



# **Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002**

## **Annual Report for Fiscal Year 2023**

*May 15, 2024*



Homeland  
Security

*U.S. Department of Homeland Security  
Office for Civil Rights and Civil Liberties*

## MESSAGE FROM THE OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES



May 15, 2024

I am pleased to present the U.S. Department of Homeland Security's (DHS or the Department) *Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002* (No FEAR Act) Annual Report for Fiscal Year (FY) 2023.

The No FEAR Act, Public Law 107-174, requires federal agencies be publicly accountable for violations of anti-discrimination laws and policies. Federal agencies must post quarterly and annual statistical data relating to federal-sector Equal Employment Opportunity (EEO) complaints on their public website, reimburse the Judgment Fund for payments made, and notify employees and applicants for employment about their rights under the federal anti-discrimination and whistleblower laws.

This report summarizes the most significant accomplishments within the Department's EEO program. The report is a testament to the dedication and excellence of our EEO professionals at the Department. This report demonstrates the Department's strong commitment to prevent and reduce the incidence of workplace discrimination, abide by merit system principles, provide protection from prohibited personnel practices, and promote accountability.

Pursuant to Section 203 of the No FEAR Act, this report is being provided to the following Members of Congress:

**The Honorable Kamala Harris**  
President of the Senate

**The Honorable Patty Murray**  
President Pro Tempore, U.S. Senate

**The Honorable Mike Johnson**  
Speaker of the House, U.S. House of Representatives

**The Honorable Gary C. Peters**  
Chairman, U.S. Senate Committee on Homeland Security and Governmental Affairs

**The Honorable Rand Paul**  
Ranking Member, U.S. Senate Committee on Homeland Security and Governmental Affairs

**The Honorable Dick Durbin**  
Chair, U.S. Senate Committee on the Judiciary

**The Honorable Lindsey Graham**  
Ranking Member, U.S. Senate Committee on the Judiciary

**The Honorable Mark E. Green**  
Chairman, U.S. House of Representatives Committee on Homeland Security

**The Honorable Bennie G. Thompson**  
Ranking Member, U.S. House of Representatives Committee on Homeland Security

**The Honorable Jim Jordan**  
Chairman, U.S. House of Representatives Committee on the Judiciary

**The Honorable Jerrold Nadler**  
Ranking Member, U.S. House of Representatives Committee on the Judiciary

**The Honorable James R. Comer**  
Chairman, U.S. House of Representatives Committee on Oversight and Accountability

**The Honorable Jamie Raskin**  
Ranking Member, U.S. House of Representatives Committee on Oversight and Accountability

Pursuant to the No FEAR Act, this report is also provided to the Chair of the U.S. Equal Employment Opportunity Commission (EEOC), the Attorney General of the United States, and the Director of the U.S. Office of Personnel Management (OPM).

The Department's Office for Civil Rights and Civil Liberties (CRCL) supports the Department's mission to secure the Nation while preserving individual liberty, fairness, and equality under the law. CRCL's mission includes leading the Department's EEO programs and promoting workforce diversity. The Department succeeds in its mission, in part, by ensuring workplace decisions are equitable, fairly implemented, and for the benefit of all employees.

The Department's EEO program continues to demonstrate a strong and collaborative partnership between CRCL and the Department's Components, which allowed the Department's EEO

program to accomplish a great deal in FY 2023. CRCL and Component partners will continue to develop and strengthen the Department's anti-discrimination and whistleblower protection programs into the next fiscal year and beyond.

I look forward to providing information on our program successes in future reports. Please contact the Department's Office of Legislative Affairs for additional information at (202) 447-5890.

Sincerely,

A handwritten signature in blue ink that reads "Shoba Sivaprasad Wadhia". The signature is written in a cursive, flowing style.

Shoba Sivaprasad Wadhia  
Civil Rights and Civil Liberties Officer  
Office for Civil Rights and Civil Liberties  
Department of Homeland Security



# Fiscal Year 2023 No FEAR Act Annual Report

## Table of Contents

EXECUTIVE SUMMARY .....	3
I. BACKGROUND.....	7
II. RESULTS AND DATA .....	8
A. The Department’s Component EEO and Civil Rights Offices .....	8
B. EEO and Whistleblower Cases Filed in Federal District Court.....	9
C. Reimbursements to Judgment Fund.....	10
D. Disciplinary Actions .....	10
E. EEO Complaint Data .....	11
III. ANALYSIS OF TRENDS AND CAUSALITY .....	11
A. EEO Complaint Activity.....	11
B. Bases of Discrimination in EEO Complaints.....	12
C. Issues in EEO Complaints .....	13
IV. COMPLAINT PROCESSING AND ADJUDICATION DATA.....	14
A. EEO Counseling.....	14
B. EEO Investigations .....	15
C. Procedural Dismissals.....	16
D. Findings of Discrimination .....	17
1. Protected Bases.....	18
2. Issues .....	19

V. PRACTICAL KNOWLEDGE GAINED THROUGH EXPERIENCE, AND ACTIONS PLANNED OR TAKEN TO IMPROVE THE COMPLAINTS AND CIVIL RIGHTS PROGRAM..... 20

    A. Improvements in the Department’s EEO Program ..... 21

        1. Advancing Joint Opportunity Initiatives Through Implementation of the EEO and Diversity Program’s Strategic Plan..... 21

        2. Collaborating and Leading the Department’s Components ..... 22

        3. Issuances of Merit FADs ..... 23

**Appendices**

- Appendix 1: The Department’s No FEAR Act Federal District Court Data for FY 2023
- Appendix 2: The Department’s No FEAR Final Year End EEO Data for FYs 2018-2023\*
- Appendix 3: Glossary of Terms

\*Due to the EEOC’s required formatting of the tables in Appendix 2, the tables may not be completely in compliance with Section 508 of the Rehabilitation Act. Please contact CRCL if any assistance is needed in accessing this information.

# EXECUTIVE SUMMARY

The purpose of the “Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002” (No FEAR Act), Public Law 107-174, is to reduce the incidence of workplace discrimination within the Federal Government by making agencies more accountable for violations of anti-discrimination and whistleblower protection laws. Section 203 of the No FEAR Act requires that each federal agency submit to certain Congressional committees and members, not later than 180 days after the end of each fiscal year, an annual report containing the following information on cases brought under federal anti-discrimination and whistleblower protection laws: complaint activity (including Federal District Court cases); resulting disciplinary actions; associated Judgment Fund reimbursements and adjustments to agency budgets to meet reimbursement requirements; and an analysis of trends, causation, and practical knowledge gained through experience. This report covers Fiscal Year (FY) 2023 (October 1, 2022, to September 30, 2023).

## *Continued Partnerships*

The CRCL Deputy Officer (Deputy Officer) serves as the Department’s Director for EEO and Diversity, and chairs the EEO Directors’ Council (the EEOD Council), of which all Component EEO and Civil Rights Directors are members. During FY 2023, the EEO Council continued in its efforts to advance the Council’s FY 2020-2024 strategic plan, again aimed at achieving a unity of effort across the Department’s EEO and Diversity programs. The strategic plan advances five goals: 1) integrate EEO and Diversity into agency operations, 2) develop the DHS EEO and Diversity workforce, 3) promote voluntary resolution of workplace disputes, 4) proactively prevent discrimination by addressing potential barriers to EEO and identifying emerging issues, and 5) optimize coordination to ensure effectiveness, efficiency, and legal compliance of Department and Component EEO and Diversity programs.

*Vaccine Mandate and Impact on EEO Complaint Processing.* On September 9, 2021, President Joseph R. Biden issued Executive Order (EO) 14043, *Requiring Coronavirus Disease 2019 Vaccination for Federal Employees*, which required all Federal employees to be fully vaccinated against the COVID-19 virus by November 22, 2021, subject to exceptions required by law. In response to the EO 14043 vaccination mandate, many employees filed EEO complaints related to the EO 14043 vaccination mandate. On January 21, 2022, the District Court for Southern District of Texas issued a nationwide preliminary injunction enjoining enforcement of the EO 14043. *Feds for Med. Freedom v. Biden*, 581 F. Supp. 3d 826 (S.D. Tex.), *vacated and remanded*, 30 F.4th 503 (5th Cir. 2022), *reh'g en banc granted, opinion vacated*, 37 F.4th 1093 (5th Cir. 2022), *on reh'g en banc*, 63 F.4th 366 (5th Cir. 2023), and *aff'd*, 63 F.4th 366 (5th Cir. 2023). To ensure compliance with the injunction, DHS held in abeyance the processing of EEO complaints and requests for reasonable accommodation directly related to the vaccine mandate.

On May 9, 2023, President Biden signed Executive Order 14099 revoking the COVID-19 vaccine mandates for Federal employees and contractors, commensurate with the end of the public health emergency. As a result of the President’s revocation of EO 14043, Components resumed processing EEO complaints that had been held in abeyance because of the injunction. The vast majority of these complaints (191) were procedurally dismissed by CRCL during FY

2023, and an additional 14 complaints were dismissed at the beginning of FY 2024. By proactively partnering with the Components, CRCL ensured that these complaints were expeditiously processed. This is discussed further in Section IV of this report.

### ***EEO Complaint Program***

*Report of Investigation (ROI) Feedback Tool.* Throughout FY 2023, CRCL provided Components an objective assessment of the quality of their EEO Reports of Investigation (ROI) through the ROI Feedback Tool (Feedback Tool). Launched in FY 2016, the Feedback Tool enables CRCL to provide Components quarterly feedback on the quality (e.g., legal sufficiency, organization, documentation) of their ROIs, whether prepared by internal personnel or by contractors. Additionally, CRCL continued to disseminate aggregate information on the quality of contractor-produced ROIs within the DHS EEO program to all Components. This aggregate information continues to provide Components with a snapshot of CRCL's assessments of the quality of ROIs issued by all contract firms. This information allows Components to make strategic decisions regarding their future ROI contractual needs.

*Complaint Activity.* In FY 2023, DHS experienced a 14 percent decrease in the number of pre-complaints.<sup>1</sup> In FY 2023, 2,446 cases were counseled, down from the 2,831 cases in FY 2022. In addition, the number and percentage of EEO counselings<sup>2</sup> completed within the regulatory timeframe of 29 C.F.R. § 1614.105(d) (within 30 days of an employee's initial contact, absent the employee's agreement to extend the timeframe by up to an additional 60 days) decreased slightly in FY 2023. In FY 2022, 99 percent (2,795 of 2,831) of all counselings were timely completed, compared with 98 percent (2,406 of 2,446) in FY 2023. The number of formal complaints filed decreased by 23 percent in FY 2023 (1,263), as compared to FY 2022 (1,637). Additional information on complaint activity is provided in Section IV of this report.

*EEO Investigations.* In FY 2023, the Department experienced a seven percent increase in the number of investigations (943) completed compared to FY 2022 (882). The percentage of timely investigations (completed within 180 days of the filing of a formal complaint or within a regulatorily permissible extension period), however, decreased slightly — 68 percent (641) in FY 2023, compared to 70 percent (613) in FY 2022. Additionally, the Department's average number of processing days for investigations increased by four percent — from 265 average processing days in FY 2022 to 276 average processing days in FY 2023. The reasons for some of these fluctuations are examined more closely in Section IV of this report.

*Adjudication.* CRCL's incoming final agency decision (FAD)<sup>3</sup> workload decreased in FY 2023, with 464 requests for FADs received in FY 2023, compared to 510 requests received in FY 2022. CRCL issued 465 FADs in FY 2023, reflecting a significant decrease from the 660 FADs issued during the prior fiscal year. This decrease is a result of the elimination of the FAD request backlog in FY 2022. CRCL's rate of timely FAD issuance increased impressively, from 48

---

<sup>1</sup> The pre-complaint process begins when an individual who believes they have been aggrieved meets with an EEO Counselor.

<sup>2</sup> EEO counseling is the process where a neutral person provides an aggrieved individual with their rights and responsibilities under EEO laws, gathers limited data, and may attempt an informal resolution.

<sup>3</sup> A FAD is a written agency decision on the merits of an employment discrimination complaint.



percent (319 of 600) in FY 2022, to 95 percent (441 of 465) in FY 2023. The average processing days also decreased significantly from 191 days in FY 2022 to 44 days in FY 2023, which accounts for a 77 percent annual decrease in average processing days.

In FY 2023, DHS issued or took final action on 27 findings of discrimination,<sup>4</sup> a slight increase from the 23 findings processed in FY 2022. A more detailed explanation regarding this increase is included in Section V of this report. In FY 2023, reprisal was the most frequently alleged basis on which complainants prevailed, followed by sex, race, disability, age, national origin, color, and religious discrimination. The most frequently raised issues on which complainants prevailed were harassment (non-sexual), non-selection/non-promotion, and failure to provide reasonable accommodation.

During FY 2023, 286 civil actions filed against the Department involving laws covered by the No FEAR Act were pending or resolved in Federal District Court. Federal judges disposed of 106 cases, with 80 cases decided in favor of the agency, 25 settled by the parties, and one decided in favor of the Plaintiff.

Components, to include DHS Headquarters, reported that the Department's reimbursement to the Judgment Fund for damages during FY 2023 was \$727,963.00. Additionally, \$48,538.00 was reimbursed to the Judgment Fund for attorney's fees. During FY 2023, 46 employees were disciplined for discrimination, retaliation, harassment, or other infractions of laws covered by the No FEAR Act. This information is described in Section III of this report.

## LEGISLATIVE REQUIREMENT

This document responds to the reporting requirements set forth in Section 203 of the “*Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002*,” or the “No FEAR Act” (Pub. L. No. 107-174), which states:

(a) Annual Report. — Subject to subsection (b), [(b) pertains to requirements for the first report] not later than 180 days after the end of each fiscal year, each Federal agency shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Reform of the House of Representatives, each committee of Congress with jurisdiction relating to the agency, the Equal Employment Opportunity Commission, and the Attorney General an annual report (in an electronic format prescribed by the Director of the Office of Personnel Management) which shall include, with respect to the fiscal year —

(1) the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged;

---

<sup>4</sup> The Department issued 7 FADs and 20 Final Orders (fully implementing EEOC AJ decisions) where there was a finding of discrimination. A more detailed explanation can be found in Section V of this report.

- (2) the status or disposition of cases described in paragraph (1);
- (3) the amount of money required to be reimbursed by such agency under section 201 in connection with each of such cases, separately identifying the aggregate amount of such reimbursements attributable to the payment of attorneys' fees, if any;
- (4) the number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of law referred to in paragraph (1);
- (5) the final year-end data posted under section 301(c)(1)(B) for such fiscal year (without regard to section 301(c)(2));
- (6) a detailed description of —
  - (A) the policy implemented by that agency relating to appropriate disciplinary actions against a Federal employee who —
    - (i) discriminated against any individual in violation of any of the laws cited under section 201(a)(1) or (2); or
    - (ii) committed another prohibited personnel practice that was revealed in the investigation of a complaint alleging a violation of any of the laws cited under section 201(a)(1) or (2); and
  - (B) with respect to each of such laws, the number of employees who are disciplined in accordance with such policy and the specific nature of the disciplinary action taken;
- (7) an analysis of the information described under paragraphs (1) through (6) (in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with Part 1614 of Title 29 of the Code of Federal Regulations) including —
  - (A) an examination of trends;
  - (B) causal analysis;
  - (C) practical knowledge gained through experience;
  - (D) any actions planned or taken to improve complaint or civil rights programs of the agency; and
- (8) any adjustment (to the extent the adjustment can be ascertained in the budget of the agency) to comply with the requirements under section 201.

Further guidance on each agency's reporting obligations is provided in 5 C.F.R. § 724.302, which also requires the submission of the annual report to the Director of OPM, for the implementation of a best practices study and the issuance of advisory guidelines.

# I. BACKGROUND

The mission of the Department is to safeguard the American people, our homeland, and our values. The Department was established through the *Homeland Security Act of 2002*, Pub. L. No. 107–296; Section 103(d)(5) of the Act provides for the presidential appointment of an Officer for Civil Rights and Civil Liberties (CRCL Officer). On October 26, 2012, the Secretary of Homeland Security issued Delegation Number 19003, which delegated to the CRCL Officer the authority to render final decisions on behalf of the Secretary in EEO complaints, pursuant to 29 C.F.R. § 1614.110, or pursuant to the Departmental EEO Complaint Procedures, when that regulation is not applicable.

CRCL, which is located within the Office of the Secretary, provides technical and policy advice to Department leadership on civil rights and civil liberties issues. The CRCL Officer, by statute, reports directly to the Secretary and assists senior leadership in shaping policy in ways that protect the civil rights and civil liberties of all persons, internal or external to DHS, who are protected by our laws. In accordance with 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, CRCL supports the Department’s mission to secure the nation while preserving individual liberty, fairness, and equality under the law. CRCL performs four key functions to integrate civil rights and civil liberties into all the Department’s missions and activities:

1. Promoting respect for civil rights and civil liberties in policy creation and implementation by advising Department leadership and personnel, and state and local partners.
2. Communicating with individuals and communities whose civil rights and civil liberties may be affected by Department activities, informing them about policies and avenues of redress, and promoting appropriate attention within the Department to their experiences and concerns.
3. Investigating civil rights and civil liberties complaints filed by the public regarding Department policies or activities, or actions taken by Department personnel.
4. Leading the Department’s EEO programs and promoting workforce diversity and merit system principles.

To maximize its effectiveness, the Department seeks to maintain an exemplary EEO program with the goal of eliminating discrimination in the workplace. CRCL provides departmental guidance and standards for establishing and maintaining effective programs for EEO, as required under both Title VII of the *Civil Rights Act of 1964* (Title VII), 42 U.S.C. §§ 2000e *et seq.*, and Section 501 of the *Rehabilitation Act of 1973* (Rehabilitation Act), as amended, 29 U.S.C. §§ 701 and 791. CRCL also works to advance the anti-discrimination protections set forth under the *Age Discrimination in Employment Act of 1967* (ADEA), 29 U.S.C. §§ 621-634 (2015), the *Equal Pay Act of 1963* (EPA), 29 U.S.C. § 206 (d)(1), and the *Genetic Information Nondiscrimination Act of 2008* (GINA), 42 U.S.C. §§2000ff *et seq.* To meet these objectives, the Deputy Officer for CRCL and the staff develop and monitor EEO and diversity program policies, plans, and guidance; deliver EEO training; conduct oversight of the Component EEO programs; adjudicate EEO complaints; and prepare and submit annual reports to stakeholders including Congress, the White House, the U.S. Department of Justice, EEOC, and OPM relating to the Department’s diversity and EEO activities.

## II. RESULTS AND DATA

### A. The Department's Component EEO and Civil Rights Offices

Section 301 of the No FEAR Act requires each Federal agency to post summary statistical data pertaining to complaints of employment discrimination filed against it by employees, former employees, and applicants for employment. Accordingly, DHS Components complete the EEOC Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints (Form 462). In addition, DHS Components provide CRCL with additional data required under the No FEAR Act. This composite report is prepared by compiling and analyzing the data submitted by all DHS Components. Below is a brief description of each Component's mission and the number of employees served by each Component EEO Office:

#### *The Cybersecurity Infrastructure and Security Agency (CISA)*

CISA leads the national effort to understand, manage, and reduce risk to our cyber and physical infrastructure. CISA's Office of Equity, Diversity, Inclusion, and Accessibility provides EEO services to 3,071 employees.

#### *Federal Emergency Management Agency (FEMA)*

FEMA's emergency management role is to: raise risk awareness before disasters occur; alert, warn, and message during disasters; and coordinate Federal recovery efforts after disasters. FEMA's Office of Equal Rights provides EEO services to 23,166 employees.

#### *The Federal Law Enforcement Training Centers (FLETC)*

FLETC, through strategic partnerships, prepares the federal law enforcement community to safeguard America's people, property, and institutions. FLETC's EEO Office provides services to 1,322 employees.

#### *DHS Headquarters EEO Office (HQ EEO)*

HQ EEO strives to ensure a working environment for Headquarters employees that is free from any form of discrimination and supports them in fulfilling their mission to safeguard the homeland. HQ EEO provides EEO services to 6,136 DHS employees.

#### *Transportation Security Administration (TSA)*

TSA exists to protect the nation's transportation systems to ensure freedom of movement for people and commerce. TSA's EEO Management Branch provides EEO services to 63,534 employees.

### *U.S. Citizenship and Immigration Services (USCIS)*

USCIS oversees lawful immigration to the United States with a mission to uphold America's promise as a nation of welcome and possibility with fairness, integrity, and respect for all. USCIS's Office of Equal Opportunity and Inclusion provides EEO services to 20,382 employees.

### *U.S. Coast Guard (USCG)*

USCG safeguards the American people and promotes national security, border security, and economic prosperity in a complex and evolving maritime environment. USCG's Civil Rights Directorate provides EEO services to 9,138 civilian employees and over 46,000 service members.

### *U.S. Customs and Border Protection (CBP)*

CBP's priority is keeping terrorists and their weapons out of the Nation. It also has a responsibility for securing the border and facilitating lawful international trade and travel while enforcing hundreds of U.S. laws and regulations, including immigration and drug laws. CBP's Office of the Commissioner, Privacy and Diversity Office provides EEO services to 64,682 CBP employees.

### *U.S. Immigration and Customs Enforcement (ICE)*

ICE protects the nation through criminal investigations and enforcing immigration laws to preserve national security and public safety. ICE's Office of Diversity and Civil Rights provides EEO services to 20,281 ICE employees.

### *U.S. Secret Service (USSS)*

USSS protects our nation's highest elected leaders, visiting foreign heads of state, and national special security events, and safeguards the U.S. financial infrastructure and payment systems. USSS's Office of Equity and Employee Support Services, Equity, Diversity, and Inclusion Program provides EEO services to 7,727 employees.

## B. EEO and Whistleblower Cases Filed in Federal District Court

During FY 2023, the Department had 286 pending or resolved civil actions in Federal District Court under the laws covered in the No FEAR Act. The majority of those filings (177) arose under Title VII, followed by filings under the Rehabilitation Act (65), filings under the ADEA (40), filings under the *Whistleblower Protection Act of 1989*, 5 U.S.C. §2302(b)(8)-(9), and filings under the EPA (2).

During FY 2023, 106 cases were disposed of in Federal District Court: 80 were decided in favor of the Department; 25 were resolved by settlement; and one decided in favor of the Plaintiff. In addition, there were 25 cases that were appealed. For further information regarding FY 2023

employment discrimination and whistleblower cases filed against the Department in Federal District Court, see Appendix 1.

### C. Reimbursements to Judgment Fund<sup>5</sup>

During FY 2023, as reported by the Department’s Components, the Department reimbursed a total of \$727,963.00 in damages to the Judgment Fund. The amount reimbursed resulted from cases filed under Title VII, the ADEA, the Rehabilitation Act, and the Whistleblower Protection Act. Reimbursements came from the following Components, in order of the largest to the smallest amount: CBP - \$502,963.00; TSA - \$150,000.00; and ICE - \$75,000.00. In addition, \$48,538.00 was reimbursed to the Judgment Fund for attorney’s fees by CBP, which stemmed from Title VII and Rehabilitation Act cases.

### D. Disciplinary Actions

Components retain independent authority to discipline their respective employees, including individuals found to have engaged in discriminatory conduct, as set forth in findings of discrimination. As part of any relief ordered, Components were required to consider disciplinary action against any individual(s) found responsible for discriminatory actions or conduct. During FY 2023, a total of 44 employees were disciplined because of findings of discriminatory conduct. The disciplinary actions resulted from violations of Title VII. The breakdown is included in Figures 1 and 2 below.<sup>6</sup>

**Figure 1: Number of Employees Disciplined in Connection with Federal Court Cases Under 5 C.F.R. § 724.302(a)(3)**

	Title VII
Reprimand	1
Suspension without Pay	0
Reduction in grade or pay	0
Removal	0

**Figure 2: Number of Employees Disciplined, Whether or Not in Connection with Federal Court Cases Under 5 C.F.R. § 724.302(a)(5) (i.e., including EEO Administrative Cases)**

	Title VII
Reprimand	16
Suspension without Pay	22
Reduction in grade or pay	2
Removal	5

<sup>5</sup> The Judgment Fund, administered by the Department of the Treasury, pays court monetary judgments and settlements of lawsuits filed against the U.S. government.

<sup>6</sup> Two of the 44 employees received two forms of discipline.

#### E. EEO Complaint Data

See Appendix 2 for the Department’s No FEAR Act data for FY 2023, which is also posted online (<http://www.dhs.gov/homeland-security-no-fear-act-reporting>).

### III. ANALYSIS OF TRENDS AND CAUSALITY

#### A. EEO Complaint Activity

Section 203(a)(7) of the No FEAR Act requires federal agencies to examine trends and causes behind the data in their reports over the past five years. Figure 3 shows the number of complaints filed Department-wide each year for the past five years and the variance from the prior year’s filings.

**Figure 3: Complaints Filed, FY 2018 – FY 2023**

	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>2022</i>	<i>2023</i>
<b>Department-wide Filings</b>	1,472	1,266	1,276	1,121	1,637	1,263
<b>Variance from prior year complaints</b>	+227	-206	+10	-155	+516	-374
<b>Department-wide Population</b>	206,449	211,421	213,653	216,015	215,243	219,382
<b>Variance in employee population from prior year</b>	+8,856	+4,972	+2,232	+2,362	-772	+4,139

The Department’s workforce population steadily increased except for in FY 2022, when the workforce decreased by 772 employees. The workforce increased again by 4,139 employees to 219,382 in FY 2023. The workforce increase reflects at all Components, except for two: HQ and USSS.

While the Department’s workforce population increased in FY 2023, the Department experienced an overall decrease (23 percent) in formal EEO complaint filings from 1,637 in FY 2022 to 1,263 in FY 2023. The formal EEO complaint filings decreased at all Components, except for CISA, USCIS, and FEMA which showed only a slight increase from the previous FY.

However, CBP, ICE, and TSA showed the most significant decreases in the number of formal complaints filed from FY 2022 to FY 2023. CBP showed a 33 percent decrease in filings (384 in FY 2023 from 569 in FY 2022), ICE showed a 38 percent decrease in filings (160 in FY 2023 from 260 in FY 2022), and TSA showed a 24 percent decrease in filings (258 in FY 2023 from 340 in FY 2022).

## B. Bases of Discrimination in EEO Complaints

During FY 2023, the most frequently alleged bases of discrimination in formal EEO complaints were, in order of frequency: reprisal, disability, and sex. See Figure 4.

- *Reprisal*: There was no notable increase or decrease in the number of reprisal claims in FY 2023 (633), as compared to FY 2022 (635). Reprisal remains the most commonly alleged basis of discrimination at DHS, and government-wide, as reported by the EEOC.<sup>7</sup> At the Department, and across the federal sector, reprisal claims are almost always joined with an underlying EEO complaint based on race, national origin, sex, etc.
- *Disability*: During FY 2023, disability discrimination was alleged in 492 complaints, which is a 13 percent decrease over the prior year, when disability discrimination was raised in 560 complaints.
- *Sex*: During FY 2023, DHS received 438 complaints alleging discrimination based on sex, including claims of discrimination based on lesbian, gay, bisexual, and transgender (LGBT) status. Females alleging discrimination based on sex accounted for the most frequently raised basis, with 264 complaints. Males alleged discrimination based on sex in 147 complaints. LGBT claims were raised in 27 complaints. The 438 complaints raising sex discrimination in FY 2023 represent a nine percent decrease from the 489 complaints alleging sex discrimination in FY 2022.

**Figure 4: Bases of Discrimination, FY 2018 – FY 2023**

	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
<b>Reprisal</b>	735	633	681	594	635	633
<b>Sex</b>	509	460	473	402	489	438
<b>Disability</b>	477	480	462	373	560	492
<b>Race</b>	488	407	438	366	440	428
<b>Age</b>	398	366	409	335	395	351
<b>National Origin</b>	263	173	210	196	195	231
<b>Color</b>	187	146	193	139	198	170
<b>Non-Statutory</b>	90	69	91	102	116	99
<b>Religion</b>	62	53	53	61	376	107
<b>GINA</b>	6	3	6	7	23	7

<sup>7</sup> <https://www.eeoc.gov/sites/default/files/2021-07/2019%20Annual%20Report%20Complaints%20Tables.zip>.



### C. Issues in EEO Complaints

The most frequently raised issue in EEO complaints at DHS during FY 2023 was harassment (non-sexual).<sup>8</sup> Non-sexual harassment has been the most frequently raised issue in EEO complaints at the Department and across the federal sector as reflected in the most recent EEOC report.<sup>9</sup> There was a six percent decrease in the number of non-sexual harassment complaints between FY 2022 (610) and FY 2023 (573).

The second-most frequently raised issue at DHS, Other terms/conditions of employment, was raised in 278 complaints. While this represents a substantial number of complaints, as compared to historical trends, it is noted that this figure is an aggregation of what was previously documented in several, separate EEOC 462 Form data sets and fields, which have since been consolidated into a single data set and field. See Figure 5. Further monitoring of this issue is ongoing.

The third-most frequently raised issue at DHS, disciplinary action, was raised in 196 complaints. This represented an 18 percent decrease from FY 2022, when it was raised in 235 complaints. As Figure 5 below shows, disciplinary action has consistently been the second or third-most frequently raised issue at the Department.

The fourth-most frequently raised issue at DHS was non-selection, which was raised in 178 complaints. This represents a nine percent decrease from FY 2022, when non-selection was raised in 195 complaints.

---

<sup>8</sup> The No FEAR Act requires reporting of complaints involving sexual harassment (i.e., sex-based claims involving actionable unwelcome conduct of a sexual nature) and non-sexual harassment (i.e., claims involving actionable unwelcome conduct not of a sexual nature, e.g., based instead on race, sex, national origin, color, religion, age, disability, or reprisal).

<sup>9</sup> <https://www.eeoc.gov/sites/default/files/2021-07/2019%20Annual%20Report%20Complaints%20Tables.zip>.

**Figure 5: Issues in Complaints, FY 2018 – FY 2023**

	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>2022</i>	<i>2023</i>
<b>Non-Sexual Harassment</b>	628	588	658	528	610	573
<b>Disciplinary Action</b>	282	228	207	224	235	196
<b>Assignment of Duties</b>	222	131	178	196	-- <sup>10</sup>	--
<b>Other Terms/Conditions of Employment</b>	--	--	--	--	--	278
<b>Promotion/Non-Selection</b>	235	215	195	195	195	178
<b>Reasonable Accommodation-Disability</b>	112	129	118	118	113	115
<b>Time and Attendance</b>	102	95	93	120	112	107

## IV. COMPLAINT PROCESSING AND ADJUDICATION DATA

### A. EEO Counseling

DHS experienced a decrease in the total number of completed counselings (from 2,831 in FY 2022 to 2,446 in FY 2023) with a 98 percent (2,406 of 2,446) timely completion rate. DHS has remained consistent (in the 90-percentile range) of timely completed counselings since FY 2018. See Figure 6.

Five Components had a 100 percent timely rate for completed counselings: USCG, CBP, CISA, FLETC, and USCIS. Notably, for the last five fiscal years, USCG has remained at 100 percent. CBP, FLETC, and USCIS timely completed 100 percent of their counselings for the last four, three, and two fiscal years respectively. TSA, HQ EEO, and ICE all experienced a decrease in completed counselings but remained steady with their timely completed counselings in the 90-percentile range.

<sup>10</sup> For FY 2022, EEOC revised the list of issues so that assignment of duties, duty hours, and terms and conditions of employment data sets and fields were consolidated and captured under the new issue of “Other terms/conditions of employment” under a single data set and field.

**Figure 6: EEO Counseling at the Department, FY 2018 – FY 2023**

	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>2022</i>	<i>2023</i>
<b>Total Number Completed</b>	2,685	2,339	2,252	2,000	2,831	2,446
<b>Timely Number</b>	2,587	2,141	2,140	1,959	2,795	2,406
<b>Percentage Timely</b>	96	92	95	98	99	98

**B. EEO Investigations**

Like EEO counselings, EEO investigations are completed at the Component level. In accordance with 29 C.F.R. § 1614.108(e), an investigation must be completed within 180 calendar days, unless the complainant and the respondent agency voluntarily extend the time period (for not more than an additional 90 days), the respondent agency unilaterally extends the time period or any period of extension for not more than 30 days where it must sanitize a complaint file that contains classified information, or the complaint is amended. The following compares the number of formal complaints filed Department-wide to the number of EEO investigations completed, and to those that were timely completed.<sup>11</sup>

In FY 2023, 943 investigations were completed Department-wide, which is a moderate increase from the number of investigations completed in FY 2022 (882). The number of timely completed investigations also increased in FY 2023, from 613 in FY 2022 to 641. Additionally, the average number of days to complete an investigation increased slightly to 276 days in FY 2023 from 265 days in FY 2022. See Figure 7.

In FY 2023, Components showed a mix of improvements and setbacks in the area of EEO investigations. Notably, FLETC has maintained a 100 percent timely rate to complete their investigations within the regulatory timeframe since FY 2021. CBP’s number of completed investigations increased to 223 in FY 2023, from 172 completed in FY 2022. In addition, CBP maintained the same percentage (nine percent) of timely completed investigations, with a slight increase in completed investigations, from 15 percent in FY 2022 to 19 percent in FY 2023, as well as an increase in the average number of days to complete the investigation (from 507 days in FY 2022 to 561 days in FY 2023). CBP’s continued staffing and funding shortages had a direct impact in this area.

Other notable information regarding Components’ FY 2023 investigation data includes:

---

<sup>11</sup> Complaints filed in one fiscal year may not always be investigated in the same fiscal year.

- Components showing a decrease in the percentage of timely completed investigations were ICE (44 percent in FY 2022 to 22 percent in in FY 2023) and USSS (95 percent in FY 2022 to 89 percent in FY 2023).<sup>12</sup>
- Components showing a decrease in the average processing days to complete investigations were HQ EEO (232 days in FY 2023 from 273 days in FY 2022), CISA (252 days in FY 2023 from 287 days in FY 2022), FEMA (160 days in FY 2023 from 197 days in FY 2022), TSA (124 days in FY 2023 from 136 days in FY 2022), ICE (334 days in FY 2023 from 342 days in FY 2022), and USSS (167 days in FY 2023 from 169 days in FY 2022).
- Components showing an increase in the percentage of timely completed investigations were CISA (45 percent in FY 2022 to 92 percent in in FY 2023), FEMA (81 percent in FY 2022 to 98 percent in FY 2023), and HQ EEO (62 percent in FY 2022 to 98 percent in in FY 2023).
- Components showing an increase in the average processing days to complete the investigations were CBP (507 days in FY 2022 to 561 days in FY 2023), USCG (109 in FY 2022 to 122 in FY 2023), and USCIS (228 days in FY 2022 to 234 days in FY 2023).

**Figure 7: EEO Investigations at the Department, FY 2018 – FY 2023**

	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>2022</i>	<i>2023</i>
<b>Total Formal Complaints Filed<sup>13</sup></b>	1,472	1,266	1,276	1,121	1,637	1,263
<b>Total Completed Investigations</b>	1,179	1,177	1,185	850	882	943
<b>Timely Investigations</b>	840	768	931	576	613	641
<b>Percentage Timely</b>	71	65	79	68	70	68
<b>Average Days</b>	271	291	239	273	265	276

### C. Procedural Dismissals

An agency may procedurally dismiss an EEO complaint for one of several reasons, including, but not limited to: failure to state a claim, untimely initial contact with an EEO counselor, filing the identical claim in Federal District Court, or failure to provide necessary information to the

<sup>12</sup> At ICE, this decrease was the result of a FY 2022 significant increase in complaint filings, low staffing levels, and complications with their EEO service contractor. At USSS, the decrease was due to a moderate increase in complaint filings and low staffing levels.

<sup>13</sup> Investigations are not completed for all formal complaints; some complaints are procedurally dismissed without an investigation (See Section IV.C, below), and other cases may be settled or withdrawn before an investigation is completed.

agency. See 29 C.F.R. § 1614.107(a). At DHS, Components send CRCL requests for procedural dismissal of complaints that, based on Components’ review, meet the appropriate regulatory criteria; CRCL then reviews the record and makes a final determination to dismiss the matter, or returns the case to the Component for investigation.

In FY 2023, there was a significant increase (376) in the number of procedural dismissals issued by CRCL, when compared to FY 2022 (129). This increase can be attributed in part to the 191 dismissals issued that were related to the COVID-19 vaccine mandate. Specifically, a fair reading of the complaints revealed the complainants were alleging discrimination based on their vaccination status, not based on classes protected by the statutes enforced by the EEOC. Despite the major increase in procedural dismissals issued, CRCL’s average processing days was 242 days in FY 2023, a five-day decrease from FY 2022 (247). See Figure 8.

**Figure 8: Procedural Dismissals, FY 2018 – FY 2023**

	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>2022</i>	<i>2023</i>
<b>Total Number</b>	186	97	110	82	129	376
<b>Average Number of Processing Days</b>	163	199	296	233	247	242

#### D. Findings of Discrimination

DHS findings of discrimination in the federal administrative EEO process result from either a merit FAD issued by CRCL<sup>14</sup> or a decision by an EEOC Administrative Judge (AJ) when the complainant elects a hearing. When an AJ issues a decision on the merits of a complaint, CRCL is required to take final action by issuing a Final Order on behalf of DHS within 40 days of the AJ’s decision. The Final Order must notify the complainant whether the agency intends to fully implement the AJ’s decision or file an appeal with EEOC’s Office of Federal Operations (OFO).

The following tally of the Department’s findings of discrimination from FY 2018 to FY 2023 illustrates the protected bases upon which the findings were made, and the specific issues involved in the findings during this period.

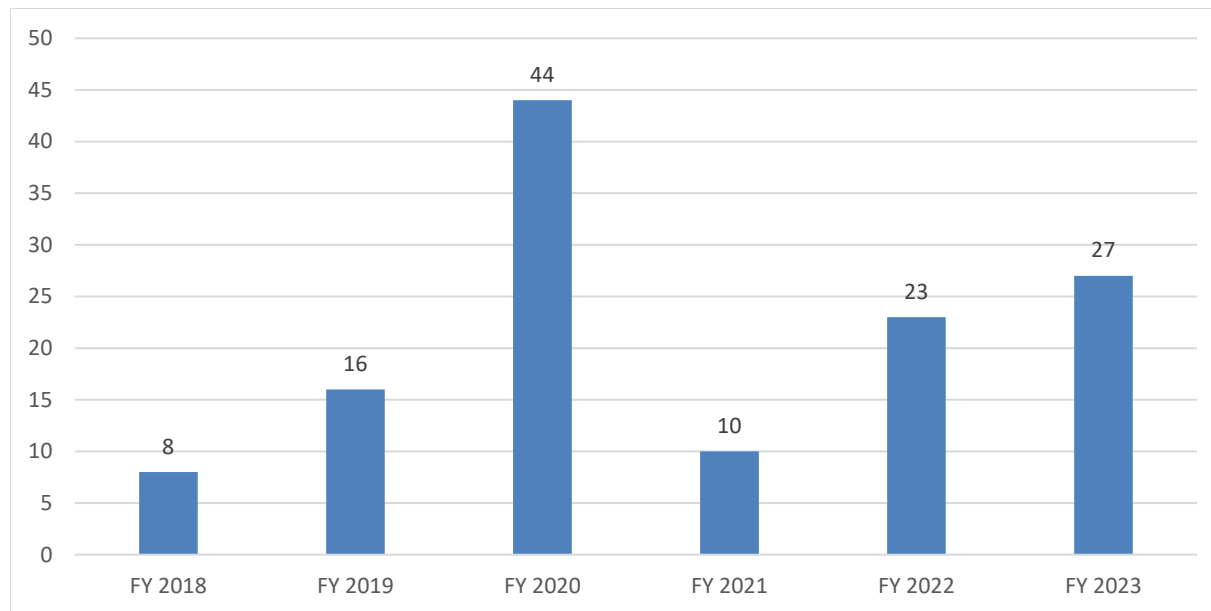
As shown in Figure 9, below, from FY 2018 to FY 2023, the Department processed 128 findings of discrimination through the issuance of merit FADs or Final Orders. In FY 2023, the Department issued 913 merit FADs and Final Orders, 27 of which resulted in a finding of discrimination. These cases included 7 merit FADs issued by CRCL and 20 EEOC AJ decisions that the Department fully implemented in Final Orders. The discriminatory conduct in FAD findings occurred primarily in 2020-2022, while the discriminatory conduct of the AJ findings occurred in 2015-2020. Eight of the findings from AJ decisions were the result of sanctions for untimely investigations.

---

<sup>14</sup> Further discussion of merit FADs can be found in Section VI of this report.

The 27 findings in FY 2023 represents three percent of merit FADs and Final Orders (913) the Department issued in FY 2023. In addition, the Department’s FY 2023 finding rate is equal to the government-wide percentage of findings of discrimination in FY 2020,<sup>15</sup> which was three percent (244 findings).<sup>16</sup> While the number of findings at DHS in FY 2023 reflects a small percentage of the Department’s overall complaint inventory, such findings receive significant attention from CRCL and Component leadership.

**Figure 9: Complaints with Findings, FY 2018 – FY 2023**



### 1. Protected Bases

In FY 2023, findings were issued with respect to claims of discrimination on the bases of reprisal (17), sex (16, to include a violation of the Equal Pay Act), race (12), disability (12), age (7), national origin (7), color (4), and religion (1).<sup>17</sup> Historically, the greatest number of findings are based on reprisal, with the exception of FY 2021, when disability discrimination accounted for the greatest number of findings. The number of findings issued in FY 2023 is slightly higher than the number of findings in FY 2022, so it follows that the number of bases upon which those findings were made in FY 2023 would be higher. It is important to note that the total number of bases within findings of discrimination may exceed the total number of findings issued because one decision may find discrimination on more than one basis. There do not appear to be any significant trends.

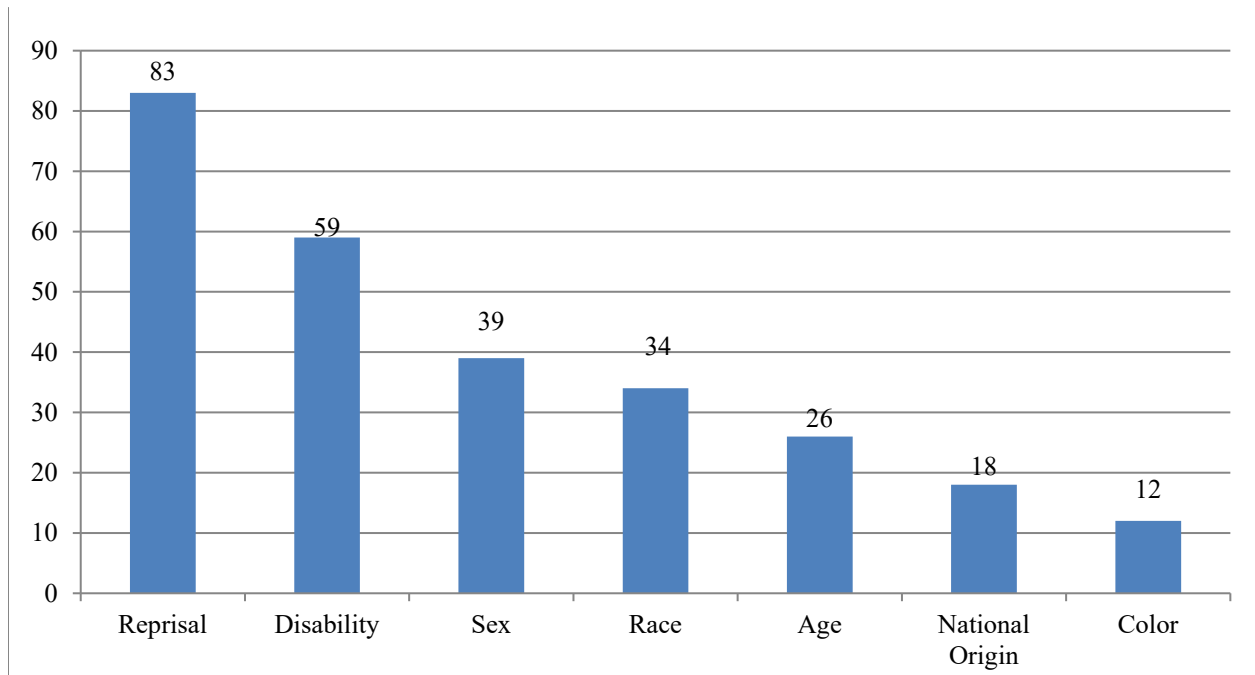
<sup>15</sup> The FY 2020 data tables are the most recent Federal workforce numbers that EEOC has released.

<sup>16</sup> <https://www.eeoc.gov/sites/default/files/202302/FY%202020%20Annual%20Report%20Complaint%20Tables.zip>

<sup>17</sup> In some complaints, findings were made on multiple claims. Accordingly, the total number of claims on which findings were made is greater than the number of complaints in which findings were made.

A comprehensive look at the number of findings by basis for the period from FY 2018 to FY 2023 is shown in Figure 10.

**Figure 10: Total Findings by Basis, FY 2018 – FY 2023**



## 2. Issues

Consistent with previous years, the FY 2023 findings of discrimination involved complaints raising a myriad of issues, with no discernable pattern or trend. As indicated in Figure 11 below, the 27 findings of discrimination in FY 2023 involved the following 12 issues: 1) Harassment (non-sexual); 2) Non-selection/Non-Promotion; 3) Reasonable Accommodation; 4) Time and Attendance; 5) Other Terms/Conditions of Employment; 6) Training; 7) Disciplinary Action; 8) Evaluation/appraisal; 9) Termination; 10) Sexual Harassment; 11) Pay/Overtime; and 12) Reassignment. As indicated above, the number of findings issued in FY 2023 is higher than the number of findings in FY 2022, so it follows that the number of issues raised in those findings would be higher than the previous year. As with protected bases, the total number of issues within the findings of discrimination may exceed the total number of findings issued, given that one decision may find discrimination regarding multiple issues. In FY 2023, there were increases in the number of issues raised from prior years due largely to an increase in the number of FADs finding discrimination that were issued. Finally, the increases do not appear to signify any particular trend. See Figure 11.

**Figure 11: Findings by Issue, FY 2018 – FY 2023**

	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>2022<sup>18</sup></i>	<i>2023</i>	<i>Total</i>
<b>Appointment/hire</b>	0	1	2	0	0	0	3
<b>Assignment of duties</b>	1	1	11	2	--	--	15
<b>Awards</b>	0	0	2	0	0	0	2
<b>Disciplinary action</b>	2	4	8	2	3	4	23
<b>Duty hours</b>	0	0	0	0	--	--	0
<b>Evaluation/appraisal</b>	2	8	13	0	1	3	27
<b>Examination/test</b>	0	0	0	0	0	0	0
<b>Harassment (non-sexual)</b>	6	11	46	4	16	21	104
<b>Harassment (sexual)</b>	0	0	4	0	1	2	7
<b>Medical Examination</b>	3	0	2	0	0	0	5
<b>Non-selection/non-promotion</b>	1	3	15	0	4	16	39
<b>Other Terms/conditions of employment</b>	--	--	--	--	0	5	5
<b>Pay/overtime</b>	0	0	0	0	0	2	2
<b>Reasonable accommodation</b>	0	1	7	3	12	8	31
<b>Reassignment</b>	0	3	15	0	2	1	21
<b>Telework</b>	0	0	2	0	0	0	2
<b>Termination</b>	0	1	3	1	2	3	10
<b>Terms/conditions of employment</b>	3	7	6	1	--	--	17
<b>Time and Attendance</b>	2	0	1	4	3	6	16
<b>Training</b>	0	0	1	0	1	5	7

## V. PRACTICAL KNOWLEDGE GAINED THROUGH EXPERIENCE, AND ACTIONS PLANNED OR TAKEN TO IMPROVE THE COMPLAINTS AND CIVIL RIGHTS PROGRAM

<sup>18</sup> For FY 2022, EEOC revised the list of issues so that assignment of duties, duty hours, and terms and conditions of employment were among several issues that were captured under the issue of “Other terms/conditions of employment.”



## A. Improvements in the Department's EEO Program

During FY 2023, the Department continued to capitalize on program enhancements started in previous fiscal years and implemented new initiatives. CRCL broadened its collaborative work with the Department's EEO Directors and Component EEO offices in several areas.

### 1. Advancing Joint Opportunity Initiatives Through Implementation of the EEO and Diversity Program's Strategic Plan

The EEO Council continued in its efforts to advance the Council's FY 2020–2024 strategic plan, again aimed at achieving a unity of effort across the Department's EEO and Diversity programs. The strategic plan advances five goals: 1) integrate EEO and Diversity into agency operations, 2) develop the DHS EEO and Diversity workforce, 3) promote voluntary resolution of workplace disputes, 4) proactively prevent discrimination by addressing potential barriers to EEO and identifying emerging issues, and 5) optimize coordination to ensure effectiveness, efficiency, and legal compliance of Department and Component EEO and Diversity programs.

In FY 2023, CRCL and the Council collaborated to develop, organize, and deliver the Department-wide EEO and Diversity Training Conference. The conference was hosted by TSA at its Headquarters Conference Center, in Springfield, Virginia, from September 12 through 14, 2023. This was the third time the conference was held, after a COVID-19 hiatus, and it brought together over 300 EEO and diversity professionals from across the Department. CRCL Officer Shoba Sivaprasad Wadhia, Deputy Officer Veronica Venture, and TSA Assistant Administrator for Civil Liberties & Civil Rights, Ombudsman and Traveler Engagement, Christine Griggs gave opening remarks. The highlight of the conference was a plenary session of DHS Senior Leaders, which concluded with in-person remarks by Secretary Alejandro N. Mayorkas. The panel of Senior Leaders included: Holly Canevari, Acting TSA Deputy Administrator; Jen Easterly, CISA Director; Kimberly A. Cheatle, USSS Director; Troy A. Miller, Senior Official Performing the Duties of the Commissioner; Erik Hooks, FEMA Deputy Administrator; and Admiral Steven Poulin, USCG Vice Commandant.

The conference's theme was "Governing Fair Employment Practices: Honoring 75 years in Federal Service," and featured over 20 dynamic breakout workshops on EEO and diversity-related topics; refresher training for EEO counselors and investigators from across DHS; and an ADR Symposium. The training conference further honed the skills of the Department's EEO, Diversity, and ADR practitioners and fostered the sharing of best practices from across the Department. Plenary sessions also included panels discussing Promising Practices from the Private Sector and the 50<sup>th</sup> Anniversary of the Rehabilitation Act of 1973. The conference ended with an awards ceremony recognizing employees for their contributions to the Department's EEO and Diversity programs.

During FY 2023, the Alternative Dispute Resolution (ADR) section received 547 requests for mediation, which is a 13 percent increase from the 484 requests received in FY 2022. As a result of mediations across the Department, there were 72 settlements in FY 2023, compared to 52 settlements in FY 2022. Finally, as part of FY 2023's EEO and Diversity Training Conference,

the ADR section facilitated an ADR Symposium for mediators and EEO professionals attending the conference.

**Figure 12: FY 2023 Mediations Conducted by Shared Neutrals<sup>19</sup>**

	<b>Number of Times Used Shared Neutrals</b>	<b>Settlements</b>
<b>USCIS</b>	51	4
<b>CBP</b>	271	14
<b>CISA</b>	19	4
<b>FEMA</b>	36	10
<b>USCG<sup>20</sup></b>	1	1
<b>ICE<sup>21</sup></b>	116	18
<b>TSA</b>	1	0
<b>FLETC</b>	8	0
<b>HQ EEO</b>	43	20
<b>USSS</b>	1	1
<b>TOTAL</b>	547	72

## 2. Collaborating and Leading the Department’s Components

In addition to the EEO Directors’ Council’s monthly meetings, throughout FY 2023, CRCL led quarterly meetings with the Component EEO Complaint Managers, providing opportunities for Components’ input on agenda topics and encouraging and facilitating discussions. This regular collaboration between CRCL and Components proved key in strengthening relationships and enabling managers within this community to share challenges and provide input on solutions and best practices.

CRCL’s EEO compliance program monitors Components’ implementation of remedial relief following findings of discrimination and reports compliance progress to the EEOC for EEOC-issued decisions in which discrimination was found. CMAS continued its collaboration with the EEOC’s compliance officer to effectively address the Department’s oldest cases pending full implementation.

Throughout FY 2023, CRCL also provided Components an objective assessment of the quality of their EEO Reports of Investigation (ROI) through the ROI Feedback Tool. Launched in FY 2016, the feedback tool enables CMAS to provide Components quarterly feedback on the quality

<sup>19</sup> These are employees from across the Department who serve as certified mediators working to resolve other Components’ complaints.

<sup>20</sup> USCG and USSS do not utilize the Shared Neutrals roster as part of their ADR programs.

<sup>21</sup> TSA primarily use contractors to provide mediation services for their ADR program.

(*i.e.*, legal sufficiency, organization, documentation, etc.) of their ROIs, whether prepared by internal personnel or by contractors. Additionally, CMAS continued to disseminate aggregate information on the quality of contractor-produced ROIs within the DHS EEO program to all Components. This aggregate information continues to provide Components with a snapshot of CMAS's assessments of the quality of ROIs issued by all contract firms and allows Components to make strategic decisions regarding their future ROI contractual needs. Throughout FY 2023, CMAS also provided the Components with Pending Election Reports, monthly reports on cases coming due for action to ensure that CMAS received timely FAD requests.

CRCL/CMAS is required to vet DHS employees nominated to receive certain high-level awards from DHS leadership. The vetting consists of a review of EEO complaint history to ensure there is no disqualifying information on the nominees, including having engaged in any discriminatory conduct. In FY 2023, CMAS processed 9 vetting requests totaling over 900 employees from across the Department, completing 100 percent of vetting requests by their requested or extended due date.

### 3. Issuances of Merit FADs

Merit FADs are issued by CRCL after the following events have occurred: at the Component level, a complainant files a formal complaint alleging discrimination (after participating in EEO counseling), the Component accepts and investigates the complaint, and if a complainant does not request a hearing before an EEOC AJ, the Component sends a FAD request to CRCL. This request may be made because the complainant specifically requested a FAD, the complainant filed of a mixed case,<sup>22</sup> the complainant failed to make an election before the expiration of the post-investigation election period, or because a FAD was ordered by an EEOC AJ after dismissal of the complaint from the hearing process. EEOC regulations, at 29 C.F.R. Part 1614, generally require the issuance of merit FADs within 60 days of election, or other event triggering the FAD request (the primary exception being mixed case FADs which are required to be issued in 45 days). Figure 13 shows CRCL's six-year trend in merit FAD issuances.

CRCL experienced a decrease in the number of incoming requests for merit FADs (464) in FY 2023, compared to those received in FY 2022 (510). CRCL's rate of timely FAD issuance impressively increased, from 48 percent (319 of 660) in FY 2022 to 95 percent (441 of 465) in FY 2023.<sup>23</sup> In addition, the average processing days decreased from 191 in FY 2022 to 44 in FY 2023.

---

<sup>22</sup> A mixed case is a complaint of employment discrimination that stems from an action that can be appealed to the Merit Systems Protection Board. In accordance with 29 C.F.R. § 1614.302(d)(2), the agency must issue a FAD within 45 days of completion of the investigation of a mixed case.

<sup>23</sup> In FY 2023, CRCL also surpassed its goal to issue 53 percent of merit-based final actions within regulatory timeframes by issuing 97 percent (885 of 913) timely final actions. These final actions included merit FADs and Final Orders.

**Figure 13: Merit FADs FY 2018 – FY 2023**

	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>2022</i>	<i>2023</i>
<b>Backlog at Year End</b>	172	311 <sup>24</sup>	407	178	3	0
<b>Total FADs Issued</b>	417	399	432	676	660	465
<b>Number Timely Issued</b>	152	83	74	128	319	441
<b>Percentage Timely</b>	37	21	17	19	48	95
<b>Average Processing Days</b>	173	238	315	328	191	44

In FY 2023, CRCL issued 465 merit FADs, which is a substantial decrease from the 660 FADs issued in FY 2022. The high number of FADs issued in FY 2021 and FY 2022 reflect the hard work that went into eliminating the FAD backlog. With the backlog cleared, CRCL was able to focus its resources on new incoming cases and, as noted above, 95 percent of the FADs were timely issued.

## CONCLUSION

The information in this report highlights the successes and challenges of the Department’s EEO program during FY 2023. Despite the year’s challenges, an impressive level of collaboration across the Department’s EEO programs continued through the EEO Directors’ Council, the ADR Shared Neutrals Program, the refinement of the Pending Election Reports, the continued use of the ROI Feedback Tool, regular engagement through the quarterly Complaint Managers meetings, and other initiatives. The Department’s EEO program continues to press forward and strengthen.

---

<sup>24</sup> In FY 2019, CRCL changed the method by which the FAD backlog was calculated by defining the backlog as any FAD request that had been pending with CRCL for more than 60 days. In previous fiscal years, the backlog was defined as a pending FAD request that had not been assigned to an Analyst. The backlog would have been 257 if the former calculation method was used. This newer method, however, is a truer measure of the actual backlog inventory in CRCL.

FY23 Annual No FEAR Act Report – Federal Court Cases

---

Department of Homeland Security

---

***Number of Cases Filed in Federal Court,  
Pending or Resolved Under Section 724.302(a)(1)***

	TITLE VII	ADEA	EPA	REHABILITATION ACT	GINA	WHISTLEBLOWER
Number of cases filed, pending, or resolved	177	40	2	65	0	9

***Number of Cases and Reimbursement by Status  
Under Section 724.302(a)(1-2)***

	TITLE VII	ADEA	EPA	REHABILITATION ACT	GINA	WHISTLEBLOWER
Cases pending hearing	113	29	2	41	0	4
Cases heard/pending decision	0	0	0	0	0	0
Decision issued in favor of the Complainant (either in its entirety or partial)	1	0	0	0	0	0
Decision issued in favor of the Agency	54	7	0	15	0	4
Arbitration/Mediation	4	0	0	0	0	0
Settlement	18	1	0	5	0	1
Appeal	17	3	0	4	0	1
Remand	0	0	0	0	0	0
Amount of Reimbursement	\$593,898.00	\$6,667.00	\$0	\$120,731.00	\$0	\$6,667.00
Amount of Reimbursement for Attorney Fees	\$24,269.00	\$0	\$0	\$24,269.00	\$0	\$0

***Number of Employees Disciplined in Cases Under Section 724.302(a)(3)***

	TITLE VII	ADEA	EPA	REHABILITATION ACT	GINA	WHISTLEBLOWER
Reprimand	1	0	0	0	0	0
Suspension without pay	0	0	0	0	0	0
Reduction of grade or pay	0	0	0	0	0	0
Removal	0	0	0	0	0	0

***Number of Employees Disciplined, Whether or Not in Connection with Federal Cases Under Section 724.302(a)(5) (i.e. Including EEO Administrative Cases)\****

	TITLE VII	ADEA	EPA	REHABILITATION ACT	GINA	WHISTLEBLOWER
Reprimand	16	0	0	0	0	0
Suspension without pay	22	0	0	0	0	0
Reduction of grade or pay	2	0	0	0	0	0
Removal	5	0	0	0	0	0

\*Two employees received two forms of discipline.

**Equal Employment Opportunity Data  
Posted  
Pursuant to the No Fear Act:  
Department of Homeland Security**

**For 4th Quarter 2023 for period ending  
September 30, 2023**

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2023Thru09-30
	2018	2019	2020	2021	2022	
Number of Complaints Filed	1482	1276	1283	1133	1654	1263
Number of Complainants	1423	1236	1216	1066	1560	1209
Repeat Filers	54	37	59	58	89	60

Complaints by Basis	Comparative Data					
	Previous Fiscal Year Data					2023Thru09-30
	2018	2019	2020	2021	2022	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>						
Race	507	418	465	391	465	428
Color	202	161	208	166	222	170
Religion	69	54	57	70	393	107
Reprisal	767	671	718	663	728	633
Sex	516	460	497	410	525	438

PDA	18	18	15	17	17	18
National Origin	269	182	222	216	215	231
Equal Pay Act	4	2	2	4	2	2
Age	414	384	433	373	431	351
Disability	423	413	418	348	514	492
Genetics	6	5	7	6	27	7
Non-EEO	87	67	88	99	107	99
<b>Complaints by Issue</b>	<b>Comparative Data</b>					
	<b>Previous Fiscal Year Data</b>					<b>2023 Thru 09-30</b>
<b>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed. Starting in FY2022, issues marked with:* are reported under Other Terms / Conditions of Employment.** are reported under Other Disciplinary Actions.</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	
Appointment/Hire	103	97	111	67	86	81
Assignment of Duties*	0	0	0	0	0	0
Awards	24	19	25	21	28	23
Conversion to Full Time/Perm Status*	0	0	0	0	0	0
<b>Disciplinary Action</b>						
Demotion	14	11	11	11	6	9
Reprimand**	0	0	0	0	0	0
Suspension	88	66	74	65	68	61
Removal	39	38	23	32	34	22
Disciplinary Warning**	0	0	0	0	0	0
Other Disciplinary Actions**	140	117	118	122	145	92



Other 2**	0	0	0	0	0	0
Duty Hours*	0	0	0	0	0	0
Perf. Eval./ Appraisal	147	131	136	130	134	91
Examination/Test	27	14	11	5	16	9
<b>Harassment</b>						
Non-Sexual	640	622	689	575	649	573
Sexual	66	45	52	32	52	30
Medical Examination	34	38	30	18	200	38
Pay including overtime	45	50	58	37	53	42
Promotion/Non-Selection	243	218	203	171	207	178
<b>Reassignment</b>						
Denied	34	22	24	19	27	46
Directed	53	42	40	29	53	0
Reasonable Accommodation Disability	116	132	128	91	129	115
Reinstatement*	0	0	0	0	0	0
Religious Accommodation	12	7	9	13	41	21
Retirement*	0	0	0	0	0	0
Sex-Stereotyping	1	0	1	0	0	1
Telework	19	15	31	22	26	24
Termination	157	132	139	108	113	128
Terms/Conditions of Employment*	0	0	0	0	0	0
Time and Attendance	109	105	111	123	116	107
Training	35	39	37	28	63	58
Other Terms/Conditions of Employment*	476	334	332	339	597	278
User Defined - Other 1*	0	0	0	0	0	0

User Defined - Other 2*	0	0	0	0	0	0
User Defined - Other 3*	0	0	0	0	0	0
User Defined - Other 4*	0	0	0	0	0	0
<b>Processing Time</b>	<b>Comparative Data</b>					
	<b>Previous Fiscal Year Data</b>					<b>2023Thru09-30</b>
	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	
Complaints pending during fiscal year						
Average number of days in investigation	274.56	287.83	241.53	274.18	266.91	275.80
Average number of days in final action	107.22	122.62	159.13	199.80	117.03	36.93
Complaint pending during fiscal year where hearing was requested						
Average number of days in investigation	253.14	270.81	226.79	250.26	269.53	268.17
Average number of days in final action	65.12	71.44	87.11	83.54	76.23	33.05
Complaint pending during fiscal year where hearing was not requested						
Average number of days in investigation	307.43	309.71	272.27	308.47	260.54	297.73
Average number of days in final action	177.73	284.60	347.91	368.07	174.85	44.97
<b>Complaints Dismissed by Agency</b>	<b>Comparative Data</b>					
	<b>Previous Fiscal Year Data</b>					<b>2023Thru09-30</b>
	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	
Total Complaints Dismissed by Agency	183	95	108	78	123	376
Average days pending prior to dismissal	278	189	321	236	242	242
<b>Complaints Withdrawn by Complainants</b>						

Total Complaints Withdrawn by Complainants	163	175	156	124	142	175						
<b>Total Final Agency Actions Finding Discrimination</b>	<b>Comparative Data</b>											
	<b>Previous Fiscal Year Data</b>										<b>2023Thru09-30</b>	
	<b>2018</b>		<b>2019</b>		<b>2020</b>		<b>2021</b>		<b>2022</b>			
	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>
Total Number Findings	8		15		44		9		22		27	
Without Hearing	0	0	0	0	0	0	0	0	0	0	7	0
With Hearing	0	0	0	0	0	0	0	0	0	0	20	0
<b>Findings of Discrimination Rendered by Basis</b>	<b>Comparative Data</b>											
	<b>Previous Fiscal Year Data</b>										<b>2023Thru09-30</b>	
	<b>2018</b>		<b>2019</b>		<b>2020</b>		<b>2021</b>		<b>2022</b>			
	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>												
<b>Total Number Findings</b>	8		15		44		9		22		27	
Race	2	25	5	33	9	20	1	11	1	5	11	41
Color	2	25	1	7	4	9	0	0	1	5	5	19
Religion	0	0	0	0	0	0	0	0	0	0	1	4
Reprisal	8	100	5	33	22	50	2	22	15	68	9	33
Sex	2	25	5	33	14	32	3	33	3	14	12	44
PDA	0	0	0	0	1	2	0	0	0	0	0	0
National Origin	1	13	0	0	9	20	1	11	3	14	5	19
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	1	4
Age	0	0	5	33	13	30	1	11	3	14	6	22
Disability	4	50	4	27	16	36	5	56	12	55	8	30



Age	0	0	5	45	5	26	1	17	1	7	1	14
Disability	0	0	3	27	5	26	3	50	7	47	1	14
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	2	11	0	0	0	0	0	0

Starting in FY2022, issues marked with:\* are reported under Other Terms / Conditions of Employment.\*\* are reported under Other Disciplinary Actions.

Findings of Discrimination Rendered by Issue	Comparative Data											
	Previous Fiscal Year Data										2023Thru09-30	
	2018		2019		2020		2021		2022			
	#	%	#	%	#	%	#	%	#	%	#	%
<b>Total Number Findings</b>	8		15		42		9		22		27	
Appointment/Hire	0	0	1	7	3	7	0	0	0	0	0	0
Assignment of Duties*	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	1	7	2	5	0	0	0	0	0	0
Conversion to Full Time/Perm Status*	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	1	5	0	0
Reprimand**	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	1	7	1	2	0	0	0	0	0	0
Removal	1	13	2	13	1	2	1	11	0	0	0	0
Other Disciplinary Actions**	0	0	0	0	1	2	0	0	0	0	3	11
Duty Hours*	0	0	0	0	0	0	0	0	0	0	0	0
Perf. Eval./ Appraisal	1	13	2	13	8	19	0	0	0	0	2	7
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	3	38	6	40	19	45	3	33	8	36	11	41



User Defined - Other 4*	0	0	0	0	0	0	0	0	0	0	0	0
<b>Findings After Hearing</b>	7		4		24		3		7		20	
Appointment/Hire	0	0	0	0	3	13	0	0	0	0	0	0
Assignment of Duties*	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	1	25	1	4	0	0	0	0	0	0
Conversion to Full Time/Perm Status*	0	0	0	0	0	0	0	0	0	0	0	0
<b>Disciplinary Action</b>												
Demotion	0	0	0	0	0	0	0	0	1	14	0	0
Reprimand**	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	1	4	0	0	0	0	0	0
Removal	1	14	1	25	1	4	0	0	0	0	0	0
Other Disciplinary Actions**	0	0	0	0	0	0	0	0	0	0	3	15
Duty Hours*	0	0	0	0	0	0	0	0	0	0	0	0
Perf. Eval./ Appraisal	1	14	0	0	5	21	0	0	0	0	2	10
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
<b>Harassment</b>												
Non-Sexual	3	43	2	50	12	50	0	0	2	29	9	45
Sexual	1	14	0	0	1	4	0	0	0	0	2	10
Medical Examination	1	14	0	0	1	4	0	0	0	0	0	0
Pay including overtime	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	1	25	4	17	0	0	0	0	7	35
<b>Reassignment</b>												
Denied	1	14	0	0	1	4	0	0	0	0	1	5







Retirement*	0	0	0	0	0	0	0	0	0	0	0	0
Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	1	6	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	1	14
Terms/Conditions of Employment*	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	1	6	1	17	1	7	0	0
Training	0	0	1	9	0	0	0	0	0	0	0	0
Other Terms/Conditions of Employment*	0	0	3	27	3	17	1	17	4	27	0	0
User Defined - Other 1*	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 2*	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 3*	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 4*	0	0	0	0	0	0	0	0	0	0	0	0
<b>Pending Complaints Filed in Previous Fiscal Years by Status</b>	<b>Comparative Data</b>											
	<b>Previous Fiscal Year Data</b>					<b>2023Thru09-30</b>						
	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>							
Total complaints from previous Fiscal Years	1783	1826	1667	1320	935	875						
Total Complainants	1609	1672	1547	1213	875	829						
<b>Number complaints pending</b>												
Investigation	81	105	84	150	248	364						
ROI issued, pending Complainant's action	22	32	10	15	5	10						
Hearing	1353	1207	1012	807	561	392						
Final Agency Action	291	459	517	321	118	110						

Appeal with EEOC Office of Federal Operations	759	971	1122	519	531	492
<b>Complaint Investigations</b>	<b>Comparative Data</b>					
	<b>Previous Fiscal Year Data</b>					<b>2023Thru09-30</b>
	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	
Pending Complaints Where Investigations Exceed Required Time Frames	163	123	108	234	366	436

# GLOSSARY OF TERMS

ADR	Alternative Dispute Resolution
AJ	Administrative Judge
CBP	U.S. Customs and Border Protection
CMAS	Complaints Management and Adjudication Section
CRCL	Office for Civil Rights and Civil Liberties
EEOC	U.S. Equal Employment Opportunity Commission
EEOC OFO	Office of Federal Operations
FAD	Final Agency Decision
FEMA	Federal Emergency Management Agency
FLETC	Federal Law Enforcement Training Centers
FO	Final Order
HQ EEO	Headquarters EEO Office
ICE	U.S. Immigration and Customs Enforcement
OPM	Office of Personnel Management
ROI	Report of Investigation
TSA	Transportation Security Administration
USCIS	U.S. Citizenship and Immigration Services
USCG	U.S. Coast Guard
USSS	U.S. Secret Service