



**HOMELAND SECURITY ADVISORY
COUNCIL**

**INTERIM REPORT
OF THE
CBP INTEGRITY ADVISORY PANEL**

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This publication is presented on behalf of the Homeland Security Advisory Council, CBP Integrity Advisory Panel, co-chaired by Police Commissioner William 'Bill' Bratton, New York City and Administrator (Ret.) Karen Tandy, Drug Enforcement Administration as an *interim report* and recommendations to the Secretary of the Department of Homeland Security, Jeh C. Johnson.



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EXECUTIVE SUMMARY

Created as part of the homeland security reorganization of 2003, U.S. Customs and Border Protection (CBP) is the single, unified agency to protect and secure our nation's borders. CBP is by far the largest law enforcement agency of our country. In terms of its more than 44,000 arms carrying, sworn law enforcement officers, CBP is more than double the size of the Federal Bureau of Investigation (FBI) and substantially larger than New York Police Department (NYPD), the largest local police force in the U.S. Unquestionably, CBP is far more effective in performing its border protection mission than was the case pre-2003 when border enforcement authority and personnel were fragmented into four separate agencies aligned within three different departments of government.

Yet as a border agency with a national security and law enforcement mission, CBP is vulnerable to the potential for corruption within its workforce which, if not detected and effectively investigated, could severely undermine its mission. Moreover, it is imperative, as with all law enforcement, that CBP officers and agents avoid using excessive and unnecessary force in carrying out their duties. To this end, it is essential that CBP be capable of effectively investigating and deterring the potential unlawful and out-of-policy use of force by its personnel.

It is within this context that in December 2014, the Secretary of Homeland Security requested the Homeland Security Advisory Council (HSAC) to create the CBP Integrity Advisory Panel ("Panel"), a subcommittee of the HSAC, in order to take stock of and evaluate the progress of CBP regarding its efforts to deter and prevent corruption and the use of excessive force and its efforts to restore public confidence through more transparency with key stakeholders and the public. As part of the Secretary's tasking, he requested recommendations based upon law enforcement best practices regarding further steps needed to assure the highest level of integrity, compliance with use of force policy, incident response transparency, and stakeholder engagement. The Secretary's six specific tasking's are set forth in his letter to the HSAC dated December 9, 2014. (See Appendix B)

This interim report discusses integrity and use of force/transparency issues separately, yet some of our recommendations apply to both. A prime example is our recommendation that the number of criminal investigators in CBP's Office of Internal Affairs (IA) be substantially increased. An adequately staffed IA is essential to giving CBP the capacity to timely and thoroughly investigate all allegations of corruption as well as all use of force violations of CBP policy.

Since its inception less than four months ago, in March 2015, the Panel has met and reviewed numerous prior reports, gathered a prodigious amount of data and met with and interviewed dozens of representatives of CBP, Department of Homeland Security (DHS), various stakeholders and Non-Government Organizations (NGOs).

This is our first interim report and recommendations with more to follow in the future. Given the extraordinary importance of maintaining integrity and assuring compliance with use of

force policy, the Panel believes that consideration of our recommendations, and action upon them, should not await our final report.

Recommendations: Assuring Integrity

1. The Secretary of Homeland Security should make clear that the Commissioner of U.S. Customs and Border Protection is responsible for assuring integrity and the proper use of force by employees of CBP.
2. Adequately staff CBP's Office of Internal Affairs with sufficient and experienced 1811 criminal investigators to timely and effectively investigate allegations of corruption and use of excessive force involving CBP personnel.
3. Allocate and budget for 550 Full Time Equivalent (FTE) 1811 criminal investigators in IA, for a net increase of 350 FTE.
4. CBP should work with DHS to amend Management Directive 810.1 of June 10, 2004 as follows:
 - a. To establish a policy that the Office of Inspector General (OIG) will ordinarily defer to CBP's IA in corruption, use of force and other serious misconduct allegations involving CBP personnel,
 - b. In those instances in which OIG does not defer, the amendment should make clear that the default position would be for OIG to investigate corruption and use of force matters involving CBP personnel jointly with IA, and
 - c. In any event, it should be clarified that the commencement of an investigation by IA will not be delayed while OIG is evaluating whether to take an investigation.

Recommendations: Preventing Unauthorized Use of Force

5. CBP should revise its use of force policy guidelines, as follows:
 - a. Emphasize that its overarching responsibility is to preserve human life.
 - b. Implement specific restrictions on the use of firearms involving a moving vehicle and individuals throwing objects.
6. Training should continue to emphasize scenario based learning and should include de-escalation techniques designed to stabilize a situation and reduce the immediacy of the threat so that more time, options, and/or resources are available.
7. CBP should consider:
 - a. Developing local/regional Use of Force Incident Teams (UFIT)
 - b. Expanding the role of the Use of Force Review Boards (UFRB) to include a separate determination as to tactics employed during a use of force incident

- c. Consider a pilot project mandating that CBP law enforcement officers wear their body armor in operational assignments. Alternatively and in addition, better defined those circumstances where wearing body armor is required.
- 8. CBP should identify metrics to compare similarly situated officers/agents in order to evaluate the effectiveness of the body-worn cameras. Additionally, CBP should continue to consult with stakeholders and review model policies as it considers its final body worn camera policy in light of the lessons learned during the feasibility study.

Recommendations: Improving Transparency

- 9. CBP has the correct policy (“Maximum Disclosure Minimum Delay”) but needs to focus on establishing and streamlining its process to further minimize delay in releasing information to the media and public.
- 10. The Commissioner should consider designating one person at a sufficiently high leadership level in CBP to direct and oversee the implementation of CBP’s transparency policy across the agency.
 - a. CBP should consider posting on the internet all high profile policies and guidelines that may be of interest to the media or public, *i.e. Use of Force, Pursuit, Internal Affairs, and Domestic Violence with Law Enforcement Officers*.
 - b. It is imperative that the two separate entities, Office of Public Affairs (OPA) Media Division and the Border Community Liaisons (BCLs), are functioning under a single congruent policy with the same mission. Information sharing between two must be mandatory.
- 11. As with all law enforcement agencies, CBP recently promulgated comprehensive, clear and concise policies on the use of force that include training, investigations, discipline, prosecutions, data collection, and information sharing.
 - a. CBP should consider making these policies openly available for public inspection.
 - b. Policies on use of force should clearly state what types of information will be released, when, and in what situation to maintain transparency.¹
- 12. The BCLs should be pro-active in their outreach to engage stakeholders, community partners and leaders regardless of whether a high profile law enforcement incident involves CBP. For example, nationally high profile incidents (Ferguson, MO; Staten Island, NY; Tulsa, OK; North Charleston, SC, and Baltimore, MD) that do not directly affect CBP should be viewed at as an opportunity for the BCLs to stay in contact with their stakeholders and engage community partners in an open dialogue.

¹ The media policies made available to the Panel contain this information, but the reputation of CBP has been that the practice of expedient release of information is not followed.

13. CBP should reinforce its existing policy that mandates all uniformed personnel must wear visible name tags identifying their last name on all uniforms at all times.
14. CBP has posted a Spanish language version of the complaints form on its website but should review and improve its overall complaints system, including fully integrated Spanish language capability in the CBP call center and other steps to provide public accessibility and transparency in its complaint process for non-English speaking individuals.

ASSURING INTEGRITY

Improving Integrity, eliminating corruption and providing for an effective Office of Internal Affairs

Several of Secretary Johnson's tasking's set forth in his December 9, 2014 letter to the Homeland Security Advisory Council (see, e.g., Nos. 2, 4 and 5) relate to the threat of corruption faced by a border agency such as CBP and call for recommendations from the Panel regarding how corruption and other serious misconduct can be deterred and prevented. Tasking No. 4, in particular, seeks recommendations that assure that CBP develops "an effective capability for investigating criminal misconduct within its ranks", including corruption and the unlawful use of force.

1. CBP General Background

CBP is one of the seven component agencies of DHS. In terms of personnel and budget, it is the largest component agency within DHS, with 60,000 employees and a budget of \$12 billion. Indeed, 25% of all the personnel of DHS are CBP employees.

CBP is a law enforcement agency, albeit one with a unique law enforcement mission to enforce the laws at and near the borders of the U.S. Of CBP's 60,000 employees, 44,000 are armed law enforcement officers (LEOs) authorized to interrogate, conduct searches and make arrests. 21,000 of CBP's LEOs are Border Patrol Agents (BPAs) assigned to CBP's Border Patrol assigned between the nation's ports of entry and 22,000 are CBP Officers (CBPOs) assigned to our nation's 300+ ports of entry, along our land borders and at our seaports and international airports. CBPOs are under CBP's Office of Field Operations. Given the number of LEOs within CBP (44,000), CBP is the largest law enforcement agency of the United States; larger than the New York Police Department with 34,500 sworn officers and larger than the FBI with 13,000 Special Agents.

CBP's primary mission is to enforce our nation's laws at and near our borders - - laws against smuggling of drugs and other contraband, against illegal migration, etc. - - and to protect the United States and its citizens against asymmetrical attack by international terrorist organizations, state sponsored or otherwise. In sum, CBP's mission is both a law enforcement and a national security mission and there is little room for error².

2. Corruption as a Threat to CBP

Every border agency in the world is vulnerable to bribery and corruption; arguably more so than any other type of law enforcement agency, federal, state or local, and CBP is no exception. Indeed, corruption is the Achilles heel of border agencies. The mere perception of widespread corruption does irreparable damage to the agency's reputation for integrity and causes other agencies to refuse to share information essential to effective border enforcement and

² At our nation's ports of entry, CBP must perform this mission without unduly impeding the flow of legitimate trade and travel.

interdiction. The threat of corruption cannot be gainsaid. There are major drug trafficking and smuggling organizations - - transnational criminal organizations (TCOs) that operate on both sides of our borders - - that have budgets in the tens of millions of dollar for bribes and corruption of government officials. The need to assure integrity within CBP, therefore, is one of its paramount priorities.

An adequately staffed internal affairs component within the border agency, reporting to the agency head, is not only an internationally recognized anti-corruption best practice, but it is an indispensable tool, along with a functioning disciplinary system, to containing, reducing and deterring corruption. As part of its international role, CBP is in the awkward position of teaching professionalism and integrity to foreign Customs and border agencies around the world, including the need for a robust internal affairs capability, and yet CBP itself does not have an adequately staffed internal affairs and has not had one since the creation of CBP in March 2003.³ This needs to be rectified as expeditiously as possible.

Over the past decade, the number of allegations of corruption involving CBP employees, both Border Patrol Agents and CBP Officers at the ports of entry, may be increasing⁴ as has the public perception, through the media, of increasingly pervasive corruption within CBP's ranks.⁵ Moreover, there is data indicating that arrests for corruption of CBP personnel far exceed, on a per capita basis, such arrests at other federal law enforcement agencies. And yet the investigations of corruption within CBP, to the extent they occur, have been undertaken outside of CBP, principally by the DHS Office of Inspector General.⁶ These investigations are nearly all reactive and do not use proactive, risk analysis to identify potential corruption. Moreover, they often take far too long and are conducted without the ability of the Commissioner to prioritize them. They often occur without any visibility of the Commissioner into ongoing corruption investigations involving his own agency. Until this is reversed, CBP remains vulnerable to corruption that threatens its effectiveness and national security.

3. The Genesis of the Problem

The U.S. Customs Service, the principal predecessor agency of CBP, had an effective internal affairs office. This office was decimated as an inadvertent, unintended consequence of the Homeland Security reorganization of March 2003. As part of the reorganization, all 3,400 Customs Special Agents (1811 criminal investigators) were transferred from Customs/CBP to Immigrations and Customs Enforcement (ICE). Because 180-200 Customs Special Agents had been assigned to Customs Office of Internal Affairs⁷, CBP was left on March 1, 2003 with no

³ CBP exercises a leadership position on the anti-corruption issue through its prominent role in the World Customs Organization.

⁴ There is data for corruption arrests. This data, which does not capture the number of corruption allegations or the current situation, has fluctuated generally downward since spiking in 2009.

⁵ Moran, Greg "Border boost spiked corruption case: Decade-long increase in staffing coincide with legal trouble for law enforcement," *San Diego Union-Tribune*, December 8, 2013.

⁶ Some corruption investigations of CBP personnel are conducted by the FBI-led Border Corruption Task Forces (BCTFs). CBP Internal Affairs investigators participate on the BCTFs, giving the CBP Commissioner desirable visibility over those matters. Until last year, when the Secretary delegated authority to investigate criminal matters involving CBP to CBP's Office of Internal Affairs, ICE's Office of Professional Responsibility handled the CBP criminal misconduct investigations declined by the DHS OIG.

⁷ All investigators in U.S. Customs' Office of Internal Affairs were Customs Special Agents.

internal affairs investigators. CBP has had to rebuild its internal affairs capability, but it is still far below what is needed. Currently, CBP's Office of Internal Affairs is woefully understaffed. CBP has approximately 218 Internal Affairs investigators⁸ for a workforce of nearly 60,000 employees, 44,000 of whom are law enforcement officers.

4. The Secretary's Actions

Secretary Johnson has taken two important steps to restore CBP's internal affairs capability. First, in August 2014, he delegated to CBP's Office of Internal Affairs investigators the authority to investigate potential *criminal* misconduct on the part of CBP personnel.⁹ Prior to this delegation, CBP internal affairs investigators could only investigate *administrative* violations. Since corruption by its nature is a potential criminal offense, CBP's Office of Internal Affairs, astonishingly, had lacked the authority to investigate such matters.

Second, Secretary Johnson gave CBP the authority to hire investigators as 1811s.¹⁰ Previously CBP internal affairs investigators had the more limited 1801 personnel designator. As a consequence of Secretary Johnson's action, CBP has recently been able to convert most of its 1801 Internal Affairs investigators to 1811s. The 1811 status will also help CBP recruit the best investigators into its Office of Internal Affairs going forward.

5. An adequately staffed Office of Internal Affairs within CBP is essential

As noted, CBP has 218 criminal investigators authorized for its Office of Internal Affairs. This is not a sufficient number. Indeed, the failure to adequately staff CBP Internal Affairs with sufficient 1811 criminal investigators to promptly and thoroughly investigate allegations of internal corruption and other serious misconduct leaves CBP with an enormous vulnerability: the risk of systemic corruption and potential scandal.

It is important to bear in mind that the CBP Commissioner is responsible and accountable for the integrity of CBP personnel. Indeed, no one within DHS has a greater institutional interest in preventing, ferreting out and staunching corruption within CBP's ranks than the Commissioner. On this important issue, and as a matter of good governance, it is of the utmost importance that the Secretary of Homeland Security is able to look to one person, the Commissioner, as the person within DHS who is ultimately responsible and can be held accountable for CBP workforce integrity. The Commissioner must have visibility into allegations of corruption and their investigation. Only the Commissioner can assure that they are investigated promptly. Only he/she can see that appropriate management action is taken to break up any developing nest of corruption at particular ports of entry or Border Patrol stations or checkpoints. Only the Commissioner can assure that investigations are timely completed, so that the cloud of a wrongful allegation can be removed when it is not proven and that swift and sure

⁸ Excluding polygraph examiners, CBP's Office of Internal Affairs is currently authorized 218 criminal investigators. There are 207 criminal investigators on board.

⁹ CBP Memo to Secretary Jeh Johnson "Authorization to the Commissioner of CBP to Investigate Allegations of Criminal Misconduct by CBP Employees and to Convert CBP Internal Affairs GS-1801 Employees to GS-1811 Series to Conduct such Investigations" dated August 29, 2014

¹⁰ CBP Memo to Secretary Jeh Johnson "Authorization to the Commissioner of CBP to Investigate Allegations of Criminal Misconduct by CBP Employees and to Convert CBP Internal Affairs GS-1801 Employees to GS-1811 Series to Conduct such Investigations" dated August 29, 2014.

discipline results when the allegation is proven. And only the Commissioner can assure that the investigatory and disciplinary apparatus is operating effectively to achieve optimal deterrence. The Commissioner must have visibility into and oversight over investigations of corruption and other serious misconduct, and the authority and resources to see that investigations are prompt and thorough. For this, CBP needs an adequate staff of competent criminal investigators in CBP's Office of Internal Affairs, headed by an Assistant Commissioner for Internal Affairs, who reports directly to the Commissioner.

If the CBP Commissioner, who heads the largest law enforcement agency in the United States in terms of number of law enforcement officers, is to be held accountable for the integrity and conduct of CBP personnel, he/she also must be provided with the resources and authority needed. No chief of police of a major police department could be held accountable for the conduct of his/her personnel if he had no internal affairs capacity and could not investigate corruption and other serious misconduct within his organization's ranks. Until Secretary Johnson's recent steps to correct this internal affairs gap, that has been the case with CBP.

CBP's nearly 60,000 FTEs, most of whom are deployed at or near our nation's borders, is comprised of 21,000 Border Patrol Agents within CBP's Border Patrol, and 22,000 CBP Officers at our nation's ports of entry. There are over 1,000 CBP Air and Marine officers. All of them carry a firearm, a badge, and have law enforcement authority to arrest and take other law enforcement actions. Last year, for example, CBP Officers made over 8,000 arrests at U.S. ports of entry of individuals wanted for serious crimes; CBP Border Patrol Agents arrested over 486,000 people illegally entering the U.S.; and CBP as a whole seized over 3.5 million pounds of illegal drugs at and near the U.S. borders.

To have an effective internal affairs capacity for a border law enforcement agency of CBP's size requires an internal affairs office of a minimum of 550 fulltime 1811 investigators. We base this number on an analysis of the ratio of LEOs to internal affairs investigators at CBP's predecessor agency, the U.S. Customs Service, as well as the NYPD and the FBI.

Before the homeland security reorganization of 2003, the U.S. Customs Service had an effective internal affairs function within its Office of Internal Affairs (OIA). It consisted of approximately 180 1811 Special Agents, most of whom were assigned for four year assignments to Customs' Office of Internal Affairs from Customs' Office of Investigation (OI). Customs assured that only the best and most highly motivated Agents were assigned to its Internal Affairs Office by assuring a good assignment within OI after serving in Internal Affairs. Assuming that the number of U.S Customs Service OIA investigators was adequate, CBP would need approximately 550-560 investigators.

Shortly before CBP was created, legacy Customs was an agency of 23,000 employees, 14,000 of which were LEOs (Customs Inspectors and 1811 Special Agents). Using the legacy Customs' ratio of LEOs to internal affairs investigators as a benchmark, CBP should have 565 full-time investigators in its Office of Internal Affairs.¹¹

¹¹ Using this ratio, 565 internal affairs investigators are warranted.

180	565 (Projected)
14,000	44,000

Benchmarking the ratio of FBI's internal affairs investigators with the number of FBI Special Agents would support an even larger number of Agents in CBP's Office of Internal Affairs. The FBI has 13,000 Special Agents. Approximately 250 Agents, or the equivalent,¹² are assigned to internal affairs investigations.¹³ It is noteworthy that ICE currently has 200 agents assigned its Office of Professional Responsibility. Its workforce of 19,000 is roughly 1/3 of CBP. This is another indicator that CBP IA should be approximately 550 to 600 agents.

In many ways CBP more closely resembles a large police department than a federal investigative agency. The largest police department in the U.S. is the NYPD. NYPD has 34,500 sworn officers. There are 550 officers assigned to its Internal Affairs component. Using this ratio, CBP would require 580 investigators in its IA.

6. How to meet the CBP requirement for internal affairs resources

Pursuant to the Secretary's authorization, CBP has converted most of the current CBP Internal Affairs 1801 investigators, who were eligible, to 1811 status. Excluding polygraph examiners, there are currently 218 criminal investigators authorized under CBP's budget. There are various ways to build CBP's Office of Internal Affairs to 550. One way would be to budget an additional 330 1811 FTE into CBP's budget and begin hiring. This of course takes time. Another, and one which could achieve the desired staffing goal more quickly, would be to re-assign and train approximately 200 experienced investigators from within the current CBP ranks, that is, approximately 100 Border Patrol Agents and 100 CBP Officers. Ideally, these re-assigned LEOs would be backfilled with a budget augmentation. The balance of the 130 1811 shortfall could be achieved by an interagency transfer of 1811 FTE from ICE and OIG.¹⁴ It is worth remembering that as part of the homeland security reorganization, all of Customs 180 internal affairs investigators moved to ICE. It is only appropriate that they, or the FTE they represent, now be returned to CBP. Moreover, as CBP's internal affairs capability is ramped up, most CBP corruption investigations previously being investigated by OIG and/or ICE will be investigated by CBP Internal Affairs going forward, and it is only fair and appropriate to do a resource transfer that reflects this new reality, i.e., the reduced workload for OIG and ICE which is being and will be absorbed by CBP's IA as it ramps up to strength.

7. Reasons to Act Now

Equipping CBP with the staffing and structure to prevent and respond to corruption within its ranks is clearly time sensitive. OIG's investigations are reactive, chronically slow and not prioritized to focus on this issue. The true levels of corruption within CBP are not known,

¹² The FBI has 30 Agents assigned to its Headquarters' internal investigations unit, but draws upon 1,400 Special Agents in the field. The 250 figure represents the approximate number of Agent years devoted to internal investigations in any given year. CBP would not be able to use this model inasmuch as it has no 1811 investigators, outside of its Office of Internal Affairs, in the field.

¹³ Using the ratio of IA investigators to LEOs would result in a need for about 800 investigators for CBP, well over the 550 investigators we are recommending.

¹⁴ In lieu of a direct transfer from ICE, it may be possible through an interagency Memorandum of Understanding to have ICE re-assign approximately 130 Special Agents to CBP's Office of Internal Affairs for 3-4 year assignments, with the expectation that most would return to ICE.

nor is there an evaluation based on sophisticated risk analysis. This means that pockets of corruption could fester within CBP, potentially for years. In turn, it also means that CBP employees against whom allegations of corruption are made live under a cloud for far too long, which affects their ability to be promoted, etc. As the accountable leader, the CBP Commissioner must have the ability to prioritize such serious misconduct investigations if corruption is to be checked and countered by expeditious and effective investigations and followed by appropriate prosecutive and/or disciplinary actions. Finally, it is noteworthy that a strong and fully functioning Internal Affairs also serves as a training ground for more effective future leaders in an agency and as a guidepost for better informed agency policy, training and recruitment.

8. Revise Management Directive 810.1

The alignment of accountability to prevent and curtail corruption requires more than just increased resources in CBP's IA; it requires fundamentally changing the paradigm that currently exists between CBP's Office of Internal Affairs and the Department's Office of Inspector General. This means changing DHS Management Directive 810.1.¹⁵

Currently, and based on a Management Directive that dates back to 2004, the OIG exercises a right of first refusal with respect to all allegations of corruption (and use of excessive force) that are presented to it. Some of these allegations come through CBP reporting into the Joint Intake Center (JIC), but some come to the OIG through separate channels. CBP has no visibility into corruption allegations and investigations that by-pass the JIC. But even those that are reported to the JIC, under the current system, may be investigated by the OIG with limited or no visibility by the Commissioner or involvement of CBP IA. This may have made sense before CBP has its own Office of Internal Affairs with investigators empowered to conduct investigations into allegations of corruption, excessive use of force and other potentially criminal and serious misconduct, but it no longer makes sense. And, it leaves CBP unnecessarily vulnerable to corruption.

As noted in the December 2011 report of the Homeland Security Studies and Analysis Institute (HSSAI) on CBP Workforce Integrity, there is a serious structural problem created by the current relationship between the DHS OIG and CBP's OIA, a problem that has existed since the very creation of DHS. The HSSAI report emphasizes that this relationship needs to change. In this regard, the HSSAI found - - and we agree - - that the OIG relationship with CBP's Internal Affairs is broken. The HSSAI stated that this relationship has "proven to be largely ineffective" and was contrary to the "conventional federal law enforcement model for internal affairs", noting that "model calls for the placement of the internal investigative function within the agency which bears the strongest institutional interest in deterring and detecting corrupt behavior." Importantly, the HSSAI recommended that the DHS leadership should change the OIG-CBP organizational structure for, among other things, assignment and investigation of CBP workforce misconduct. (See HSSAI Final Report, pages 14-18).

¹⁵ As noted elsewhere in this report, the Commissioner also needs similar authority and resources in order for CBP to reduce and curtail unlawful and out-of-policy use of force.

Facilitating effective internal affairs investigations, overseen by the CBP Commissioner, requires a modification of the DHS Management Directive 810.1, which was promulgated June 10, 2004, shortly after the creation of the Department of Homeland Security. It is noteworthy the first Secretary of Homeland Security issued this Management Directive at a time when CBP had *no* internal affairs investigators and *no* delegated authority to investigate allegations of potential criminal misconduct.¹⁶ Under the outdated 2004 Management Directive, DHS OIG is given the right of first refusal regarding all corruption and other serious misconduct allegations against CBP personnel. This impairs the launching of an investigation by CBP IA, often for days, until the OIG decides whether to investigate. Moreover, the OIG's decision whether to investigate is not made pursuant to any defined criteria. Rather, the decision is delegated by the Inspector General (IG) to OIG agents-in-charge in the field who are given no guidance as to when or when not to investigate a matter¹⁷. When OIG elects to investigate, the Commissioner of CBP has no control over such investigations. The Commissioner has no ability to prioritize these investigations or take any preventative management actions for the simple reason that the Commissioner has limited to no visibility and has no authority to direct OIG agents.

By contrast, at the Treasury Department, the Treasury OIG, while it had a right of first refusal, almost routinely deferred investigation of corruption and other misconduct involving U.S. Customs employees to Customs' internal affairs. The Department of Justice (DOJ) has no Management Directive governing the relationship between the DOJ OIG and its law enforcement component agencies, i.e., FBI, DEA and ATF. Each DOJ component agency has a separate Memorandum of Understanding (MoU) with the DOJ OIG. We understand that ordinarily the DOJ OIG defers to the individual agencies' internal affairs components.

With an adequately staffed CBP Office of Internal Affairs and visibility by and oversight of the CBP Commissioner, the current antiquated arrangement between the OIG and CBP needs to change. The Management Directive should be amended to make clear that, while all allegations of misconduct will be reported to the OIG, the OIG ordinarily will defer the investigation of such allegations to CBP IA. In particular, the OIG should apply criteria that it will ordinarily defer to CBP IA in corruption and use of force cases involving CBP personnel. In those instances in which the OIG chooses not to defer to CBP IA, the ordinary default position should be that the OIG and IA will jointly investigate the allegation.¹⁸ The Secretary of Homeland Security should direct that the OIG's guideline for these cases should be to defer to CBP's IA, or at a minimum to work these investigations jointly with CBP IA, and this guideline should be specifically incorporated as an amendment to MD 810.1.

¹⁶ The operative MoU between the OIG and CBP is even older. It dates back to December 2003 and is between the OIG and the Border and Transportation Security Directorate (BTS), a part of the DHS that no longer exists. BTS was abolished in 2006. This means that, in reality, there is no operative MoU between CBP and OIG. That said, the OIG-BTS MoU was entered into at a time, unlike today, when CBP had no internal affairs investigators, much less investigators with authority to investigate criminal and other serious misconduct.

¹⁷ Currently, the IG provides no criteria to the Office of Investigations of the OIG when it should accept matters for investigation or defer to CBP IA. Agents in charge of OIG field offices are left to decide without any criteria or guidelines to follow from the IG. This is simply not an efficient way to proceed, particularly with respect to allegations of corruption or excessive use of force.

¹⁸ The only exception where OIG would exclusively investigate CBP personnel is where the allegations involve the highest level management of CBP or personnel of CBP's IA. Only in these rare instances, where there could be an appearance of partiality, should the OIG investigate alone.

In lieu of or in addition to a revision of the Management Directive, the foregoing could be accomplished by a separate MoU between the OIG and CBP.

PREVENTING UNAUTHORIZED USE OF FORCE

The first tasking of the Secretary's December 9, 2014 relates to Use of Force issues, and particularly CBP's training and actions to address use of force incidents as well as its progress in responding to use of force reviews.

1. Background re Use of Force

As noted, CBP has 44,000 gun carrying, sworn law enforcement officers (LEOs). To carrying out its law enforcement and national security mission at and near the borders of the U.S. CBP divides its operational components into three separate operational divisions, the Office of Field Operations, the United States Border Patrol and the Office of Air & Marine. This includes 21,000 Border Patrol Agents, 22,000 Customs and Border Protection Officers at the nation's ports of entry, and 1,000 Air and Marine Officers. Unlike any police department or any other federal law enforcement agency, CBP's LEOs have a law enforcement mission and operate in a far-flung, often rugged environment. This is particularly true of CBP's Border Patrol which operates and patrols vast segments of our country's borders between the land ports of entry. This includes a 4,000+ mile border with Canada, and the 2,000 mile border with Mexico. Indeed, because of the threats from illegal drugs and illegal migrant smuggling, approximately 18,000 Border Patrol Agents are stationed at and near the U.S. border with Mexico.

The primary mission of CBP is to prevent illegal entry of persons and contraband, including illegal drugs into the U.S. But CBP's priority mission is to prevent terrorists and terrorist weapons from entering the U.S.

CBP's Border Patrol operates in a particularly difficult and often dangerous environment, with their typical law enforcement encounters occurring in rugged, rural terrain and almost always at night. Whereas, CBP's LEOs at the ports of entry, while also exposed to danger, operate in an enclosed, more controllable environment. It is not surprising, then, that most of the attention, and criticism, of use of force within CBP has been focused on CBP's Border Patrol Agents. Indeed, most uses of force resulting in death or serious bodily injury by CBP LEOs are force exercised by Border Patrol Agents. All 67 instances of use of force referenced in the PERF review involved Border Patrol Agents. Most of the adverse media relating to CBP's use of force involves the Border Patrol.

There are times when, in order to accomplish its mission, CBP's LEOs must and appropriately do use force, even lethal force. Yet as is true of all law enforcement agencies, and CBP is no exception, the exercise of force must be consistent with the U.S. Constitution and laws and in compliance with sound policy based on a model of law enforcement best practices, primarily developed and implemented by large urban police departments within the U.S., e.g., the NYPD.

As discussed below, Commissioner Kerlikowske has moved forward and implemented the first comprehensive use of force policy for all LEOs within CBP. He has launched Use

of Force Incident Teams (UFIT) and established the Use of Force Review Board (UFRB). He has improved training to the Use of Force policy. Yet CBP still lacks the number of investigators to investigate all significant use of force incidents and only recently received the authority to investigate the more serious use of force cases.¹⁹

2. Model Practice

The following model practice should be used to develop use of force policy within law enforcement agencies, regardless of their specific mission and areas of responsibility.

The use of force by law enforcement officers must at all times be consistent with federal constitutional requirements. This is the minimum standard that applies to all applications of force. Many law enforcement agencies have established standards for the use of force that exceed the constitutional requirements. It is the collective experience of these agencies that raising the standard within the agency has resulted in a decrease in the use of deadly force without compromising officer safety. Additionally, promulgation of succinct restrictions resonates with officers/agents and does not place them in the precarious position of deciphering what in some contexts may be complicated or nuanced areas of law. Nothing contained in the Panel's recommendations should be construed in a manner that contravenes constitutional requirements. Our recommendations are intended to serve as additional limitations beyond the minimum requirements of the constitution.

An overarching responsibility of all law enforcement, including CBP LEOs, is to preserve human life. Whenever possible, de-escalation techniques shall be employed to safely gain voluntary compliance by a subject. In situations in which this is not feasible, officers/agents will use only the amount of force reasonably necessary to gain compliance, control or custody of a subject. Deadly force should be used only as a last resort to protect officers/agents and/or the public from a threat of serious physical injury or death.

Any use of force must be both necessary and objectively reasonable under the circumstances to ensure the safety of the officer/agent, protect life, control volatile situations, and/or bring subjects into custody. All officers/agents are responsible and accountable for the proper use of force. The application of force must be consistent with existing law and CBP policies and training.

Excessive or unnecessary force will not be tolerated. Officers/agents who use excessive force will be subject to discipline, up to and including dismissal from the agency. Similarly, failure to intervene and or report the use of excessive or unnecessary force, is itself serious misconduct that may result in discipline, up to and including dismissal from the agency.

¹⁹ Recent articles have severely criticized CBP for failing to adequately investigate the uses of force. Duara, Nigel, "Border Patrol agents, facing scrutiny over shootings, have harsh words for their leaders", *LA Times*, June 17, 2015. And yet, CBP did not have sufficient IA investigators to investigate these incidents, nor until recently did its IA investigators have authority to conduct investigations involving potential criminal misconduct in the exercise of use of force by CBP's LEOs

The use of force policy and training materials should emphasize the values and principles articulated above, include best practices including de-escalation and less lethal techniques, provide clear guidelines, employ scenario based learning and stress sound tactics. Meaningful in-service training for all officers/agents is essential to buttress these principles. An effective and robust use of force investigation and evaluation program is essential to ensuring adherence to the use of force guidelines and identifying tactical deficiencies as well as training needs.

3. Changes in CBP Policies and Systems

a. Updated and Ongoing Policy Changes

There are times in law enforcement when some level of force must be used to safeguard the public or protect an officer or agent. Any use of force must be justified by law and consistent with CBP policy.

The CBP use of force policy requires that deadly force only be used when an officer or agent has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or agent or another person.

b. The PERF Report and the Public Release of CBP's Use of Force Handbook

In 2012, CBP commissioned the Police Executive Research Forum (PERF) to conduct a review of the use of force by CBP officers and agents. PERF reviewed CBP's Use of Force Policies and specific cases of deadly force. The PERF review raised concerns about shots fired at vehicles and shots fired at subjects throwing rocks and other objects at agents. PERF also recommended improvements in initial reporting, investigations, incident review, weapons, personal protective equipment, and training.

Based on the observations and recommendations made in the PERF's report, "U.S. Customs and Border Protection Use of Force Review: Cases and Policies," and following its own review, CBP revised its *Use of Force Policy Handbook* and its training processes for agents and officers (*U.S. Customs and Border Protection, Use of Force Review: Cases and Policies*, February 2013, conducted by PERF, p. 2).

In May 2014, to reinforce accountability and transparency in use of force situations, CBP Commissioner Kerlikowske ordered the public release of the agency's *Use of Force Policy Handbook* and the PERF report. This was the first time the *Handbook* had been made public. At the time of its release, Commissioner Kerlikowske said, "We initiated both internal and external use of force reviews to improve ourselves and our responsibility to the public and to use force only when necessary . . . the policy and training changes they represent are the beginning of a continuous review of our responsibility to only use force when it is necessary to protect people" (CBP Press Release, *CBP Releases Use of Force Policy Handbook and Police Executive Research Forum Report*, May 30, 2014). The Handbook went into full effect on October 1, 2014.

In addition to the above CBP actions to improve their policies, practices, training and other requirements to address proper use of force, CBP has issued safe tactics directives, undertaken policy reviews such as vehicle pursuit, added systems to manage their use of force program such as a center of excellence to address and oversee use of force training policy, and has established an administrative review process that includes use of force incident response teams (UFIT) and local and national review boards (UFRB).

4. Use of Force – Looking Ahead

a. Use of Force Guidelines

Customs and Border Protection has already made significant improvements to its use of force policies, training and investigations as outlined above and CBP continues to evaluate these programs in an effort to identify best practices and seek improvement. The following observations and recommendations are offered to assist CBP in this process by highlighting the shared experiences of other law enforcement agencies in these challenging areas.

CBP has comprehensive use of force guidelines promulgated in its “Use of Force Policy, Guidelines and Procedures Handbook,” but should consider revising those guidelines to include a decisive value statement prominently featured at the outset of the policy stating that above all, CBP values human life and the dignity of every person and that the primary duty of every CBP officer/agent is the preservation of human life. Such a value statement clearly establishes the agency’s priorities and provides the context for the policies that flow from it. Accordingly, CBP should clarify its statement that a use of force is “necessary” when it is “reasonably required to carry out the officer’s/agent’s law enforcement duties”²⁰ and limit the use of force to the minimum amount necessary to protect life and personal safety as well take control of a suspect.

In the current Handbook, the policy statement limiting the application of deadly force to situations in which the officer/agent is facing imminent danger of death or serious physical injury should be prominently featured at the forefront of the policy. It should be stressed that firearms are to be used only as a last resort and then only to protect human life. While a certain degree of discretion is absolutely necessary for officers/agents to perform their duties and protect their safety, that discretion should be constrained by very specific policies addressing the most problematic situations.²¹

CBP should consider specific restrictions on the use of deadly force including the following:

- i. Prohibit or restrict discharging firearms at a moving vehicle unless deadly force, other than the vehicle itself, is being used/threatened against the officer/agent or another person present unless it is not possible for the

²⁰ Customs and Border Protection, *Use of Force Policy, Guidelines and Procedures Handbook* (May 2014) p.1.

²¹ Walker, Samuel, E. & Archbold, Carol, A., *The New World of Police Accountability* (2014) pp. 66 – 71.

threatened officer to avoid being struck by the vehicle.²² When firing at a moving vehicle, there is little likelihood of incapacitating the driver or disabling the vehicle. Even if the driver is incapacitated, an out of control vehicle may present an even greater hazard to the officers/agents.²³

- ii. Prohibiting the use of deadly force if objects are hurled/thrown at officers/agents unless the object(s) are likely to cause serious physical injury or death. In many cases the use of cover and positioning may mitigate the threat posed by thrown objects.
- iii. Prohibiting the discharging of firearms if in the officer's/agents professional judgment doing so will unnecessarily endanger innocent persons.

Under the current guidelines, following the use of deadly force, an officer/agent is required to notify a supervisor. While an important step, there is an opportunity to emphasize the values articulated above more clearly. The immediate action following a use of deadly force should be to take whatever action is necessary to mitigate any threats to life and safety. Next, the officer/agent should request medical assistance and render aid if practicable. After these life-saving/life-preserving measures, it would be appropriate to notify a supervisor as well as request additional resources.

Finally, CBP should consider mandating that officers/agents wear their body armor when performing an operational function in the field. Currently the decision to wear body armor is optional although a local commander can mandate it in certain situations. CBP should conduct a pilot project in several areas to study the impact and effects of wearing the body armor.

b. Use of Force Training

CBP's in-service training should continue to emphasize scenario-based training that includes actual situations encountered by officers/agents in the field.²⁴ Training should involve all levels along the use of force continuum and not necessarily follow a set progression (utilize a randomized approach so the outcomes are not predictable

²² The only exception to this prohibition would be when it is impossible for the threatened CBP LEO to avoid the vehicle or escape its probable impact.

²³ In 1972, the NYPD recorded over 900 officer involved shootings. In that same year, the NYPD adopted a use of deadly force policy that was more restrictive than state law required. The NYPD prohibited firing warning shots and firing at a moving vehicle and required the reporting and investigation of all firearm discharges. Officer involved shootings declined by 30% over the next three years. In 2014, the NYPD recorded 80 officer involved shootings (includes intention/adversarial, accidental and animal encounters).

²⁴ There is a consensus among law enforcement agencies that the key to improving police-recruit training is to move from traditional classroom to more hands-on instruction by increasing the quality, number, and use of scenario-based training events. There needs to be sufficient flexibility in the training schedule to allow students the opportunity to repeat training if necessary until they can demonstrate that they have mastered the skills being taught. Rand Center on Quality Policing, *Evaluation of the New York City Police Department Firearm Training and Firearm-Discharge Review Process* (2008).

to the trainees). Scenarios should include de-escalation techniques and the application of less lethal options. Training should also emphasize effective tactics that may avoid necessitating the use of force (e.g. repositioning and utilizing cover to mitigate a threat from rock throwers).

De-escalation techniques can be used to stabilize the situation and reduce the immediacy of the threat so that more time, options, and/or resources are available (e.g., tactical communication, requesting additional resources, etc.). The goal is to gain the voluntary compliance of the subject, when feasible and consistent with personal safety, to reduce or eliminate the necessity to use force. Officers/agents should communicate from a safe position by using distance, cover or concealment and attempt conflict negotiation techniques to calm an agitated subject and obtain voluntary compliance if feasible. De-escalation techniques should be attempted whenever feasible.

c. Investigation of use of force incidents

CBP should investigate, or whenever possible, participate in investigations of use of significant force by CBP LEOs. Such investigations have a threefold purpose. One is to develop evidence of violation of CBP's use of force policy for purposes of imposing discipline²⁵, and, where warranted, to support criminal prosecutions for, e.g. violation of a victims civil rights. But such investigation, whether initiated by the UFIT or otherwise, are needed in order that the Commissioner and the UFRB have insight into upgrades in policy and training that are indicated by patterns detected. It is also noted that investigations permit better tracking of potential problem personnel.

d. Review of use of force incidents

According to the CBP Handbook, the Use of Force Review Committee reviews certain shooting incidents and is chaired by the director of the Use of Force Center for Excellence (UFCE). However, during recent CBP briefings for this panel, UFCE executives indicated that an executive from Internal Affairs chairs the review. This discrepancy needs to be clarified. The IAP recommends that neither position should chair the review committee. Each of these disciplines as well as the operational components within the agency play an important role in the review process but each represents a specialized interest. CBP should consider vesting authority to chair the review board in the Deputy Commissioner's office or in someone at a sufficiently high level within CBP to command and respect by CBP's operational components.

The UFRB reviews all significant use of force incidents resulting in serious physical injury or death, or any incident involving the discharge of a firearm. The UFRB determines if the actions of an officer/agent were consistent with agency policy, whether there was any misconduct and what lessons were learned from the incident.

²⁵ We intend to address the adequacy of CBP's discipline process in a subsequent report, but it is an important component for deterring out-of-policy force.

In determining whether a firearms discharge was within agency guidelines, the actions of each officer/agent involved should be evaluated and a determination made as to each round fired or action taken. Additionally, the UFRB should assess the tactics employed surrounding each action taken and round discharged and make a determination whether the officer/agent contributed to the need to use force by ineffective tactics. Examples of such an analysis, also addressed by the PERF report, include:

- i. Moving into the path of a moving vehicle in an attempt to stop the vehicle may result in a threat to the officer/agent requiring the use of deadly force.
- ii. Moving into or remaining in a position susceptible of being struck by a rock may place the officer/agent in a position to use force, which could be negated by changing position.

The tactical analysis should be a separate and distinct determination analogous to the determination whether the firearms discharge was within agency guidelines and whether there was any misconduct. Such analysis should not be lumped in with overall lessons learned which could diminish its significance. Poor or ineffective tactics can be the catalyst that places an officer/agent in a position necessitating the use of justifiable force.

CBP should consider expanding the mandate for the Use of Force Incident Teams (UFIT) to include all intentional firearms discharges, accidental discharges resulting in death or serious physical injury, deaths in custody or as a result of CBP action and any other case at the direction of the Commissioner. Often, the difference between a discharge resulting in injury or a miss is the result of chance. All intentional discharges should be treated the same and investigated by the UFIT. Additionally, local or regional UFITs can be established to investigate and review less lethal uses of force resulting in injury and accidental firearms' discharges not resulting in a hit as well as other matters deemed appropriate by the Commissioner. The CBP-wide UFIT should maintain oversight over the local UFIT investigations to help ensure quality and consistency across the agency.

e. Use of Body Cameras

Law enforcement organizations are increasingly equipping their officers with body-worn cameras as a method of reducing complaints, de-escalating volatile situations (thus enhancing officer/agent safety) and ensuring compliance with use of force policies.²⁶ CBP has undertaken a feasibility study on the use of body-worn cameras in several operational areas since October 2014. CBP should continue to consult with stakeholders including prosecutors, Inspector General, unions, officer/agent/supervisor focus groups and advocacy groups/NGOs as the feasibility study progresses. Additionally, in the near term, CBP should complete its ongoing

²⁶ The Bureau of Justice Assistance (BJA) has published the National Body-Worn Camera Toolkit to assist agencies in developing a body-worn camera program (available at: <https://www.bja.gov/bwc/>).

review of model policies and recommendations including those published by the Police Executive Research Forum, International Association of Chiefs of Police, Department of Justice and the American Civil Liberties Union to name a few, and formalize its final policy in light of the lessons learned during the feasibility study. Finally, CBP should identify metrics to compare similarly situated officers/agents in order to evaluate the effectiveness of the body-worn cameras. The body-worn camera program should include a system for supervisory review as well as an auditing program involving random sampling to ensure compliance with the policy and to assess officer/agent actions.

IMPROVING TRANSPARENCY

The third tasking in Secretary Johnson's December 9, 2014 letter asked the HSAC to "identify best practices . . . on transparency pertaining to incident response and discipline as well as stakeholder outreach."

1. Background regarding transparency and outreach

Until recent changes, led by Commissioner Kerlikowske, CBP had no coherent policy for informing the public, or anyone outside of CBP, regarding the significant use of force by CBP LEOs, i.e., use of force resulting in death or serious bodily injury. And it was anything but transparent. Often CBP did not have accurate information, and when it did, it did almost nothing to inform the public, much less informing the public of information in a timely way. Part of the reason for this was that neither the Commissioner nor anyone else at CBP Headquarters had visibility into and an understanding of what happened in a timely way. This relates to a lack of investigative capacity for CBP and a tendency to defer to whatever administrative investigation was conducted by a field element of the operational component within CBP whose LEO had used significant force. Thus, the CBP's Border Patrol field element, at the Sector level, investigated and determined whether discipline was warranted. Rarely was there an investigation by CBP's IA much less centralized review by CBP, which lacked the central coordination necessary to formulating accurate, timely and appropriate releases of information to the public.

Under Commissioner Kerlikowske's leadership, CBP has adopted a policy of transparency: Maximum Disclosure Minimum Delay. The challenge now is developing the coordination mechanisms and processes within CBP to implement CBP's policy.

The need for transparency and accountability in law enforcement generally, also applies with equal force to CBP. In some measure, the public trust and confidence in CBP hinges on CBP providing the people they serve with accurate and timely information about CBP policies, activities and actions. The recent 21st Century Policing Report also recommends that law enforcement agencies communicate with citizens and the media swiftly, openly and neutrally²⁷. CBP should be commended for selecting a former member of the media to head its public affairs and for its efforts to provide professional media training to its field leadership.

2. Implementing CBP's transparency policy

The current Standard Operating Procedures (SOP) that govern CBP's Media Division, Office of Public Affairs (OPA) are well constructed and very thorough. CBP policy establishes that the OPA will adhere to "Maximum Disclosure Minimum Delay." This model standard requires that every effort is made to timely disseminate an appropriate level of information about CBP's cases within the bounds of the law. Although CBP's public affairs policy directives are consistent with best practice, as noted, CBP has not had a reputation for releasing information

²⁷ *Final Report of The President's Task Force on 21st Century Policing*, May 2015, Action Item 1.3.2, pg. 13

expeditiously. A level of review and proper coordination is required to ensure the accuracy of information and the appropriateness of its release in the midst of legal proceedings and ongoing investigations. However, a balance must be struck to ensure that disclosure of the most basic information (arrest circumstances, charges, and involved agencies) is accomplished with minimal delay in order to maintain public confidence. Accordingly, CBP should review its information disclosure processes and its implementation of policy to identify and eliminate duplicative and time consuming layers of review that may hinder “maximum disclosure, minimum delay.”

Additionally, disclosure should not be limited to basic information about an incident involving or under CBP investigation but should also include related CBP policies and guidelines in matters of public interest such as the use of force, pursuit, and employee misconduct. Increasingly, more law enforcement agencies are voluntarily posting their policies and guidelines for high profile matters on the Internet to expand public access instead of requiring a more formal and time-consuming applicant process pursuant to the Freedom of Information Act or Open Public Records Act.

3. Community outreach

In July 2012, CBP established the Border Community Liaison (BCL) program for greater reach and sustained relationships within the communities in which CBP operates. The community partnerships and underlying trust developed through these BCL relationships are particularly essential during critical and high profile incidents. As such, the BCL and OPA should complement each other. Unfortunately, the establishment of the BCL program created a community relations silo, separating it from the Media Division of OPA. This organizational structure should be adjusted to foster a more collaborative relationship that maximizes public confidence and trust.

4. Nongovernmental Organization Concerns

Over the past several months, the CBP IAP conducted a listening session with a number of NGOs regarding CBP accountability and oversight, and reviewed a number of NGO recommendations and supplemental materials. (Appendix D, May 5, 2015 NGO letter to CBP IAP Co-Chairs Bratton and Tandy). The NGO perspective has been helpful to inform the panel of their concerns about CBP policies and practices. Recognizing that we are in the early stages of review and this is an interim report, there are some matters raised by the NGOs that can and should be addressed at this interim stage with more to follow in subsequent reports.

- CBP should reinforce its existing policy that mandates all uniformed personnel must wear visible name tags identifying their last name on all uniforms at all times.
- CBP has posted a Spanish language version of the complaints form on its website but should review and improve its overall complaints system, including fully integrated Spanish language capability in the CBP call center and other steps to provide public accessibility and transparency in its complaint process for non-English speaking individuals.

APPENDIX A – PANEL MEMBER BIOGRAPHIES

William J. Bratton (Co-Chair)

William (Bill) J. Bratton is the Police Commissioner, City of New York. Commissioner Bratton began his policing career in 1970, and is the only person ever to serve as chief executive of the LAPD and the NYPD. Commissioner Bratton established an international reputation for re-engineering police departments and fighting crime in the 1990s. As Chief of the New York City Transit Police, Boston Police Commissioner, then New York City Police Commissioner, Bratton revitalized morale and cut crime in all three posts, achieving the largest crime declines in New York City's history. Afterward, Commissioner Bratton was named Chairman of Kroll, one of Altegrity, Inc.'s four core businesses. In his role with Kroll, Bratton worked with the business' senior leadership to achieve Kroll's strategic growth objectives as well as assist with client outreach and service initiatives. New York City Mayor Bill DeBlasio reinstated him as Commissioner of NYPD in January of 2014.

Karen Tandy (Co-Chair)

Karen Tandy has 37 years of leadership experience in the government and corporate sectors. For seven years, she was the Senior Vice President of Government Affairs for Motorola Solutions where she oversaw country management, compliance, governance and government affairs in more than 70 countries where Motorola operates. Her responsibilities also included corporate social responsibility, including the company's charitable Foundation and sustainability initiatives. During her tenure, Ms. Tandy was Motorola's top public policy spokesperson on issues related to global telecom policy, trade, regulation and spectrum allocation.

Prior to joining Motorola in 2007, Tandy headed the U.S. Drug Enforcement Administration (DEA), where she managed a \$2.4 billion budget and approximately 11,000 employees in 86 global offices. Prior to that, she was U.S. Associate Deputy Attorney General, responsible for developing national drug enforcement and money laundering policy and strategies, including terrorist financing after the terrorist attacks on 9/11. She previously held a variety of leadership positions in the Criminal Division of the Department of Justice where she led a nationwide organized crime task force comprised of thousands of prosecutors and law enforcement agents. She also served for more than a decade as Senior Litigation Counsel and Assistant U.S. Attorney in the Eastern District of Virginia and in the Western District of Washington.

Robert C. Bonner

Robert Bonner is the Senior Principal of Sentinel Policy & Consulting, a consulting firm that provides strategic advice regarding homeland and border security issues, and a retired partner of Gibson, Dunn & Crutcher. In September 2001 Mr. Bonner was appointed Commissioner of the U.S. Customs Service, and served until 2006 as the first Commissioner of U.S. Customs and Border Protection. Mr. Bonner is also a former Administrator of the Drug Enforcement Administration (DEA), U.S. District Judge and Attorney for the Central District of California. He was the chair of the California Commission on Judicial Performance and currently serves on

the board of trustees of the California Institute of Technology. Recently he was a member of the Mayor's Blue Ribbon Panel on LAX security. Mr. Bonner received a B.A. from the University of Maryland, College Park in 1963 and a J.D. from Georgetown University Law Center 1966.

Rick Fuentes

Superintendent Rick Fuentes enlisted in the State Police in January 1978, as a member of the 93A Class. He has served the Division of State Police throughout the state, including assignments as a general road duty Trooper in Central and Southern New Jersey, and an instructor at the Sea Girt Academy. He also was a supervisor with the FBI/NJSP Joint Terrorism Task Force, Narcotics Units, and the Street Gang Unit. Prior to being named Acting Superintendent, he was assigned as the Chief of the Intelligence Bureau, overseeing nine units within the Intelligence Section. The recipient of numerous awards, Superintendent Fuentes has been recognized by the U.S. Justice Department, Drug Enforcement Administration, and in 1993 was a co-recipient of the New Jersey State Police Trooper of the Year award. In 2006, Colonel Fuentes was appointed to a three year term as General Chair of the State and Provincial Division of the IACP. He is a member of the U.S. Attorney General's Global Advisory Committee, a member of the Homeland Security and Law Enforcement Partners Group of the Office of the Director of National Intelligence, and an appointed member of Harvard University's Executive Session on Policing and Public Safety.

John Magaw

John Magaw is a domestic and international security consultant who most recently served as the Under Secretary for Security at the Department of Transportation in 2002. In that role, Mr. Magaw was responsible for implementation of the "Aviation and Transportation Security Act of 2001." Mr. Magaw also previously served as the Acting Director of FEMA from January of 2001 to February of 2001 where he led the Office of National Preparedness within FEMA. Magaw has also served as the Director of the Bureau of Alcohol, Tobacco, and Firearms from 1993 to 1999 and as the Director of the Secret Service from 1992 -1993. Mr. Magaw is a life member of the International Association of Chiefs of Police.

Walter McNeil

Chief Walter McNeil was chosen as the Police Chief for the City of Quincy, February 28, 2011. Chief McNeil had more than 29 years of law enforcement experience, serves as the Secretary of the Florida Department of Corrections, and head of the Florida Department of Juvenile Justice. Prior to being selected to lead the above named agencies, he was the Chief of Police for the City of Tallahassee, Florida. Chief McNeil was a past president of the International Association of Chiefs of Police. Chief McNeil holds a Master's Degree in Criminal Justice and a Bachelor's Degree in Criminology. Chief McNeil is also a graduate of the FBI National Academy.

Roberto Villaseñor

Roberto Villaseñor is the Chief of Police for the Tucson Police Department and has held that position since 2009. He was awarded a Bachelor's degree from Park University and a Master's Degree from

Northern Arizona University. He graduated from the FBI National Academy in Quantico, VA, the Senior Management Institute for Police and the FBI National Executives Institute. He is a member of the Major Cities Chiefs Association (MCCA), the International Association of Chiefs of Police (IACP), the FBI Law Enforcement Executive Development Association (LEEDA) and is the President of the Arizona Association of Chiefs of Police (AACOP). In January 2013 Chief Villaseñor became Treasurer of the Police Executive Research Forum (PERF) and in January 2015 he was appointed to President Obama's Task Force on 21st Century Policing. In 2015 Chief Villaseñor was also appointed by Arizona Governor Doug Ducey to the Arizona Criminal Justice Commission.

William "Bill" Webster

William H. Webster served as the Director of the Central Intelligence Agency (CIA) from 1987 to 1991. Prior to his service as CIA Director, Judge Webster served as Director of the Federal Bureau of Investigation (FBI), a judge on the United States Court of Appeals for the Eighth Circuit, and an attorney for the Eastern District of Missouri. In 1991, Judge Webster was presented the Distinguished Intelligence Medal. Judge Webster was also awarded the Presidential Medal of Freedom and the National Security Medal. Following his departure from the CIA, Judge Webster joined the law firm of Milbank, Tweed, Hadley & McCloy, LLP in Washington, DC, and is now a retired partner. In addition, Judge Webster serves as the Homeland Security Advisory Council Chair.

APPENDIX B – TASK STATEMENT


Secretary
U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

December 9, 2014

MEMORANDUM FOR: Judge William H. Webster
Chairman, Homeland Security Advisory Council

FROM: Jeh Charles Johnson 
Secretary

SUBJECT: Homeland Security Advisory Council Tasking of the CBP
Integrity Advisory Panel

I hereby ask the Homeland Security Advisory Council to establish a new subcommittee entitled the "CBP Integrity Advisory Panel" to provide findings and recommendations on the best practices from federal, state, local, and tribal law enforcement integrity leaders. As the Homeland Security Advisory Council is comprised of senior level officials from local and Federal Government, academic experts, and community leaders, the Homeland Security Advisory Council is uniquely positioned to provide actionable expertise to policymakers, governments, faith-based and civic organizations, and communities. The CBP Integrity Advisory Panel should address, among other closely related topics, the following subjects:

1. Benchmark CBP's progress in response to Use of Force reviews:
 - a. CBP Use of Force Review;
 - b. DHS OIG Report – CBP Use of Force Training and Actions to Address Use of Force Incidents;
2. Identify best practices from federal, state, local, and tribal law enforcement on integrity incident prevention – both mission compromising and off-duty conduct;
3. Identify best practices from federal, state, local, and tribal law enforcement on transparency pertaining to incident response and discipline as well as stakeholder outreach;

4. Obtain recommendations to ensure CBP develops an effective capability for investigating criminal misconduct within its ranks given CBP's high-risk environment and its expanding workforce;
5. Obtain recommendations for CBP to facilitate enhanced participation among law enforcement and intelligence agencies within an interagency task force environment, combining federal, state, local, and tribal resources to more effectively address the significant threat of public corruption by leveraging resources, capabilities, and reducing duplication of effort:
 - a. Evaluate progress toward the development of intra-departmental and interagency agreements/strategies emphasizing an intelligence driven, threat-based approach to address and mitigate the threat of public corruption;
 - b. Evaluate CBP's continued commitment to, and support of, the Department of Justice's Border Corruption Task Force (BCTF) and, if determined to be an effective concept, develop recommendations to increase DHS-wide engagement in the task force; and
6. Evaluate CBP's efforts to become an intelligence-driven organization in the context of current labor/management constraints.

Should you have questions, please contact Ben Haiman, Deputy Executive Director of the Homeland Security Advisory Council at (202) 380-8615.

APPENDIX C – SUBJECT MATTER EXPERTS

Randolph Alles, Assistant Commissioner, Office of Air and Marine

Paul Baker, Deputy Assistant Commissioner, Office of Training and Development

Patrina Clark, President, Pivotal Practices Consulting

Katherine Coffman, Assistant Commissioner, Office of Human Resources Management

Charlie Deane, Pivotal Practices Consulting

Michael Friel, Supervisor Public Affairs Specialist, Office of Public Affairs

Chris Hall, Assistant Commissioner, Office of Training and Development

Rene Hanna, Deputy Chief of Staff, Office of the Commissioner

Melvin Harris Executive Director, Office of Human Resources

Anna Hinken, NGO Liaison, Office of the Commissioner

R. Gil Kerlikowske, Commissioner, U.S. Customs and Border Protection

Susan Keverline, Deputy Director, Office of Internal Affairs

Philip LaVelle, Assistant Commissioner, Office of Public Affairs

Kathryn Olson, Pivotal Practices Consulting

Chris Pignone, Deputy Director, Office of Internal Affairs

Lewis Roach, Deputy Executive Director, Office of Policy and Planning

John Roth, Inspector General, Department of Homeland Security

Edna Ruano, Chief, Office of Communications, Office of Public Affairs

Dana Salvano-Dunn, Compliance Branch Director, Department of Homeland Security

Jeremy Schappell, Acting Assistant Director, Use of Force Center of Excellence

Austin Skero, Director, Use of Force Center of Excellence

James Tomsheck, Former Assistant Commissioner, Office of Internal Affairs

Anthony Triplett, Acting Assistant Commissioner, Office of Internal Affairs

Ronald Vitiello, Deputy Chief, Office of Border Patrol

John Wagner, Deputy Assistant Commissioner, Office of Field Operations

APPENDIX D – May 5, 2015 NGO letter to CBP IAP Co-Chairs Bratton and Tandy

May 5, 2015

William J. Bratton, Co-Chair
Karen Tandy, Co-Chair
Customs and Border Protection Integrity Advisory Panel
Homeland Security Advisory Council
245 Murray Lane, SW, Mailstop 0445
Washington, DC 20528-0075

cc. Panel Members

**Re: NGO Recommendations and Supplementary Materials Following April 8, 2015
Listening Session**

Dear Co-Chairs Bratton and Tandy:

On behalf of the border community representatives, including civil rights, human rights, immigration, and faith advocates who participated in the listening session with you on April 8th, we write to thank you for having provided this opportunity. We regret that the panel does not include among its membership representatives of the communities CBP serves, but value the panel's outreach nonetheless.

Customs and Border Protection (CBP) policies and practices have profound implications for our communities and the borders in general, so we value highly the panel's expressed commitment to incorporate civil society concerns and perspectives in its process to review current CBP policies and practices. We hope this letter assists the panel, with its extensive law enforcement experience and expertise, in identifying best law enforcement policies and practices that CBP lacks and must promptly implement. We look forward to the panel's recommendations in its six areas of review¹ and greatly appreciate all panel members' service.

We have a shared goal to advance CBP's accountability, integrity, and transparency. To further that process, please find below a compilation of written recommendations and supplemental materials discussed during the listening session. We look forward to continued engagement with the panel and would be happy to facilitate contacts between the panel and border advocates in the field.

Recommendations:

(1) Implement a Uniform, Responsive, Accessible Complaint Process

Nongovernmental organizations have consistently documented the routine failure by CBP to respond to, investigate, or provide appropriate redress for complaints. The absence of a uniform, centralized complaint process at the Department of Homeland Security has resulted in confusion about where to file complaints and hindered CBP's ability to identify concerns and

¹ Homeland Security Advisory Council—New Tasking, 79 Fed. Reg. 75, 827 (Dec. 19, 2014).

take appropriate corrective action. Individuals Complainants are left frustrated as few receive a response or acknowledgement of their complaint.

We urge DHS to implement a uniform complaint process based upon previously-submitted recommendations:

Resources and Recommendations:

- o American Immigration Council, No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse (May 2014), <http://www.americanimmigrationcouncil.org/newsroom/release/no-action-taken-lack-cbp-accountability-responding-complaints-abuse>
- o Recommendations to DHS to Improve Complaint Processing (May 2014), https://www.aclu.org/sites/default/files/assets/14_5_5_recommendations_to_dhs_to_improve_complaint_processing_final.pdf
- o Individuals should receive notice of their right to file a complaint regarding CBP abuse at any point during their custody and processing, including: CBP holding facilities, Immigration and Customs Enforcement (ICE) detention and processing facilities, and Office of Refugee Resettlement (ORR) facilities and programs.

(2) CBP must work to repair community trust by promptly completing, in a transparent manner, prior investigations that were inadequate

- a. Complete investigations of past complaints, and provide appropriate redress and response;
- b. Strengthen CBP accountability by putting in place a new head of CBP Internal Affairs; and
- c. Review all enforcement operations away from the border with the goal of reducing CBP's impact on border residents' daily lives.

Resources:

- o Bob Ortega, "CBP: No agents disciplined for deadly force since 2004." *Arizona Republic* (Sept. 12, 2014) (Citing former acting head of IA Morgan: "CBP determined after an initial review that 14 of the remaining use-of-force cases and 141 of the abuse complaints merited further investigation by an agency task force")
- o Outstanding ACLU complaints on Port-of-Entry; Roving Patrol; and Checkpoint abuses:
 - *May 2012:
https://www.aclu.org/files/assets/aclu_2012_cbp_abuse_complaint_2.pdf
 - *October 2013:
<http://www.acluaz.org/sites/default/files/documents/ACLU%20AZ%20Complaint%20re%20CBP%20Roving%20Patrols%20Oct%209%202013.pdf>
 - *January 2014:
<http://www.acluaz.org/sites/default/files/documents/ACLU%20AZ%20Complaint%20re%20CBP%20Checkpoints%20%202014%2001%2015.pdf>

Background Articles:

- o Carmen Duarte, "Border agents at shooting scene 'angry' with investigators." *Arizona Daily Star* (July 23, 2014), <http://tucson.com/news/blogs/police->

[beat/border-agents-at-shooting-scene-angry-with-investigators/article_cb683a81-c41d-5a1b-873b-2eba7a94df95.html](http://www.revealnews.org/article-legacy/border-patrol-shooting-under-scrutiny/beat/border-agents-at-shooting-scene-angry-with-investigators/article_cb683a81-c41d-5a1b-873b-2eba7a94df95.html)

- Andrew Becker, "2010 Border Patrol fatal shooting comes under renewed scrutiny." Center for Investigative Reporting (Aug. 1, 2014), <http://www.revealnews.org/article-legacy/border-patrol-shooting-under-scrutiny/>
- Garrett Graff, "The Green Monster: How the Border Patrol became America's most out-of-control law enforcement agency." Politico Magazine (Nov/Dec 2014), <http://www.politico.com/magazine/story/2014/10/border-patrol-the-green-monster-112220.html>
- Anna Werner, "'Disturbing' sex abuse case within agency that patrols U.S. border, says former top official." CBS News (May 4, 2015), <http://www.cbsnews.com/news/u-s-border-patrol-has-a-sex-abuse-problem-says-whistleblower>
<http://www.cbsnews.com/news/cbs-news-investigates-sex-abuse-by-u-s-customs-and-border-protection-agents>

(3) Improve responsiveness by CBP to FOIA requests

CBP must improve its response to FOIA requests to improve transparency. Frequently those who submit requests receive no response or an inadequate response to FOIA requests.

(4) Implement Body-Worn Cameras

We urge the panel to encourage CBP's adoption of body-worn cameras for all officers and agents in contact with the public, within a framework of strong privacy and data retention protections.

Resources:

- ACLU, Strengthening CBP with the Use of Body-Worn Cameras (June 27, 2014), <https://www.aclu.org/strengthening-cbp-use-body-worn-cameras>

(5) DOJ Guidance on the Use of Race: Prohibitions and Data Collection

Our groups are deeply concerned by the exemption contained in the December 2014 DOJ Guidance² for racial profiling at or near the border, given ongoing reports of racial profiling by CBP in the southern and northern border regions. Strong prohibitions against profiling are urgently needed, with implementation of thorough data collection requirements to monitor the existence of profiling. As recommended by the President's Task Force on 21st Century Policing, CBP like all law enforcement agencies should collect, maintain, and analyze demographic data on all encounters (stops, frisks, searches, summons, and arrests).

Resources: Please see two attached submissions to CBP on racial profiling, as well as:

² <http://www.justice.gov/sites/default/files/ag/pages/attachments/2014/12/08/use-of-race-policy.pdf>

- People Helping People, *Community Report: Campaign Documents Systemic Racial Discrimination at Arizona Border Patrol Checkpoint* (Oct. 1, 2014), <http://bit.ly/1NKChNh>.

(6) Improve CBP transparency and responsiveness at Ports of Entry, including mandatory name tags for agents and availability of multilingual complaint forms.

In addition to making multilingual complaint forms widely available, CBP must audit and substantially increase its efforts to make the public aware of complaint mechanisms, as part of this process adding *clear statements on complaint directions and forms that **no retaliation** will result from filing a complaint.*

All CBP personnel interacting with the public must wear visible identifying name tags.

(7) Civilian Participation in CBP Oversight and Accountability

We encourage the panel to recognize that independent, outside participation in law enforcement oversight and accountability is vital to achieving community trust. The gold standard would be to install a civilian review board with meaningful authority. Short of this, we respectfully suggest that the panel recommend to CBP that it include border community representatives in all oversight and accountability bodies and activities, with appropriate exemptions for classified information.

CBP personnel and policies have a profound impact on our communities at the Northern and Southwest borders, and on all others who come into contact with CBP. We look forward to continuing to provide the panel with our input to inform and support its commendable work to develop much-needed recommendations to strengthen oversight and accountability at CBP. Please contact Jenny Johnson, Latin America Working Group (jjohnson@lawg.org or 202-564-7010), Rich Stolz, OneAmerica (rich@weareoneamerica.org or 206-452-8401), Vicki Gaubeca, ACLU of New Mexico – Regional Center for Border Rights (vgaubeca@aclu-nm.org or 575-527-0664), or Chris Rickerd, ACLU (crickerd@aclu.org or 202-675-2339) for any additional information or materials.

Yours sincerely,

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