



August 11, 2022

Chairman Dick Durbin
Ranking Member Chuck Grassley
Senate Judiciary Committee
Via email

Chairman Bennie Thompson
Ranking Member John Katko
House Committee on Homeland Security
Via email

Chairman Jerrold Nadler
Ranking Member Jim Jordan
House Committee on the Judiciary
Via email

Chairwoman Carolyn B. Maloney
Ranking Member James Comer
House Committee on Oversight and Reform
Via email

Chairman Gary Peters
Ranking Member Rob Portman
Senate Committee on Homeland Security &
Governmental Affairs
Via email

Re: New information that raises the stakes on the investigation of Border Patrol Critical Incident Teams (BPCITs) and implicates other parts of CBP.

Dear Congressional Committee Leaders:

We write to follow up on the Southern Border Communities Coalition's (SBCC) [October 2021 request to investigate](#) Border Patrol Critical Incident Teams (BPCITs), and to bring to your attention new information relevant your investigation of what may be the largest and longest standing cover-up teams operating inside the federal government today.

Since our last letter, we have learned several alarming facts implicating U.S. Customs and Border Protection (CBP). First, the CBP Office of Professional Responsibility (OPR) is hiring the very people you are investigating. Second, OPR is not able or willing to prevent BPCIT interference in recent use-of-force investigations. Third, we have newly acquired documents which reveal that BPCITs have been involved at every level of oversight within CBP for years, undermining the entire system of accountability. In light of this, we urge you to expand your investigation to all of CBP.

In our prior letter, we alerted you to the existence of BPCITs, which have been investigating border agents' use-of-force incidents unlawfully since 1987, without congressional authorization. We are grateful that [you and your colleagues heard us](#) and subsequently initiated investigations. As a result of this scrutiny, CBP Commissioner Chris Magnus announced in May 2022 that the [BPCITs would be eliminated](#), starting Oct. 1, 2022. But that is not enough.

We are gravely concerned that at no time, even now, has CBP ever been transparent about the activities of BPCITs. In light of their history of coverups, we are particularly concerned about the destruction, concealment, and alteration of records related to BPCITs. These records are vital to Congress in their investigation and to prosecutors that may need to consider obstruction of justice and other criminal charges. In view of all of the above, we believe the threat that BPCITs pose is ongoing, pervasive, and may be increasing.

I. The stakes were already high — now 24 more people have been killed.

Since we sent our October 2021 letter to you ten months ago, [24 more people have been killed](#) in a use-of-force incident with border agents.¹ That brings the total number of fatal encounters since 2010 to [nearly 240](#), that we know of (the Government Accountability Office report in 2020 that CBP does not have reliable information on deaths).² No one has been held accountable for the deaths committed by on-duty agents in the near 100 year history of Border Patrol. No one. Ever.

We now know that the lack of accountability is not accidental — it is by design — and that BPCITs are pivotal to undermining investigations of border agents and perpetuating impunity. It's important to understand that impunity is not about a few bad apples — it's about widespread, longstanding, and institutional interference to obstruct justice. In the case of BPCITs, they have been told by Border Patrol sector chiefs to investigate incidents involving other agents, not as internal affairs investigators (that is the role of OPR), but as management investigators charged with mitigating the liability of fellow agents and the agency.³ They perform this function without any legal authority to do so, but are rewarded internally with promotions and raises.⁴

With this incentive system in place to protect fellow agents and the agency, BPCITs have unlawfully processed evidence, questioned witnesses, and prepared reports given to the attorneys for the agents. At best, BPCITs have engaged in egregious conflict of interest, and at worst, they have engaged in criminal coverups. They were never authorized by Congress, and they have intentionally operated in the shadows. Bringing them into the light now won't matter if they or their cover-up functions are absorbed elsewhere in CBP.

¹ This includes all on-duty vehicle pursuits and other use-of-force incidents. The [CBP Use of Force Policy](#) definition of use of force includes vehicle pursuits resulting in death or serious injury.

² See GAO report, *CBP Needs to Increase Oversight of Funds, Medical Care, and Reporting of Deaths* (July 2020), at 3, <https://www.gao.gov/assets/gao-20-536.pdf>.

³ See [SBCC letter to Congress in October 2021](#). CBP and OPR leadership have since confirmed that BPCITs investigate agent-involved use-of-force incidents to mitigate liability. This has never been disputed.

⁴ The current promotion assessment tool used by the agency asks a candidate, "Have you performed Sector Evidence Team/Critical Incident Team/Evidence Collection Team collateral duties or special assignments?" Promotion is based in part on these kinds of "specialized experiences" for a promotion to supervisor or other top positions. See [job posting for Border Patrol promotions to GS 13-15](#).

II. OPR is now hiring the very people that Congress is investigating — BPCITs.

For more than three decades, BPCITs have covered up, destroyed, and altered evidence to obstruct justice and protect border agents. Despite this, OPR is now hiring BPCIT agents, potentially shifting cover-up activities from one office to another.⁵ To be clear, the BPCITs' lack of integrity and possible criminal obstruction has not been resolved. Investigations of BPCITs are ongoing. Open investigations are being conducted by:

- [House Homeland Security & House Oversight and Government Reform Committees](#)
- [DHS Office of Civil Rights and Civil Liberties](#)
- Government Accountability Office (GAO)⁶

Until these investigations are complete, no part of BPCITs should be folded into OPR. Even then, it is unclear that agents who once served to protect their own at the expense of the public would be fit to serve as impartial investigators. Hiring them into OPR ignores the problematic role they have played previously and risks giving them even greater authority and opportunity to undermine the integrity of investigations that are critical to making accountability real.

We appreciate that OPR is currently seeking to meet hiring goals, but it should not do so at the expense of the very imperative that we confront — a need for investigative integrity and accountability. To strengthen its own integrity, OPR should seek to hire people from outside of BPCITs who are not tainted by the bias inherent in the role that BPCITs have played to mitigate liability. It is never appropriate for an investigator to play that role.

III. OPR is not able or willing to prevent BPCIT interference in recent investigations.

On February 2, 2022, in response to the investigations of BPCITs, Border Patrol Chief Raul Ortiz and OPR Assistant Commissioner Matthew Klein issued a [memo](#), directing BPCITs to stop investigating unless requested to do so by OPR and under their guidance. This was a tacit admission that BPCITs did not have their own authority to investigate.

Less than three weeks later, that direction was put to the test when a [border agent fatally shot Carmelo Cruz Marcos](#) in Arizona. The BPCIT wasted no time in [undermining the investigation](#), which was full of irregularities and inconsistencies. Among other things, border agents controlled the scene of the shooting for a full night, during which they detained and questioned the witnesses and had custody of Carmelo's body.⁷ Witnesses claimed that before they were detained, they saw agents [move the body](#) and tamper with the scene. Agents did not cede the body, witnesses, and evidence to local law enforcement until the next day. Additionally, [four border agents attended the autopsy](#) (twice as many as came from local law enforcement who were investigating the case).

⁵ CBP Commissioner Magnus stated in his May 2022 memo that the agency would be “transferring interested Border Patrol agents with specialized skills to OPR.” SBCC has since confirmed that this is happening now.

⁶ Confirmed by GAO to SBCC directly.

⁷ An [NBC News report on Feb. 21, 2022](#) indicates that although the incident happened at 10 pm in the evening, the sheriff's office did not arrive to scene or remove the body until the following morning. The report also indicates that witnesses were taken into custody by Border Patrol “for interview purposes.”

Viewing the autopsy is a practice repeated by BPCITs in other agent-involved killings and is a potential conflict of interest.⁸

The activities of border agents in this case and others beg the question of what kind of oversight, if any, OPR has been able or willing to exercise over BPCITs, and whether OPR is complicit in the undermining of investigations in order to protect agents and the agency.

IV. New records reveal BPCITs have undermined CBP's entire system of accountability.

A few weeks ago, SBCC learned through a Freedom of Information Act request that BPCITs have been involved in investigations for CBP at the highest levels since 2015, and have provided the very information that CBP's oversight bodies use to determine accountability. This raises the question of what CBP leaders knew and when they knew it, and points to their complicity in the operation of unsanctioned cover-up units. The [2015 CBP directive 4510-038](#) that SBCC acquired on July 5, 2022, and which CBP made public simultaneously states:

Section 5.3: The Chief Office of Border Patrol will provide qualified employees, including personnel from Critical Incident Teams or specialized teams, to be trained and participate as members of the [Use of Force Incident Team] and allow them to travel and respond as necessary, to use of force incidents in support of UFIT.

This directive, which was not made public at the time but explicitly named BPCITs as part of the Use of Force Incident Teams (UFITs), was dated July 27, 2015. On that same day, CBP made public a report to Congress called, "Investigations into Deaths in Custody and Use-of-Force Incidents," that deleted any reference to BPCITs.⁹ In this manner, BPCITs were kept hidden from Congress and the general public. This omission is all the more glaring in light of the recommendation by the Police Executive Research Forum (PERF) in a 2013 audit of CBP that BPCITs (which were not then known publicly) be publicly acknowledged and explained.¹⁰

The 2015 directive created the UFITs as well as the National Use of Force Review Board (NUFRB). These entities were formed in direct response to [congressional concerns about the accountability of border agents](#), prompted by a string of killings beginning with Anastasio Hernández Rojas, which in turn led to the PERF audit of CBP's use of force that led to policy changes and the formation of these entities. The CBP report to Congress lauds the NUFRB as a "robust process to investigate and review deaths and serious injuries," that relies on UFITs "to conduct thorough investigations."¹¹ But the newly revealed 2015 CBP directive casts doubt as to the impartiality of these entities, given the involvement of BPCITs *from the beginning* in preparing the information that was reviewed.

⁸ SBCC has reviewed multiple autopsy reports and consistently sees BPCIT agents present. This happened for example in the [autopsy of Anastasio Hernández Rojas](#).

⁹ See CBP's 2015 Report to Congress, "[Investigations into Deaths in Custody and Use-of-Force Incidents](#)," at ii.

¹⁰ PERF recommended that Critical Incident Teams, referenced in the [2010 Use of Force Handbook](#) at pages 20-21 (which was not public at the time), be defined and described. CBP responded by removing the reference altogether. It has never reappeared in subsequent handbooks even though BPCITs have continued to operate. See PERF audit recommendations, at 14, <https://www.cbp.gov/sites/default/files/documents/PERFReport.pdf>.

¹¹ *Ibid.*

The implications of BPCIT involvement in the UFIT and NURFB are devastating. It means that there is no part of CBP oversight that does not involve BPCITs. It means that their biased practice of mitigating liability to protect agents and the agency has permeated CBP. It means that the integrity of every investigation may have been compromised.

V. Congress must act to hasten and deepen its investigation of BPCITs.

In July 2022, the U.S. Immigration Policy Center conducted a national survey of voters, only one-quarter of whom trust border agents to protect their constitutional rights, or trust that agents will be held accountable if agents abuse those rights.¹² This is a crisis of confidence that cannot be ignored. When made aware of the congressional investigation of BPCITs, more than three-quarters of voters support government prosecutors reviewing these teams for potential obstruction of justice. Voters want accountability, and Congress can help deliver it.

Public safety depends on public trust, but there can be no trust if there is no accountability. Over the last three decades the BPCITs have become a significant threat to the pursuit of justice. There are an unknown number of border agents, supervisors, chiefs, and leaders who have at one time participated in BPCITs. It is imperative that Congress understand the scope of involvement in these unlawful units. One way to do that is to look at the Border Patrol Enforcement Tracking System (BPET) which collects and stores the “special skills” of agents, including BPCIT assignments.¹³

It is conceivable that most, if not every, current Border Patrol sector chief has participated in or overseen the activities of BPCITs. It’s also conceivable that former BPCIT agents now serve in positions throughout CBP, DHS, and other parts of government, including for example, the Office of Inspector General (OIG). Their footprint may be significant and may affect every oversight body within CBP and DHS. For this reason, we urge you to broaden your scope to understand the potential harm caused by a network of unchecked current and former BPCIT agents.

In the coming months, the international spotlight will be on the systemic impunity of border agents in the United States during a hearing before the Inter American Commission on Human Rights (IACHR) in the case of Anastasio Hernández Rojas.¹⁴ The case reveals the mechanics of impunity that operate to shield border agents from accountability for serious human rights violations. It is the first case against the United States involving an extrajudicial killing by U.S. law enforcement to be [admitted for review by the IACHR](#). To date, the United States has not rebutted the [allegations made by the family and corroborated by high-level officials](#). Anastasio’s case is not the only one, but it is the first to reach the international arena and it will bring into sharp focus the lack of accountability at the nation’s largest law enforcement agency.

¹² Only 1 in 4 voters trusted border agents “a great deal” or “a lot.” See [survey conducted by U.S. Immigration Policy Center in July 2022](#).


¹³ According to a 2017 BPET report, the system collects and stores “special skills” including “Critical Incident Investigative Team.” See page 8, FN 17 of the [report](#).

¹⁴ BPCIT interference in the Anastasio case is detailed in the [October 2021 letter sent to Congress](#). In November 2021, the [widow of Anastasio provided additional detail in a formal request](#) to the San Diego District Attorney to consider criminal charges for obstruction of justice. That request is pending.

This is the moment for Congress to respond, to fill the void and answer the call for accountability. Your committees are essential to exercise oversight through your ongoing investigations, through dedicated hearings, and through your own statements. Your actions can ensure that there is no place for rogue law enforcement in our democracy.

SBCC is making a special effort to be transparent with the information we receive or discover about BPCITs and will continue to document and share information with you about misconduct as we become aware of it. We are available to you to cooperate with your investigations.

Respectfully,



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Andrea Guerrero
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Cc: Nancy Pelosi, House Speaker
Steny Hoyer, House Majority Leader
Kevin McCarthy, House Minority Leader
Charles Schumer, Senate Majority Leader
Mitch McConnell, Senate Minority Leader