



February 6, 2023

The Honorable James Comer
Chairman
House Committee on Oversight and Accountability
2157 Rayburn House Office Building
Washington, DC 20515

The Honorable Jamie Raskin
Ranking Member
House Committee on Oversight and Accountability
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Comer, Ranking Member Raskin, and members of the Committee:

The Project On Government Oversight (POGO) respectfully submits this letter for entry into the record for your February 7, 2023, hearing, “On the Front Lines of the Border Crisis: A Hearing with Chief Patrol Agents.”

POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

The United States, along with many countries in the western hemisphere, is experiencing historically high levels of migration, which presents serious logistical and humanitarian challenges along migration routes and at the U.S.-Mexico border — particularly to the lives of migrants themselves.¹ The U.S. is also facing a very large number of fentanyl overdoses, with much of the supply coming through ports of entry at the southern border.² These are important subjects for congressional inquiry. But rhetoric accompanying these discussions has serious ramifications.

¹ Ariel G. Ruiz Soto, “Record-Breaking Migrant Encounters at the U.S.-Mexico Border Overlook the Bigger Story,” Migration Policy Institute, October 2022, accessed January 30, 2023, <https://www.migrationpolicy.org/news/2022-record-migrant-encounters-us-mexico-border>; Mica Rosenberg, Kristina Cooke, and Daniel Trotta, “The Border’s Toll,” Reuters, July 25, 2022, <https://www.reuters.com/investigates/special-report/usa-immigration-border-deaths/>; Russell Contreras, “Border cities again see low violent crime rates,” *Axios*, October 18, 2022, <https://www.axios.com/2022/10/18/crime-fbi-mexico-border-homicides>.

² Nick Miroff et al., “Cause of death: Washington faltered as fentanyl gripped America,” *Washington Post*, December 12, 2022, <https://www.washingtonpost.com/investigations/interactive/2022/dea-fentanyl-failure/>; Joel Rose, “Many Americans falsely think migrants are bringing most of the fentanyl entering the U.S.,” NPR, August 18, 2022, <https://www.npr.org/2022/08/18/1118271910/many-americans-falsely-think-migrants-are-bringing-most-of-the-fentanyl-entering>.

White supremacist terrorists who committed massacres in El Paso, Pittsburgh, Buffalo, and elsewhere have justified their attacks with false, racist claims of an “invasion” or a planned “replacement” of white people by people of color.³ It is crucial that Congress refrain from demonizing migrants with false claims that they are responsible for the fentanyl epidemic, or with racist rhetoric of an “invasion” of the United States or “replacement” of its citizens.

Moreover, whatever external challenges U.S. Customs and Border Protection faces, they should not be an excuse for delaying urgently needed internal reforms for the agency. There are several areas that demand congressional oversight. They include:

- **Addressing workplace sexual misconduct and violent crime by CBP officials.** There are a disturbing number of allegations of CBP officers committing horrific violent crimes off-duty (including rape, murder, and child sexual abuse), engaging in sexual misconduct, and mistreating their co-workers and subordinates.⁴ The agents committing these crimes are obviously not representative of most officers. But given other evidence of serious culture problems at CPB, these crimes also cannot be dismissed as isolated incidents.

According to a draft report by the Department of Homeland Security’s Office of the Inspector General (DHS IG) disclosed by POGO last year, 10,000 out of roughly 28,000 DHS law enforcement officials surveyed by the DHS IG said that they had experienced sexual harassment or sexual misconduct at work. Only 22% of those employees had formally reported the incident, and 41% of those who did report said that doing so “negatively affected their careers.”⁵

³ “How the ‘Great Replacement’ Myth Inspired a Wave of Racist Terrorist Attacks,” *Vice News*, July 11, 2022, <https://www.vice.com/en/article/v7vezb/great-replacement-theory-decade-of-hate>; Will Carless, “‘Replacement theory’ fuels extremists and shooters. Now a top Border Patrol agent is spreading it,” *USA Today*, updated May 15, 2022, <https://www.usatoday.com/story/news/nation/2022/05/06/great-replacement-theory-border-patrol-racist-talking-point/9560233002/>.

⁴ Eileen Sullivan, “Top Border Patrol Official Resigned Amid Allegations of Improper Conduct,” *New York Times*, January 21, 2023, <https://www.nytimes.com/2023/01/21/us/politics/top-border-patrol-official-resigned.html>; Tim Steller, “Sex crime arrests too common among Border Patrol agents,” *Tucson.com*, updated June 13, 2022, https://tucson.com/news/local/govt-and-politics/tim-stellers-opinion-sex-crime-arrests-too-common-among-border-patrol-agents/article_87a358b8-aed7-11eb-bded-93600218e338.html; Rick Jervis, “Border Patrol Agent’s murder trial the latest in string of incidents stirring distrust,” *USA Today*, November 27, 2022, <https://www.usatoday.com/story/news/nation/2022/11/27/murder-trial-laredo-border-patrol-agent-juan-david-ortiz/10762769002/>; Caleb J. Fernández, “Former Border Patrol agent found guilty on 11 counts of sexual assault,” *KGUN 9 Tucson*, December 27, 2022, <https://www.kgun9.com/news/local-news/former-border-patrol-agent-found-guilty-on-11-counts-of-sexual-assault>; Human Rights Watch, “*They Treat You Like You Are Worthless*: Internal DHS Reports of Abuses by US Border Officials” (October 21, 2021), <https://www.hrw.org/report/2021/10/21/they-treat-you-you-are-worthless/internal-dhs-reports-abuses-us-border-officials>; Corky Siemaszko, “Former CBP agent accused of sexually assaulting a minor was caught on video threatening his accuser,” *NBC News*, December 6, 2022, <https://www.nbcnews.com/news/us-news/former-cbp-agent-accused-sexually-assaulting-minor-was-caught-video-th-rana60222>; Manny Fernandez and Mitchell Ferman, “Senior Border Patrol Agent Faces Charge of Sexually Assaulting Colleague,” *New York Times*, October 5, 2019, <https://www.nytimes.com/2019/10/05/us/border-patrol-sexual-assault.html>; Malik Earnest, “Family of Border Patrol agent who killed himself charged in 11-year-old girl’s death,” *CBS8 News*, updated November 9, 2022, <https://www.cbs8.com/article/news/local/family-of-agent-who-committed-suicide-charged-in-11-year-old-daughters-death/509-9982a486-a319-436c-b1c0-8bddb6126bfa>.

⁵ Adam Zagorin and Nick Schwellenbach, “Protecting the Predators at DHS,” *Project On Government Oversight*, April 7, 2022, <https://www.pogo.org/investigation/2022/04/protecting-the-predators-at-dhs>.

Former CBP Commissioner Chris Magnus, who was forced to resign in November, recently told the *New York Times* that several women who worked within the agency described reporting sexual misconduct as “pointless” because “[t]oo many of these guys just sort of stick together and protect each other. ... It’s a culture of a wink and a nod.”⁶

Another draft DHS IG report uncovered by POGO outlines problems with domestic violence within the ranks of DHS law enforcement. The report documented 30 cases where DHS officials had been allowed to keep their jobs and service weapons despite substantiated allegations of domestic violence against them.⁷

- **Replacing Joseph Cuffari with an effective inspector general.** POGO released text from the draft DHS reports on sexual misconduct and domestic violence after DHS Inspector General Joseph Cuffari chose not to alert Congress to his office’s findings — two in a long line of instances where Cuffari has failed at his crucial mission.⁸ We have repeatedly called for his removal and replacement with an independent, qualified inspector general.
- **Reining in the Border Patrol’s overly broad jurisdiction to operate checkpoints and conduct roving patrols within a “reasonable distance” of the border.** Federal regulations permit Border Patrol to operate in an incredibly expansive stretch of U.S. territory: 100 air miles from any land or maritime border. This means that over two-thirds of Americans live in the “border zone” and can be subject to stops at checkpoints based on no suspicion whatsoever. Instead of this overbroad, one-size-fits-all authority, which could be abused for surveillance of U.S. citizens and longtime residents as well as migrants, DHS should assess *sector by sector* what constitutes a “reasonable distance” from the border for the Border Patrol to exercise enhanced search powers.⁹
- **Forbidding the use of racial and religious profiling by CBP.** In 2014, the Justice Department banned federal law enforcement agencies from engaging in profiling on the basis of race, ethnicity, religion, sexual orientation, or gender. Over the then-attorney general’s objections, the policy made exceptions to allow consideration of race and ethnicity for activities “in the vicinity of the border,” as well as in national security investigations. Those exceptions should be removed.¹⁰

⁶ Eileen Sullivan, “Top Border Patrol Official Resigned Amid Allegations of Improper Conduct,” *New York Times*, January 21, 2023, <https://www.nytimes.com/2023/01/21/us/politics/top-border-patrol-official-resigned.html>.

⁷ Zagorin and Schwellenbach, “Protecting the Predators at DHS,” [see note 5].

⁸ Zagorin and Schwellenbach, “Protecting the Predators at DHS,” [see note 5]; Nick Schwellenbach, “DHS Watchdog Staff Call on Biden to Fire Inspector General Cuffari,” Project On Government Oversight, September 23, 2022, <https://www.pogo.org/investigation/2022/09/dhs-watchdog-staff-call-on-biden-to-fire-inspector-general-cuffari>.

⁹ Katherine Hawkins, *The Border Zone Next Door, and Its Out-of-Control Police Force*, Project On Government Oversight, (January 10, 2023), <https://www.pogo.org/report/2023/01/the-border-zone-next-door-and-its-out-of-control-police-force>.

¹⁰ Hawkins, *The Border Zone Next Door*, [see note 9].

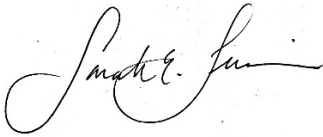
- **Reforming CBP’s complaint, investigation, and discipline process.** When CBP officials mistreat people in their custody, there is little recourse. The entire life cycle of complaints at the agency — from filing through acknowledgment, investigation, and outcome — fails to meet basic standards of responsiveness and redress. Complaints are shuffled around, victims may not even receive acknowledgment that their allegations will be investigated, and discipline is generally inconsistent and often reduced.¹¹

Until recently, Border Patrol “critical incident teams” were responsible for investigating fatal shootings, vehicle crashes, and other use-of-force incidents by their colleagues, a clear conflict of interest.¹² The transfer of that function to the Office of Professional Responsibility is a step in the right direction, as is the Border Patrol’s recent revision of its vehicle pursuit policy.¹³ But how meaningful those changes are will depend on their implementation, and on leadership and supervisors’ willingness to impose recommended discipline on officers when they abuse their authority.

As our leaders in Washington look for ways to increase safety for all of those living along our southern border, it is critical that Congress and the administration not lower hiring standards for an agency already struggling so much with accountability. Customs and Border Protection should not be expanded; it should be reformed to better meet its mission and to protect individual rights.

Thank you for the opportunity to submit this information.

Sincerely,



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Director, The Constitution Project at POGO

¹¹ Sarah Turberville and Chris Rickerd, *An Oversight Agenda for Customs and Border Protection: America’s Largest, Least Accountable Law Enforcement Agency*, Project On Government Oversight, (October 12, 2021), <https://www.pogo.org/report/2021/10/an-oversight-agenda-for-customs-and-border-protection-americas-largest-least-accountable-law-enforcement-agency>.

¹² Eileen Sullivan, “Customs and Border Protection Will Disband Secretive ‘Critical Incident Teams,’” *New York Times*, May 6, 2022, <https://www.nytimes.com/2022/05/06/us/politics/border-protection-critical-incident-teams.html>.

¹³ Eric Katz, “DHS’ New Limited Policy On Vehicle Chases Brings Hope for Ending Unnecessary Deaths,” *Government Executive*, January 13, 2023, <https://www.govexec.com/management/2023/01/groups-hopeful-dhs-new-limited-chase-policy-will-end-unnecessary-deaths/381825/>.