



2401 Dodson Avenue
Del Rio, TX 78840

**U.S. Customs and
Border Protection**

December 3, 2019

COR

Border Patrol Agent
Del Rio Sector – Carrizo Springs Station
Carrizo Springs, Texas

Agent **COR**

By letter dated August 19, 2019, which you received on August 20, 2019, you were notified of a proposal to remove you from your position of a Border Patrol Agent, GS-1896-12. You were charged with **CONDUCT UNBECOMING A BORDER PATROL AGENT (BPA)**.

You were also advised of your right to reply to the proposed action orally, in writing, or both, and to furnish affidavits and other documentary evidence in support of your reply. On November 1, 2019, you and your representative, [REDACTED] presented an oral reply.

I have carefully considered the reasons for the proposed action, the entire case file, and your oral reply. I have determined that the misconduct is supported by a preponderance of evidence; therefore, the Charge, as stated in the proposal, is sustained.

In determining an appropriate penalty, I considered all the relevant factors set forth in *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981). In determining whether removal is appropriate, I considered that this offense was serious and related to your position. As a law enforcement officer, you are held to a higher standard of conduct than other Customs and Border Protection (CBP) employees that requires trust, honesty, integrity, and the exercise of sound judgement at all times. As such, you are expected to know and adhere to all CBP rules, regulations, policies and procedures. This includes, but is not limited to, CBP Directive Number 51735-013A, Standards of Conduct, Sections 3.1, 6.7.3, and 6.11.2. Your conduct in this case directly contradict the standards expected of you.

In your November 1, 2019 oral reply, [REDACTED] explained that you do not remember reading Assistant Commissioner (AC) Klein's memorandum, dated February 8, 2018, regarding the use of social media. Nevertheless you do remember hearing something about the use of social media. [REDACTED] further explained that your interruption of the guidance was in reference to the use of social media while on duty. Therefore you believed that you did not violate Agency policy. However, AC Klein's memorandum was clear in stating the Agency's expectation of employees in the use of social media if there is a nexus to the workplace. It further places employees on clear notice that if such messages are deemed inappropriate; those messages are not a form of protected speech and violates the Standards of Conduct.

Furthermore, I considered that the "I'm 10-15" group Facebook page gained adverse national notoriety. In specific to your case, *The Intercept* article mentioned in your proposal letter printed your "I'm 10-15" post and mentioned you by name. In your November 1, 2019 oral reply, [REDACTED] argued that you were not referred to specifically as a Border Patrol Agent but rather as a Carrizo Springs resident and for this reason a nexus was not created. On the contrary, the

context of *The Intercept* article directly referred to Border Patrol Agents and the private Facebook page, therefore by a preponderance of evidence, a reasonable person would believe that you were a CBP employee.

The conduct of our law enforcement officers both on and off-duty is essential to the success of the reputation of CBP. I believe your derogatory post tarnished our reputation and undermined our credibility with the public we serve. Your conduct failed to comply with Agency policy and thus, you failed to meet the standards of conduct expected of a law enforcement officer.

I also considered mitigating factors you and your representative brought up in your oral reply, such as the current political climate surrounding your post, you admitting to the misconduct and you admitting that your post was in poor taste. In addition, I considered your sincerely apology for bringing shame to not only the Service but to your family and friends as well.

While I did considered that you have over 14 years of federal service, your successful work performance, lack of prior discipline and alternative sanctions; I believe the seriousness of your actions outweigh any mitigating circumstances in this case. Due to the nature of your duties and the low expectation of recovery from the negative media attention your post brought to the Agency; my confidence in your ability to perform the duties of your position is depleted and there is no potential for rehabilitation.

Accordingly, I have decided to remove you from your position and from Federal employment. This action is being taken for just and sufficient cause in order to promote the efficiency of the Service. Your removal will be effective upon receipt of this letter.

A Standard Form 50, Notification of Personnel Action, documenting this action will be placed in your Electronic Official Personnel Folder.

You have the right to contest this action under the following options. You may elect **only one** option and your election will be considered final on the date any grievance, appeal, or complaint is filed.

1. **MSPB Appeal.** You have the right to appeal this action to the Merit Systems Protection Board (MSPB). Your appeal may also include allegations that the action is based on discrimination or in reprisal for whistleblowing.

Appeals to MSPB must be filed no later than 30 days after the effective date, if any, of this action, or 30 days after the date of receipt of this letter, whichever is later. 5 C.F.R. §1201.22. If you do not submit an appeal within the time set by statute, regulation, or order of a judge, it will be dismissed as untimely filed unless a good reason for the delay is shown. The judge will provide you an opportunity to show why the appeal should not be dismissed as untimely.

You may access the MSPB appeal form and MSPB regulations at www.mspb.gov. Paper copies are available upon request. If you decide to appeal to MSPB, you may file your appeal electronically via MSPB's online appeal system (<https://e-appeal.mspb.gov>), by facsimile at (214) 767-0102, by mail, commercial overnight delivery, or personal delivery to the Regional Director, Merit Systems Protection Board, 1100 Commerce Street, Room 620, Dallas, TX 75242-9979. You must submit two copies of both your appeal and all attachments. To assist MSPB in processing your appeal, your petition should inform them to send the Acknowledgment Order and a copy of the appeal to [REDACTED]

2. **EEO Complaint.** If you believe that this action is based on discrimination because of your race, color, religion, national origin, sex (including sexual orientation), age, disability, genetic information, or reprisal for prior EEO activity, you may file a complaint with CBP's Privacy and Diversity Office (PDO), in accordance with the Equal Employment Opportunity (EEO) discrimination complaint procedures found in 29 C.F.R. Part 1614. If you believe this action is based on discrimination because of your status as a parent, you may file a complaint pursuant to DHS's modified complaint procedure.

You must seek EEO counseling from PDO within **45** calendar days of the date of receipt of this letter. You can initiate EEO counseling by calling (1-877) MY-EEO-HELP (1-877-693-3643), sending an email to: cbpeeocomplaintfiling@dhs.gov, or by contacting your servicing PDO Officer.

3. **OSC Complaint.** If you allege that this personnel action is being taken against you because of reprisal for whistleblowing, you may seek corrective action by filing a complaint with the Office of Special Counsel (OSC).

If OSC fails to complete its review of your whistleblower reprisal allegation within 120 days after it receives your complaint, or it closes your complaint without seeking corrective action on your behalf, you may appeal this action to MSPB within 65 days from the date of OSC's written notice, or 60 days from your receipt of OSC's written notice, whichever is later.

You may access the OSC complaint form (OSC-11) and OSC procedures at www.osc.gov. If you decide to file a complaint with OSC, you may file electronically via OSC's online complaint system (www.osc.gov), by facsimile at (202-254-3711), by mail or commercial overnight delivery to: Complaints Examining Unit, Office of Special Counsel, 1730 M Street, NW, Suite 218, Washington, DC 20036-4505. To assist OSC in its investigation of your complaint, your complaint should inform them to send the Acknowledgment Order and a copy of the appeal to:

4. **Arbitration.** If you are a union bargaining member, the union may request arbitration on your behalf using arbitration procedures set forth in Article 34 (Arbitration) of the Collective Bargaining Agreement between the U.S. Customs and Border Protection and National Border Patrol Council. A request by the union to refer the matter to arbitration must be filed within thirty (30) days of the effective date of the action. The union's request for arbitration must be in writing and filed with the Director, Labor-Management Relations, 90 K Street NE, 5th Floor, Washington, D.C. 20229-1146.

In accordance with 5 C.F.R. § 1201.155, employees who elect the negotiated procedures and believes he or she has been subjected to prohibited discrimination may request review of the arbitrator's final decision to the MSPB.

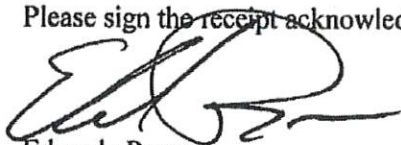
The Employee Assistance Program (EAP), which is free and confidential, may be able to assist you with any personal problems that you may be experiencing. You may schedule an appointment with EAP by calling 1-800-755-7002.

COR [REDACTED] BPA

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If you have any questions concerning this letter, or your rights or procedures regarding this action, you may contact [REDACTED] Labor and Employee Relations Specialist, at [REDACTED]

Please sign the receipt acknowledgment copy of this letter as evidence that you have received it.



Eduardo Payan
Deciding Official

Receipt of the original notice is hereby acknowledged.

COR [REDACTED]

Signature

12/4/19

Date