

Border Patrol Agents in Secret Facebook Group Faced Few Consequences for Misconduct

House Committee on Oversight and Reform

Endnotes

¹ *Inside the Secret Border Patrol Facebook Group Where Agents Joke About Migrant Deaths and Post Sexist Memes*, ProPublica (July 1, 2019) (online at www.propublica.org/article/secret-border-patrol-facebook-group-agents-joke-about-migrant-deaths-post-sexist-memes).

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³ Customs and Border Protection, *About CBP* (online at www.cbp.gov/about) (accessed Sept. 29, 2021).

⁴ *Id.*

⁵ *Inside the Secret Border Patrol Facebook Group Where Agents Joke About Migrant Deaths and Post Sexist Memes*, ProPublica (July 1, 2019) (online at www.propublica.org/article/secret-border-patrol-facebook-group-agents-joke-about-migrant-deaths-post-sexist-memes); *Border Patrol Agents Tried to Delete Racist and Obscene Facebook Posts. We Archived Them.*, The Intercept (July 5, 2019) (online at <https://theintercept.com/2019/07/05/border-patrol-facebook-group/>).

⁶ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Mark Morgan, Chief Operating Officer and Senior Official Performing the Duties of the Commissioner, Customs and Border Protection (July 31, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-07-31.EEC%20to%20Morgan-CBP%20re%20Secret%20Facebook%20Group.pdf>).

⁷ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Mark Morgan, Chief Operating Officer and Senior Official Performing the Duties of the Commissioner, Customs and Border Protection (Sept. 23, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-09-23.EEC%20to%20Morgan-CBP%20re%20Facebook%20Group%20%281%29.pdf>); Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Mark Morgan, Chief Operating Officer and Senior Official Performing the Duties of the Commissioner, Customs and Border Protection (Feb. 18, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-02-18.CBM%20to%20Morgan-USCBP%20re%20Documents%20and%20TIs.pdf>).

⁸ Letter from Deputy Assistant Commissioner Stephanie Talton, Customs and Border Protection, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform (Mar. 3, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/USCBP.030320.Response%20to%20CBM%20re%20Documents%20and%20TIs.pdf>); Memorandum from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Members of the Committee on Oversight and Reform, *Notice of Intent to Issue Subpoena to Customs and Border Protection* (Oct. 30, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-10-30.COR%20Subpoena%20Memo%20re%20Customs%20and%20Border%20Protection.pdf>).

⁹ Subpoena from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Mark Morgan, Chief Operating Officer and Senior Official Performing the Duties of the Commissioner, Customs and Border Protection (Nov. 2, 2020) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/CBP%20Subpoena%2011.02.20_FINAL.pdf).

¹⁰ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Mark Morgan, Chief Operating Officer and Senior Official Performing the Duties of the Commissioner, Customs and Border Protection (Jan. 11, 2021) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2021-01-11.CBM%20to%20Morgan-CBP%20re%20Committee%20Requests.pdf>).

¹¹ Customs and Border Protection, *Standards of Conduct*, Directive No. 51735-013B (Dec. 9, 2020) (online at www.cbp.gov/sites/default/files/assets/documents/2021-Jan/cbp-standards-conduct-2020_0.pdf).

¹² Committee on Oversight and Reform analysis of CBP documents and case files; Office of Inspector General, Department of Homeland Security, *CBP Senior Leaders' Handling of Social Media Misconduct* (May 12, 2021) (OIG-21-34) (online at www.oig.dhs.gov/sites/default/files/assets/2021-05/OIG-21-34-May21.pdf); Government Accountability Office, *Department of Homeland Security: Components Could Improve Monitoring of the Employee Misconduct Process* (July 31, 2018) (GAO-18-405) (online at www.gao.gov/assets/gao-18-405.pdf).

¹³ Customs and Border Protection, *Report of Investigation* (Aug. 29, 2019).

¹⁴ Email from Staff, Customs and Border Protection, to Staff, Committee on Oversight and Reform (Apr. 6, 2021); *American Federation of Government Employees v. Department of Homeland Security*, FMCS No. 201210-02112 (Mar. 30, 2021); *National Border Patrol Council v. Department of Homeland Security*, FMCS No. 200113-02986 (Jan. 5, 2021); *Supervisory Border Patrol Agent v. Department of Homeland Security*, No. SF-752S-20-0149-I-1 (M.S.P.B. Jan. 24, 2020); *American Federation of Government Employees v. Department of Homeland Security*, (Dec. 29, 2020).

¹⁵ Email from Staff, Customs and Border Protection, to Staff, Committee on Oversight and Reform (Apr. 6, 2021).

¹⁶ Email from Staff, Customs and Border Protection, to Staff, Committee on Oversight and Reform (July 27, 2021); Email from Staff, Customs and Border Protection, to Staff, Committee on Oversight and Reform (Sept. 15, 2021).

¹⁷ The position descriptions for Border Patrol agents and supervisors state, “In addition to contacts with employees, supervisors and managers of the sector and throughout the Agency, personal contacts are with the general public including legal and illegal aliens.” Customs and Border Protection, *Border Patrol Agent Position Description* (Aug. 6, 2010); Customs and Border Protection, *Supervisory Border Patrol Agent Position Description* (Aug. 6, 2010).

¹⁸ Customs and Border Protection, *Border Patrol Agent Careers* (online at www.cbp.gov/careers/bpa) (accessed Sept. 29, 2021).

¹⁹ Email from Staff, Customs and Border Protection, to Staff, Committee on Oversight and Reform (Apr. 6, 2021); Email from Staff, Customs and Border Protection, to Staff, Committee on Oversight and Reform (July 27, 2021).

²⁰ Abeyance and last chance agreements are used by federal agencies to mitigate a disciplinary action by delaying the penalty for a set time or to impose only a portion of the penalty. If the employee engages in further misconduct under the abeyance agreement, the full discipline may be enacted.

²¹ There are more final outcomes than proposed penalties because some employees retired before final discipline was decided and because some employees’ proposed discipline was removal and the final outcome was a suspension. This reflects the final number of days after appeals and abeyance agreements between CBP and the employee.

²² Letter from Chief Patrol Agent Eduardo Payan, Border Patrol, to Border Patrol Agent (Dec. 3, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Agent%203_Deciding%20Official%20Letter_Redacted_FINAL.pdf).

²³ Memorandum from Deputy Patrol Agent in Charge, Border Patrol, to Chief Patrol Agent, Border Patrol, *Derogatory and Inflammatory Statements; RE: IDO BPA* (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Agent%205_Deputy%20Patrol%20Agent%20in%20Charge%20Letter_Redacted_FINAL.pdf).

²⁴ Congressional Research Service, *Disability Retirement for Federal Employees* (Mar. 25, 2014) (RS22838) (online at <https://crsreports.congress.gov/product/pdf/RS/RS22838>).

²⁵ Customs and Border Protection, *Historical (Closed) “I’m 10-15” Cases* (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/23%2C%2025_Final_Table%20of%20Closed%2010-15%20Cases%20-%20FOUO.pdf).

²⁶ Office of Inspector General, Department of Homeland Security, *CBP Senior Leaders’ Handling of Social Media Misconduct* (May 12, 2021) (OIG-21-34) (online at www.oig.dhs.gov/sites/default/files/assets/2021-05/OIG-21-34-May21.pdf). CBP officials also knew about racist posts on a private, CBP-centric Facebook group called the “Laredo Choir Practice” beginning in 2017. CBP Office of Inspector General found that “management took very little initiative to address the racial harassment.” *Id.*; see also *Border Agency Knew About Secret Facebook Group for Years*, Politico (July 3, 2019) (online at www.politico.com/story/2019/07/03/border-agency-secret-facebook-group-1569572).

²⁷ Customs and Border Protection, *Historical (Closed) “I’m 10-15” Cases* (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/23%2C%2025_Final_Table%20of%20Closed%2010-15%20Cases%20-%20FOUO.pdf).

²⁸ *National Border Patrol Council v. Department of Homeland Security*, FMCS No. 200113-02986 (Jan. 5, 2021).

²⁹ *American Federation of Government Employees v. Department of Homeland Security*, FMCS No. 201210-02112 (Mar. 30, 2021).

³⁰ *Facebook Employees Flag Drug Cartels and Human Traffickers. The Company's Response Is Weak, Documents Show*, Wall Street Journal (Sept. 16, 2021) (online at www.wsj.com/articles/facebook-drug-cartels-human-traffickers-response-is-weak-documents-11631812953).

³¹ *American Federation of Government Employees v. Department of Homeland Security*, FMCS No. 201210-02112 (Mar. 30, 2021).

³² Facebook, *Hate Speech* (online at <https://transparency.fb.com/policies/community-standards/hate-speech/>) (accessed Sept. 26, 2021).

³³ *Id.*

³⁴ *The Facebook Files*, Wall Street Journal (online at www.wsj.com/articles/the-facebook-files-11631713039) (accessed Sept. 26, 2021).

³⁵ *Border Patrol Chief Carla Provost, First Woman to Lead Agency, to Step Down*, NBC News (Jan. 14, 2020) (online at www.nbcnews.com/news/us-news/border-patrol-chief-carla-provost-first-woman-lead-agency-step-n1115656).

³⁶ Customs and Border Protection, *Report of Investigation* (Oct. 9, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/34%2C%2039_Provost_Report%20of%20Investigation_Redacted_FINAL.pdf).

³⁷ *Biden Administration Removes Rodney Scott as Head of U.S. Border Patrol*, Washington Post (June 23, 2021) (online at www.washingtonpost.com/national/biden-administration-removes-rodney-scott-as-head-of-us-border-patrol/2021/06/23/c93411f6-d451-11eb-baed-4abcf380a17_story.html); *Border Patrol Chief Rodney Scott Retiring*, Arizona Public Media (Aug. 16, 2021) (online at <https://news.azpm.org/s/88683-border-patrol-chief-rodney-scott-retiring/>).

³⁸ Customs and Border Protection, *Report of Investigation* (Oct. 9, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/36%2C%2042%2C%2070_Scott_Report%20of%20Investigation.pdf).

³⁹ See, e.g., *Customs and Border Protection Roundtable*, C-SPAN (Feb. 2, 2018) (online at www.c-span.org/video/?440627-1/president-trump-participates-customs-border-protection-roundtable); *President Trump at Otay Mesa Port of Entry*, C-SPAN (Mar. 13, 2018) (online at www.c-span.org/video/?442527-3/president-trump-otay-mesa-port-entry); Trump White House Archive (@Trump White House Archived), *YouTube: President Trump Receives a Briefing on Drug Trafficking on the Southern Border* (Mar. 13, 2019) (online at www.youtube.com/watch?v=ONMqeWsVWP); *Trump Visits Border Barrier in Push of Immigration Message amid Pandemic and Civil Unrest*, Washington Post (June 23, 2020) (online at www.washingtonpost.com/politics/trump-border-wall-arizona/2020/06/23/45695db6-b555-11ea-a510-55bf26485c93_story.html).

⁴⁰ Customs and Border Protection, *Carla Provost: From Agent to Chief* (accessed Sept. 27, 2021) (online at www.cbp.gov/frontline/carla-provost-agent-chief).

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⁴² *Id.*, at Exhibit 2.

⁴³ Letter from Deputy Commissioner Robert Perez, Customs and Border Protection, to Chief Carla L. Provost, Border Patrol (Nov. 14, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/41_Provost%20Letter.pdf).

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⁴⁶ Customs and Border Protection, *Press Release: Statement of Acting Commissioner Mark A. Morgan on the Selection of Rodney S. Scott as Chief, U.S. Border Patrol* (Jan. 24, 2020) (online at www.cbp.gov/newsroom/speeches-and-statements/statement-acting-commissioner-mark-morgan-selection-rodney-s-scott).

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- ⁴⁸ Office of Personnel Management, *OPM Senior Executive Service Desk Guide* (Dec. 2020) (online at www.opm.gov/policy-data-oversight/senior-executive-service/reference-materials/ses-desk-guide.pdf); *Senior Executive Service Fundamental Competencies* (online at www.opm.gov/policy-data-oversight/senior-executive-service/executive-core-qualifications/#url=Overview) (accessed Sept. 27, 2021).
- ⁴⁹ Office of Inspector General, Department of Homeland Security, *CBP Senior Leaders' Handling of Social Media Misconduct* (May 12, 2021) (OIG-21-34) (online at www.oig.dhs.gov/sites/default/files/assets/2021-05/OIG-21-34-May21.pdf).
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- ⁵⁴ Customs and Border Protection, *Report of Investigation* (July 11, 2019).
- ⁵⁵ *American Federation of Government Employees v. Department of Homeland Security*, FMCS No. 201210-02112 (Mar. 30, 2021).
- ⁵⁶ Customs and Border Protection, *CBP's Core Values and Maintaining Public Trust* (July 3, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/56_CBP%20Core%20Values%20Memo%202019-07-03_19.pdf).
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- ⁶⁵ *American Federation of Government Employees v. Department of Homeland Security*, FMCS No. 201210-02112 (Mar. 30, 2021).
- ⁶⁶ Committee on Oversight and Reform, *Press Release: New Document Shows CBP Cut Deals with Border Patrol Agents Who Engaged in Misconduct* (July 20, 2020) (online at <https://oversight.house.gov/news/press-releases/new-document-shows-cbp-cut-deals-with-border-patrol-agents-who-engaged-in>); Memorandum from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Members of the Committee on Oversight and Reform, *Notice of Intent to Issue Subpoena to Customs and Border Protection* (Oct. 30, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-10-30.COR%20Subpoena%20Memo%20re%20Customs%20and%20Border%20Protection.pdf>); Office of Inspector General, Department of Homeland Security, *CBP Senior Leaders' Handling of Social Media Misconduct* (May 12, 2021) (OIG-21-34) (online at www.oig.dhs.gov/sites/default/files/assets/2021-05/OIG-21-34-May21.pdf).
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