



SANTA FE
DREAMERS
PROJECT



September 11, 2020

Via FedEx & Email

Chad Wolf, Acting Secretary¹
U.S. Department of Homeland Security
Washington, D.C. 20528
OGC@DHS.GOV

Via Email and FedEx

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Re: Demand for Corrective Action under Information Quality Act Guidelines

Acting Secretary Wolf and Ms. Evans:

We write on behalf of several organizations to demand that Border Patrol take immediate action as required by the Information Quality Act. On September 9, 2020, the Border Patrol’s social media managers posted a video entitled “The Gotaway” on Twitter via the account of Border Patrol Chief Rodney Scott.² The video, which Scott has described as originally being for “internal use” was previously posted but subsequently removed from YouTube.³

¹ As recently noted by the Government Accountability Office and the federal judiciary, because Mr. Wolf has been neither properly appointed nor confirmed, as a legal matter, he currently lacks any lawful claim the position he purports to hold. See <https://www.gao.gov/assets/710/708830.pdf>.

² U.S. Border Patrol, The Gotaway (2020), <https://twitter.com/USBPChief/status/1303850255902027777> (last visited Sept. 11, 2020).

³ Border Patrol’s *The Gotaway*, YouTube, <https://www.youtube.com/watch?v=0aErNkBFhcY&feature=youtu.be> (last visited Sept. 11, 2020). For a statement about the original removal see Customs and Border Protection, Statement (Sept. 9,

As described below, “The Gotaway” contains blatantly false and misleading information.⁴ As such, it fails to meet the information quality obligations imposed by Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub L. No. 106-554 § 515(a), 44 U.S.C § 3516 (hereinafter the “Information Quality Act” or “IQA”), as well as the implementing guidelines adopted by the Office of Management and Budget (“OMB”)⁵ and the Department of Homeland Security (“DHS”)⁶ (collectively, the “Guidelines”). Because “The Gotaway” contains false and misleading information and falls far short of satisfying the Government’s burden of objectivity in presentation of data, we demand that Border Patrol respond to this request at the earliest possible date.

A. The Requestors Have a Strong Interest in Halting Dissemination of False and Misleading Information by DHS and Border Patrol.

Al Otro Lado is a nonprofit legal services organization based in Los Angeles, California that serves deportees, migrants, refugees, and their families in Southern California and Tijuana, Mexico. Al Otro Lado’s mission is to provide screening, advocacy, and legal representation for individuals in asylum and other immigration proceedings; to seek redress for civil rights violations; and to provide assistance with other legal and social service needs. As an immigrant legal service provider representing alleged noncitizens in discretionary bond determinations before DHS officials and federal immigration courts, as well as in litigation before federal courts Al Otro Lado has a vested interest in accurate government statistics and information regarding the danger immigrants pose to American communities, including those who may have encounters with Border Patrol. In custody proceedings where the liberty of Al Otro Lado’s clients is at stake, the potential danger to the community posed by those clients is a determining factor in securing their freedom. *See, e.g., Matter of Simiauskas*, 27 I&N Dec. 207 (BIA 2018) (“Dangerous [noncitizens] are properly detained without bond.”). False and misleading narratives -- particularly those from the nation’s largest federal law enforcement agency -- about the prevalence of criminality in immigrant populations fundamentally undermines the fairness of custody proceedings. Al Otro Lado also has an interest in preserving already scarce organizational resources that would be dedicated elsewhere, but for the need to combat the false and misleading portrayal of immigrant criminality at the heart of the “Gotaway.”

2020),

<https://www.cbp.gov/newsroom/speeches-and-statements/statement-us-border-patrol-chief-rodney-scott-re-el-centro-secto>

F.

⁴ Jean Guerrero, “Border Patrol Pulls Vid Reflecting How Stephen Miller Helped Make Homeland Security a Race War Propaganda Shop,” *The Daily Beast* (Sept. 10, 2010) *available at*

<https://www.thedailybeast.com/new-video-shows-how-stephen-miller-helped-turn-homeland-security-into-a-race-war-propaganda-shop>.

⁵ Office of Management and Budget, *Information Quality Guidelines*, *available at*

https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/OMB/inforeg/iqg_oct2002.pdf.

⁶ U.S. Department of Homeland Security, *Information Quality Guidelines*, *available at*

<https://www.dhs.gov/sites/default/files/publications/dhs-iq-guidelines-fy2011.pdf>.

Texas Civil Rights Project are Texas Lawyers for Texas Communities. In this capacity, we advocate in and out of the courtroom for immigrants to live free and without fear. We have a strong interest in the correction of the false and misleading narratives put forth in this video, including erroneous statistics, as we use correct, objective statistics in our advocacy for unbiased and just treatment of immigrants and their families.

Immigrant Defenders Law Center is a Southern California based non-profit deportation defense organization serving over 2,600 clients annually. We are committed to defending our immigrant communities against injustices in the legal system. We envision a future where no immigrant will be forced to face immigration court alone and our programs are a first step towards the long-term goal of providing universal representation to all immigrants facing deportation. ImmDef has a strong interest in ensuring that all information being released by the Department of Homeland Security is accurate, unbiased and fair as this misinformation directly impacts the safety and well-being of the communities we serve.

Santa Fe Dreamers Project is a non-profit legal services organization that, among a whole array of services, advises vulnerable transgender asylum seeking individuals about how to keep themselves as safe as possible as they navigate the US border, custody with CBP, and ICE detention. Misinformation about our clients could have dangerous effects on their safety in federal custody and their ability to protect themselves and assert their rights as they seek asylum in the US.

CHIRLA or the Coalition for Humane Immigrant Rights is a nonprofit organization that has been serving the immigrant community since 1986. We provide legal services, community education, policy and advocacy, and civic engagement for and with immigrants and their families, through 11 offices throughout California, Washington,DC. CHIRLA has also established programs on the Mexican side of the border in order to more effectively meet the needs of transnational migrants and asylum-seekers. Through various academic and demographic studies, it is an established fact that immigrant populations commit violent crimes in the US at a significantly lower rate than the native born population. Depicting migrants and asylum-seekers as dangerous murderers obscures this fact while sowing hate and violence towards the immigrant communities that we work with and are a part of. We work directly with clients' immigration cases, which requires us to deal directly with CBP and other DHS agencies. We have a strong interest that false and misleading statistics and narratives about immigrants not be utilized by the federal government, as they make our work not only more difficult, but potentially even dangerous given the current threats that DHS and other experts have identified that come from white supremacist extremists/potential terrorists.

Haitian Bridge Alliance is a non-profit community organization. Our goal is to work to develop a self-sufficient community of Haitian immigrants in California and beyond. Our vision is not myopic but rather broad enough to believe in a Haitian community in California that is strong at its

foundation so that it doesn't crumble when crisis hits. Haitian Bridge Alliance is the only black-led organization representing black migrants at the Southern Border. Haitian Bridge serves hundreds of migrants who interact with Border Patrol each year and consequently has a vested interest in ensuring that not only Border Patrol Agents but border communities have truthful and accurate information regarding population statistics.

Central American Resource Center (CARECEN) is a community-based, non-profit organization that empowers Central Americans and all immigrants by defending human and civil rights, working for social and economic justice, and promoting cultural diversity. CARECEN, founded in 1983, is the largest Central American immigrant rights organization in the country and has fought for 37 years to protect immigrant and refugee communities. As an organization initially founded and led by Central Americans, we have a deep understanding of community needs, the root causes of the humanitarian crisis in Central America, and cultural considerations surrounding service of the Central American community. CARECEN has advocated extensively for Central American refugees and immigrants' needs and rights since its inception because the challenges facing immigrants have always been complex to address. Its complexity is even more true today and the spread of false information further exacerbates these challenges. Misleading information about immigrants cannot be taken lightly. False information about our immigrant community has very real and harmful consequences and puts immigrants in danger. We must ensure that immigrants are accurately represented and not put at risk due to the irresponsible spreading of false information.

B. Information Quality Guidelines Require Border Patrol's Communications Meet Specific Quality Standards.

The IQA requires agencies, including the Department of Homeland Security and Border Patrol, to adopt policies and procedures "for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies." See Pub. L. No. 106-554 § 515(a). "The Gotaway," which includes statistical representations, is plainly "information" under the IQA and the Guidelines because it is a "communication or representation of knowledge such as facts."⁷ The caption for the video as posted by Border Patrol Chief Rodney Scott ends with the phrase "Choose truth, not sides." Scott's words evince a clear intention by the Border Patrol's most senior official, as well as DHS, to impart unbiased and accurate information to the public about the function of the agency.

As explained in the OMB Guidelines implementing the IQA, "the fact that the Internet enables agencies to communicate information quickly and easily to a wide audience not only offers great benefits to society, but also increases the potential harm that can result from the dissemination of

⁷ See e.g. The Gotaway, *supra* note 1, at 2:38.

information that does not meet basic information quality guidelines.” 67 Fed. Reg. at 8452. As used in the Guidelines, “quality” encompasses “utility, objectivity, and integrity.” *Id.* at 8459; *see also* DHS Guidelines at 4 (same).

First, disseminated information must have utility, or be “useful[] to its intended users, including the public.” 67 Fed. Reg. at 8459. In assessing the utility of information disseminated to the public, an agency must consider the perspective of the public and, “when transparency of information is relevant for assessing the information’s usefulness from the public’s perspective, the agency must take care to ensure that transparency has been addressed in its review of the information.” *Id.*; *see also* DHS Guidelines at 3.

Second, disseminated information must be objective. As explained in the OMB Guidelines by which Border Patrol is bound:

“Objectivity” involves two distinct elements, presentation and substance.

a. “Objectivity” includes whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner. This involves whether the information is presented within a proper context. Sometimes, in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation. Also, the agency needs to identify the sources of the disseminated information...

b. In addition, “objectivity” involves a focus on ensuring accurate, reliable, and unbiased information....

67 Fed. Reg. at 8459; *see also* DHS Guidelines at 3-4.⁸

C. The Gotaway Does Not Comply with the Agency’s Information Quality Guidelines.

“The Gotaway” violates the IQA requirements and the Guidelines, which require that “disseminated information [be] presented in an accurate, clear, complete, and unbiased manner” and “within a proper context.” 67 Fed. Reg. at 8459. It also fails to meet the standards for “quality” as it is neither “useful” for its intended audience, nor “objective.” *Id.*; *see also* DHS Guidelines at 4. While purporting to be an accurate, unbiased portrayal,⁹ “The Gotaway” fails to meet these basic legal

⁸ The third requirement-- integrity-- is, ironically, not an issue in this demand because it refers to “the security of information” which is not an issue here. 67 Fed. Reg. at 8459.

⁹ *See* Twitter caption for “The Gotaway,” *supra* note 2: “Choose truth, not sides.”

requirements. Specifically, the following portions of the video are manifestly contrary to the agency's legal obligation under the Act:

1. Segment 1: (0:26-0:29) - Deliberately Misleading BP Agent Dialogue

“Man. That’s the second one in less than a week.”

“This is getting out of hand.”



This portion of the video features two men who appear to be white dressed in Border Patrol uniforms listening to a CBS News report on the alleged rape and murder of a 64 year-old woman in Santa Maria, California.¹⁰ The video specifically notes that the story on the radio is “actual audio.” This story ran on or around August 9, 2015, and the crime occurred on or around August 5, 2015. We have conducted a thorough search for other news reports involving the alleged rape and murder of a US citizen by a migrant in the seven days preceding the CBS News Story. This search revealed no evidence that two such murders occurred within that week. Rather, it appears that the agents depicted in the video are using a real story to spin a false narrative and stoke fear. If the agency intends to keep this portion of the video, it must identify the factual basis on which the agents in the video base the claim that two such murders occurred within the first week of August 2015 or remove their dialogue.

2. Segment 2: (1:47-2:23) - The Undifferentiated Depiction of Two Different Tattooed Men Who Appear Latino As “The Gotaway” is Misleading.

The overriding theme of “The Gotaway” is “Every apprehension matters. Do you know who got away?” (2:23). To support this theme, the video insinuates that a Latino man who evades arrest by Border Patrol agents later attempts to rob and then stabs another man. The man in the front passenger

¹⁰“ Undocumented California Immigrant Charged with Rape, Murder,” CBS News (Aug. 9, 2015), *available at*: <https://www.cbsnews.com/video/undocumented-california-immigrant-charged-with-rape-murder/#x>.

seat of the car wears a gray t-shirt and jeans. His left arm is covered in tattoos that extend to a black wrist watch. (:53) & (1:17).



The fictionalized killer is also wearing a man, who appears to be Latino, but he is not the man who “got away.” He wears different clothes (which he apparently changed into while running), and does not have the same tattoos on his left arm. His immigration status cannot be determined by any information in the video. The viewer is simply left to conclude that he is undocumented because of his appearance.



The message of “The Gotaway” is clear: white men are chasing down Latino immigrants who, if allowed to “get away,” will go on to commit heinous crimes against US citizens. The video further exploits the association between criminal gangs in Latin America and tattoos, whereby the camera repeatedly lingers on the ubiquitous arm tattoos of the suspected Latino immigrant killer. Either Border Patrol has a difficult time telling the difference between Latino immigrants, or the intention is to mislead the viewer into thinking all Latino men with tattoos are immigrants without status who have avoided the Border Patrol and will soon commit heinous crimes. Regardless, the overall point of this storyline in the video is to communicate that Latino immigrants crossing the US-México border are doing so with the ability and the intention to commit violent crimes against US citizens, *unless of course*, they are stopped by the Border Patrol. This depiction of an entire subset of the population as

“illegal immigrants” is blatantly false and misleading, and it stigmatizes a subset of the American public without any factual support for doing so.

3. The False and Misleading Use of News Clips In Rapid Succession

a. Article 1: (2:32-2:34): Misleading Information About the Kate Steinle Case

Just after white text on a black screen that reads, “Do you know who got away?,” the video cuts to a screenshot of a Fox News broadcast, citing “thetruthaboutguns.org.”



As Border Patrol and DHS are no doubt aware, the man in this photo was acquitted by a jury of his peers of murdering Kate Steinle, and his conviction for unlawful possession of a firearm, this conviction was later overturned by the California Court of Appeals.¹¹

“The Gotaway” is about the violent attack and apparent murder of a person in the United States by a person who evades the Border Patrol. The image that Border Patrol uses implies the man in the photo murdered Kate Steinle. But the justice system concluded that he did not. A viewer without that information and context would therefore believe this Latino-appearing man’s “gotaway” story resulted in the murder of a young blonde white woman. At least one member of Kate Steinle’s family has specifically demanded that her death not be sensationalized to stoke anti-immigrant sentiment.¹² In violation of her relative’s wishes, the IQA, and the Guidelines, that is precisely what Border Patrol does.

¹¹ See Juliet Williams, Felon in Possession Conviction of Kate Steinle’s Killer Overturned by California Appeals Court (Aug. 30, 2019), available at: <https://www.thetruthaboutguns.com/felon-in-possession-conviction-of-kate-steinles-killer-overturned-by-california-appeal-s-court/>.

¹² Theodore Schleifer, “Brad Steinle: Trump ‘Sensationalizing’ Sister’s Death JUL. 14 2015, available at <https://www.cnn.com/2015/07/14/politics/donald-trump-kate-steinle-san-francisco/index.html>.

b. Article 2: (2:35-2:36) Misleading Information About the Mollie Tibbetts Case.

The image below regarding Mollie Tibbetts' death follows the developing theme of misleading information that begins with reference to Kate Steinle's tragic death. Again, Border Patrol uses the side-by-side images of a young smiling white woman next to the mugshot of a man of Latino appearance, and again the man in the photo has neither been tried nor convicted of this crime.¹³ Viewers would not know that if they simply watched this portion of the Border Patrol's video. Indeed, he is presumed innocent. But his image is used to prove Border Patrol's thesis: people who "get away" go on to murder Americans, as viewers witness in graphic detail less than one minute earlier in the video.



The threat that men of color pose to white women is an image which has historically been used to villainize Black men for years, and justify brutal violence against them in the name of protecting the honor of white women. Here history repeats itself, though the immigration status of the "villain," the perpetual "boogeyman" has changed. In the plainest terms this video tells the American public that the greatest threat to the nation's white women are immigrants of color who "got away," having evaded detection and/or capture by Border Patrol.

¹³ Blake Branch, Its Been Two Years Since Mollie Tibbetts' Body Was Found in a Corn Field, KTTV.com (Aug. 21, 2020), available at <http://www.kttv.com/2020/08/21/its-been-two-years-since-mollie-tibbets-body-was-found-in-a-cornfield>.

c. Article 3: (2:36-2:38) Misleading Use of a Headline To Imply Crimes Committing *Against* Migrants Were Actually Committed *By* Migrants.

The next frame reads: “Report: Illegal immigration leads to 2,200 deaths, 118,000 rapes, 138,000 assaults:”¹⁴



The image Border Patrol relies on comes not from fact-based reporting, but from an opinion piece by Paul Bedard which appeared in the *Washington Examiner* on August 21, 2018.¹⁵ Presented alone, and as fact, rather than opinion, this headline is ambiguous and misleading. Juxtaposed with the preceding minute of imagery depicting a man who has just escaped a Border Patrol arrest, and then stab and rob someone in the United States (or another tattooed Latino man of indeterminable immigration status do so), this headline seems to suggest it is “the gotaways” themselves, i.e. people who elude Patrol Patrol apprehension who are committing these crimes.

But that is not what the opinion column or the study on which it was based said. Instead, the victims of these crimes were not people in the United States harmed by unlawful migrants, but the migrants themselves and the harm that they experience in their migration journey through Mexico. While Border Patrol has the “gotaways” as criminals and predators to boost its key thesis (“every apprehension matters”) and uses this headline to mislead the public about the scope of the problem, the underlying data in the article shows this is not an accurate use of the headline. Using the inherently misleading *Washington Examiner* headline is a violation of the IQA requirements and implementing Guidelines’ accuracy requirement. It clearly does not meet the standard for presenting information “within a proper context.” 67 Fed. Reg. at 8459.

¹⁴ The Gotaway, *supra* note 1, at 2:38.

¹⁵ Paul Bedard, Report: Illegal immigration leads to 2,200 deaths, 118,000 rapes, 138,000 assaults, *Washington Examiner* (Aug. 21, 2018), available at: <https://www.washingtonexaminer.com/washington-secrets/report-illegal-immigration-leads-to-2-200-deaths-118-000-rapes-138-000-assaults>.

d. Article 4: (2:39-2:40) The False and Misleading Breitbart Headline

Viewers next see a headline from a white nationalist publication¹⁶ reading “Fact Check: Yes, Thousands of Americans Have Been Killed By Illegal Aliens.”

The image shows a screenshot of a Breitbart website article. At the top, the Breitbart logo is displayed. Below it is a navigation bar with the word "TRENDING:" followed by several topics: "DACA 'DEAL'?", "TWITTER HACK ATTACK", "BACK TO SCHOOL BATTLE", "DR. DOOM", "WAR ON POLICE", and "CHINA THREAT". The main headline reads "FACT CHECK: YES, THOUSANDS OF AMERICANS HAVE BEEN KILLED BY ILLEGAL ALIENS". To the right of the headline is a "SOCIAL" section with icons for Facebook, Twitter, Instagram, and YouTube, and a link to "BREITBART STORE >>". Below the headline are four buttons: a Facebook button with "2,153", an "EMAIL" button, a "SHARE" button with a red background, and a "TWEET" button. At the bottom of the screenshot, a video player is visible with the source URL "https://www.breitbart.com" highlighted in yellow. The video player shows "15.5K views" and a progress bar at "2:39 / 3:05".

The article behind this headline fails to provide any evidence or statistics to back up the claim. The article does not include a link to a government report that the blogger claims “reveals about 12 Americans a day are killed by illegal aliens,” but the linked report does say anything of the sort.¹⁷ Moreover this statistic, which originated from false statements by (now former) Congressman Steve King (who has a well documented history of white supremacist speech and action), and led to an incorrect conclusion that undocumented immigrants have killed 63,000 citizens since September 11, 2001 (seemingly the impetus for the headline), has been repeatedly debunked.¹⁸ In fact, CBP’s own “Criminal Alien Statistics” indicate that *out of all* undocumented immigrants detained in the past three

¹⁶ See, e.g., “Miller Turned to Breitbart to Promote Political Agenda,” Southern Poverty Law Center HateWatch (Nov. 19, 2019) available at <https://www.splcenter.org/hatewatch/2019/11/19/miller-turned-breitbart-promote-political-agenda>; see also “Stephen Miller’s Affinity for White Nationalism Revealed in Leaked Emails,” Southern Poverty Law Center HateWatch (Nov. 12, 2019) available at

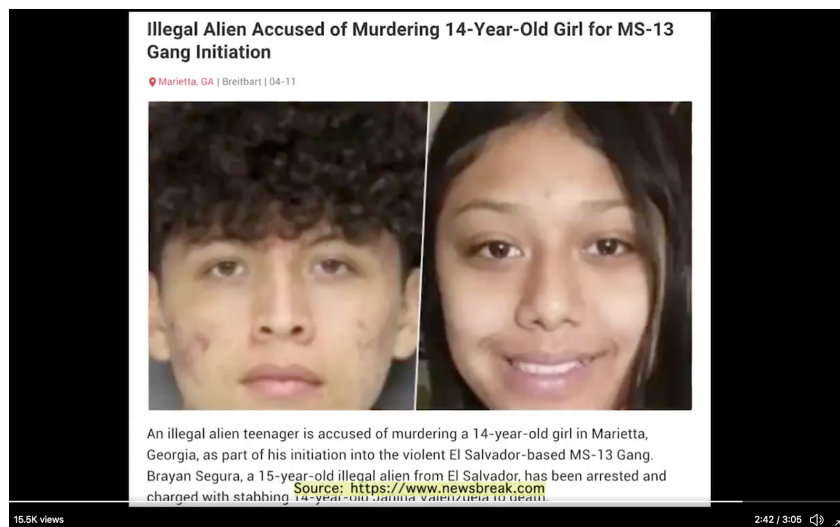
<https://www.splcenter.org/hatewatch/2019/11/12/stephen-millers-affinity-white-nationalism-revealed-leaked-emails#link>
¹⁷ U.S. Government Accountability Office Report to Congressional Requesters, Criminal Alien Statistics (March, 2011), available at <https://www.gao.gov/assets/320/316959.pdf>.

¹⁸ Arturo Garcia & Bethania Palma, “Have Undocumented Immigrants Killed 63,000 American Citizens Since 9/11?,” Snopes (June 22, 2018), available at: <https://www.snopes.com/fact-check/have-undocumented-killed-63000-us-9-11/>; Remarks by President Trump at Law Enforcement Roundtable on Sanctuary Cities, Whitehouse.gov (March 20, 2018), available at: <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-law-enforcement-roundtable-sanctuary-cities>.

and a half years, only 10 were convicted of murder.¹⁹ The factual discrepancy between the headline that Border Patrol uses in the video and Border Patrol's own publication could not be more obvious: 12 murders by undocumented immigrants per day by 10 murders by undocumented immigrants committed in 3.5 years.

e. Article 5: (2:40-2:42) Misleading Information About the Death of Janina Valenzuela

Border Patrol's next frame features a screengrab of another article from the white nationalist publication involving the death of a 14 year-old girl in Marietta, Georgia. She is the first victim whose name is not featured in Border Patrol's presentation. She is also the first non-white person. So we are going to say her name here. Her name is Janina Valenzuela. A 15-year-old boy has been charged as an adult in connection with her death. Once again, there is no evidence publicly available that the case has been brought to trial or that individuals have been convicted. The 15-year-old boy is presumed innocent, until proven guilty, except, apparently, by the Border Patrol.



f. The Final Flourish: (2:43-2:49) Deliberately Misleading Information Suggesting A Link Between Immigration Status and Criminality

The final seconds of this portion of the video feature 9 separate headlines involving heinous crimes committed by people who are allegedly in the United States unlawfully, presented in a gradual *accelerando*. All involve Latino men, like the one who stabbed a fictional victim earlier in the video, despite the reality that crimes are committed by non-Latinos as well. The accelerating sequence and

¹⁹ Garcia & Palma, *supra* note 16; U.S. Government Accountability Office Report to Congressional Requesters, *supra* note 15

tempo emphasize the Border Patrol's message from several seconds earlier: "Fact Check: Yes, Thousands of Americans Have Been Killed By Illegal Immigrants."

The Border Patrol's message does not match the evidence. Nearly all studies show that migrants, and specifically undocumented migrants, commit crimes at a lower rate than native-born individuals in the United States.²⁰ The agency thus uses the film to promote the false narrative, that undocumented immigrants, particularly Latino men, increase violence and endanger communities. In reality, they are less likely to commit crimes, thus making the country statistically safer.

D. DHS and Border Patrol Must Either Take Down or Re-Cut "The Gotaway."

The offices and resources of the United States government are not propaganda organs for any political party or ideological viewpoint. The public relies on the United States government to provide accurate, objective, and unbiased information. The IQA and the Guidelines safeguard this reliance, and help the public to understand the role of federal agencies. It also allows the public to hold our government accountable.

Border Patrol and DHS are legally responsible for carrying out their enforcement activities with the same rigorous fealty to the rule of law that they demand from those who may become subject to these activities. These agencies must earn and maintain the trust of the American people in order to fulfill their missions. The agents who work for these agencies also must accurately understand the risks they face at work to properly carry out their duties and make decisions. Furthermore, Congress has mandated the adoption of information quality guidelines and, pursuant to that obligation, DHS has adopted guidelines that require information disseminated by CBP to meet standards of "utility, objectivity, and integrity." *See* 67 Fed. Reg. at 8459; *see also* DHS Guidelines at 4.

The IQA implementing Guidelines addressed above define "quality" information as information that is both "useful[] to its intended users, including the public," and "objective." 67 Fed. Reg. at 8459. In this case, intended users include Border Patrol agents and the public.²¹ Inaccurate or biased information about the population Border Patrol agents are working with can only serve to mislead, rather than aid these agents, in carrying out their duties. Misinformation and a biased video

²⁰ See, e.g., Alex Nowrasteh, Immigration and Crime – Watch the Research Says, CATO (Jul. 14, 2014) available at <https://www.cato.org/blog/immigration-crime-what-research-says>; Christopher Ingraham, Two charts demolish the notion that immigrants here illegally commit more crime, Washington Post (June 19, 2018), available at: <https://www.washingtonpost.com/news/wonk/wp/2018/06/19/two-charts-demolish-the-notion-that-immigrants-here-illegally-commit-more-crime/>; Ann Flagg, Is There a Connection Between Undocumented Immigrants and Crime?, The Marshall Project (May 13, 2019), available at: <https://www.themarshallproject.org/2019/05/13/is-there-a-connection-between-undocumented-immigrants-and-crime>.

²¹ On September 9, 2020, Chief Rodney Scott wrote that "The Gotaway" was "created to remind our Border Patrol agents that the risks they take every day to protect America matter & result in saving American's lives well beyond our physical borders." See Jean Guerre on Twitter, available at: <https://twitter.com/jeanguerre/status/1303863892204900353/photo/1>.

presented under the guise of the statement “choose truth” is likewise not useful to the public, which is being denied a fair portrayal of immigrant behavior.

“The Gotaway” also fails the objectivity prong. False use of headlines, a propaganda- style demonization of immigrants as evidenced by the use of a fictional murder scene in conjunction with headlines, the sourcing of the headlines, and the failure to contextualize any of the video by providing countervailing statistics (i.e.,: what proportion of undocumented immigrants pursued by CBP do *not* commit violent crimes?) all indicate a lack of the objectivity required by law for this government communication. The law consequently requires DHS and Border Patrol to remove “The Gotaway” permanently and immediately issue a correction of the false and misleading information it disseminated.

In addition to removing the above screen captures, if CBP chooses not to retract the video it will be essential to compliance with the IQA that the following information be added to accompany the film:

1. A disclaimer that the events in the border patrol chase and murder scene are fiction.
2. Additional crime statistics showing that undocumented immigrants are less likely than American-born individuals to commit violent crimes in order to give appropriate context to the material in the video.

We look forward to hearing back from you within the 60-day deadline for responses to IQA petitions.²² However, the video already had almost 19000 views by the evening of September 11th, two days after its release, and is being disseminated quickly.²³ Therefore because of the grave risk the video poses of misleading the public, and the irreparable harm of doing so, we urge you to respond to this request, and retract and revise the video at the earliest possible opportunity.

Border Chief Scott encouraged viewers of “The Gotaway” to “chosed truth, not sides.” There is only one way for DHS and Border Patrol to comply with the IQA and Guidelines and also “chosed truth”: Permanently remove “The Gotaway” and immediately issue a full correction of all misleading information contained therein.

²² DHS Guidelines at 6 (“DHS Components should respond to requests for correction in writing within 60 calendar days of receipt. If the request for correction requires an extended period of time for processing, the Component should notify the petitioner”).

²³ The video was viewed over 1,500 times on Youtube before it was removed, and as of the evening of September 11th has been viewed 16,200 times since being uploaded to Twitter on September 9th. Jean Guerrero, *supra* note 3; The Gotaway, *supra* note

Regards,

/s/ Erika Pinheiro & /s/ Nicole Elizabeth Ramos

Erika Pinheiro & Nicole Elizabeth Ramos

On Behalf of Al Otro Lado, CHIRLA, Texas Civil Rights Project, Santa Fe Dreamers Project, Haitian Bridge Alliance, Immigrant Defenders Law Center, and CARCEN