

# Congress of the United States

## Washington, DC 20515

April 4, 2022

Chris Magnus  
Commissioner  
U.S. Customs and Border Protection  
1300 Pennsylvania Avenue, N.W.  
Washington, D.C. 20229

Dear Commissioner Chris Magnus,

We write to congratulate you on your appointment and confirmation to lead U.S. Customs and Border Protection (CBP) and to express the urgent need to implement humane border policies which prioritize transparency and accountability within the agency. We expect your decades of law enforcement and community policing experience in the border region to contribute to the adoption of evidence-based policies and best practices to build a culture of integrity within CBP.

While the Biden Administration has made efforts to rescind the racist and inhumane border policies of the Trump Administration, policies such as Title 42 and the Migrant Protection Protocols persist, leaving migrants vulnerable to mistreatment at the hands of Border Patrol agents, and susceptible to violence and exploitation in Mexico and in home or third countries to which individuals are forcibly returned.

Migrants waiting to be processed at the border face atrocious conditions in CBP facilities. Leaked photos of CBP facilities in Yuma, Arizona<sup>1</sup> show migrants held in conditions that are unsanitary, overcrowded, and that do not appear to adopt Centers for Disease Control and Prevention (CDC) guidance for correctional and detention facilities regarding measures that mitigate risks of COVID spread.<sup>2</sup> Mistreatment of migrants at the hands of Border Patrol agents is prevalent while disciplinary mechanisms for these agents are unclear. Department of Homeland Security (DHS) records obtained through a Freedom of Information Act (FOIA) request<sup>3</sup> found cases of abuse of asylum seekers and misconduct by CBP officers and Border Patrol agents from 2016 to 2021. As of March 1, 2022, the American Civil Liberties Union (ACLU) of Texas reports a total of 216 fatal encounters<sup>4</sup> and CBP itself recorded 768 “use-of-force” incidents during fiscal year 2021.<sup>5</sup> Over just the last two years the number of deaths resulting from Border Patrol vehicle pursuits have risen 11-fold, from just 2 in 2019 to a record high 22 in 2021.<sup>6</sup> Both the agency’s “use-of-force” policy and vehicle pursuit policy require updating. Not holding agents accountable for misconduct or fully investigating cases of alleged misconduct is unacceptable.

The list of issues plaguing CBP is unacceptably long and addressing them is integral to treating migrants, border community residents, and all others who encounter CBP with dignity and respect. Therefore, we believe the following recommendations will add transparency and accountability to CBP:

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<sup>1</sup> [Leaked Photos Reveal Inhumane Conditions in Border Processing Centers \(immigrationimpact.com\)](https://www.immigrationimpact.com/leaked-photos-reveal-inhumane-conditions-in-border-processing-centers)

<sup>2</sup> [Guidance on Management of Coronavirus Disease 2019 \(COVID-19\) in Correctional and Detention Facilities | CDC](https://www.cdc.gov/media/releases/2019/s110519-covid-19-correctional-detention.html)

<sup>3</sup> [Internal DHS Reports of Abuses by US Border Officials | HRW](https://www.hrw.org/report/2021/08/02/internal-dhs-reports-of-abuses-by-us-border-officials)

<sup>4</sup> [CBP Fatal Encounters Tracker | ACLU of Texas | We defend the civil rights and civil liberties of all people in Texas, by working through the legislature, the courts, and in the streets. \(aclutx.org\)](https://www.aclutx.org/cbp-fatal-encounters-tracker)

<sup>5</sup> [Assaults and Use of Force Statistics | U.S. Customs and Border Protection \(cbp.gov\)](https://www.cbp.gov/newsroom/stats/assaults-and-use-of-force-statistics)

<sup>6</sup> [Fact Sheet: The Deadly Trend of Border Patrol Vehicle Pursuits | ACLU of Texas | We defend the civil rights and civil liberties of all people in Texas, by working through the legislature, the courts, and in the streets. \(aclutx.org\)](https://www.aclutx.org/fact-sheet-the-deadly-trend-of-border-patrol-vehicle-pursuits)

### Accountability and Transparency:

- Depart from CBP-only oversight and self-accountability by implementing independent and external investigations.
- Address the culture of racism, violence, domestic violent extremism, and sexism that plagues the agency as exemplified by CBP personnel’s “I’m 10-15” Facebook page and emphasized by the DHS inspector general’s conclusion that “although OFO officials took action in response to social media misconduct during that period, CBP and Border Patrol headquarters officials did not, except when required to do so.”<sup>7</sup>
- Require CBP officers, including Border Patrol agents, to always wear badges visible to all individuals they encounter, and provide all relevant identifying information in writing.
- Issue updated profiling guidance, following up on the U.S. Department of Justice’s (DOJ) 2014 Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, and Gender Identity. Explicitly prohibiting profiling based on actual or perceived race, religion, national origin, sexual orientation, or gender (including gender identity and expression), without any exceptions.
- Require annual certifications for all existing Border Patrol agents in the following topics: use-of-force, sexual violence and sex discrimination, foreign languages (particularly Spanish), cultural competence and bias/racism training, and working with traumatized and vulnerable populations.
- Direct the CBP Office of Professional Responsibility to develop and publish disciplinary guidelines for all CBP officials and empower it to take direct disciplinary measures as a result of its investigations.
- Ensure adequate oversight of the expansion of CBP’s body-worn camera program by prioritizing privacy rights and engaging with impacted communities and stakeholders in the development of relevant policies and rollout.
- Engage in meaningful dialogue and consultation with tribal nations, impacted communities, stakeholders, and individuals.

### Migrant Holding Facilities:

- Limit CBP custody to the minimum period necessary for processing.
- Ensure safe and sanitary conditions in facilities. Instead of expelling individuals with no due process under Title 42, implement CDC recommended safety measures to prevent the spread of COVID-19.
- Prohibit the detention of pregnant, postpartum, and breastfeeding people, beyond the minimum period necessary for initial processing. U.S. Immigration and Customs Enforcement (ICE) already adopted a similar policy.<sup>8</sup>
- Establish an access directive for CBP facilities similar to the ICE access directive for CBP facilities to permit third party monitoring to ensure that individuals in CBP facilities receive proper care and treatment and that their rights are respected.
- Ensure compliance with TEDS<sup>9</sup> and the Flores settlement agreement.<sup>10</sup>

### Use of Force and Fatal Practices:

- Curtail the use of vehicle pursuits, update vehicle pursuit policy, and adopt oversight measures.
- Adopt a standardized shooting review process that utilizes incident mapping and analysis software.
- Strengthen use-of-force standards to prohibit agents and officers from using deadly force unless necessary, and only after all reasonable alternatives have been exhausted.
- Require the agency to publish the facts of any use-of-force incident that results in serious injury or death within 24 hours.

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<sup>7</sup> [OIG-21-34 - CBP Senior Leaders' Handling of Social Media Misconduct \(dhs.gov\)](#)

<sup>8</sup> [Directive 11032.4: Identification and Monitoring of Pregnant, Postpartum, or Nursing Individuals \(ice.gov\)](#)

<sup>9</sup> [CBP National Standards on Transport, Escort, Detention, and Search | U.S. Customs and Border Protection](#)

<sup>10</sup> [Child Migrants at the Border: The Flores Settlement Agreement and Other Legal Developments \(fas.org\)](#)

- Publish comprehensive data on all use-of-force incidents on a quarterly basis.
- Create a policy to report use-of-force incidents by peers and supervisors and to intervene when feasible to stop other officers from using force in violation of agency standards and prohibit retaliation.
- Commission an independent review of all use-of-force fatalities in the last 10 years to identify patterns and practices of use-of-force misuse.

Critical Incident Teams:

- Immediately suspend Border Patrol Critical Incident Teams (BP CITs) and ban their involvement in investigations into deadly incidents. In order to determine the legitimacy and authorization of BP CITs promptly identify and release all:
  - BP CIT reports from cases that resulted in deaths or injuries and the statutory authority under which BP CITs operate and become involved in investigations;
  - Policies and procedures that regulate BP CIT activities; and
  - Memorandum(s) of agreement, formal delegation, or other formal arrangement that exists between these Border Patrol teams and other applicable agencies.
- Engage an independent investigative agency outside of DHS to review all past cases involving BP CITs and issue a report detailing findings and recommendations.

Checkpoints:

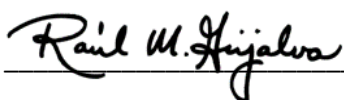
- Minimize or eliminate use of Border Patrol interior checkpoints.
- Collect and publish data on checkpoints to identify patterns of profiling and abuse, including location, data collected during patrol stops, identifying characteristics of the motorist and the basis for the stop, whether the search was completed, and whether force was used.

Humanitarian Concerns:

- Halt any intimidation, harassment, or stigmatization and criminal prosecution of humanitarian aid volunteers.
- Restrict the tactic of “scattering” migrants as part of the prevention through deterrence approach causing migrants to become disoriented, lost, and separated from family members and travelling companions.
- Work with NGOs and local shelters to continue to advocate for federal grants supporting welcome centers focused on welcoming new arrivals, facilitating safe onward travel, and connecting asylum seekers to services in their destination locations.
- Implement guidelines for identification and repatriation of deceased migrants.
- Establish water cooling stations at ports of entry and implement emergency first aid plans.

We thank you for your attention to these issues and for your consideration of the above recommendations. Protecting the legal right to seek asylum is integral to a humane border solution and these recommendations are critical to achieving that goal. We look forward to working with you to improve transparency and accountability within CBP and ensure that all individuals regardless of immigration status are treated humanely and with dignity.

Sincerely,



**Raúl M. Grijalva**  
Member of Congress



**Veronica Escobar**  
Member of Congress



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**Ann Kirkpatrick**  
Member of Congress



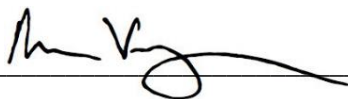
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**Juan Vargas**  
Member of Congress



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**Joaquin Castro**  
Member of Congress



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**Marc Veasey**  
Member of Congress