

May 29, 2024

Alejandro Mayorkas
Secretary of the Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528

Troy A. Miller
Senior Official Performing the Duties of the Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Ave., NW
Washington, DC 20229

Dear Secretary Mayorkas and Acting Commissioner Miller:

We are writing in response to the U.S. Government Accountability Office (GAO) report released on May 13, 2024 that identified additional steps that U.S. Customs and Border Protection (CBP) could take to ensure that its responses to “critical incidents” are objective, unbiased, and lawful. Under CBP’s definition, critical incidents are incidents involving CBP personnel that result in serious injury, death, the use of deadly or excessive force, or any incident that could lead to widespread media attention.

As you know, in 2021, allegations surfaced that the U.S. Border Patrol had relied on Critical Incident Teams (CITs), known colloquially as “Shadow Units,” in an attempt to shield Border Patrol personnel from incidents that could be embarrassing, result in civil liability, or both since 1987 with little, if any, oversight. In an affidavit, former Border Patrol officials identified a pattern of cover ups at Border Patrol, including “activities to tamper with, corrupt, and destroy evidence.”

In response, several members of Congress representing border communities urged the U.S. Department of Justice to investigate reports that these units were operating without federal authority. Members of Congress also called on the appropriate agencies to ensure that records regarding the creation and use of these units would be shared with Congress.

This month, the GAO released a report documenting how these Border Patrol CITs operated before they were disbanded in 2022. After interviewing CBP officials, reviewing documents, and visiting border locations, the report detailed how from fiscal years 2010 through 2022, Border Patrol CITs responded to an estimated 2,351 incidents—including approximately 893 critical incidents.¹ The report estimates that in 149 of those critical incidents—roughly 17 percent—someone died.²

The GAO issued several recommendations that CBP concurred with, including that CBP issue guidance to help standardize how different sectors respond to incidents. The report also recommended that CBP train investigators on how to identify threats to the independence of their investigations.

This report raises serious questions about how these units were able to operate for so long with little to no oversight. The American people deserve nothing less than full transparency. It’s imperative that CBP take steps to ensure that something like this never happens again.

Full implementation of these recommendations is especially important for our constituents who live near the United States-Mexico border—many of whom regularly interact with CBP officials as they make their way

¹ U.S. Government Accountability Office, *CBP Could Take Additional Steps to Strengthen Its Response to Incidents Involving Its Personnel*, at 16 (May 2024), available at <https://www.gao.gov/assets/gao-24-106148.pdf>.

² *Id.*

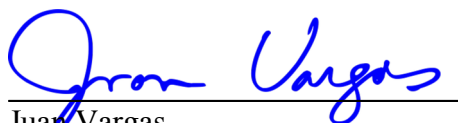
between the United States and Mexico to work or visit family. We must ensure that the Border Patrol officials we entrust to enforce the law are not acting outside of it.

Accordingly, we ask that you answer the following questions by June 29, 2024.

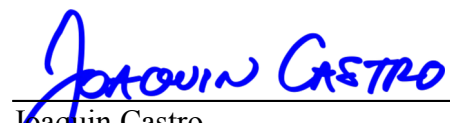
- How does the agency plan to implement the recommendations in the GAO report? What benchmarks has the agency put in place to assess when the recommendations have been fully implemented?
- What plans does the agency have to share its progress toward implementing these recommendations with Congress, the public, or both?
- Does the agency require additional support or authorities from Congress to fully implement these recommendations?
- The report notes that the CBP Office of Chief Counsel has argued that the CIT investigative activities fell under the agency's general "housekeeping" authority, codified at 5 U.S.C. § 301.³ Before 2022, what safeguards, if any, did the agency have in place to oversee the steps that sectors were taking pursuant to that authority?
- The report also notes that between 2010-2014 other law enforcement agencies asserted that the agency lacked authority to respond to incident scenes in an official capacity.⁴ Was the agency aware of these reports? If so, what steps, if any, did the agency take to respond to those reports?
- What steps is the agency taking to ensure that agency headquarters is actively engaged in oversight of any new units created at border sectors?

We appreciate your attention to this important matter.

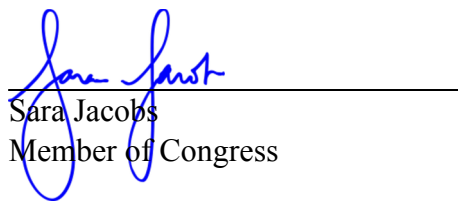
Sincerely,



Juan Vargas
Member of Congress



Joaquin Castro
Member of Congress



Sara Jacobs
Member of Congress



Scott H. Peters
Member of Congress

³ *Id.* at 9 & n.19.

⁴ *Id.* at 35.