

# United States Senate

WASHINGTON, DC 20510

November 10, 2022

The Honorable Chris Magnus  
Commissioner  
U.S. Customs and Border Protection  
1300 Pennsylvania Avenue, NW  
Washington, DC 20229

Matthew Klein  
Assistant Commissioner  
Office of Professional Responsibility  
U.S. Customs and Border Protection  
1300 Pennsylvania Avenue, NW  
Washington, DC 20229

Dear Commissioner Magnus and Mr. Klein:

We write regarding our concerns about the investigation and subsequent final report that U.S. Customs and Border Protection's (CBP) Office of Professional Responsibility (OPR) conducted and released on July 8, 2022 regarding the treatment of Haitian migrants in Del Rio, Texas, by Border Patrol agents.<sup>1</sup> This report found that agents engaged in "unnecessary use of force" against Haitian migrants.<sup>2</sup>

Over a year ago, on September 19, 2021, Border Patrol agents in CBP's Horse Patrol Unit (HPU) joined Texas Department of Public Safety troopers in removing the nearly 15,000 migrants that were attempting to seek asylum in the United States and had established an encampment under the International Bridge in Del Rio, Texas.<sup>3</sup> It would appear that the agents' activities did not comport with operational guidance that day, under which, according to OPR interviews with a supervisor, "They [HPU agents] weren't supposed to do any enforcement actions."<sup>4</sup> According to the OPR report, "Due to the lack of resources and extreme heat, USBP [U.S. Border Patrol] made an operational decision to allow the migrants to move back and forth across the Rio Grande River, as needed, to obtain food, water, and other necessities,"<sup>5</sup> and in a CBP briefing earlier on September 19, "personnel at this meeting were not instructed to stop or deter the flow of migrants entering the U.S."<sup>6</sup>

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<sup>1</sup> U.S. Department of Homeland Security, Customs and Border Protection, Office of Professional Responsibility, "Report of Investigation: Incident Near Del Rio, TX, Port of Entry," July 8, 2022, <https://www.cbp.gov/sites/default/files/assets/documents/2022-Jul/202112280-cbp-closing-report-public-redacted-final.pdf>.

<sup>2</sup> *Id.*, p. 5.

<sup>3</sup> U.S. Customs and Border Protection, "CBP Releases September 2021 Monthly Operational Update," press release, October 22, 2021, <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-september-2021-monthly-operational-update>.

<sup>4</sup> U.S. Department of Homeland Security, Customs and Border Protection, Office of Professional Responsibility, "Report of Investigation: Incident Near Del Rio, TX, Port of Entry," July 8, 2022, p. 43, <https://www.cbp.gov/sites/default/files/assets/documents/2022-Jul/202112280-cbp-closing-report-public-redacted-final.pdf>.

<sup>5</sup> *Id.*, p. 2.

<sup>6</sup> *Id.*, p. 377.

Footage taken that day, however, showed CBP HPU agents “corralling Black migrants”<sup>7</sup> and “swinging reins and screaming obscenities while briefly trying to block families bringing food to a sprawling, chaotic camp.”<sup>8</sup> The HPU Border Patrol agents who engaged in this operation were later placed on administrative leave.<sup>9</sup> Following CBP and Department of Homeland Security protocol, OPR initiated an investigation the next day, on September 20, 2021 and immediately referred this investigation to the Department of Homeland Security’s (DHS) Office of the Inspector General (OIG).<sup>10</sup> The DHS OIG’s office declined to pursue an investigation into this matter in November 2021 and referred the case back to CBP OPR.<sup>11</sup>

OPR conducted 30 interviews with Border Patrol management officials, Border Patrol agents, Texas Department of Public Safety troopers, reporters present on the day, and other personnel.<sup>12</sup> However, during the nearly 10 months between the September 2021 incident and the July 8, 2022 report, not one migrant who was present in Del Rio on September 19 was interviewed by OPR for the investigation, as far as can be determined by OPR’s report. Commissioner Magnus confirmed in a press conference that although “efforts were made to locate and interview the Haitian migrants directly involved in this incident, given though the thousands of migrants present and the challenging nature of the scene, these individuals could not be located.”<sup>13</sup> During this press conference, Commissioner Magnus noted that “discussions are also ongoing with attorneys representing the migrants to make them available for interviews by CBP OPR investigators.”<sup>14</sup> But CBP OPR chose to finalize the report without the formal inclusion of interviews from any directly impacted individuals.

However, several migrants present at Del Rio in September filed a suit against the government regarding the treatment that CBP agents inflicted on them, cited as Exhibit 8 in CBP’s July 8 report.<sup>15</sup> This suit included testimony from 11 individuals who stated they were

<sup>7</sup> New York Times, “Review Finds Agents Used Unnecessary Force Against Black Migrants,” Eileen Sullivan and Zolan Kanno-Youngs, July 8, 2022, <https://www.nytimes.com/2022/07/08/us/politics/border-patrol-investigation-migrants.html>.

<sup>8</sup> Washington Post, “Border Patrol agents did not strike Del Rio migrants, report finds,” Nick Miroff, July 8, 2022, [https://www.washingtonpost.com/national-security/2022/07/08/report-border-agents-horseback-del-roi/](https://www.washingtonpost.com/national-security/2022/07/08/report-border-agents-horseback-del-rio/).

<sup>9</sup> U.S. Department of Homeland Security, Customs and Border Protection, Office of Professional Responsibility, “Report of Investigation: Incident Near Del Rio, TX, Port of Entry,” July 8, 2022, p. 3, <https://www.cbp.gov/sites/default/files/assets/documents/2022-Jul/202112280-cbp-closing-report-public-redacted-final.pdf>.

<sup>10</sup> U.S. Department of Homeland Security, Customs and Border Protection, Office of Professional Responsibility, “Report of Investigation: Incident Near Del Rio, TX, Port of Entry,” July 8, 2022, p. 3, <https://www.cbp.gov/sites/default/files/assets/documents/2022-Jul/202112280-cbp-closing-report-public-redacted-final.pdf>.

<sup>11</sup> U.S. Department of Homeland Security, “DHS Update Regarding the Investigation of Horse Patrol Activity in Del Rio, Texas on September 19, 2021,” press release, November 16, 2021, <https://www.dhs.gov/news/2021/11/16/dhs-update-regarding-investigation-horse-patrol-activity-del-rio-texas-september-19>.

<sup>12</sup> U.S. Customs and Border Protection, “CBP Releases Findings of Investigation of Horse Patrol Activity in Del Rio, Texas,” press release, July 8, 2022, <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-findings-investigation-horse-patrol-activity-del-rio>.

<sup>13</sup> U.S. Customs and Border Protection, “CBP Commissioner Chris Magnus provides update on Del Rio Horse Patrol investigation.” July 8, 2022, <https://www.youtube.com/watch?v=AJ-DW4Wnz8o>.

<sup>14</sup> *Id.*

<sup>15</sup> U.S. Department of Homeland Security, Customs and Border Protection, Office of Professional Responsibility, “Report of Investigation: Incident Near Del Rio, TX, Port of Entry,” July 8, 2022, pp. 115-206, <https://www.cbp.gov/sites/default/files/assets/documents/2022-Jul/202112280-cbp-closing-report-public-redacted->

harmful by the actions of Border Patrol personnel during the September 19 incident. The inclusion of named individuals who were reportedly present and involved in the day's event as an exhibit in the report raises questions about why CBP declined to conduct any interviews with these individuals, and about Commissioner Magnus's claims that CBP was unable to find individuals to interview. During a White House press briefing on September 24, 2021, DHS Secretary Alejandro Mayorkas stated that "DHS has conducted 17 expulsion flights to Haiti with approximately 2,000 individuals" from the Del Rio encampment.<sup>16</sup> It is unclear whether CBP OPR had the opportunity to interview these individuals when they were in federal custody before their removal and declined to do so.

The apparent failure of CBP OPR to interview any member of a group of individuals who were directly and crucially involved in the incident means that CBP OPR has released a report based on an inadequate and incomplete investigation. These deficiencies in the investigation also raise concerns as to what additional information CBP OPR may have excluded. There were more than 15,000 migrants present on September 19. Failing to interview a single one of these individuals raises serious questions as to whether the full scale of actions by Border Patrol agents was documented in this report. Additionally, conducting interviews with those involved would have allowed OPR to determine whether other CBP personnel, in addition to the four HPU agents the report has already identified, committed inappropriate or unlawful actions. This report will stand as the government's official record of the day's events; it is important that all efforts are made to ensure it is complete and fully documents the experiences of victims of, and witnesses to, CBP personnel's actions. The report's accuracy has been called into question by immigration and human rights advocacy groups, who cite the failure to interview impacted individuals.<sup>17</sup> There have been calls that this investigation was a "sham" and is part of a larger issue of inaction by the federal government to take seriously the human rights concerns of migrants.<sup>18</sup> It is imperative additional action is taken to ensure that the legitimacy and credibility of the report is not further questioned.

In addition, CBP OPR released its report on July 8, almost 10 months after the events in Del Rio took place. The timeline of events noted in CBP's July 8 press release accompanying the report noted that OPR completed its final report on April 11 and "transferred case materials to the separate agency discipline process on April 19, 2022."<sup>19</sup> On April 20, 2022, Senators Warren,

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<sup>16</sup> The White House, "Press Briefing by Press Secretary Jen Psaki and Secretary of Homeland Security Alejandro Mayorkas," press release, September 24, 2021, <https://www.whitehouse.gov/briefing-room/press-briefings/2021/09/24/press-briefing-by-press-secretary-jen-psaki-and-secretary-of-homeland-security-alejandro-mayorkas-september-24-2021/>.

<sup>17</sup> Southern Border Communities Coalition, "SHAM INVESTIGATION: CBP'S OVERSIGHT REPORT ON TREATMENT OF HAITIAN MIGRANTS IN DEL RIO," press release, July 12, 2022, [https://www.southernborder.org/sham\\_investigation\\_cbps\\_oversight\\_report\\_on\\_treatment\\_of\\_haitian\\_migrants\\_in\\_del\\_rio](https://www.southernborder.org/sham_investigation_cbps_oversight_report_on_treatment_of_haitian_migrants_in_del_rio); Robert F. Kennedy Human Rights, "SIX MONTH ANNIVERSARY DEL RIO REPORT DETAILS A LIVING LEGACY OF ANTI-HAITIAN DISCRIMINATION IN U.S. IMMIGRATION SYSTEM," press release, March 29, 2022, <https://rfkhumanrights.org/press/del-rio-report-details-a-legacy-of-anti-haitian-discrimination-in-us-immigration-system>.

<sup>18</sup> *Id.*

<sup>19</sup> U.S. Customs and Border Protection, "CBP Releases Findings of Investigation of Horse Patrol Activity in Del Rio, Texas," press release, July 8, 2022, <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-findings-investigation-horse-patrol-activity-del-rio>.

Menendez, Cardin, and Wyden sent a private inquiry to CBP requesting information on CBP OPR's progress into their investigation of the events that occurred in Del Rio, Texas.<sup>20</sup> The senators never received a reply to their April letter. It remains unclear what occurred during the nearly three-month period between the report's completion and its public release, or why a response was never sent to the April letter. This lack of transparency and responsiveness further calls into question the report's credibility.

CBP has subsequently convened a Disciplinary Review Board that has been charged with reviewing the findings of this report "in order to propose specific disciplinary actions for individual agents."<sup>21</sup> Because the report does not include a full and appropriate investigation of the events of September 19, it is not clear how it can be used as the basis for the Disciplinary Review Board's review of the four HPU Border Patrol agents' conduct, and it is not clear whether all individuals that should be under review by the Board have been identified. Any actions the Disciplinary Review Board takes could fail to account for the entire scale of the events on September 19.

Given our concerns about this incomplete investigation, we ask that you respond to the following questions regarding our concerns about CBP OPR's July 8 report no later than November 28, 2022:

1. Please detail the efforts that CBP OPR, or other CBP personnel, undertook to interview Haitian migrants who might have been involved in, or witnesses to, the September 19, 2021 incident. Why were the 11 named individuals in Exhibit 8 of the report not interviewed for this report?
2. Did CBP consider postponing the deportation or removal from the United States of any Haitian migrants who might have been involved in, or witnesses to, the September 19, 2021 incident?
3. Did OPR investigate whether CBP hastened the deportation or removal from the United States of any Haitian migrants who might have been involved in, or witnesses to, the September 19, 2021 incident? If not, why did OPR not investigate this question that obviously bears upon the accuracy and reliability of its final report?
4. The timeline released on July 8 details that OPR "issued its final report to CBP leadership on April 11, 2022, and transferred case materials to the separate agency discipline process on April 19, 2022."<sup>22</sup> Please explain the nearly three-month delay in the report's conclusion and public release.
5. During a press conference on July 8, Commissioner Magnus noted that CBP was in on-going discussions with the attorneys of impacted individuals willing to sit for interviews about their experiences in Del Rio. Why had this not been done in the over 10 months the investigation was conducted over? Why did CBP OPR choose to release the report before these discussions were complete?

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<sup>20</sup> Letter from Senator Elizabeth Warren to CBP Commissioner Chris Magnus, April 20, 2022, <https://www.warren.senate.gov/download/20220420-private-letter-to-cbp-commissioner-magnus-on-past-commitments>.


<sup>21</sup> U.S. Customs and Border Protection, "CBP Releases Findings of Investigation of Horse Patrol Activity in Del Rio, Texas," press release, July 8, 2022, <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-findings-investigation-horse-patrol-activity-del-rio>.

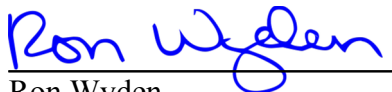
<sup>22</sup> *Id.*

6. How is the Disciplinary Review Board expected to evaluate an incomplete report that fails to evaluate the experiences of all individuals involved in the events of September 19? Is the Review Board attempting to contact migrants that were victims of Border Patrol agents' "unnecessary force" before it comes to a determination?<sup>23</sup>

Sincerely,

  
Elizabeth Warren  
United States Senator

  
Robert Menendez  
United States Senator

  
Ron Wyden  
United States Senator

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<sup>23</sup> U.S. Department of Homeland Security, Customs and Border Protection, Office of Professional Responsibility, "Report of Investigation: Incident Near Del Rio, TX, Port of Entry," July 8, 2022, p. 5, <https://www.cbp.gov/sites/default/files/assets/documents/2022-Jul/202112280-cbp-closing-report-public-redacted-final.pdf>.