



**HOMELAND SECURITY ADVISORY  
COUNCIL**

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

**March 15, 2016**

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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 the *final report* and recommendations to the Secretary of the Department of Homeland Security, Jeh C. Johnson.



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Police Commissioner  
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## EXECUTIVE SUMMARY

Created in the aftermath of 9/11 as part of the homeland security reorganization, U.S. Customs and Border Protection (CBP) is still a young agency, albeit one with roots that go back to the very founding of our nation. CBP is primarily a merger of most of the former U.S. Customs Service and the Border Patrol<sup>1</sup>, formerly part of the now defunct Immigration & Naturalization Service, and it has unquestionably improved overall effectiveness and efficiency to have one border agency for our nation. CBP, however, is a complex agency involving two large operational offices,<sup>2</sup> with an extraordinarily important national security mission, to protect and secure our borders from the threat of international terrorism. Yet as we discuss at length in the Interim Report of the CBP Integrity Advisory Panel of June 29, 2015 (hereafter “Interim Report”), CBP, like all border agencies worldwide, has a significant potential vulnerability, - the threat of corruption.<sup>3</sup> Moreover, because CBP has the largest number of armed, sworn law enforcement officers in the United States, over 44,000, there is a very real potential for the use of excessive and unnecessary force, especially by CBP’s Border Patrol given the difficult environment in which it operates. In its brief history, CBP has not been noted for its transparency when it comes to use of force incidents, although this is changing, and given its size, it has never developed a truly CBP-wide process for receiving, tracking and responding to public complaints. Its disciplinary process takes far too long to be an effective deterrent.

Viewed in this context, the tasking of the Secretary of Homeland Security to this Panel is critically important and timely. The Secretary’s tasking is broken down into six areas, set forth in his December 9, 2014 letter to the Homeland Security Advisory Council (HSAC). (See Appendix B, the Secretary’s December 9, 2014 letter). Created as a subcommittee of the HSAC, the CBP Integrity Advisory Panel (hereafter the “Panel”), established in March 2015, was charged by the Secretary to make findings and recommendations based on law enforcement best practices regarding use of force, preventing corruption, investigative capabilities needed to address criminal and serious misconduct within CBP, engagement in interagency task forces such as the Border Corruption Task Forces, using intelligence driven approaches proactively to identify corruption and other misconduct, and addressing transparency issues pertaining to incident response, discipline and stakeholder outreach.

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<sup>1</sup> It also merged all frontline immigration inspectors and all agricultural inspectors who worked at our nation’s ports of entry within CBP. There is now, in fact, “one face”, one agency, at all of the ports of entry of the U.S., rather than personnel from three separate agencies reporting into three different departments of government, as was the case prior to the homeland security reorganization.

<sup>2</sup> Part of the complexity is that, despite the slogan, there is no “one face at the border”. There are, in fact, two faces. One, CBP Officers of CBP’s Office of Field Operations, wears blue uniforms and operates at all the nation’s official entry points or “ports of entry”. The other, CBP’s Border Patrol, wears green uniforms and operates in the vastly different environment protecting the land borders between these official entry points. Each of these law enforcement organizations brought their own unique culture with them to CBP. The challenge is not to merge these two operational components, but adapt CBP-wide policies regarding use of force and integrity that are truly part of a new CBP culture and to take full advantage of the fact that both operational offices are under the common control of the CBP Commissioner in order to effectuate a comprehensive border strategy.

<sup>3</sup> *CBP Integrity Advisory Panel Interim Report and Recommendations*, June 29, 2015, <https://www.dhs.gov/sites/default/files/publications/DHS-HSAC-CBP-IAP-Interim-Report.pdf>

In our Interim Report, we made fourteen (14) recommendations, many of them requiring immediate attention, such as the need to increase investigative staffing of CBP's Office of Internal Affairs (IA)<sup>4</sup>. Given their time sensitivity, we did not believe these recommendations should await our Final Report. After the Panel presented its Interim Report, the HSAC voted to adopt its recommendations in their entirety, and many of these recommendations are now implemented or CBP has actively undertaken steps to do so. Unfortunately, as noted in more detail in this Final Report, implementation of the principal interim recommendations needed to harden CBP against threats of public corruption have not been completed, i.e., substantially increasing staffing of IA and realigning investigative authority from the Office of the Inspector General to CBP Internal Affairs as it relates to corruption, misuse of force and other serious misconduct of CBP employees below the GS-15 level.

In the almost nine months since the Interim Report, the Panel has conducted numerous interviews of current and past CBP officials and employees, met with Non-Governmental Organizations (NGO) from across the southwest border, toured the border at Nogales, Arizona, observed port of entry and checkpoint operations, inspected Border Patrol virtual and scenario based training on use of force, met with union leadership for the unions representing CBP Officers and Border Patrol Agents, reviewed caseload data from the Office of the Inspector General (OIG) and reviewed considerable CBP materials reflecting its policies, guidelines, practices, and data. Taken together, the Panel is well prepared to address its remaining tasks from the Secretary.

In this Final Report, we make thirty-nine (39) additional recommendations. Below, after reviewing the status of the recommendations of our Interim Report, we discuss the rationale for our additional recommendations. These recommendations deal with using proactive measures to assure integrity, streamlining CBP's broken disciplinary process from intake to final resolution of discipline, establishing a CBP-wide method to receive, track and respond to public complaints, more effectively leveraging CBP's own personnel at interior checkpoints and in task forces, particularly Border Corruption Task Forces, and, although great strides are being made, improving transparency regarding use of force incidents and outreach to stakeholders.

These recommendations, like our interim recommendations, in some instances will require restructured or additional resources that must be obtained through the budgetary process. Moreover, a few of the recommendations may require legislation or regulatory change. Some will not be easy and will encounter bureaucratic or union resistance.

Yet we firmly believe that if our recommendations are implemented:

1. The risks of endemic corruption taking root within CBP will be eliminated;
2. The use of unlawful and unconstitutional use of force by CBP law enforcement personnel, most especially use of lethal force, will be a rarity; and

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<sup>4</sup> Shortly before the issuance of this report, CBP announced that it was changing the name of its Office of Internal Affairs to the Office of Professional Responsibility (OPR) but for clarity and consistency between the Panel reports, the Panel will continue using the name Internal Affairs (IA) in this report instead of its new name.

3. Transparency regarding use of force incidents and openness to public complaints will make CBP a world-class border security agency, rivaled by none and the model for every such agency around the globe.

Finally, as we do not repeat the recommendations of our Interim Report, or the discussion that supports them here, the Interim Report and this Final Report should be read and taken together.

### **Recommendations: Assuring Integrity – Proactive Integrity Measures**

1. CBP IA, under the direction of the CBP Commissioner, should develop and implement a comprehensive, proactive strategy for preventing, deterring, identifying and promptly investigating potential corruption and acceptance of bribes by CBP personnel.
2. Continue pioneering and implementing proactive anticorruption measures and programs, such as the Analytical Management Systems Control Office (AMSCO), the Enforcement Linking Mobile Operation Red Flag (ELMOrf) system, the Integrity Officer Program, and the Combined Automated Operations System.
  - a. Assign additional program analysts to AMSCO and otherwise assure that staffing levels are sufficient. Analysts are needed because of the volume of data that needs to be evaluated.
  - b. Expand the use of data analytics to identify potential corruption issues across all of CBP's operational offices. In this regard, CBP's current program, AMSCO, provides a useful model for the proactive use of data analytics.
  - c. Remove impediments and assure that AMSCO receives feedback from the Department of Homeland Security (DHS) OIG, CBP IA's Investigative Operations Division, and CBP's Human Resource and Management's Labor and Employment Relations (LER) Division regarding the results of all referrals of potential integrity issues to and through the Joint Intake Center (JIC). In order to better identify trends and patterns and to evaluate additional rules sets for ELMOrf. AMSCO should be provided all completed investigative reports involving corruption on the part of CBP personnel including those of the OIG. Further, AMSCO should be provided with any actions taken, disciplinary or otherwise, in response to such investigations.
  - d. Expand ELMOrf beyond land border ports of entry (POE) to U.S. International airport and seaport POEs. It should also be expanded to interior checkpoints run by CBP's Border Patrol.
3. Expand the Integrity Officer Program beyond the Office of Field Operations (OFO) to CBP's Border Patrol. At least one person within each Border Patrol Sector should be designated as the Sector Integrity Officer, who should have a dotted line relationship with the Office of Integrity Assurance within CBP Headquarters.

4. Expand Blue Force Tracking beyond the current pilot phase to all operational personnel, vehicles and vessels of CBP's Border Patrol and all aircraft and vessels of CBP's Air and Marine Operations (AMO). Not only will Blue Force Tracking enhance command & control, operational efficiency and contribute to officer safety, but it will also serve as a significant anticorruption measure that can assist CBP in achieving its integrity goals.
5. CBP's Office of Intelligence, in coordination with CBP's Internal Affairs, should more actively engage the U.S. interagency and Intel community, and particularly the Drug Enforcement Administration (DEA), to increase the flow of intelligence regarding potential corruption issues within CBP by providing the relevant agencies with CBP Internal Affairs intelligence needs and collection requirements, at least on an annual basis. For example, CBP should proactively request DEA to attempt to identify the location at the border (port of entry or otherwise) through which bulk amounts of illegal drugs seized in the interior of the U.S. were smuggled. This should be done routinely with respect to every significant seizure of drugs likely smuggled across the border (e.g., cocaine, heroin, and methamphetamines) into the United States.
6. Continue to study cases of corruption through CBP's Threat Mitigation Division and on a systematic basis identify causes of corrupt behavior and develop countermeasures that CBP can and should proactively use to reduce future corruption of its personnel.
7. Extend the current one year probation period for CBP law enforcement (CBP Officers, Border Patrol Agents, and AMO Officers) to two years, as the current one year period is not sufficient.
8. Expand the CBP polygraph program to include post-employment polygraphs, random and targeted, for CBP law enforcement personnel and promptly seek the necessary resources and authorities to implement this recommendation.
9. Prioritize upgrading or replacing CBP's current information technology (IT) platforms to ensure that its systems are fully integrated and capable of conducting searches and data analysis across all systems.

### **Recommendations: Streamlining CBP's Discipline Process**

10. Place CBP law enforcement personnel into Excepted Service in light of the critical national security mission of CBP's Border Patrol Agents along our nation's land borders and CBP Officers at our nation's ports of entry. A law enforcement organization, such as CBP, is not benefitted, and the deterrent effect of discipline is substantially undermined, by lengthy post-discipline hearing processes of the Merit System Protection Board and collective bargaining agreement appeals to outside arbitrators.
11. Establish clear goals and timelines for each step of the discipline process to achieve agency wide deterrence as well as no action/closing of investigations as promptly as possible, to include competent, appropriately prioritized and timely investigations of *all*

misconduct allegations, speedy and thorough investigations, and prompt and appropriate discipline and/or closure.

12. Designate one sufficiently high level official (GS-15 or preferably Senior Executive Service level) within the Office of the Commissioner responsible for overseeing all phases of the discipline process on behalf of the Commissioner, from intake to final resolution. Although this official would not decide or recommend levels of discipline, he/she should be responsible for monitoring, coordinating, tracking, setting and enforcing timelines, and pushing forward all allegations of misconduct levied against CBP personnel. This official would make certain that all participants in the process are moving forward expeditiously, to include IA, LER, Deciding Officials, and the Office of the Chief Counsel. Where another agency is handling the misconduct investigation of a CBP employee (e.g., OIG and/or Border Corruption Task Forces), this CBP official, on behalf of the Commissioner, and working with the Assistant Commissioner for IA, will insist on visibility by the Commissioner of such investigations and on the timely completion of such investigations.
13. Give the Commissioner the authority, similar to that of the Federal Bureau of Investigation Director, to summarily suspend without pay and/or terminate law enforcement employees of CBP who have committed egregious, serious and flagrant misconduct, such as, accepting bribes in exchange for being influenced in their official duties.
14. Centralize the role of the deciding official at CBP Headquarters in a small number of Deciding Officials appointed by the Commissioner. The number of Deciding Officials should be no more and no less than are needed to promptly resolve all misconduct matters potentially involving adverse action on their merits, once the investigation is completed, without delay. Discipline, when warranted, should be imposed without unnecessary delay.
15. Revise the Table of Offense and Penalties to provide clearer guidance on appropriate penalties and foster more consistent disciplinary practices across CBP. This guidance should include more specific parameters, including narrower ranges and mandatory consequences for the most serious offenses.<sup>5</sup>
16. Establish clear policies, procedures, timeline expectations and supervisory guidance for the handling of administrative and criminal matters and ensure all supervisors receive and have access to the guidance.<sup>6</sup>

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<sup>5</sup> The report of Pivotal Practices Consulting LLC, *U.S. Customs and Border Protection Complaints and Discipline Systems Review – Public Report of Findings and Recommendations*, November 23, 2015, supports this and many of our other recommendations [Recommendation: A.8.R.1 –page 11] (Hereafter referred to as "Pivotal Practices")

<sup>6</sup> *Ibid.* A.4.R.2., at page 9.

## **Recommendations: Improving CBP's Receipt, Tracking and Response to Complaints**

17. Implement the Complaint Management System or a similar data system throughout all CBP operational offices in the field as expeditiously as practicable.
18. Continue taking additional steps to assure that CBP adequately and prominently publicizes its Citizen Complaint Form and includes the information necessary for the public to file a complaint.
19. Record all conversations on the toll free CBP "hotline" that CBP IA established to accept complaints and notify all persons calling the toll free "hotline" of the tape recording, but making clear that they can report anonymously. CBP should take reasonable steps to preserve the caller anonymity.
20. Create a uniform CBP Reportable Incident Form to internally document all misconduct complaints.
21. Acknowledge all complaints received from the public by CBP. If the complaint amounts to allegations of misconduct potentially warranting discipline, CBP IA should acknowledge with a letter or other documented communication to the complainant, verifying receipt of the complaint and assuring a fair and objective investigation.
22. Notify complainants by letter of the results of such complaints, including administrative or disciplinary action, if any, to the extent permitted by law and legitimate privacy concerns.<sup>7</sup>
23. Require all CBP law enforcement personnel to immediately self-report misconduct whether or not it leads to arrest (including misuse of alcohol and arrests for DUI, incident of spousal abuse, use of force, bribery attempts) using the Reportable Incident Form. CBP needs to establish a short time frame for reporting (e.g., within 24 hours) that eliminates any ambiguity. Regarding allegations of serious or criminal misconduct, timelines for identifying and interviewing witnesses and preserving evidence should be established for IA investigators, when IA has the authority to initiate an investigation.
24. Promptly implement a memorandum of understanding (MoU) between DHS OIG and CBP IA on case referral guidelines to establish clear accountability and responsibility for misconduct investigations of CBP personnel. At a minimum, the MoU should provide that all investigations of misconduct involving CBP employees default to IA, unless the subject employee is a GS-15 or higher.<sup>8</sup>
25. Establish the ability during the disciplinary adjudication process for CBP to impose upon its law enforcement personnel the loss of vehicle privileges, alcohol and drug monitoring, participation in anger management training, independent medical examination, and the

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<sup>7</sup> *Ibid.* L.3.R.1., at page 15.

<sup>8</sup> *Ibid.* A.3.R.1., at page 8.

potential for a last chance agreement, in appropriate circumstances. Alcohol and drug monitoring, however, should be mandatory in all alcohol related incidents and/or prescription drug related misuse or abuse.

26. Develop and deliver training and on-the-job resources for supervisors to appropriately address performance and conduct issues.<sup>9</sup>

### **Recommendations: Optimizing Interior Checkpoints**

27. Assign OFO Officers to perform the primary inspection function at CBP's permanent checkpoints to optimize the deployment and skill sets of CBP law enforcement personnel. Because a key part of the effectiveness of checkpoints is lateral enforcement, CBP's Border Patrol should retain overall operational and management control of the checkpoints.

### **Recommendations: Effectively Using Task Forces to Investigate Border Corruption**

28. Assign investigators to participate in *all* Border Corruption Task Forces (BCTFs) given the benefits CBP receives from its participation in them.
29. Because the BCTFs are an effective model of interagency law enforcement cooperation, the DHS OIG also should actively participate in them.
30. Assign Border Patrol intelligence agents to the BCTFs, resources permitting.

### **Recommendations: Enhancing Transparency / Stakeholder Outreach**

31. To embrace a culture of transparency, continue to make "use of force" policies that are not law enforcement sensitive available for public review and regularly post all relevant information about "use of force" on incidents on CBP's website.
32. When serious incidents occur, including those involving the potential use of out of policy and excessive force, continue CBP's policy of communicating with citizens and the media swiftly, openly, and neutrally, while respecting areas where the law or on-going investigations require confidentiality.
33. Publish an annual report to government officials, media and the public, and post a copy of the report on CBP's website to provide the public with the ability to review CBP's internal affairs functions and overall condition of the agency.

### **Additional Recommendations: Use of Force**

34. Further develop the CBP Assault and Use of Force Reporting System to include an

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<sup>9</sup> *Ibid.* A.9.R.1., at page 11.

automated early warning component that eliminates the need to manually generate reports.

35. Analyze use of force data and develop metrics to identify and evaluate officers and agents who may be at risk beyond CBP's current mechanical trigger of more than three (3) use of force incidents in the previous six (6) months.
36. Publish an annual report that aggregates use of force data by incident type, force used, assignment type, nature of injury and outcome. Also include information about assaults against officers/agents.

### **Body Worn Cameras and Camera Technology Next Steps**

37. Continue to monitor the development of camera technology to select the cameras most suitable for CBP's unique environment.
38. In developing risk based deployment options, consider the type of assignment, likelihood of adversarial action, location and individual officers/agents who have requested BWCs or who have indicators of potential at-risk behavior.
39. Develop a protocol for supervisory review as well as an internal auditing program involving random sampling of body worn camera video to ensure compliance with policy and to assess officer/agent actions. Such a policy may include a provision that excludes minor administrative violations from adverse employment or disciplinary actions.



## INTRODUCTION

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We will not repeat what we have said in the Executive Summary, above, or in our Interim Report. However, the following is an update of the status of the Recommendations made in the Interim Report, followed by a discussion, by category, which supports the foregoing Recommendations.

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## STATUS OF RECOMMENDATIONS OF THE INTERIM REPORT

A number of the CBP Integrity Advisory Panel's (Panel) recommendations from our Interim Report have been implemented, improved, or are moving forward in Customs and Border Protection (CBP). Notably, CBP greatly improved the timing and content of its public releases following serious use of force incidents,<sup>10</sup> and high level agency oversight on transparency related matters now rests with the CBP Deputy Commissioner. CBP has published its policies on standards of conduct and use of force as well as other national standards that it follows regarding detainee and arrestee movements, instituted Border Community Liaison (BCL) training which also is responsive to an earlier Government Accountability Office (GAO) report, and at the request of the Panel following its recent meeting with Non-Government Organizations (NGO) in Tucson, Arizona, CBP quickly modified its online Information Center to improve its Spanish language service capacity by enabling Spanish speakers to directly link from the CBP website landing page to the online Spanish translated sites such as the complaint filing page, help desk and frequently asked questions.

As we pointed out in our Interim Report, an adequately staffed internal affairs component is an indispensable element for assuring integrity and ferreting out corruption within a law enforcement organization. As we also discussed in our Interim Report, CBP's Office of Internal Affairs (IA)<sup>11</sup> is woefully understaffed and requires a substantial increase in the number of IA investigators. We stated that CBP's IA requires approximately 550 fulltime investigators to do the job, and recommended 350 additional 1811 investigators be added to IA, ideally over the next three years. Since our June 2015 Interim Report, CBP has initiated plans to add 57 agents to IA with 30 from Immigration and Customs Enforcements (ICE) Office of Professional Responsibility (OPR) and the balance detailed from the CBP's Border Patrol and Office of Field Operations (OFO). It also plans to leverage an unspecified number of Federal Bureau of Investigation (FBI) resources through CBP's participation in the Border Corruption Task Forces (BCTF). CBP's budget request for Fiscal Year (FY) 2017, however, calls for an increase of a mere 30 additional investigators for IA. At this pace, even assuming the planned detailees and leveraged resources occur, it could take almost a decade to get IA to the staffing levels needed to ensure it can adequately and timely investigate corruption, use of force and other serious misconduct of CBP employees. This leaves CBP vulnerable to a corruption scandal that could potentially threaten the security of our nation.

The Homeland Security Advisory Council (HSAC) adopted the recommendation of the Panel regarding the staffing levels needed. We note that, after the HSAC adopted and issued our Interim Report in June 2015, the Department of Homeland Security's (DHS) Office of Inspector General (OIG) circulated a tentative notice of findings and recommendations that, in part,

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<sup>10</sup> This is consistent with a recommendation from the *Final Report of The President's Task Force on 21<sup>st</sup> Century Policing – May 2015*, of "...When serious incidents occur, including those involving alleged police misconduct, agencies should communicate with citizens and the media swiftly, openly, and neutrally, respecting areas where the law requires confidentiality."

<sup>11</sup> As noted earlier, at the time of this report, as part of a CBP reorganization, CBP announced that it is changing the name of its Office of Internal Affairs (IA) to the Office of Professional Responsibility. For purposes of clarity between the Panel's Interim and Final Reports, we will maintain the original reference as 'IA' in this report.

questioned the use of internal affairs staffing levels of comparable law enforcement organizations to determine the staffing needs of CBP. In this regard, this Panel used the ratio of internal affairs investigators to total law enforcement personnel of the FBI, the New York Police Department, ICE's OPR and CBP's predecessor agency, the U.S. Customs Service. See the HSAC response to the OIG attached hereto as Appendix D. In each instance, benchmarking the ratio of law enforcement personnel to internal affairs investigators of any of these agencies requires a staffing level at CBP of *more than* the 350 additional investigators we recommended. This, then, should be viewed as a minimal number. Such benchmarking to comparator agencies is a commonly resorted to method in law enforcement in the U.S. for validating numbers of personnel needed for specific functions. In any event, no one can rationally argue that CBP's IA does not need a large increase in internal affairs investigators given the number of law enforcement personnel (44,000) within its ranks.

Our Interim Report also highlighted the dysfunctionality created by the current fragmentation of responsibility for investigating allegations of serious misconduct by CBP personnel, including corruption and unlawful use of force. As explained in our Interim Report, currently there is no one who the Secretary of Homeland Security can clearly hold accountable for seeing to it that corruption does not take root within CBP and that our national security interests at our nation's border are not compromised by corrupt CBP personnel. As indicated in the Interim Report, we strongly believe that the CBP Commissioner should be the official within the DHS who is responsible and accountable for the integrity of CBP personnel and that the Commissioner should be given the investigative resources, visibility and authority commensurate with this responsibility. In this regard, we urged the Homeland Security Secretary to take prompt action to remedy this by requiring changes to the Secretary's Management Directive (MD) 810.1 issued in June 10, 2004. To date, the Secretary has convened meetings with CBP and OIG leadership to address this issue but none of the recommended modifications to MD 810.1 from the Interim Report have been instituted. We are informed that CBP is pursuing a separate Memorandum of Understanding (MoU)<sup>12</sup> with the DHS Inspector General to establish agreed upon procedures for dealing with incidents of alleged misconduct and to eliminate the fragmentation of effort and responsibility that currently exist, consistent with our recommendations in the Interim Report.<sup>13</sup> Although at best an interim solution, the Panel is hopeful that the MoU alternative succeeds, but is concerned with the overall pace of resolving this critical gap. If a MoU is not successfully negotiated in the near term, we urge the Secretary to revisit our recommended amendments to his management directive before the current Administration nears its end.

Although the Interim Report addressed CBP's use of force and CBP's then feasibility study of body worn cameras, we make additional recommendations and observations in both areas.

Since the publication of the Panel's Interim Report, CBP has fully or partially implemented several recommendations contained in the report regarding the prevention of unauthorized use of force:

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<sup>12</sup> We indicated the possibility of a MoU in lieu of amending MD 810.1 in our Interim Report, page 12.

<sup>13</sup> Pivotal Practices at A.3.R.1, at page 36.

- CBP incorporated some language emphasizing its overarching responsibility to preserve human life in its 2014 Handbook update. Additionally, the Use of Force Center of Excellence is reviewing other parts of the Handbook to further emphasize this point.
- The Office of Training and Development (OTD) is incorporating safe tactics and de-escalation techniques within its basic and firearms/less-than-lethal training programs and is reviewing the language in the handbook addressing use of force against vehicles.
- CBP developed regional Use of Force Incident Teams (UFIT) and, as of November 1, 2015, 337 CBP employees have been trained and are certified to participate in UFIT deployments.
- Local Use of Force Review Boards (LUFRRB) have been established, which are comprised of a committee of individuals in leadership roles from the law enforcement components within CBP. There will be twenty-one LUFRRBs, one in each Border Patrol sector and one additional LUFRRB to cover the majority of California and Oregon, to review incidents regionally, apply consistent standards for evaluating the use of less-than-lethal force, and like its counterpart at the national level, make observations and recommendations regarding training, tactics, policy, and equipment issues. Specifically, these boards will determine if a use of force incident was consistent with policy, whether any misconduct was committed and consider tactics employed or neglected as well as lessons learned. In performing this role, the boards will provide CBP senior leadership with an objective assessment of less-lethal force incidents and their observations and recommendations will then be submitted for Internal Affairs review.
- The Use of Force Center of Excellence has deployed use of force virtual training simulators to the field. CBP is installing 27 virtual training simulators at locations across the country with the last five to be installed by the end of March 2016.

The Panel also was advised that the Commissioner has taken the additional step of developing a Use of Force Review Board report that will be publicly released. In this new report, certain use of force statistics will be released so that the public can see sector by sector the number of incidents involving lethal force, use of a less than lethal device such as a baton or taser, for example, and the number of assaults against agents and officers. This new report also is expected to include trend line data for a period of years, which further demonstrates the Commissioner's commendable forward leaning approach to transparency that should lead to greater public trust in the agency.

At the time of our Interim Report, a CBP working group was conducting a feasibility study of body worn cameras (BWC) in several operational areas over a twelve month period. In November 2015, the CBP working group considered and rejected several different BWC deployment options, ultimately recommending risk-based deployment to those areas or assignments where internal assessments have indicated the need for enhanced technology. CBP is continuing to examine the use of BWCs in its operational environments, along with a variety

of other camera types to include mobile, stationary and maritime cameras.<sup>14</sup> The Panel agrees that BWCs may not be needed at most port of entry (POE) areas due to the proliferation of fixed or other cameras, but they may have application in environments in which the CBP Border Patrol operates. As announced in November 2015, the Commissioner's next steps in developing a more comprehensive, hybrid approach to CBP's overall camera technology, that includes BWCs as a component, is the right approach to achieve the overarching goal of capturing incident images.<sup>15</sup> Going forward, insofar as BWCs are concerned, the Panel's Recommendations Nos. 37 and 38 encourage CBP to continue monitoring BWC and other camera technology improvements, consider using BWCs in certain known high risk assignments, and develop appropriate compliance protocols for supervisory review and random internal audits of BWC use.

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<sup>14</sup>As the Panel previously observed in its Interim Report, BWCs have been widely adopted and generally successfully used by law enforcement across the country not only to ensure policy compliance and accountability but also because of the added benefits that flow from BWCs such as the reduction in the filing of frivolous complaints and the enhancement to officer safety that followed when many volatile situations were de-escalated after violators became aware that their actions would be captured by an active camera. That said, a variety of data and privacy policy issues accompany the use of BWCs that must be resolved. See the Police Executive Research Forum report, *Implementing a Body Worn Camera Program – Recommendations and Lessons Learned* located at <https://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>

<sup>15</sup> See the CBP's *Camera Technology* release at <http://www.cbp.gov/sites/default/files/documents/camera-technology-20151112.pdf>. Also, see the CBP's *Body Worn Camera Feasibility Study Report* at <http://www.cbp.gov/sites/default/files/documents/body-worn-camera-20151112.pdf>

## ASSURING INTEGRITY: PROACTIVE INTEGRITY MEASURES

Several factors contribute to and promote integrity within an organization. A workforce that is well qualified and trained, one that is highly motivated by its mission, one that believes that personnel and other decisions are made on the merits is far less likely to have integrity lapses and corruption issues. Also important is deterrence and a strong ethos internalized within the organization that emphasizes corruption will not be tolerated and is, in fact, dealt with in a prompt and decisive way, i.e., by prompt investigations and disciplinary actions. As noted in our Interim Report, there are three essential elements to assure integrity within CBP: (1) Clear alignment of accountability with internal affairs investigative resources, (2) an adequately staffed internal affairs capability, and (3) a disciplinary system that metes out appropriate discipline in a timely fashion and without unnecessary delay.

In the Interim Report, we discuss at length why CBP, as a law enforcement agency at the border, is particularly vulnerable to corruption. See pages 5-10 of the Interim Report regarding the magnitude of potential corruption in a border agency such as CBP. CBP must be in a position to deal with and investigate large volumes of allegations and investigations if it is to be in a position to aggressively deal with corruption issues and nip them in the bud. And it must be more than reactive if it is going to be able to do this going forward.

Beyond the recommendations of the Interim Report, there are other steps that CBP can take to assure integrity and dramatically reduce the risk of corruption within its ranks. Our additional recommendations regarding assuring integrity are grounded in the best practice that, to be optimally effective, a law enforcement organization must be *proactive* in preventing, deterring and ferreting out corruption. To facilitate this, we are recommending the development of a comprehensive proactive CBP strategy to prevent corruption and promote integrity; one that energizes the CBP offices in thinking about this issue and which captures the basket of initiatives and programs, many outlined below, that are worthy of the agency's support.<sup>16</sup>

CBP is the lead border agency in the world and is often cited as the model for border law enforcement by other governments. As part of CBP's leadership position and foreign outreach through the World Customs Organization and other international fora, CBP, working with the State Department, espouses the importance of anti-corruption best practices to customs and border agencies throughout the world. See Interim Report, page 6, fn. 3. Accordingly, CBP itself should have and use best practices to prevent, deter and reduce corruption. CBP must be proactive in its approach if it is to prevent corruption from taking root.

Nearly all past investigations of corruption within CBP have been reactive, dependent on reporting by co-workers, members of the public or other law enforcement agencies. Yet, because corruption is like a cancer on an organization, it is desirable and a best practice to take a

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<sup>16</sup> See Recommendation No. 1, above. We are mindful of CBP's *Integrity and Personal Accountability Strategy* implemented by the CBP Commissioner on September 18, 2014 located here <http://www.cbp.gov/sites/default/files/documents/CBP%20Integrity%20and%20Personal%20Accountability%20Strategy%20091814.pdf>. This is an important strategy. A specific focus on the proactive aspects an anti-corruption strategy, however, will only make it stronger.

proactive approach to prevent corruption and where it is occurring, to identify pockets of corruption early on so there can be earlier investigations and excisions.

Fundamental to CBP's transformation from a reactive mode to proactively combatting corruption is prioritizing its investment in upgrading or replacing its information technology (IT) systems with platforms that are fully integrated, capable of talking to each other and proactively cross-mining the rich data that CBP currently possesses in data silos. Without these IT improvements, CBP cannot fully achieve the much needed proactive integrity assurance it seeks. Currently, for example, its case intake system (Joint Integrity Case Management System – JICMS) has no search feature to support trend analysis and requires days of manual data searches to answer simple queries. The Panel is encouraged that CBP has an internal working group to review these IT issues but urges their swift action to address needed system improvements expeditiously.

CBP has developed and implemented several world-class proactive integrity measures and programs and is to be commended. Among these is the Combined Automated Operations System (CAOS), a program that randomly and unpredictably re-assigns CBP Officers working primary inspection lanes to other lanes. CBP wisely has prohibited the use of cell phones by CBP Officers working primary. Moreover, CBP has implemented the Integrity Officer Program within OFO. Integrity Officers (IO) are experienced CBP officers who are trained regarding integrity issues and assigned to the staff of the Directors of each OFO's District Offices. Utilizing specialized software, the IOs provide the subject matter expertise to CBP's IA and other investigative entities, such as the FBI-led BCTFs. As such, this program provides an important link between IA and CBP field operations at the District Field Office level. Importantly, the CBP IOs also help develop and oversee the delivery of integrity-related training to the field. CBP's other large operational office, CBP's Border Patrol, does not have an equivalent to the Integrity Officer Program, but we believe it would benefit from having an experienced and trained Border Patrol Agent assigned as the Sector Integrity Officer in each of the 20 Border Patrol sectors.

CBP is one of the few agencies in the world that carefully studies all instances of corruption. Headed by a Ph.D. in Psychology, CBP IA's Division of Threat Mitigation, using a behavior based approach, dissects and analyzes proven corruption for the purpose of understanding root causes. Based on a more detailed understanding of factors that have led to integrity lapses, CBP management is better able to develop proactive counter-measures. This is a continuous process, but an extremely important one to achieving CBP's integrity goals.

Starting in 2009, CBP developed the Analytical Management Systems Control Office (AMSCO). AMSCO, assisted by analysts within CBP IA, evaluates entry and other transactional data to identify potential corruption issues well before any human reporting. Building on AMSCO, and utilizing principles of targeting pioneered by CBP's National Targeting Center, CBP has deployed a program called the Enforcement Link Mobile Operations red flags (ELMOrf) which uses well designed rules sets to identify in real time problematic actions taken by CBP Officers conducting primary and secondary inspections at POEs. AMSCO and ELMOrf "hits" are referred to the Investigative Operations Division of IA if there are indications of potential corruption.



AMSCO and ELMOrf are surely one of the best practices of any border control agency in the world. One of the challenges for CBP, however, is continuing to expand AMSCO and ELMOrf concepts beyond CBP's OFO to its other operational offices, including the CBP's Border Patrol. CBP also needs to see to it that these programs are adequately resourced with analysts and that they are provided with feedback based on their referrals, both with respect to investigative follow up and disciplinary action taken. This is not happening on a regular basis now, and it is essential to the optimization of these tools and evolving ever more sophisticated rules sets.

We also note that CBP has been piloting Blue Force Tracking to permit visibility to managers in the field and at headquarters of where CBP's Border Patrol and Air and Marine Operations (AMO) resources are positioned. Blue Force Tracking is unquestionably a law enforcement best practice. Once expanded beyond the pilot phase, CBP's Border Patrol will be more operationally effective, and it will promote officer safety in the field. Tragic friendly fire incidents can be vastly reduced, if not eliminated entirely. But in addition to its other benefits, Blue Force Tracking is a proactive measure that will help prevent corruption and promote integrity. The challenge for CBP is to secure any necessary funding and implement Blue Force Tracking throughout the entire CBP Border Patrol as well as AMO as expeditiously as possible.

One of the most effective anti-corruption measures is to weed out relatively new law enforcement officers before they become problems. Currently, CBP has only 12 months to evaluate and decide whether to keep a new CBP Officer or Border Patrol Agent. Given that basic training for CBPOs and BPAs takes nearly 6 months, there is only a mere six to seven months in which these rookies can be evaluated in the field *before* the full panoply of civil service protections attach. This is plainly insufficient. The Office of Personnel Management has the authority to extend the period of evaluation to 24 months for sensitive law enforcement and national security positions, such as Border Patrol Agents, CBP Officers and Air & Marine Officers, and it should do so. This would give CBP much needed additional time to determine whether a CBP law enforcement officer is inclined toward behavior that makes him or her an integrity risk or a risk for use of excessive force.

In addition to a longer probationary period for CBP's law enforcement personnel (Border Patrol Agents and CBP Officers), it is noteworthy that these personnel perform an important national security function, i.e., preventing international terrorists and the implements of terror from entering the U.S. across the borders of our nation. Indeed, since the terrorist attacks of 9/11, this has been *the priority mission* of CBP. If the U.S. is to be successful in preventing asymmetrical attacks against the homeland, it will be due largely to the diligence and integrity of CBP's frontline law enforcement personnel in preventing foreign terrorists from getting into the U.S. Integrity lapses by frontline CBP personnel, be they Border Patrol agents or CBP Officers at the nation's ports of entry, threaten the national security of the U.S. more directly and frontally than integrity issues, say, of FBI agents, who are deemed national security employees and therefore in the Excepted Service, i.e., service exempted from civil service requirements and restrictions.

In our view, CBP's sworn law enforcement personnel, approximately 44,000 officers and

agents, should be deemed national security employees and placed in the Excepted Service, just as all FBI agents and as a number of other Homeland Security agencies currently are, including Federal Air Marshals, ICE Homeland Security Investigators, TSA screeners, and uniformed Secret Service personnel. Indeed, employees of 14 national security-related federal agencies are part of the Excepted Service<sup>17</sup>. We believe that this status will greatly enhance CBP's ability to take appropriate disciplinary action of the type that is essential to assure integrity as is the case in the other agencies responsible for national security, both inside and outside of DHS. Not only will it be possible to impose discipline much more quickly, where warranted by the facts, but it also will eliminate the watering down, lowest-common-denominator approach that has resulted from an appeal process to outside arbitrators under the current collective bargaining agreement; arbitrators who may not see the need for severe discipline in matters involving corrupt acts, out-of-policy use of force and basic dishonesty. Of note, both of the unions that represent many of the rank and file CBP agents and officers, the National Treasury Employees Union and the National Border Patrol Council, expressed to this Panel their overarching concern with the long delays in the disciplinary process and the resulting negative impact on employees.<sup>18</sup> Excepted Service employees by definition are removed from civil service and as such are not entitled to representation by a collective bargaining unit. We also recognize that Excepted Service employees are not entitled to appeal disciplinary decisions to outside arbitrators, nor to appeal adverse disciplinary action to the civil service Merit System Protection Board (MSPB). Nonetheless, CBP's current internal discipline process, even without the additional layers of MSPB and union arbitrators, is fair and provides for considerable due process with several layers of review and an opportunity to be heard before adverse action is taken.

The Panel recommended Excepted Service for the CBP frontline officers and agents only after considerable research, benchmarking and discussion. It should be noted, however, that the Panel's recommendation was not unanimous, with Panel member Ron Barber respectfully dissenting from the recommendation.<sup>19</sup>

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<sup>17</sup> There are at least 14 security-related Agencies with employees in the Excepted Service to include:

- Air Force Office of Special Investigations (AFOSI)
- Central Intelligence Agency (CIA)
- Defense Intelligence Agency (DIA)
- Federal Air Marshal Service (FAMS)
- Federal Bureau of Investigation (FBI)
- National Geospatial-Intelligence Agency (NGA)
- National Maritime Intelligence Center
- National Security Agency (NSA)
- Nuclear Regulatory Commission (NRC)
- Space and Naval Warfare Systems Command (SPAWAR)
- US Department of Homeland Security (DHS) - Transportation Security Administration (TSA)
- United States Department of Justice (DOJ)
- Homeland Security Investigations (HSI)
- United States Secret Service - Uniformed Division (USSS)

<sup>18</sup> While our recommendation to reclassify CBP's agents and officers as national security employees has the collateral benefit of also addressing these union concerns, we recognize that their endorsement of this recommendation is highly unlikely because, among other things, it would eliminate their dues paying membership.

<sup>19</sup> In sum, Mr. Barber's dissenting view holds that the current appeal process should be maintained so that those employees who have the most challenging jobs will have the protections that are afforded to others in the nation who have public safety responsibilities. His other concerns revolved around the potential negative impact to morale that

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Since the Anti-Border Corruption Act in 2010, as part of the background investigation of new hires, CBP was mandated to screen new CBP law enforcement personnel using a polygraph. After hiring a sufficient number of polygraph examiners, this important integrity measure was implemented for all new hires in 2012. We believe that integrity could be enhanced further by periodic random and targeted polygraph examinations on a post-hire basis of CBP law enforcement personnel. The FBI and the agencies in the U.S. intelligence community (e.g., CIA, DIA, NSA) currently conduct post-hire polygraphs during their 5-year periodic security investigation and some random polygraphs for on-board employees.

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some consider unacceptably low, and the possibility that if civil service protections are removed, decisions could be arbitrary and capricious or inappropriately politically motivated.

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## STREAMLINING CBP'S DISCIPLINE PROCESS

The CBP discipline system is broken. The length of time from receiving an allegation of misconduct to imposing final discipline is far too long. The average case involving allegations of serious misconduct takes more than a year and a half from intake to final disposition of discipline. This undermines the deterrence goals of discipline. And, it is a disservice to those CBP employees who are left in limbo under the cloud of misconduct allegations that are later disproven or do not warrant disciplinary action. In its report of November 23, 2015, Pivotal Practices Consulting LLC (Pivotal) "*U.S. Customs and Border Protection Complaints and Discipline Systems Review – Public Report of Findings and Recommendations*" concluded that delay was one of the central problems with CBP's discipline process and a key reason that discipline is not nearly as effective as it could and should be.

The CBP discipline process is a complicated one for many reasons, but in no small measure because it involves several different offices of CBP with different and overlapping responsibilities during different phases of the process. No one official and no single office of CBP is actually responsible for assuring timeliness for all phases of the discipline process, from intake and investigation to the discipline review board, to the imposition of discipline by the deciding official, through the appeal phase.<sup>20</sup> Moreover, as noted above, the responsibility for investigating an allegation of misconduct is fragmented, as some of the most serious investigations are retained by DHS OIG, over which the CBP Commissioner has no control and no way of assuring timeliness, much less establishing prioritization.

Besides integrity and use of force issues, arrests for misuse of alcohol and for spousal abuse are serious concerns that impact CBP, both in terms of employee availability and integrity and fitness to perform law enforcement duties. Yet CBP currently has no provisions as part of the discipline process to require alcohol and drug monitoring<sup>21</sup>, to mandate anger management training, suspend use of official government vehicles, implement a last chance agreement and the like. All of these are best practices within police departments and law enforcement organizations.

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<sup>20</sup> The Commissioner's Management Staff currently is responsible for oversight of the disciplinary process but as a group lacks the single point of authority recommended by the Panel.

<sup>21</sup> Currently, alcohol or drug monitoring is included only if offered by the employee as part of remediation.

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## IMPROVING CBP'S RECEIPT, TRACKING AND RESPONSE TO COMPLAINTS

CBP interacts with more people on a daily basis than any other law enforcement organization in the U.S. CBP Officers assigned to CBP's Office of Field Operations interact with and clear into the U.S. over 100 million people annually, or over 300,000 people entering the U.S. through our international airports *every day*<sup>22</sup>. Nearly half of those, are foreign nationals, some of who are visiting our country for the first time. The number of people interacting with CBP Officers at the land border POEs is even greater, approximately 270 million people move annually through Customs and Border Protection into the U.S. from Mexico and Canada, or approximately 740,000 daily.<sup>23</sup> In sum, CBP interacts with and clears into the United States over 1 million people, on average, every single day. Last year, CBP Officers at our ports of entry determined that 236,953 foreign nationals were inadmissible, and they were not allowed to enter. 11,611 of these CBP identified and determined to be inadmissible high risk foreigners who were then prevented from boarding flights to the U.S. A smaller, though not inconsiderable number (8,246), were arrested by CBP Officers at the ports of entry for serious crimes, ranging from murder, rape, assault and robbery<sup>24</sup>. Between the POEs, during FY2015, CBP Border Patrol apprehended 337,117 migrants, (nearly 1,000 arrests each day), attempting to illegally enter the U.S., mainly along and near our border with Mexico. Moreover, CBP's Border Patrol Agents interact with at least 27 million people annually, most of whom are U.S. Citizens (74,000 daily) at the 34 checkpoints it operates interior of the southwest border.<sup>25</sup>

*These numbers are staggering.* More than any other law enforcement agencies, CBP would benefit from a system where it receives complaints and comments from the vast public it interacts with. CBP must be willing to invite criticism from and listen to the public and to take action as warranted. This will help assure the highest standards of professionalism and courtesy are maintained, while doing their difficult job of identifying people not entitled to enter the U.S., who are attempting to smuggle illegal drugs or other contraband or who pose a potential terrorist threat to our homeland.

Yet CBP's ability to intake, track, process and benefit from such a complaint system has been lacking. Outsiders, including NGOs and other stakeholders, complain that there was often no acknowledgement of receipt of complaints, much less any follow up with members of the public regarding action taken to address their complaints. Last year, on the initiative of the CBP Commissioner, CBP undertook to review how CBP's vast and far flung network of operational and field offices handles and addresses comments and complaints from the public. The review, and a similar one conducted by Pivotal Practices, revealed multiple and inconsistent processes for submitting complaints and "incongruent procedures for tracking and resolving complaints" across different CBP offices and geographic locations in the field<sup>26</sup>.

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<sup>22</sup> The actual numbers for last year, FY 2015, were 112 million (or 308,000 daily) arriving air passengers.

<sup>23</sup> CBP Officers pre-clears another 17.5 million travelers annually, mainly from Canadian airports.

<sup>24</sup> See DHS Press Release dated December 22, 2015, page 2, re: End of FY 2015 statistics.

<sup>25</sup> Data related to the checkpoints is based on available CBP Border Patrol License Plate Reader data for 28 of the 34 checkpoints.

<sup>26</sup> Pivotal Practices at page 2.

To address this problem, the Commissioner of CBP decided to consolidate and standardize the intake, tracking and handling of public complaints CBP-wide by expanding the Complaint Management System (CMS).<sup>27</sup> CMS is a single automated process for receiving and tracking public complaints and comments developed by CBP in 2009 that has been piloted in certain offices of CBP. In October 2015, the CBP Commissioner directed that the CMS pilot project that had already been initiated at ports of entry of CBP's OFO and to the Tucson Sector of CBP's Border Patrol, be expanded to other CBP components to include CBP's Border Patrol.

The Commissioner has clearly stated: "The goal is to expand the CMS system to all CBP components."<sup>28</sup> We believe that this is an important step in the right direction and urge the Commissioner to implement the full roll-out of CMS, or a CMS-type system, to all offices of CBP as soon as feasible.

Once implemented CBP-wide, CMS has the potential of assuring that CBP's policy of responding to all public complaints takes place, to track progress in resolving these complaints, improve CBP's interactions with the public by taking prompt corrective actions when appropriate, and letting complainants know that they have been heard by advising them of actions taken.

NGOs have observed that public complaints of misconduct or inappropriate conduct by CBP personnel are not responded to and fall into some "black hole". Given the lack of a standardized system, and many different ways of handling public complaints within CBP, this no doubt has happened. CMS holds the promise of making sure a complaint is acknowledged and a tracking number assigned. It also holds the promise for appropriate feedback to a complainant after the complaint has been resolved, subject to any legal or privacy restrictions. Further, CMS will assist CBP supervisors and managers in assuring that the professionalism, courtesy and respect goals of CBP are being met on a consistent, CBP-wide basis. The sooner CMS can be implemented CBP-wide, the better.

Based upon the pilot of CMS, a relatively small percentage (8%) of the 250,000 annual calls and emails related to professionalism issues of CBP personnel. (An even smaller percentage will warrant IA investigation and potential disciplinary action). Even though some of these complaints will not be valid or justified, some will, and CBP, as an organization committed to professionalism, courtesy, and respect for human dignity, can reap enormous benefit from taking them to heart and taking action.

CBP Officers are truly the face of our nation. They are the first U.S. government official that foreign nationals contact after arrival in the U.S. CBP Officers must do their jobs, but they must do so at all times professionally and with courtesy. After conducting primary questioning, the simple remark by a CBP Officer of "welcome to America" to a foreign national, or "welcome home" to a returning U.S. citizen, speaks volumes. On the other hand, there is no place for curt or rude remarks by CBP Officers, and CBP management and supervisors should be aware of

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<sup>27</sup> See CBP memorandum from Commissioner R. Gil Kerlikowske, dated October 26, 2015, "Expansion of the Consolidated Complaint Management System Pilot Program."

<sup>28</sup> Ibid



such conduct and promptly take corrective action, where warranted, even if it does not warrant formal discipline. CMS will facilitate this and will help make CBP the world-class border agency that it aspires to be.

For CMS to be optimally effective, it is important that members of the public who interact with CBP have access to complaint/comment forms, websites, or phone numbers in a way that is prominently displayed in federal inspection areas at the ports of entry and other processing locations. This form should also be available and easily assessable on CBP's website. We note that CBP has already made its standard public complaint form available in Spanish and is in the process of expanding its bilingual signage to notify the public how to file a complaint or comment with CBP.<sup>29</sup>

In addition to the above, CBP's IA has a tip "hotline" established for receiving complaints alleging misconduct by CBP personnel. Although anonymous reporting, a best practice, is permitted, it would be desirable and a best practice if CBP recorded such calls and notified the caller that his/her call is being recorded. The caller's anonymity can still be maintained, such as added technology that alters the voice of the caller to mask distinguishing voice characteristics. Recording tip line calls not only provides IA investigators with a firsthand account of the allegation, but this practice also adds transparency and an audit trail for agency accountability.

CBP has a requirement and procedure for reporting all complaints of misconduct to CBP Internal Affairs and logging them into the Joint Intake Center (JIC), including self-reporting, but lacks a uniform, standardized Reportable Incident Form. It would be desirable and a law enforcement best practice to have one. Moreover, we note that the time frame for reporting is not a model of clarity, and a set time frame for reporting to IA would be desirable. There should also be clear guidance to IA investigators regarding allegations of criminal or serious misconduct for initiating investigations without delay and for promptly identifying and interviewing witnesses and preserving evidence.

Recommendation No. 23 above involves a self-reporting best practice. Based on our review, CBP's self-reporting procedures and timeline for doing so are not clearly established. In our view, all CBP personnel should be required to self-report using the Reportable Incident Form referred to above. A definitive and short time frame for reporting needs to be established, perhaps no more than four (4) hours. In any event, there should be no ambiguity what needs to be self-reported and when. In the case of serious or criminal allegations, a set time for reporting is particularly useful in that it provides IA investigators with the ability to promptly initiate an investigation and take timely steps to preserve evidence.

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<sup>29</sup> The Panel also has been advised that OFO is now distributing printed flyers at the ports of entry that bear a QR (quick response) Code, which, when scanned by a phone app, links directly to the CBP Information Center website to submit complaints or comments. We are advised that the Border Patrol also plans to provide the same flyers to travelers at checkpoints in the future.

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## OPTIMIZING INTERIOR CHECKPOINTS

In addition to the benefits of interagency task forces such as the FBI-led BCTFs, CBP should attempt to optimize the law enforcement strengths and skill sets within its two large operational offices, the Border Patrol and Field Operations.

CBP operates 34 permanent checkpoints, all of which are located on highways within 60 miles or less of the southwest border. All of these checkpoints are staffed by CBP's Border Patrol. Border Patrol Agents perform the primary inspection, typically involving the stop of north bound vehicles and a few questions of the driver and occupants. In a small percentage of instances, the driver and vehicle are referred for a secondary inspection including questioning and search of the vehicle at a site just off the highway. An important part of the checkpoint operation is lateral enforcement in areas adjacent to the checkpoints against those who seek to evade the checkpoints. The checkpoints, as such, are a critical component of CBP's defense-in-depth strategy and are needed in order to secure our nation's border. Without them, a substantially larger number of illegal migrants and smuggled drugs would make it into the interior of the U.S. The legal authority for these checkpoints is also clear and well established.<sup>30</sup>

As noted above, historically CBP's Border Patrol operates these checkpoints. This involves: primary inspection, secondary inspection and lateral enforcement. As with the ports of entry, these checkpoints are one of the few situations where the vast majority of people that BPAs interact with are U.S. citizens or otherwise legally entitled to be in the U.S. In other words, the primary inspection at checkpoints (and secondary also) is far more akin to operations at the ports of entry that CBP's Office of Field Operations conducts on a daily basis, than it is to what BPAs generally encounter, where nearly everyone is or has just entered the U.S. illegally. Indeed, unlike BPAs, CBP Officers receive specialized training in the primary and secondary inspection process. Accordingly, since the checkpoints more closely mirror the OFO function, we recommend that CBP consider restructuring checkpoint operations to more effectively align the talents and expertise of CBP resources by assigning CBP Officers to perform the inspection function at all permanent checkpoints. However, because Border Patrol's lateral enforcement expertise remains a strategic component in the overall effectiveness of checkpoints, CBP's Border Patrol should retain responsibility for overall operational control of the checkpoints.

This recommendation will not require an increase in CBP's FTE, but it will require a relatively small transfer of FTE from the Border Patrol to OFO. This is a small price to pay in order to achieve one of the largely unrealized benefits of merging all frontline border law enforcement into one agency, Customs and Border Protection.

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<sup>30</sup> See *United States v. Marintez-Fuerte*, 428, U.S. 543 (1976)

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## EFFECTIVELY USING TASK FORCES TO INVESTIGATE BORDER CORRUPTION

As discussed in our Interim Report, CBP, like all border control agencies worldwide, is vulnerable to corruption within its ranks. This is particularly so given the resource-rich drug cartels and criminal enterprises that operate south of our border in Mexico, who employ a variety of methods in an attempt to target, recruit and corrupt law enforcement personnel who then can facilitate the smuggling of drugs and people and other criminal activity. This includes CBP Officers and Border Patrol Agents as well as local police officers. Such corrupt officials can assist the cartels by providing intelligence and facilitating the movement of large amounts of contraband across our borders and into our country. Indeed, corrupt CBP law enforcement personnel pose a national security threat.

A key point in our Interim Report is that CBP must have the ability to promptly and effectively investigate allegations of corruption. Although the BCTFs investigate only a fraction of the corruption allegations involving CBP personnel, they investigate many of the most serious corruption cases and are a deterrent to corruption. The BCTFs should have full participation of CBP and should be supported by the Department of Homeland Security.

By way of background, to help address the threat of border corruption writ large, the FBI has established the National Border Corruption Task Force (NBCTF) in Washington, D.C. and 22 Border Corruption Task Forces / Border Corruption Work Groups in high risk areas near the U.S. northern and southern borders. The BCTFs investigate serious official corruption allegations involving state, local and federal officials that have law enforcement authorities at and near the U.S. borders, including not just CBP law enforcement personnel, but state and local law enforcement. The FBI and the federal law enforcement community recognize the BCTF concept as an effective investigative tool for uncovering official corruption at and near the borders of our nation. The FBI values CBP's strong commitment to the BCTFs.

CBP actively participates in the NBCTF, a national level coordination mechanism that meets in Washington, D.C., and has assigned CBP IA investigators to 18 of the 22 BCTFs.<sup>31</sup> In addition to the assignment of CBP IA investigators, CBP's OOFO assigns CBP Officers to the various BCTFs. Based on our review, there is significant evidence that the BCTF concept is an important and effective enforcement tool, and it especially benefits CBP's goal of identifying, investigating and rooting out corruption within its ranks. Moreover, CBP is able to leverage its investigative capabilities with those of its BCTF partner agencies, thereby expanding CBP's internal oversight. BCTF operations also are mutually beneficial for the partnering agencies, such as the FBI, because it allows the FBI to leverage its increasingly scarce FBI Special Agents for border corruption investigations.

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<sup>31</sup> IA currently does not have active participation in the San Juan or Guam BCTFs or the Minneapolis or Imperial County, California Border Corruption Working Groups. CBP agrees that it should assign investigators to all BCTFs, but currently lacks the staffing resources to do so. We addressed IA's overall staffing insufficiency in our Interim Report.

The Southern Arizona BCTF is a model task force operation, and is recognized as such by the FBI. Indeed, in our view, engagement by CBP in BCTF operations across the borders should model the Southern Arizona BCTF. The Southern Arizona BCTF is the only BCTF that includes investigators from all three DHS internal investigative components, DHS OIG, ICE OPR and CBP IA. This depth of involvement streamlines communication and enhances inter-agency cooperation.

Currently, CBP has 27 employees assigned to the BCTFs, 18 of which are CBP IA special agents. Some of the BCTFs currently include a small number of CBP Officers and Border Patrol Agents. As noted, CBP should participate in all 22 BCTFs and consider expanding the presence of BPAs assigned to the BCTFs. In particular, the inclusion of Border Patrol intelligence agents in the BCTFs would further expand the BCTF's ability to identify and investigate corruption cases. Inherent in the task force concept is the fact that task force operations are mutually beneficial for the partnering agencies. This is surely the case for CBP's involvement with the BCTFs. CBP is able to leverage its investigative capabilities, have expanded database access, resource sharing, electronic surveillance capabilities, and analytical capabilities of all BCTF partner agencies, thereby enhancing CBP's own internal affairs oversight of corruption issues within CBP.

In sum, the interests of CBP and the Department of Homeland Security in better securing the border by eliminating corruption at the vicinity of the border would be well served by increased participation in the BCTFs by CBP and the other investigative agencies of the Department, including in particular the DHS OIG. Currently, DHS OIG participates in about one-half of the BCTFs, but even as to these rarely assigns investigators fulltime.

## ENHANCING TRANSPARENCY / STAKEHOLDER OUTREACH

CBP has improved its overall transparency and community outreach at a headquarters level under the practices and policies of the present Commissioner and in certain of its Border Patrol sectors. However, until recently, CBP lacked the structure, oversight and accountability required to uniformly implement the Commissioner's agency standards of performance towards civilians that prioritize courtesy, respect and professionalism on a CBP-wide basis throughout its vast operations in the field. Moreover, communication between the BCL at the headquarters and Border Patrol sector levels had suffered from self-imposed silos and a lack of inclusiveness, oftentimes depriving the sector level of valuable information regarding discussions and policy concerns that NGOs had separately directed to headquarters but which implicated the entire agency.

CBP headquarters is now in the process of redoubling its efforts to improve leadership, transparency and stakeholder outreach. As part of that effort, headquarters has elevated stakeholder outreach to the Commissioner's office by adding an NGO advisor and delegating newly created overall oversight and the accountability for stakeholder outreach to the Commissioner's Deputy Chief of Staff for Policy, who has instituted weekly internal headquarters meetings to address NGO issues and directly reports to the Commissioner. These improvements also incorporate needed procedural changes that routinize quarterly NGO meetings and bridge communication silos by including in the headquarters level NGO meetings the local CBP Border Patrol liaisons and OFO professional service managers responsible for community engagement. CBP has instituted other meeting changes to add the visibility and structure necessary to ensure policy follow up. As these new steps mature, best practices also need to be highlighted and shared in regular and more structured internal conference calls among the sector liaison representatives and headquarters program leadership.

These program and leadership changes are timely and critical to driving uniform transparency and stakeholder outreach from the top down in CBP. In multiple meetings of the Panel with NGOs over the past year, at both the headquarters and sector levels, these civilian groups favorably noted improved engagement at the CBP headquarters level, especially complimenting Commissioner Kerlikowske. However, the NGOs did not see consistency in CBP outreach and partnership at the field or sector level of CBP's Border Patrol. The NGOs cite a number of specific policy concerns but their overarching complaint is their perception that there is a CBP Border Patrol culture that operates with an arrogance and impunity in their dealings with civilians. In some respects, the NGO cultural concerns derive from alleged acts of misconduct, many dating back years.

It is very difficult to change both organizational culture and overcome long standing reputational damage from historical acts inconsistent with the desired change in culture. This is especially true when by the very nature of law enforcement, many civilian encounters arise from their violations of the law and the agency has tens of thousands of agents and officers operating in diverse and difficult settings. Agency-wide, the Commissioner has consistently set the tone and personally demonstrated his high expectations for stakeholder/community engagement and transparency, but adding the needed structure and oversight should lead to measureable change

throughout the agency if appropriately driven by performance standards, reviews and rewards.

From the Panel's sector level meetings, it is clear that CBP understands the importance of some segments of the civilian population to its mission, highly values those civilian partnerships as force multipliers, and attempts to cultivate those relationships.<sup>32</sup> For example, sector leadership of CBP's Border Patrol has established citizen academies to educate civilian leaders about the Border Patrol and its training and challenges, has actively reached out to the ranchers to share intelligence, and has used social media effectively to educate the public and school age children about various CBP Border Patrol programs. There also are a number of examples at the local level where the Border Patrol has supported some of their greatest civilian detractors. In one instance, Border Patrol sector management enabled public protests against the agency by driving protesters to their protest site after their vehicle broke down on the side of the road. And, many staff level employees have quietly demonstrated their compassion by voluntarily contributing their personal funds and shopping to ensure that detainees have essential supplies. CBP's Border Patrol also devotes considerable effort to rescuing migrants who have illegally crossed the U.S. border and are stranded in harsh environments without food or water. Unfortunately, these humanitarian efforts are little known and underappreciated.

Secretary Johnson's December 9, 2014 letter to the Homeland Security Advisory Council requested that the Panel identify law enforcement best practices involving stakeholder outreach. Since then, President Obama established the Task Force on 21st Century Policing. This appointed group of various law enforcement leaders, which included a member of this Panel, considered and set forth proposed best practices on law enforcement transparency and stakeholder outreach in their May 2015 report to President Obama.<sup>33</sup> The Panel is advised that CBP already has reviewed the recommendations made by the Task Force on 21st Century Policing and has incorporated or is considering adopting those recommendations that are applicable to CBP and otherwise practicable.

Regarding stakeholder outreach, best practice models currently exist within some of CBP's Border Patrol sectors. The Tucson Sector is a good example, where four such groups are operational. One of the longest running community advisory councils in the country is in place at the Nogales Station in Southern Arizona. Its time tested and productive approach could be replicated in other Border Patrol sectors and stations. These community advisory groups can provide an ongoing venue for positive communication between the CBP Border Patrol and community residents and serve to increase mutual understanding and trust.

We believe that CBP should establish similar stakeholder groups in each of the other 19 Border Patrol sectors and, where warranted, at the station level.

Lastly, CBP releases some form of annual review of the agency's discipline process. It appears that it is only available to government officials, however, the Panel has been advised that

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<sup>32</sup> We concur with the law enforcement best practice from the *Final Report of The President's Task Force on 21<sup>st</sup> Century Policing – May 2015* of "...establish a culture of transparency and accountability in order to build public trust and legitimacy. This will help ensure decision-making is understood and in accord with stated policy."

<sup>33</sup> The *Final Report of The President's Task Force on 21<sup>st</sup> Century Policing – May 2015* can be found at [http://www.cops.usdoj.gov/pdf/taskforce/TaskForce\\_FinalReport.pdf](http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf).



the Commissioner intends to publicly issue a detailed disciplinary report at the end of this calendar year, which the Panel encourages. In that same vein, to further transparency, in Recommendation No. 36, we recommend that CBP IA issue an annual report that is disseminated to the public and media, and that it be posted on CBP's website. We have suggested some content that should be included in such a report. For example, this could include a description of the current CBP Internal Affairs Table of Organization and related office functions, an explanation of the classification process for all reportable incidents, the system by which incidents are addressed and disposed of, and finally, an analysis of the data compiled during the given year. We are confident that a publicly available annual report will contribute to the transparency goals of CBP advocated for by the Commissioner.

In the final analysis, a law enforcement organization in a democratic society can tie its effectiveness directly to its level of public trust. A significant factor in gaining and maintaining that trust is ensuring that there is a strict allegiance to a highly professional and transparent internal affairs function. The execution of the internal affairs function within a professional law enforcement entity presents challenges that require constant and consistent vigilance.

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## **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, New York City Police Commissioner, and Chief of the LAPD, Bratton revitalized morale and cut crime in all four posts. In New York City, he achieved the largest crime declines in the city's history, and in Los Angeles he successfully reengineered the department to comply with the nation's largest federal consent decree. 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 de Blasio reinstated him as Commissioner of the NYPD in January 2014.

### Karen P. Tandy (Co-Chair)

Karen P. Tandy has more than 38 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 the more than 70 countries where Motorola operated.

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. She also held the position of 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. In addition, she led the nationwide Organized Crime and Drug Enforcement Task Forces, comprised of thousands of federal and state prosecutors and law enforcement agents, including among them, Customs and Border Protection. During her public service, Tandy 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.

### Ron Barber

Ron Barber is a former U.S. Representative from the Arizona 2<sup>nd</sup> District who served in the 112<sup>th</sup> and 113<sup>th</sup> Congresses. Born in Wakefield, England shortly after World War II, Mr. Barber moved to Tucson, Arizona as a teenager, graduating from Rincon High School in 1963 and the University of Arizona in 1967. He served the people of Arizona for over 35 years as Head Start Director and then as Regional Administrator and, subsequently, as State Director of the Arizona Division of Development Disabilities. Mr. Barber began working with former Congresswoman Gabrielle Giffords in 2006, and was appointed district director by her the following year. He and

Congresswoman Giffords were shot and seriously wounded at a congressional event on January 8, 2011. Following Congresswoman Gifford's resignation in 2012 he was elected to represent Southern Arizona's 8th Congressional District in 2012 in the One Hundred Twelfth Congress, by special election and was reelected, following redistricting, to represent the 2<sup>nd</sup> Congressional District in the One Hundred Thirteenth Congress. After leaving Congress, he joined several local and national boards of directors to continue serving his community and the country.

#### 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), a U.S. District Judge and the United States 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. He chairs the Advisory Committee for the annual U.S.-Canada Border Conference. Recently he was a member of the Citizens Commission on Jail Violence which investigated use of excessive force by the Los Angeles County Sheriff's Department. 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

Colonel Joseph R. "Rick" Fuentes was nominated by Governor James McGreevey to become the 14th superintendent of the New Jersey State Police and was confirmed on June 2, 2003. Fuentes enlisted in the state police in January 1978, serving several postings as a general road duty trooper. He served as instructor in the training academy and then as a detective and supervisor in a variety of assignments that included the FBI/NJSP Joint Terrorism Task Force, the Intelligence Bureau, and Street Gang Unit. Prior to his nomination as superintendent, he was assigned as chief of the Intelligence Bureau, overseeing nine units within the Intelligence Section. In 1993, as a result of several narcotics investigations, he was a co-recipient of the Trooper of the Year award. Fuentes holds a doctorate's degree in criminal justice from the City University of New York. He is a member of the U.S. Attorney General's Global Advisory Committee, a member of the Homeland Security and Law Enforcement Partner's 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. Colonel Fuentes also serves on the Homeland Security Advisory Council's, Customs and Border Protection Integrity Advisory Panel and the National Counterterrorism Center's, Joint Counterterrorism Assessment Team Advisory Panel.

#### 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

Walter McNeil has over 30 years of law enforcement leadership at the local and state levels in the state of Florida. He served as a police officer and commander in that department for eighteen years and was appointed Tallahassee Police Chief in 1997. In 2007 he was appointed by then Florida Governor Charlie Crist, as the Secretary of the Florida Department of Juvenile Justice. After completing the task of restructuring the Florida Department of Juvenile Justice delivery system, Governor Crist appointed him as Secretary of the Florida Department of Corrections. At the conclusion Governor Crist term as Governor, He was selected as police chief for the city of Quincy, Florida. While serving in the city of Quincy he was elected President of the International Association of Chiefs of Police in 2011. He currently serves as a consultant for the consulting firm Intergovernmental Research in Tallahassee, Florida.

#### Paul Stockton

Paul Stockton is the Managing Director of Sonecon LLC. From June 2009 until January 2013, Dr. Stockton was Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs at the U.S. Department of Defense, where he served as the Department's Domestic Crisis Manager, helping lead the response to Superstorm Sandy, Deepwater Horizon, and other disasters. Dr. Stockton was also responsible for Departmental programs strengthening security cooperation with partner nations in the Western Hemisphere, leading talks on Defense Cooperation Agreements with Peru, Brazil, and other key countries, as well as defense policy coordination with Mexico and Canada. In September 2014, Secretary Hagel named Stockton the co-chair of the Independent Review of the Washington Navy Yard Shootings, which recommended major changes to the Department of Defense's security clearance system. He was twice awarded the Department of Defense Medal for Distinguished Public Service, the Pentagon's highest civilian honor, and a Distinguished Public Service Medal from the Department of Homeland Security.

#### Roberto Villaseñor

Roberto Villaseñor is the former Chief of Police for the Tucson Police Department and has held that position since 2009 until his retirement in 2015. 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 was 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 in 2015 was 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 held that position until his retirement in

December 2015. In January 2015 he was appointed to President Obama's Task Force on 21st Century Policing, and later in the year Chief Villaseñor was also appointed by Arizona Governor Doug Ducey to the Arizona Criminal Justice Commission.

William H. 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.

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## APPENDIX C – SUBJECT MATTER EXPERTS

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**Nathan Aller**, Supervisory Marine Interdiction Agent, Air and Marine Operations, CBP

**Chris Bishop**, Special Agent in Charge, Office of Internal Affairs, CBP

**Adam Connerton**, Supervisory Marine Interdiction Agent, Air and Marine Operations, CBP

**Gaetano Cordone**, Director, Analytical Management Systems Control Office, Office of Field Operations, CBP

**Erick Funn**, Director, Office of Internal Affairs, CBP

**Rene Hanna**, Deputy Chief of Staff – Policy, Office of the Commissioner, CBP

**Linda Jacksta**, Assistant Commissioner, Office of Human Resources Management, CBP

**Brandon Judd**, President, National Border Patrol Council

**Lauren Kaufer**, Director, Office of Human Resources Management, CBP

**Dr. Susan Keverline**, Acting Director, Threat Mitigation Division, Office of Internal Affairs, CBP

**Matthew Klein**, Assistant Commissioner, Office of Internal Affairs, CBP

**Kevin McAleenan**, Deputy Commissioner, U.S. Customs & Border Protection

**Clint Lamm**, Labor and Employee Relations Advisor, Office of Human Resources Management, CBP

**Jonathan Levine**, Assistant Counsel for Negotiations, National Treasury Employees Union

**Scott Luck**, Acting Deputy Chief, U.S. Border Patrol, CBP

**John Morris**, Acting Director, Credibility Assessment Division, Office of Internal Affairs, CBP

**Chris Pignone**, Deputy Director, Office of Internal Affairs, CBP

**Tony Reardon**, President, National Treasury Employees Union

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

**Patrick Stewart**, Assistant Chief, Enforcement Systems Division, U.S. Border Patrol, CBP

**Antonio Trindade**, Associate Chief, Enforcement Systems Division, U.S. Border Patrol, CBP

**Timothy Quinn**, Chief of Staff, U.S. Customs & Border Protection

**Ronald Vitiello**, Deputy Chief, U.S. Border Patrol, CBP

**Edward Young**, Deputy Assistant Commissioner, Air and Marine Operations, CBP

**Southwest Border Tour**

**Joe Agosttini**, Assistant Port Director, Port of Nogales, Office of Field Operations, CBP

**Mario Agundez**, Operations Officer, Tucson Sector, U.S. Border Patrol, CBP

**Marcia Armendariz**, Supervisory Customs & Border Protection Officer – Public Affairs, Office of Field Operations, CBP

**Paul Beeson**, Chief Patrol Agent, Tucson Sector, U.S. Border Patrol, CBP; Commander of DHS Joint Task Force – West, Arizona (JTF-W AZ)

**Victor Brabble**, Supervisory Public Affairs Specialist, Office of Public Affairs, CBP

**Felix Chavez**, Deputy Chief Patrol Agent, Tucson Sector, U.S. Border Patrol, CBP

**George Campos**, Watch Commander, Port of Nogales, Office of Field Operations, CBP

**Ralph Castillo**, Supervisory Border Patrol Agent, Tribal Liaison, Tucson Sector, U.S. Border Patrol, CBP

**Debra Cline**, Border Patrol Agent, Ranch Liaison, Tucson Sector, U.S. Border Patrol, CBP

**Araceli Cutright**, Director, Policy and Compliance, Tucson Sector, U.S. Border Patrol, CBP

**Jason Daniels**, Border Patrol Agent, Less Lethal Instructor, Nogales Station, Tucson Sector, U.S. Border Patrol, CBP

**Fernando Grijalva**, Assistant Chief Patrol Agent, Tucson Sector, U.S. Border Patrol, CBP

**Kevin Hecht**, Deputy Patrol Agent in Charge, Nogales Station, Tucson Sector, U.S. Border Patrol, CBP

**Mark McComack**, Operations Officer, Tucson Sector, U.S. Border Patrol, CBP

**Charles McLoughlin**, Assistant Chief Patrol Agent, Tucson Sector, U.S. Border Patrol, CBP

**Steve Passement**, Supervisory Border Patrol Agent, Branch Chief – Border Community Liaison, Tucson Sector, U.S. Border Patrol, CBP

**Mark Qualia**, Operations Officer, Tucson Sector, U.S. Border Patrol, CBP

**Guadalupe Ramirez**, Port Director of Nogales, Office of Field Operations, CBP

**Mark Rios**, Assistant Chief Patrol Agent, Tucson Sector, U.S. Border Patrol, CBP

**Gus Soto**, Special Operations Supervisor, Foreign Operations Branch, Tucson Sector, U.S. Border Patrol, CBP

**Greg Stearns**, Special Operations Supervisor, Tucson Sector, U.S. Border Patrol, CBP

**Teresa Small**, Chief Customs & Border Protection Officer, Tucson Field Office, Office of Field Operations, CB

**Timothy Thomas**, Border Patrol Agent, Tucson Sector, U.S. Border Patrol, CBP

**Charles Trost**, Operations Officer, Public Lands Liaison, Tucson Sector, U.S. Border Patrol, CBP

**Mark Wactor**, Operations Officer, Tucson Sector, U.S. Border Patrol, CBP

**Gary Widner**, Patrol Agent in Charge, Nogales Station, Tucson Sector, U.S. Border Patrol, CBP

**Markus Winnecke**, Border Patrol Agent, Tucson Sector, U.S. Border Patrol, CBP

**Tim York**, Division Chief, Tucson Sector, U.S. Border Patrol, CBP

**Claudia Zamora**, Chief Customs & Border Protection Officer, Port of Nogales, Office of Field Operations, CBP

**The American Immigration Lawyers Association (AILA)**

**The American Civil Liberties Union (ACLU)**

**The Southern Borders Communities Coalition** along with some of its affiliated organizations

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## APPENDIX D – CBP Integrity Advisory Panel Response to Office of Inspector General Audit Team

### RESPONSE AND COMMENTS OF THE HOMELAND SECURITY ADVISORY COUNCIL TO THE DHS OFFICE OF INSPECTOR GENERAL'S TENTATIVE NOTICE OF FINDINGS AND RECOMMENDATIONS RE "CBP NEEDS BETTER DATA TO JUSTIFY ITS CRIMINAL INVESTIGATOR STAFFING"

Re: OIG Project # 15-084-AUD-CBP

Regarding the DHS OIG's Tentative Notice of Findings and Recommendations in its report titled:

"CBP Needs Better Workload Data to Justify Its Criminal Investigator Staffing," the Homeland Security Advisory Council responds to each statement in the OIG's Tentative Notice under the heading "Homeland Security Advisory Council (HSAC) Report Not Supported By Appropriate and Sufficient Data", at page 4 of the OIG's Tentative Notice, and request its responses be incorporated into the OIG's Final Report.

#### OIG Statement #1:

"HSAC's recommendation that CBP increase its criminal investigator workforce by 350 does not consider CBP's current operating environment..."

#### HSAC Response:

This statement is inaccurate. In the June 29, 2015 Interim Report of an HSAC Subcommittee, known as the CBP Integrity Advisory Panel, there is extensive discussion regarding CBP's operating environment and why CBP unique operating environment renders it more susceptible to corruption than other law enforcement agencies. The Interim Report was adopted and approved by the full Homeland Security Advisory Council on June 29th, 2015.

In this regard, the HSAC Interim Report observes:

"CBP is law enforcement agency, albeit one with a unique law enforcement mission to enforce the laws at and near the borders of the United States. . . . CBP's primary mission is to enforce our nation's 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 . . . . In sum, CBP's mission is both a law enforcement and a national security mission and there is little room for error." See *Interim Report*, page 5.

The Interim Report then went on to discuss the particular vulnerability of all border enforcement agencies worldwide, CBP included. The HSAC Interim Report states:

"The threat of corruption [to CBP] cannot be gainsaid. There are major drug trafficking and smuggling organizations - - transnational criminal organizations (TCOs) that operate on both sides of our border - - that have budgets in the tens of millions of dollars for bribes and corruption of government officials. The need to assure integrity within CBP, therefore, is one of tis paramount priorities." *Ibid*, page 6

The HSAC's Interim Report went on to state:

“... there is data indicating that arrests of CBP personnel for corruption far exceed, on a per capita basis, such arrest at other federal law enforcement agencies.” *Ibid*, page 6.

Further, approximately half of CBP's 44,000 law enforcement officers are Border Patrol Agents. Our report observed:

“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.” *Ibid*, page 13.

The Interim Report also noted that CBP has 44,000 armed law enforcement officers, most of whom operate at and near the borders of our country, also means that it will have a proportionately higher incidence of uses of lethal and non-lethal force requiring investigation. *Ibid*.

**OIG Statement #2:**

“The HSAC's recommendation that CBP increase its criminal investigator workforce by 350 does not consider CBP's current ... investigative caseload.”

**HSAC Response:**

The OIG's implied criticism that the HSAC did not consider current caseload is misplaced. First, *current* caseload - - as opposed to historical caseload - - is not a predictor of future caseload, either in terms of number of cases or their complexity. Second, although historical caseload is relevant, as explained in the HSAC Interim Report, CBP had *no* criminal investigative authority until last year and *no* 1811 criminal investigators until January of this year, and, therefore, was not in a position to investigate criminal misconduct allegations involving CBP personnel. Moreover, as noted in HSAC's Interim Report, CBP lacks historical information regarding the number, type and length of investigations of CBP personnel, because many of these investigations in the past were conducted by other agencies, including DHS OIG and ICE OPR<sup>1</sup>, without full visibility of CBP IA or its Commissioner. In these circumstances and because CBP is re-building its Internal Affairs (IA) component from the ground up, the best measure of its resource requirement for investigators is to compare CBP with other reasonably comparable law enforcement agencies.

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<sup>1</sup> Historically, the DHS OIG has chosen to investigate cases originated from the Joint Intake Center (JIC), but it also has investigated an unknown number of cases targeting CBP personnel generated from its hotline and other sources. Until last year, when the DHS OIG chose not to investigate an allegation of serious or criminal misconduct involving a CBP employee, the OIG deferred the matter to ICE's Office of Professional Responsibility. The reason for this initially was that CBP had no Internal Affairs Office following its creation, and later, CBP's rebuilding IA has had an insufficient number of investigators, all whom lacked authority to investigate allegations of criminal misconduct against CBP personnel. The net effect is that CBP lacks meaningful and comprehensive historical caseload data.

Because CBP's IA was inadvertently eliminated with the creation of the Department of Homeland Security and because only within the last year has its IA office had 1811s and the authority to investigate criminal misconduct, the HSAC Subcommittee determined there was insufficient workload data within CBP's IA. For that reason, in August 5, 2015, the HSAC's Integrity Advisory Panel requested statistical data regarding investigations involving CBP personnel from DHS OIG going back five years. See Exhibit "A" hereto. After recently being advised by OIG that a formal request for such data was necessary from the HSAC, the HSAC, through Judge William Webster, the chair of the HSAC, formally requested this information from the OIG by letter dated September 25, 2015. See Exhibit "B" hereto.

Further, the Interim Report notes that virtually all cases investigating CBP personnel, regardless what agency investigated them, have been reactive.<sup>2</sup> *Interim Report*, pages 9-10. The HSAC Subcommittee found that to be effective, particularly to prevent corruption, requires a proactive approach, involving data analytic and intelligence-driven investigations that will generate substantially more investigations than is currently the case.

**OIG Statement #3:**

"HSAC's recommendation is based on an analysis of the ratio of CBP's law enforcement workforce to Internal Affairs' investigators at its legacy agency, the U.S. Customs Service."

**HSAC Response:**

This statement is inaccurate. The ratio was not developed with reference only to CBP's legacy agency, the U.S. Customs Service. The ratio was derived from a combination of similar law enforcement agencies, including the NYPD, the FBI, and ICE, in addition to legacy Customs. See *Interim Report*, pages 8-9.

**OIG Statement #4:**

"This [the ratio in the HSAC Interim Report] is not supported by any workforce data or analysis."

**HSAC Response:**

This statement is inaccurate. The HSAC Interim Report cites to and compares CBP's law enforcement workforce with the workforce of other comparable law enforcement organizations. Further, the Interim Report analyzes the employee and law enforcement workforce data to arrive at a ratio for determining adequacy of IA investigators. The recommended increase of 350 investigator FTE for CBP's IA is at the low end of the range derived from comparing comparable law enforcement agencies. *Interim Report*, pages 8-9. For example, a comparison with NYPD would suggest an increase of 380 CBP investigators. The same result is the case

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<sup>2</sup> Currently, in the corruption area, almost all investigations are reactive. For reasons we explained, this will remain so until CBP IA has an adequate number of 1811s.

comparing ICE's total workforce to IA investigators. The FBI has an even higher percentage of IA investigators to law enforcement agents. *Ibid*, page 9.

To the extent that the OIG's Tentative Findings and Recommendation impliedly suggests that benchmarking is not an appropriate analytical tool to ascertain resource needs, this is contrary to widely accepted practice. Indeed, it is common to look to other law enforcement and police agencies and make comparison to arrive at a range of resources (personnel) necessary to perform law enforcement functions. In absence of historical data for the total caseload of numbers and complexity of internal investigations of CBP personnel over several years, it is one of the only ways to do so.

**OIG Statement #5:**

"It [the ratio utilized in the HSAC IR] does not take into account

- Recent workload data such as number and type of allegations received and investigations performed
- Time spent investigating allegations, and
- Case complexity"

**HSAC Response:**

As noted above, recent workload data is not good indicator of resource needs, and this is especially so for an IA office, such as CBP's, that was totally depleted of investigators, is in a rebuilding mode, has not had criminal investigators or criminal investigative authority until recently, and where some of the most complex and difficult misconduct investigations involving CBP personnel were investigated by other organizations, e.g., ICE OPR, DHS OIG, and the FBI-led Border Corruption Task Forces.<sup>3</sup>

**OIG Statement #6:**

"Furthermore, HSAC did not consider the impact of key changes in CBP employment practices as a result of the Anti-Border Corruption Act of 2010, such as requiring background investigations and polygraph screening for law enforcement positions."

**HSAC Response:**

Regarding background investigations, this statement is misleading. Background investigations were required by CBP prior to the Anti-Border Corruption Act. We view pre-hiring polygraph screening, which became fully implemented at CBP in October of 2013 as a positive development, but one with relatively marginal impact on the number of investigations of corruption and other serious misconduct that CBP IA will be required to investigate in the future, especially as CBP implements a proactive approach to deter misconduct. The HSAC

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<sup>3</sup> As the Interim Report makes clear, the report contemplates a situation where most misconduct cases involving CBP personnel are, in fact, investigated by CBP IA, not DHS OIG, not ICE OPR, not someone else. We set forth compelling policy reasons for amending MD 810.1 to permit most cases involving misconduct by CBP personnel to be investigated by CBP IA. *Interim Report*, pages 10-11.



Subcommittee interviewed many witnesses, including experts on corruption. Most corruption cases occur after a law enforcement employee has been on the job for 8-9 years or more<sup>4</sup>. Pre-hire polygraph screening has little impact on weeding out such cases.

**OIG Statement #7:**

“Additionally, HSAC did not determine if the ratio of CBP’s law enforcement workforce to Internal Affairs’ investigators at its legacy agency was the right ratio or appropriate.”

**HSAC Response:**

As previously noted, the ratio was derived from a combination of comparable law enforcement organizations that included, but was not limited to CBP’s legacy agency, the U.S. Customs Service (USCS). That said, the former Commissioner of the USCS<sup>5</sup>, who is a member of the HSAC subcommittee, has validated that the number of IA 1811 investigators was minimally sufficient for an agency the size of the USCS, approximately 60% of whom were gun carrying, law enforcement officers. Also, the HSAC’s CBP Integrity Advisor Panel includes as its co-chairs, the current Commissioner of Police of the NYPD and a former Administrator of the Drug Enforcement Administration. Other Members of the HSAC Panel include the current head of the New Jersey State Police and a former Director of the U.S. Secret Service. The Panel has decades of experience running major federal, state and local law enforcement agencies and has the expertise to assess the number of IA investigators needed by CBP to be able to effectively and efficiently conduct misconduct investigations involving the CBP workforce.

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<sup>4</sup> Study by CBP Internal Affairs / Threat Mitigation Division

<sup>5</sup> Former USCS Commissioner Bonner (2001-03) monitored all USCS IA investigations on a bi-weekly basis.

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