from a large pool of qualified, disabled veterans who are undertaking vocational rehabilitation at educational institutions in the Washington, D.C. area and around the country.

These are only a few examples from the extensive infrastructure created, at the Secretary’s direction, to help Department managers locate highly qualified individuals with disabilities.

In order to build upon the tools that are available to the Department, the Secretary has announced a major new initiative to stimulate the hiring of people with disabilities. The Secretary has tasked each directorate and office within Department headquarters to take the following steps:

*Department managers must take a training course on this initiative.*

The Human Capital and EEO offices will hold special training programs directed at Department managers. These sessions will help managers increase their comfort level – personally and professionally – with the Secretary’s commitment to aggressively provide equal employment opportunity for people with disabilities. The sessions, which have already begun and will continue through July 1, 2004, clearly lay out the Department’s commitment to hiring people with disabilities and allow managers to hear from a panel of Department employees with disabilities who describe their personal work experiences in the federal government. By July 1st, it is expected that over 100 managers will have participated in the training.

*Each directorate and office must work regularly with interns with disabilities.*

CRCL has identified several sources for interns, including, for example, students seeking credit during the academic year or employment during the summer and veterans seeking to re-enter the workforce. The Secretary has directed that all directorates and offices within Department headquarters work regularly with these interns, and the Department's headquarters offices expect to work with dozens of interns with disabilities every year.

*Each directorate and office will work proactively with the Department's Selective Placement Coordinator.*

Secretary Ridge recognizes that for the Department's Selective Placement Coordinator to be successful in helping match interested candidates with managers she will need information about the staffing plans, both short and long-term, for each directorate and office. Therefore, the Secretary has tasked all directorates and offices within Department headquarters to work proactively with the Selective Placement Coordinator.

*Each component should have the opportunity to design a similar but customized strategy.*

The strategies above relate to employment opportunities at Department headquarters. Therefore, the Secretary directed each head of a component to work with that component's EEO office and Human Capital office to develop a specific strategy that is parallel to the program described above. All components submitted these strategies by April 1, 2004. Because all components of DHS now have aggressive strategies in place to hire people with disabilities, opportunities for employment should increase across the nation and in all categories of jobs, both in senior and entry-level positions.

## **CONCLUSION**

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The Department of Homeland Security has made a strong effort to incorporate a respect for personal liberties into the work of protecting our nation. The establishment of a robust Office for Civil Rights and Civil Liberties is evidence of that commitment. The Department looks forward to working with Congress and the public to continue to ensure that the homeland security effort meets the high calling of protecting America while also enhancing our way of life.

## APPENDIX A - ACRONYMS

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ADR	Alternative Dispute Resolution
BTS	Directorate of Border and Transportation Security
CAP	Computer Electronic Accommodations Program
CBP	Customs and Border Protection
CIO	Chief Information Officer
CIS	Citizenship and Immigration Services
CRCL	Office for Civil Rights and Civil Liberties
CSU	Customer Satisfaction Unit
DHS	Department of Homeland Security
DOJ	Department of Justice
DOJ OIG	Department of Justice Office of the Inspector General
DRO	Detention and Removal Office
EARN	Employer Assistance Referral Network
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
E&IT	Electronic and Information Technology
EPR	Directorate of Emergency Preparedness and Response
FCC	Federal Communications Commission
FEMA	Federal Emergency Management Agency
FLETC	Federal Law Enforcement Training Center
LEP	Limited English Proficiency
IAIP	Directorate of Information Analysis and Infrastructure Protection
ICE	Immigration and Customs Enforcement
INS	Immigration and Naturalization Service
IG	Inspector General
NSEERS	National Security Entry-Exit Registration System
OGC	Office of the General Counsel
OIG	Office of Inspector General
OEOP	Department of Treasury Office of Equal Opportunity Program
OPM	Office of Personnel Management
S&T	Directorate of Science and Technology
TCC	TSA Telephone Contact Center
TSA	Transportation Security Administration
UAV	Unmanned Aerial Vehicle
USCG	United States Coast Guard
USSS	United States Secret Service
US VISIT	United States Visitor and Immigrant Status Indicator Technology
VA	U.S. Department of Veterans Affairs
VRE	Vocational Rehabilitation and Employment Service

# APPENDIX B - DHS ORGANIZATIONAL CHART



# APPENDIX C - DHS VISION, MISSION STATEMENTS, AND STRATEGIC GOALS

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## DEPARTMENT OF HOMELAND SECURITY STRATEGIC PLAN SUMMARY 2004

The *National Strategy for Homeland Security* and the Homeland Security Act of 2002 served to mobilize and organize our nation to secure the homeland from terrorist attacks. This exceedingly complex mission requires a focused effort from our entire society if we are to be successful. To this end, one primary reason for the establishment of the Department of Homeland Security was to provide the unifying core for the vast national network of organizations and institutions involved in efforts to secure our nation. In order to better do this and to provide guidance to the 180,000 DHS men and women who work every day on this important task, the Department developed its own high-level strategic plan. The vision and mission statements and strategic goals and objectives provide the framework guiding the actions that make up the daily operations of the department.

### VISION STATEMENT

Preserving our freedoms, protecting America ....we secure our homeland.

### MISSION STATEMENT

We will lead the unified national effort to secure America. We will prevent and deter terrorist attacks and protect against and respond to threats and hazards to the Nation. We will ensure safe and secure borders, welcome lawful immigrants and visitors, and promote the free-flow of commerce.

**CORE VALUES:** Personal attributes expected of every Department of Homeland Security employee.

**Integrity:** “**Service before Self**” Each of us serves something far greater than ourselves. To our Nation, we represent the President and the Congress. To the world, seeking to visit or do business with us, we are often the first Americans they meet. We will faithfully execute the duties and responsibilities entrusted to us, and we will maintain the highest ethical and professional standards.

**Vigilance:** “**Guarding America**” We will relentlessly identify and deter threats that pose a danger to the safety of the American people. As a Department, we will be

constantly on guard against threats, hazards, or dangers that threaten our values and our way of life.

**Respect: “Honoring our Partners”** We will value highly the relationships we build with our customers, partners and stakeholders. We will honor concepts such as liberty and democracy, for which America stands.

**GUIDING PRINCIPLES:** The philosophy that informs and shapes decision making and provides normative criteria that governs the actions of policy makers and employees in performing their work.

**Protect Civil Rights and Civil Liberties:** We will defend America while protecting the freedoms that define America. Our strategies and actions will be consistent with the individual rights and liberties enshrined by our Constitution and the Rule of Law. While we seek to improve the way we collect and share information about terrorists, we will nevertheless be vigilant in respecting the confidentiality and protecting the privacy of our citizens. We are committed to securing our nation while protecting civil rights and civil liberties.

**Integrate Our Actions:** We will blend 22 previously disparate agencies, each with its employees, mission and culture, into a single, unified Department whose mission is to secure the homeland. The Department of Homeland Security will be a cohesive, capable and service-oriented organization whose cross-cutting functions will be optimized so that we may protect our nation against threats and effectively respond to disasters.

**Build Coalitions and Partnerships:** Building new bridges to one another is as important as building new barriers against terrorism. We will collaborate and coordinate across traditional boundaries, both horizontally (between agencies) and vertically (among different levels of government). We will engage partners and stakeholders from federal, state, local, tribal and international governments, as well as the private sector and academia. We will work together to identify needs, provide service, share information and promote best practices. We will foster inter-connected systems, rooted in the precepts of federalism that reinforce rather than duplicate individual efforts. Homeland security is a national effort, not solely a federal one.

**Develop Human Capital:** Our most valuable asset is not new equipment or technology, but rather our dedicated and patriotic employees. Their contributions will be *recognized and valued* by this Department. We will hire, train and place the very best people in jobs to which they are best suited. We are committed to personal and professional growth and will create new opportunities to train and to learn. We will create a model human resources management system that supports equally the mission of the Department and the people charged with achieving it.

**Innovate:** We will introduce and apply new concepts and creative approaches that will help us meet the challenges of the present and anticipate the needs of the future. We will support innovation and agility within the public and private sector, both by providing resources and removing red tape so that new solutions reach the Department and the marketplace as soon as possible. We will harness our nation’s best minds in science, medicine and technology to

develop applications for homeland security. Above all, we will look for ways to constantly improve—we will recognize complacency as an enemy.

**Be Accountable:** We will seek measurable progress as we identify vulnerabilities, detect evolving threats to the American homeland and prioritize our homeland security resources. We will assess our work, evaluate the results and incorporate lessons learned to enhance our performance. We will reward excellence and fix what we find to be broken. We will communicate our progress to the American people, operating as transparently as possible and routinely measuring the success of our progress.

## **STRATEGIC GOALS AND OBJECTIVES**

**AWARENESS** -- Identify and understand threats, assess vulnerabilities, determine potential impacts and disseminate timely information to our homeland security partners and the American public.

**Objective 1.1** Gather and fuse all terrorism related intelligence; analyze, and coordinate access to information related to potential terrorist or other threats.

**Objective 1.2** Identify and assess the vulnerability of critical infrastructure and key assets.

**Objective 1.3** Develop timely, actionable and valuable information based on intelligence analysis and vulnerability assessments.

**Objective 1.4** Ensure quick and accurate dissemination of relevant intelligence information to homeland security partners, including the public.

**PREVENTION** -- Detect, deter and mitigate threats to our homeland.

**Objective 2.1** Secure our borders against terrorists, means of terrorism, illegal drugs and other illegal activity.

**Objective 2.2** Enforce trade and immigration laws.

**Objective 2.3** Provide operational end users with the technology and capabilities to detect and prevent terrorist attacks, means of terrorism and other illegal activities.

**Objective 2.4** Ensure national and international policy, law enforcement and other actions to prepare for and prevent terrorism are coordinated.

**Objective 2.5** Strengthen the security of the Nation's transportation systems.

**Objective 2.6** Ensure the security and integrity of the immigration system.

**PROTECTION** – Safeguard our people and their freedoms, critical infrastructure, property and the economy of our Nation from acts of terrorism, natural disasters, or other emergencies.

**Objective 3.1** Protect the public from acts of terrorism and other illegal activities.

**Objective 3.2** Reduce infrastructure vulnerability from acts of terrorism.

**Objective 3.3** Protect against financial and electronic crimes, counterfeit currency, illegal bulk currency movement and identity theft.

**Objective 3.4** Secure the physical safety of the President, Vice President, visiting world leaders and other protectees.

**Objective 3.5** Ensure the continuity of government operations and essential functions in the event of crisis or disaster.

**Objective 3.6** Protect the marine environment and living marine resources.

**Objective 3.7** Strengthen nationwide preparedness and mitigation against acts of terrorism, natural disasters, or other emergencies.

**RESPONSE** -- Lead, manage and coordinate the national response to acts of terrorism, natural disasters, or other emergencies.

**Objective 4.1** Reduce the loss of life and property by strengthening nationwide response readiness.

**Objective 4.2** Provide scalable and robust all-hazard response capability.

**Objective 4.3** Provide search and rescue services to people and property in distress.

**RECOVERY** -- Lead national, state, local and private sector efforts to restore services and rebuild communities after acts of terrorism, natural disasters, or other emergencies.

**Objective 5.1** Strengthen nationwide recovery plans and capabilities.

**Objective 5.2** Provide scalable and robust all-hazard recovery assistance.

**SERVICE** -- Serve the public effectively by facilitating lawful trade, travel and immigration.

**Objective 6.1** Increase understanding of naturalization, and its privileges and responsibilities.

**Objective 6.2** Provide efficient and responsive immigration services that respect the dignity and value of individuals.

**Objective 6.3** Support the United States humanitarian commitment with flexible and sound immigration and refugee programs.

**Objective 6.4** Facilitate the efficient movement of legitimate cargo and people.

**ORGANIZATIONAL EXCELLENCE** -- Value our most important resource, our people. Create a culture that promotes a common identity, innovation, mutual respect, accountability and teamwork to achieve efficiencies, effectiveness, and operational synergies.

**Objective 7.1** Protect confidentiality and data integrity to ensure privacy and security.

**Objective 7.2** Integrate legacy services within the Department improving efficiency and effectiveness.

**Objective 7.3** Ensure effective recruitment, development, compensation, succession management and leadership of a diverse workforce to provide optimal service at a responsible cost.

**Objective 7.4** Improve the efficiency and effectiveness of the Department, ensuring taxpayers get value for their tax dollars.

**Objective 7.5** Lead and promote E-Government modernization and interoperability initiatives.

**Objective 7.6** Fully integrate the strategic planning, budgeting and evaluation processes to maximize performance.

**Objective 7.7** Provide excellent customer service to support the mission of the Department.

## APPENDIX D - STRATEGIC PLAN FOR THE OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES

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### *Mission Statement*

From the very beginning of the homeland security effort, the Bush Administration has emphasized the need to protect and enhance our civil rights and civil liberties. Just weeks after the September 11<sup>th</sup> terrorist attacks, President Bush told a conference of federal prosecutors that, “[W]e have a huge responsibility, and that’s to defend America while protecting our great liberties.” Secretary Ridge recently said, “[O]ur strategy and our actions [will be] consistent with the individual rights and civil liberties protected by the Constitution.”

The Administration’s commitment to these principles is demonstrated in part by the appointment of an Officer for Civil Rights and Civil Liberties within the senior leadership of the Department of Homeland Security. The purpose of this document is to lay out the Office’s broad mission statement as well as a specific operating plan.

*The mission of the Office is to protect civil rights and civil liberties and to support homeland security by providing the Department with constructive legal and policy advice on the full range of civil rights and civil liberties issues the Department will face, and by serving as an information and communication channel with the public regarding all aspects of these issues.*

The Office will work closely with a number of other components within DHS, including the General Counsel, the Privacy Officer, and the Inspector General. Establishing positive relationships with these components will be a key to the Office’s effectiveness.

The Office for Civil Rights and Civil Liberties will have five key objectives:

*Objective 1: Establish an effective and efficient Office for Civil Rights and Civil Liberties.* This objective focuses on a number of management issues that must be resolved to properly establish the Office.

*Objective 2: In close cooperation with the General Counsel, provide legal and policy advice to the Secretary and senior officers at DHS with regard to issues and initiatives that may have an impact on civil rights or civil liberties.* The Office will provide constructive advice so that policy is shaped in ways that are mindful of and consistent with civil rights and civil liberties.

*Objective 3: Develop proactive initiatives that will demonstrate the Department’s commitment to civil rights and civil liberties.* In addition to reacting to issues raised by other components within DHS, the Office will also take the initiative in developing projects that will enhance civil rights and civil liberties.

*Objective 4: Communicate with the public to explain DHS’s commitment to civil rights and civil liberties.* The Office will play an active role in communicating with the public, both by listening to people’s concerns and by advancing the Department’s positions in public forums.

*Objective 5: Develop a state-of-the-art equal employment opportunity office within DHS. The Office will strive to make the Department's EEO program a model for the government.*

Throughout its work, the attorneys and professionals who staff the Office for Civil Rights and Civil Liberties will be guided by four principles:

- **Integrated** - we will work diligently to be integrated into the daily operations of the Department.
- **Constructive** - we will be skilled at providing proactive legal and policy advice that will assist DHS's senior officers to carry out their various national security and law enforcement initiatives while also protecting civil rights and civil liberties.
- **Professional** - we will establish a culture of professionalism, including a rigorous approach to the law, timeliness, strong writing skills, a strong ethic of nonpartisanship, and the ability to listen to all points of view.
- **Innovative** – we will search for creative solutions to ensure that the Department's objectives are met while also protecting civil rights and civil liberties. Harvard law professor Randall Kennedy argues that the "inherited debates" on race and civil rights "have become increasingly sterile ... [U]seful prescriptions for problems as complex as those generated by the imperatives of law enforcement in our large, rambunctious, multiracial society can arise only from thinking that frees itself of reflexive obedience to familiar signals."<sup>27</sup> We will promote innovation in many ways: respecting and valuing the contributions of immigrants to America while also enhancing the integrity of our nation's immigration laws and borders; integrating people with disabilities into the effort to secure our homeland; enhancing the use of alternative dispute resolution systems; and, embracing the expansion of technological developments such as biometric identifiers while also enhancing privacy and individualism in the 21st century.

#### *Operating Plan*

*Objective 1: Establish an effective and efficient Office for Civil Rights and Civil Liberties. This objective focuses on a number of management issues that must be resolved to properly establish the Office.*

- Develop a Strategic Plan
- Develop a Staffing Plan
- Develop a Proposed Budget for Fiscal Years 04 and 05

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<sup>27</sup> Randall Kennedy, *Race, Crime and the Law*, Pantheon Books, 1991.

- Clarify the Relationship with the Office of General Counsel
- Clarify the Relationship with the Office of the Inspector General
- Develop a Plan for Monitoring Compliance with Federal Civil Rights Laws
- Develop a process for receiving, processing, investigating and resolving complaints that DHS personnel have violated a private citizen's civil rights or civil liberties.
- Develop a system to encourage compliance by grant recipients with civil rights laws and regulations.

*Objective 2: In close cooperation with the General Counsel, provide legal and policy advice to the Secretary and senior officers at DHS with regard to issues and initiatives that may have an impact on civil rights or civil liberties. The Office will provide constructive advice so that policy is shaped in ways that are mindful of and consistent with civil rights and civil liberties.*

- Provide advice on the prevention of racial profiling
- Provide civil liberties perspective on issues involving identity documents, including US VISIT, TWIC, and other identity or credentialing efforts.
- Provide advice on CAPPS II
- Provide advice on the DOJ IG's report on the detention of immigrants post 9/11
- Assist in strengthening training at the Federal Law Enforcement Training Center (FLETC) on the Constitution and federal civil rights laws
- Provide advice on a wide range of issues dealing with the detention of immigrants

*Objective 3: Develop proactive initiatives that will demonstrate the Department's commitment to civil rights and civil liberties. In addition to reacting to issues raised by other components within DHS, the Office will also take the initiative in developing projects that will enhance civil rights and civil liberties.*

- Develop policies and initiatives to advance the interests of people with disabilities;
- Sign the CAP agreement, to provide accommodations for employees with disabilities;
- Prepare a reasonable accommodations policy for employees with disabilities;
- Create a communications network so that DHS information can quickly reach disability groups;

- Integrate people with disabilities into the emergency planning effort;
- Work with TSA to ensure that screeners interact effectively with people with disabilities;
- Reinforce the value of protecting civil rights and civil liberties throughout the DHS culture;
- Develop guidance on how to embrace new technologies, such as biometrics, without creating a national identifier; and,
- Work with the Brown v. Board of Education 50<sup>th</sup> Anniversary Commission.

*Objective 4: Communicate with the public to explain DHS's commitment to civil rights and civil liberties.* The Office will play an active role in communicating with the public, both by listening to people's concerns and by advancing the Department's positions in public forums. We will be conscious of the need to communicate both with those in Washington, D.C., as well as those around the country.

- Create a webpage;
- Accept appropriate opportunities to speak at public forums to present DHS's position; and,
- Meet regularly with civil rights and civil liberties interest groups, both here in Washington, D.C., and around the country.

*Objective 5: Develop a state-of-the-art equal employment opportunity office within DHS.* The Office will strive to make the Department's EEO program a model for the government.

- Process EEO complaints in a timely fashion;
- Develop a long-term strategy for the EEO function within DHS;
- Establish effective EEO policies and procedures;
- Develop methods to ensure that job openings receive wide dissemination;
- Establish effective information management systems; and,
- Analyze complaint trends to determine root causes and make recommendations for dispute prevention strategies.

## APPENDIX E – OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES POSTER

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“Together we will answer history’s call  
to protect America and preserve our way of life”

- Secretary Tom Ridge, January 24, 2003



**Homeland  
Security**



Although terrorists try to exploit as a weakness and a vulnerability the freedom we cherish, the mission of this Department and every Homeland Security employee is to prove every day that a nation can be free and open, without sacrificing safety and security.

**We need your help in meeting our goals.**

If you have comments about how we can protect our national security and preserve our civil rights and liberties, please contact us:

Office for Civil Rights and Civil Liberties  
U.S. Department of Homeland Security • Washington, DC 20528

1-866-644-8360 • 1-866-644-8361 (TTY)  
202-401-4708 (Fax) • [Civil.liberties@dhs.gov](mailto:Civil.liberties@dhs.gov)

# **APPENDIX F - EQUAL EMPLOYMENT OPPORTUNITY AND SEXUAL HARASSMENT POLICY STATEMENT**

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Office of the Secretary  
U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

## **EQUAL EMPLOYMENT OPPORTUNITY AND SEXUAL HARASSMENT POLICY STATEMENT**

October 9, 2003

As Secretary of the Department of Homeland Security, I am personally committed to making the Department a model employer with a diverse and effective workforce. To achieve this goal it is essential that managers and supervisors maintain an atmosphere where employees and applicants for employment are judged solely on the basis of merit or ability. We want to create an atmosphere where there is respect for the strength brought to our workforce when we have employees with a wide range of background and experiences. We must strive to ensure that all employees have an opportunity to reach their full potential and to contribute to the success of the Department.

To this end I ask all managers and supervisors to take two steps. First, please ensure that you advertise job openings as widely as possible. It is critical that we take advantage of the talents of the broadest possible range of Americans as we carry out our critical work. Second, please make special effort to reasonably accommodate the needs of employees and applicants for employment who have physical or mental disabilities.

Let me be clear about a related point: discrimination against or harassment of any employee cannot be tolerated. Managers and supervisors must make special efforts to identify and eliminate any form of sexual harassment and to maintain an environment free of any conduct – physical or verbal – that could create a hostile or intimidating environment. I emphasize again that we will accomplish our critical mission only if we ensure that all employees are free to fully contribute their talents.

As in all phases of our mission, we must strive for excellence. I challenge supervisors, managers and employees to join me in making DHS a leader in equal employment opportunity.

  
Tom Ridge