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United States Senate

COMMITTEE ON
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July 20, 2022

The Honorable Chris Magnus
Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Ave. NW
Washington, D.C. 20229.

Dear Commissioner Magnus,

I write to you today to inquire about due process and impartiality—to which U.S. Customs and Border Protection personnel are entitled—in relation to the disciplinary action being proposed against U.S. Border Patrol agents following the Horse Patrol Unit activity in Del Rio, Texas on September 19, 2021.

On that date, photographs were taken of Border Patrol agents on horseback using horse reins and attempting to deter Haitian migrants from illegally crossing the border near Del Rio, Texas.¹ Some viewed these photographs and interpreted them as depicting agents using whips to assault migrants; but, by the morning of September 23, 2021 the photographer who took the photos, confirmed he did not see agents whip anyone and suggested the images had been misconstrued.² However at a news conference the next day, President Biden said “[i]t was horrible what you see, what you saw—to see people treated like [the agents] did, with horses nearly running [migrants] over and people being strapped. It’s outrageous. I promise you, those people will pay.”³ Also on September 24, Vice President Harris commented during an interview with ABC’s *The View* that the images reminded her of “behavior which has been used against the Indigenous people of our country, has been used against African Americans during times of slavery.”⁴ On the same day, DHS Secretary Mayorkas stated during a White House press briefing that “we—our entire nation—saw horrifying images that do not reflect who we are, who we aspire to be…” adding that “those images painfully conjured up the worst elements of our nation’s ongoing battle against systemic racism.”⁵ He concluded by noting that the investigation into this matter would be swift.⁶

After 30 eyewitness interviews and interviews with agents involved with the incident, OPR released their final report to the leadership of CBP on April 11th, 2022—six months after the incident occurred.⁷ OPR found “there

¹ Natassia Paloma, *Photographer behind Controversial Photos Speaks Exclusively to KTSM*, El Paso News (Sept. 23, 2021, 11:47 AM), <https://www.ktsm.com/local/el-paso-news/photographer-behind-controversial-photos-speaks-exclusively-to-ktsm/>.

² *Id.*

³ Justin Sink, *Biden Says Border Agents Who Menaced Migrants ‘Will Pay,’* Bloomberg (Sept. 24, 2021, 10:28 AM), <https://www.bloomberg.com/news/articles/2021-09-24/biden-says-border-patrol-agents-who-menaced-migrants-will-pay#:~:text=President%20Joe%20Biden%20called%20scenes,criticism%20from%20his%20own%20party.>

⁴ Caitlin McFall, *Harris Says CBP on Horseback Evoked Images of Slavery*, Fox News (Sept. 24, 2021, 1:04 PM), <https://www.foxnews.com/politics/harris-border-patrol-evoked-images-slavery-the-view-interview.>

⁵ Press Briefing, The White House, Press Briefing by Press Secretary Jen Psaki and Secretary of Homeland Security Alejandro Mayorkas (Sept. 24, 2021), <https://www.whitehouse.gov/briefing-room/press-briefings/2021/09/24/press-briefing-by-press-secretary-jen-psaki-and-secretary-of-homeland-security-alejandro-mayorkas-september-24-2021/>.

⁶ *Id.*

⁷ U.S. Customs & Border Prot., *CBP Releases Findings of Investigation of Horse Patrol Activity in Del Rio, Texas* (2022), <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-findings-investigation-horse-patrol-activity-del-rio.>

is no evidence that Border Patrol Agents involved in this incident, intentionally or otherwise, any person with their reins.”⁸ However, OPR has proposed discipline against four agents for actions which fall outside the scope of professional conduct.

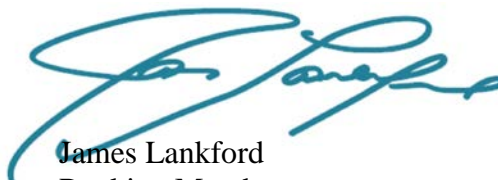
I am deeply concerned about the appearance of partiality and, consequently, the Administration’s potential failure to provide due process during both the investigation and the disciplinary process resulting from this event. Specifically, I find it troubling that you appeared in a press conference following the final report findings where you discussed the actions which will be taken against CBP officials.⁹ These are proposed actions and the process due to these officials has not yet been completed. The partiality and politicization Administration officials have generated around this incident has placed undue pressure on agents, the agency, and agency officials involved in the investigation and disciplinary process.

I have the following questions about CBP’s actions relating to the events of September 19, 2021:

1. What contact has you had with the OPR staff since your confirmation?
2. What, if any, role did you, or any politically appointed members of your staff have in the development of the final OPR report?
3. What, if any, role did politically appointed DHS staff have in the development of the final OPR report?
4. When did you first receive a draft report?
5. Were there any changes made to the draft report after you first received a draft? If so, who recommended the changes?
6. When was that decision made to hold the July 8 press conference? Who made the decision?
7. What policy, precedent, or directive contributed to the decision to hold the July 8, 2022 press conference?
8. Did any individuals at CBP raise concerns to you or to any other senior CBP official relating to the press conference? If so, what concerns were raised about the conference?
9. Did any individuals at DHS raise concerns to you, or to any other senior CBP official relating to the press conference? If so, what concerns were raised about the conference?
10. Did DHS post online the identities of the agents being investigated?

I look forward to your timely response no later than August 5, 2022. Please reach out to Clark Hedrick (Clark_Hedrick@hsgac.senate.gov) on my staff with any questions. Thank you for your attention to this matter.

In God We Trust,



James Lankford
Ranking Member
Subcommittee on Government
Operations and Border Management

⁸ *Id.*

⁹ News conference, Customs and Border Protection Agency News Conference (July 8, 2022). <https://www.c-span.org/video/?521579-1/customs-border-protection-agency-news-conference>.