



Border Patrol Agents in Secret Facebook Group Faced Few Consequences for Misconduct

Prepared for Chairwoman Carolyn B. Maloney

Staff Report

**Committee on Oversight and Reform
U.S. House of Representatives**

October 2021

oversight.house.gov

SENSITIVE CONTENT WARNING

This report reproduces content of a sensitive, offensive, discriminatory, and sexual nature. This content is included in the report to provide a clear record of social media misconduct by Customs and Border Protection employees.

EXECUTIVE SUMMARY

This staff report presents the findings of an investigation launched in 2019 by the Committee on Oversight and Reform into violent and offensive posts by Customs and Border Protection (CBP) personnel in secret Facebook groups. The most prominent of these groups, a private group for Border Patrol agents called “I’m 10-15,” had more than 9,500 members in July 2019. The Committee’s investigation followed alarming media reports of CBP employees threatening harm to migrants and elected officials on the “I’m 10-15” page.¹

The Committee requested documents from CBP in July 2019 to determine whether agents who posted this content were allowed to continue working with migrants and to assess whether appropriate disciplinary action was taken. After the Trump Administration obstructed this inquiry for more than a year, CBP finally began producing complete unredacted documents in February 2021, after President Trump left office.

Documents obtained by the Committee show that although CBP was aware of misconduct on “I’m 10-15” since August 2016, the agency took minimal action to strengthen social media training or guidance after the media began reporting on agents’ misconduct and the Committee launched its investigation in 2019.

The Committee found that CBP conducted 135 investigations into personnel affiliated with “I’m 10-15” and similar secret Facebook groups. The agency determined that 60 CBP agents engaged in misconduct and were subject to discipline. However, the discipline imposed on most of those agents was significantly reduced from the recommendation made by CBP’s Discipline Review Board. Eighteen agents whom the Board recommended removing from their positions due to serious misconduct had their discipline reduced to suspensions. One proposed removal was reduced to a letter of reprimand, and another was reduced to an “oral admonishment.” Most of these agents were then allowed to resume working with migrants and children. For example:

- A Border Patrol agent who posted a sexually explicit doctored image and derogatory comments about a Member of Congress had his discipline reduced from removal to a 60-day suspension and was awarded back pay.
- A Border Patrol supervisor who improperly posted an internal CBP video of a migrant falling off a cliff to their death, as well as an explicit and offensive

¹ *Inside the Secret Border Patrol Facebook Group Where Agents Joke About Migrant Deaths and Post Sexist Memes*, ProPublica (July 1, 2019) (online at www.propublica.org/article/secret-border-patrol-facebook-group-agents-joke-about-migrant-deaths-post-sexist-memes).

comment about a Member of Congress, had their discipline reduced from removal to a 30-day suspension.

- A Border Patrol agent with a history of multiple infractions was allowed to retire with disability benefits rather than face removal or any other discipline after posting a photograph of a drowned father and child and referring derisively to them as “floaters.”

These outcomes were the result of a number of failings at CBP, including an inconsistent disciplinary process, a failure to train on and enforce social media policies, and senior leadership’s failure to take appropriate actions despite knowledge of these Facebook groups.

The Committee’s investigation resulted in the following key findings:

- **At Least 60 Agents Committed Misconduct Related to Secret Facebook Groups During the Trump Administration, but Only Two Were Removed:** Of the 60 agents that CBP determined had committed misconduct, two agents were removed, 43 were suspended without pay, 12 received letters of reprimand, and three were issued alternate disciplinary actions such as a suspension with pay. Ten other employees retired from federal service before a final misconduct finding was made. In addition, 11 employees received corrective or non-disciplinary actions, such as letters of caution.
- **CBP Reduced Most Agents’ Final Discipline and Allowed Agents to Continue Working with Migrants:** Most of the 60 agents who committed misconduct received reduced penalties, and 57 of them continue to work with migrants today. Of the other three, CBP removed two from the agency and the other is an investigator who does not work with migrants. The vast majority of agents—including those who made degrading and even threatening comments about migrants—received only minor discipline.
- **CBP Knew About Agents’ Inappropriate Facebook Posts Three Years Before It Was First Publicly Reported:** From August 2016 to November 2017, CBP investigated 13 cases of agents posting racist and sexist content on the “I’m 10-15” Facebook group, according to documents obtained by the Committee. CBP suspended one agent for three days, issued written reprimands or counseling in eight cases, and closed the remaining four cases without any action.
- **Weaknesses in the Disciplinary Process Hampered CBP’s Ability to Hold Agents Accountable:** Documents obtained by the Committee reveal that CBP officials were given wide discretion to determine disciplinary penalties and that the penalties for similar instances of misconduct were inconsistent. Arbitrators used the inconsistent penalties as a basis for reducing penalties.
- **CBP Provided Insufficient Social Media Guidance and Training to Agents:** Agents charged with misconduct expressed confusion or unawareness regarding

CBP's social media guidelines. Starting in 2019, CBP began requiring mandatory annual training on social media. Prior related trainings were not taken seriously, even by CBP management. For example, the acting chief at one sector that received training said it was perceived as "punishment for all, due to the actions of a few" and that agents were disruptive during the training session.

- **CBP Employees Have Low Morale:** Agents told CBP investigators that they used the "I'm 10-15" Facebook group to vent their frustrations with CBP and job dissatisfaction. Federal employee surveys have long shown that CBP employees have low morale and view the agency as having a poor organizational climate.

President Biden recently reminded Americans that we "deserve Federal, state, local, tribal and territorial law enforcement that approach their critical tasks without any racial bias or any other biases."² Americans entrust CBP personnel with protecting our borders and expect them to adhere to high standards and uphold CBP's core values. Border Patrol agents serve in positions of power over vulnerable populations, including ethnic minorities, women, and children. According to CBP's official website, "Integrity is our cornerstone. We are guided by the highest ethical and moral principles. Our actions bring honor to ourselves and our agency."³

The offensive images and comments on the "I'm 10-15" Facebook group are antithetical to the CBP ethos and undermine the work carried out by dedicated CBP employees every day. Unfortunately, the agency failed to take adequate steps to prevent this conduct or impose consistent discipline on agents who engaged in it, creating a serious risk that this conduct could continue. This report makes several recommendations to improve CBP's policies, training, and disciplinary process in order to address these issues.

I. BACKGROUND

The mission of CBP is to safeguard our nation's borders. CBP is the largest law enforcement agency in the United States with more than 60,000 sworn law enforcement officers and agents.⁴ In July 2019, the Committee on Oversight and Reform opened an investigation into violent and offensive posts by CBP employees to secret Facebook groups. The Committee's investigation focused on "I'm 10-15," a private Facebook group of over 9,500 members that described itself as a place for members of the Border Patrol to post content that was "funny, serious and just work related." "10-15" is a Border Patrol code for "aliens in custody." CBP employees posted content about killing and harming migrants on "I'm 10-15." A congressional delegation to a Texas immigration detention facility in 2019 sparked a surge in racist and

² National Security Council, Executive Office of the President, *National Strategy for Countering Domestic Terrorism* (June 2021) (online at www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf).

³ Customs and Border Protection, *About CBP* (online at www.cbp.gov/about) (accessed Sept. 29, 2021).

⁴ *Id.*

sexually violent content on “I’m 10-15,” including multiple images depicting a Member of Congress being violently and sexually assaulted.⁵

In July 2019, the late Chairman Elijah E. Cummings requested documents from CBP on employee participation in secret Facebook groups, including disciplinary cases completed by CBP’s Office of Professional Responsibility (OPR).⁶

Under the Trump Administration, CBP obstructed the Committee’s investigation from its inception and sought to shield Border Patrol agents who committed misconduct. Despite multiple letters and requests by Members at Committee hearings, CBP refused to provide the Committee access to documents and witnesses.

Between September 2019 and February 2020, Chairman Cummings and Chairwoman Carolyn B. Maloney sent two additional oversight letters to CBP.⁷ In March 2020, CBP produced a set of documents that were extensively redacted, masking which employees were charged with misconduct, the roles they held at CBP, how they were disciplined, and whether they continued to work with migrant populations.⁸

In November 2020, Chairwoman Maloney issued a subpoena to compel CBP to produce complete and unredacted documents.⁹ CBP failed to produce documents by the subpoena’s

⁵ *Inside the Secret Border Patrol Facebook Group Where Agents Joke About Migrant Deaths and Post Sexist Memes*, ProPublica (July 1, 2019) (online at www.propublica.org/article/secret-border-patrol-facebook-group-agents-joke-about-migrant-deaths-post-sexist-memes); *Border Patrol Agents Tried to Delete Racist and Obscene Facebook Posts. We Archived Them.*, The Intercept (July 5, 2019) (online at <https://theintercept.com/2019/07/05/border-patrol-facebook-group/>).

⁶ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Mark Morgan, Chief Operating Officer and Senior Official Performing the Duties of the Commissioner, Customs and Border Protection (July 31, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-07-31.EEC%20to%20Morgan-CBP%20re%20Secret%20Facebook%20Group.pdf>).

⁷ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Mark Morgan, Chief Operating Officer and Senior Official Performing the Duties of the Commissioner, Customs and Border Protection (Sept. 23, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-09-23.EEC%20to%20Morgan-CBP%20re%20Facebook%20Group%20%281%29.pdf>); Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Mark Morgan, Chief Operating Officer and Senior Official Performing the Duties of the Commissioner, Customs and Border Protection (Feb. 18, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-02-18.CBM%20to%20Morgan-USCBP%20re%20Documents%20and%20TIs.pdf>).

⁸ Letter from Deputy Assistant Commissioner Stephanie Talton, Customs and Border Protection, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform (Mar. 3, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/USCBP.030320.Response%20to%20CBM%20re%20Documents%20and%20TIs.pdf>); Memorandum from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Members of the Committee on Oversight and Reform, *Notice of Intent to Issue Subpoena to Customs and Border Protection* (Oct. 30, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-10-30.COR%20Subpoena%20Memo%20re%20Customs%20and%20Border%20Protection.pdf>).

⁹ Subpoena from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Mark Morgan, Chief Operating Officer and Senior Official Performing the Duties of the Commissioner, Customs and

deadline. On January 11, 2021, the Chairwoman wrote to CBP urging full compliance with the Committee's subpoena.¹⁰ On February 17, 2021, under the Biden Administration, CBP finally began providing complete and unredacted files regarding employees, their alleged misconduct, and proposed and final disciplinary measures.

Committee staff reviewed 135 case files of CBP employees alleged to have committed misconduct in "I'm 10-15" and similar secret Facebook groups. This report highlights a selection of these case files that show a range of CBP employees, types of misconduct, and final disciplinary actions.

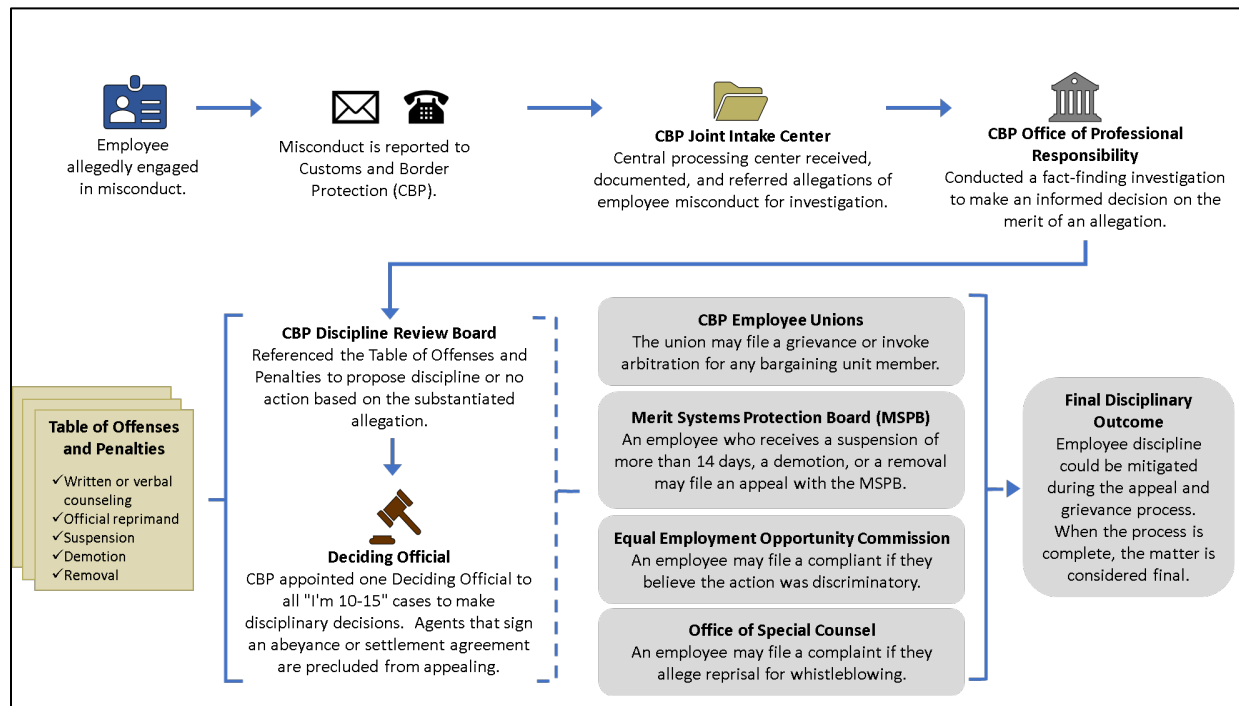
CBP has a multi-step process to receive, investigate, and adjudicate allegations of employee misconduct, whether the conduct occurs inside or outside of the workplace. CBP employees are required to report serious misconduct that could jeopardize the agency's mission.¹¹ OPR investigates the conduct, and CBP's Discipline Review Board proposes discipline. A deciding official then makes a discipline determination. In some cases, when CBP substantiates allegations of misconduct, employees may be able to appeal to the Merit Systems Protection Board (MSPB); file a grievance with a CBP employee union such as the National Border Patrol Council, which may invoke arbitration on behalf of the employee; or, if they believe the action was discriminatory, file a complaint with the Equal Employment Opportunity Commission.

Border Protection (Nov. 2, 2020) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/CBP%20Subpoena%2011.02.20_FINAL.pdf).

¹⁰ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Mark Morgan, Chief Operating Officer and Senior Official Performing the Duties of the Commissioner, Customs and Border Protection (Jan. 11, 2021) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2021-01-11.CBM%20to%20Morgan-CBP%20re%20Committee%20Requests.pdf>).

¹¹ Customs and Border Protection, *Standards of Conduct*, Directive No. 51735-013B (Dec. 9, 2020) (online at www.cbp.gov/sites/default/files/assets/documents/2021-Jan/cbp-standards-conduct-2020_0.pdf).

Figure 1: Customs and Border Protection Investigative and Disciplinary Process for “I’m 10-15”¹²



CBP followed these processes to investigate and determine discipline for cases related to “I’m 10-15.” However, CBP was limited in its ability to conduct thorough investigations because Facebook refused to provide OPR with content from “I’m 10-15,” leaving OPR “unable to access the group page or any of the posts made on the page.” According to OPR, all of the “screenshots included in this investigation were obtained from third party sources, including media outlets.”¹³

II. FINDINGS

A. CBP Reduced Proposed Discipline, Allowing Agents Who Committed Misconduct to Continue to Work with Migrants

The Committee’s investigation found that 60 agents committed misconduct according to CBP’s own disciplinary process. However, CBP reduced proposed disciplinary measures for almost all of these agents, who continue to work with migrants.

¹² Committee on Oversight and Reform analysis of CBP documents and case files; Office of Inspector General, Department of Homeland Security, *CBP Senior Leaders’ Handling of Social Media Misconduct* (May 12, 2021) (OIG-21-34) (online at www.oig.dhs.gov/sites/default/files/assets/2021-05/OIG-21-34-May21.pdf); Government Accountability Office, *Department of Homeland Security: Components Could Improve Monitoring of the Employee Misconduct Process* (July 31, 2018) (GAO-18-405) (online at www.gao.gov/assets/gao-18-405.pdf).

¹³ Customs and Border Protection, *Report of Investigation* (Aug. 29, 2019).

According to documents obtained by the Committee, CBP opened 135 investigations into allegations of misconduct related to the “I’m 10-15” group and similar secret Facebook groups. A chief patrol agent served as the deciding official who made the disciplinary decisions for all cases. Sixty CBP employees were found by the deciding official to have committed misconduct by violating CBP’s Standards of Conduct, such as posting offensive and threatening content and disclosing agency information without authorization. Almost all received significantly lighter final penalties than proposed by CBP’s Discipline Review Board. CBP administered the following disciplinary actions:

- Two removals;
- 43 suspensions without pay;
- 12 letters of reprimand; and
- Three alternate disciplinary actions, such as suspension with pay.

Ten employees retired from federal service before formal disciplinary action was taken. In addition, 11 employees received corrective or non-disciplinary actions, such as letters of caution or counseling, or guidance about unacceptable performance that should be corrected or improved. To date, a total of 12 agents have appealed disciplinary decisions, and the National Border Patrol Council, the union that represents non-supervisory Border Patrol agents, has invoked arbitration on behalf of ten agents.¹⁴ Two agents filed a petition for review with MSPB.¹⁵ Seven appeals are currently ongoing.¹⁶ Allegations of misconduct were not substantiated for 54 CBP personnel, and no action was taken.

¹⁴ Email from Staff, Customs and Border Protection, to Staff, Committee on Oversight and Reform (Apr. 6, 2021); *American Federation of Government Employees v. Department of Homeland Security*, FMCS No. 201210-02112 (Mar. 30, 2021); *National Border Patrol Council v. Department of Homeland Security*, FMCS No. 200113-02986 (Jan. 5, 2021); *Supervisory Border Patrol Agent v. Department of Homeland Security*, No. SF-752S-20-0149-I-1 (M.S.P.B. Jan. 24, 2020); *American Federation of Government Employees v. Department of Homeland Security*, (Dec. 29, 2020).

¹⁵ Email from Staff, Customs and Border Protection, to Staff, Committee on Oversight and Reform (Apr. 6, 2021).

¹⁶ Email from Staff, Customs and Border Protection, to Staff, Committee on Oversight and Reform (July 27, 2021); Email from Staff, Customs and Border Protection, to Staff, Committee on Oversight and Reform (Sept. 15, 2021).

Figure 2: Proposed and Final Disciplinary Outcomes for Facebook Misconduct Cases

Types of Discipline	Proposed Discipline	Final Outcome ^a
Removal	24	2
Suspension Without Pay	40	43 ^b
Letter of Reprimand	2	12
Alternative Disciplinary Action, Such as Suspensions with Pay	N/A	3
Non-disciplinary or Corrective Action	N/A	11
Retired	N/A	10
No Action	54	54
Total		135
^a There are more final outcomes than proposed discipline because the Discipline Review Board did not propose discipline for some employees, such as those who retired.		
^b This reflects the final number of suspensions after the process of employee appeals, agreements, and grievances.		

Of the 58 agents that CBP found to have committed misconduct but did not remove from their positions, 57 continue to work in positions of power over migrants, including families with children.¹⁷ After completing the disciplinary processes, these agents returned to their previous duties working face-to-face with migrant populations at the border, in detention, and throughout inspection and processing. According to CBP, Border Patrol agents are responsible for “[g]uarding our country from illegal activity while providing aid to those in need. It’s mentally and physically challenging and every day requires both courage and compassion.”¹⁸

B. CBP Removed Only Two CBP Employees for Facebook Misconduct


Of the 24 removals proposed by the CBP Discipline Review Board, CBP ultimately removed only two employees. Twenty proposed removals were reduced to less severe penalties. Eighteen removals were converted to suspensions without pay, one was reduced to a letter of reprimand, and one was reduced to an “oral admonishment.” Two agents retired shortly after the Discipline Review Board proposed their removal. Of the 20 agents who continued in their roles at CBP, 18 proposed removals were mitigated by the CBP deciding official and two others were reduced by arbitrators during the appeals process.

One agent who was removed from CBP, Border Patrol Agent #1, posted offensive images of an alt-right and white supremacist symbol and sexualized images of a Member of Congress. The Discipline Review Board proposed removing Border Patrol Agent #1 from federal service, a

¹⁷ The position descriptions for Border Patrol agents and supervisors state, “In addition to contacts with employees, supervisors and managers of the sector and throughout the Agency, personal contacts are with the general public including legal and illegal aliens.” Customs and Border Protection, *Border Patrol Agent Position Description* (Aug. 6, 2010); Customs and Border Protection, *Supervisory Border Patrol Agent Position Description* (Aug. 6, 2010).

¹⁸ Customs and Border Protection, *Border Patrol Agent Careers* (online at www.cbp.gov/careers/bpa) (accessed Sept. 29, 2021).

decision upheld by the deciding official. The National Border Patrol Council invoked arbitration on behalf of the agent.¹⁹ The final outcome is still pending.



Note: Images are photoshopped.

Border Patrol Agent #1

Years of service: 10
Station: Texas
Proposed discipline: Removal
Final discipline: Removal—arbitration invoked

Example(s):

The agent posted offensive images in which Pepe the Frog — a symbol of the alt-right and white supremacy — appears as a detained child with a Member of Congress looking on. The image also showed now-President Biden touching the Member of Congress in a suggestive manner.

"I'm 10-15" Facebook Group

Supervisory Border Patrol Agent #2 was also removed from CBP. The agent had more than 20 years of federal service. The agent posted multiple offensive and abhorrent posts, including a doctored picture of a Member of Congress being violently sexually abused and raped by President Trump, as well as graphics and comments bullying the agent's subordinates. In 2005, Supervisory Border Patrol Agent #2 was suspended for ten days for undisclosed misconduct. In the "I'm 10-15" investigation, the Discipline Review Board proposed removing Supervisory Border Patrol Agent #2 from federal service, a decision upheld by the deciding official. Supervisory Border Patrol Agent #2 appealed to MSPB, which affirmed CBP's decision to remove the agent.

¹⁹ Email from Staff, Customs and Border Protection, to Staff, Committee on Oversight and Reform (Apr. 6, 2021); Email from Staff, Customs and Border Protection, to Staff, Committee on Oversight and Reform (July 27, 2021).

Supervisory Border Patrol Agent #2

Years of service: 20

Station: California

Proposed discipline: Removal

Final discipline: Removal—upheld by
the Merit Systems Protection Board

▶ Prior Offense:

2005: Ten-day suspension for
undisclosed misconduct.

Example(s):

The agent was removed from the "I am 10-15" group for posting offensive content. After the agent was allowed back into the group, the agent posted a doctored image of a Member of Congress being violently sexually abused and raped by President Trump.

In another post, the agent tagged one male subordinate in a homophobic meme captioned: **"Here we have two people who love riding dick, staring at each other."** The agent also tagged two subordinates in a second homophobic meme that showed two male torsos with the text: **"ALL ABOUT BROjobs."** The agent commented that the agents were **"all about these."**

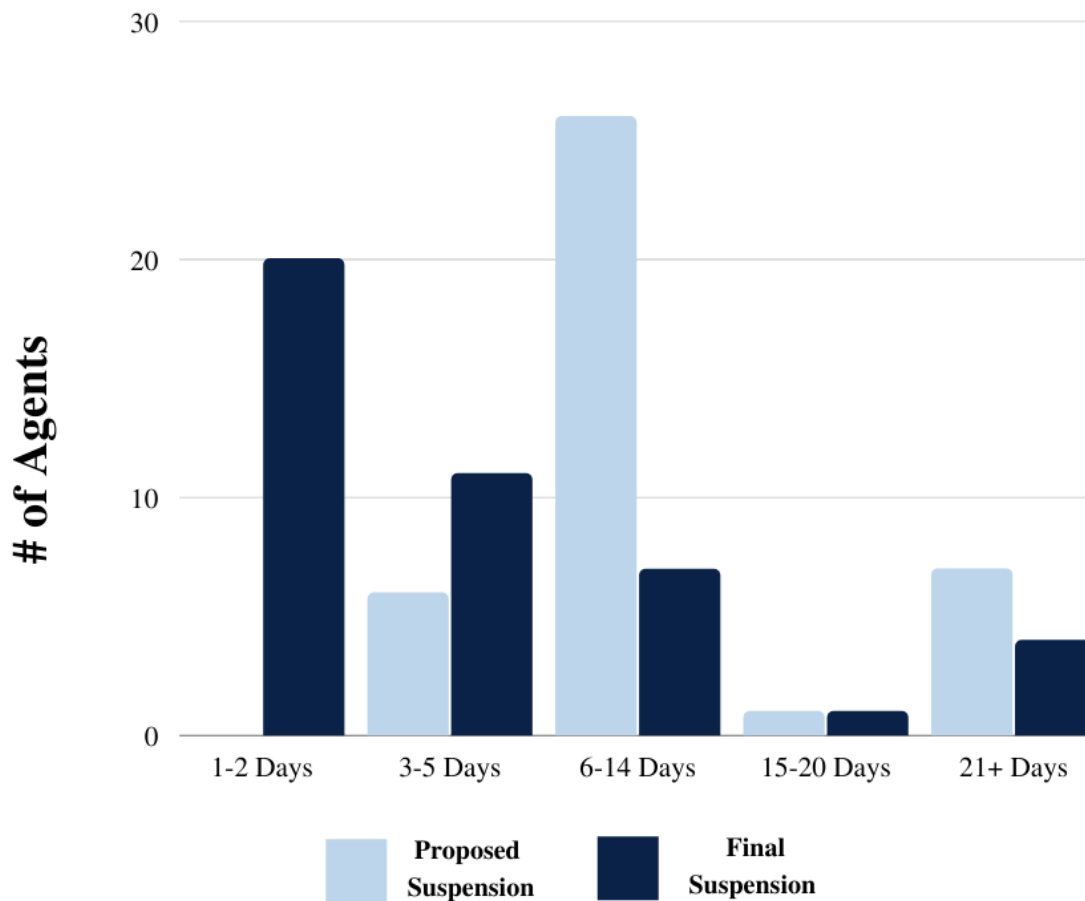
I'm 10-15 Facebook Group

C. CBP Suspended 43 Employees for Facebook Misconduct

Of the 60 CBP employees for whom the deciding official substantiated findings of misconduct, records obtained by the Committee show that 43 employees received suspensions without pay. Of those, 41 received suspensions ranging from one to 30 days, with most suspended for five days or fewer. The remaining two agents had their recommended removals mitigated by arbitrators to a suspension of 60 days and time served. The deciding official offered 15 abeyance agreements and entered into last chance agreements with three Border Patrol agents.²⁰

²⁰ Abeyance and last chance agreements are used by federal agencies to mitigate a disciplinary action by delaying the penalty for a set time or to impose only a portion of the penalty. If the employee engages in further misconduct under the abeyance agreement, the full discipline may be enacted.

Figure 3: Proposed and Final Employee Suspensions²¹



The following agents are among those who were suspended and then permitted to return to work in positions of power over migrants:

- Border Patrol Agent #3 posted obscene and lewd images on “I’m 10-15,” which included an explicit graphic and comments about a Member of Congress. The Discipline Review Board recommended removal—a decision upheld by the deciding official.²² The National Border Patrol Council invoked arbitration, and

²¹ There are more final outcomes than proposed penalties because some employees retired before final discipline was decided and because some employees’ proposed discipline was removal and the final outcome was a suspension. This reflects the final number of days after a appeals and abeyance agreements between CBP and the employee.

²² Letter from Chief Patrol Agent Eduardo Payan, Border Patrol, to Border Patrol Agent (Dec. 3, 2019) (online at

ultimately Border Patrol Agent #3 received a 60-day suspension and was awarded back pay, including interest and other benefits, for each day the agent had been removed from service beyond the 60-day suspension period. Border Patrol Agent #3 returned to duty in April 2021.

Border Patrol Agent #3	Example(s):
<p>Years of service: 14</p> <p>Station: Texas</p> <p>Proposed discipline: Removal</p> <p>Final discipline: 60-day suspension with back pay</p>	<p>The agent posted a picture of a fence containing a hole with a penis and the face of a Member of Congress superimposed into the picture. The image had the text, "Lucky Illegal Immigrant Glory Hole Special Starring [Name of Member of Congress.]"</p>

"I'm 10-15 Facebook Group"

- Supervisory Border Patrol Agent #4 posted an internal video of CBP's Tactical Unit that showed a group of migrants under pursuit, including a migrant fleeing and falling off a cliff to their death. In addition, the agent posted an explicit and offensive comment referring to a Member of Congress, writing, "FTP," which he explained meant "fuck the puta." The Discipline Review Board proposed removing Supervisory Border Patrol Agent #4 from federal service. The deciding official reduced the discipline to a 30-day suspension.

https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Agent%203_Deciding%20Official%20Letter_Redacted_FINAL.pdf.

**Supervisory Border
Patrol Agent #4**

Years of service: 16

Station: Arizona

Proposed discipline: Removal

Final discipline: 30-day
suspension

▶ **Prior offense:**

2015: Three-day suspension
for interference with agency
operations.

Example(s):

The agent posted an internal video of CBP's Tactical Unit pursuing a group of migrants, which included a migrant fleeing and falling to his death in the Arches Canyon area of the Arizona mountains. The video was recorded off a computer screen.

The agent posted explicit and offensive comments referring to a Member of Congress as “FTP” which he explained meant “fuck the puta.”

“I’m 10-15” Facebook Group

- Border Patrol Agent #5 is a firearms instructor and works at border checkpoints. The Agent referred to migrants as “ignorant” on “I’m 10-15” and made explicit and offensive comments about a Member of Congress at a CBP muster meeting about “I’m 10-15.”²³ Although the Discipline Review Board recommended removal, the deciding official ordered a 14-day suspension and offered an abeyance agreement to further reduce the discipline to a seven-day suspension. However, Border Patrol Agent # 5 refused the abeyance agreement and served the 14-day suspension. The National Border Patrol Council invoked arbitration on behalf of Border Patrol Agent #5. Following the suspension, the agent resumed working with migrants. The final outcome is still pending.

²³ Memorandum from Deputy Patrol Agent in Charge, Border Patrol, to Chief Patrol Agent, Border Patrol, *Derogatory and Inflammatory Statements; RE: IDOBPA* (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Agent%205_Deputy%20Patrol%20Agent%20in%20Charge%20Letter_Redacted_FINAL.pdf).

Border Patrol Agent #5

Years of service: 21

Station: California

Proposed discipline: Removal

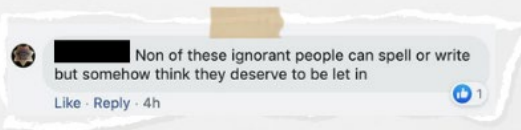
Final discipline: 14-day suspension, pending arbitration

▶ **Prior offense:**

2007: One-day suspension for failure to prepare a proper vehicle inspection.

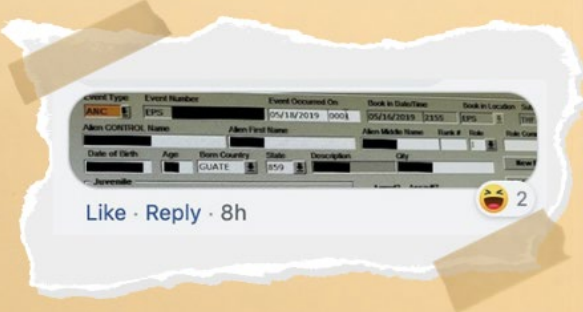
Example(s):

The agent posted on "I'm 10-15" calling migrants **"ignorant."** At a muster meeting about "I'm 10-15," the agent referred to a Member of Congress as a **"ho."**



"I'm 10-15" Facebook Group

- Border Patrol Agent #6 took a picture with a personal cell phone of an agency record that contained personally identifiable information of a migrant in custody at his border station and posted it on "I'm 10-15" without authorization. The Discipline Review Board recommended removal. Border Patrol Agent #6 signed an abeyance agreement offered by the deciding official, which reduced the penalty to a five-day suspension and two-year probationary period.



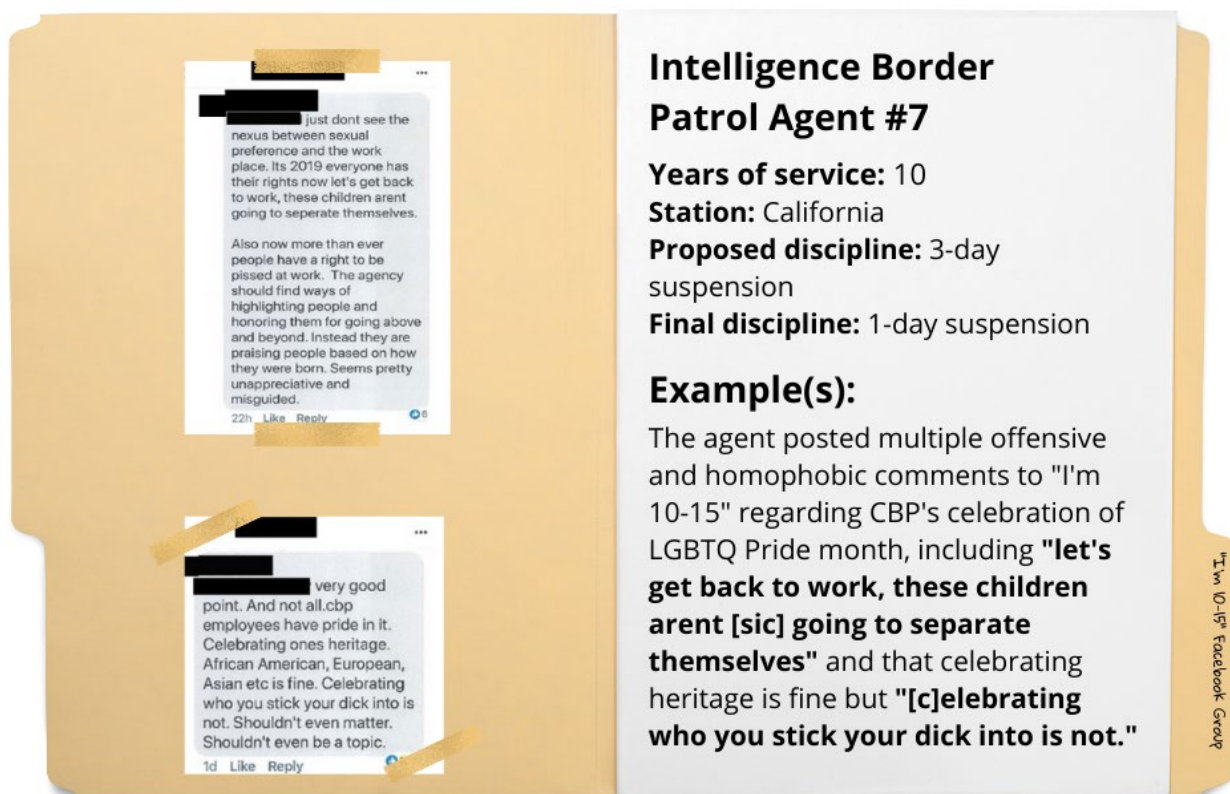
Border Patrol Agent #6

Years of service: 9
Station: New Mexico
Proposed discipline: Removal
Final discipline: 5-day suspension, abeyance agreement

Example(s):
 The agent conducted an unauthorized query in an internal portal containing law enforcement sensitive information. The system—e3—is CBP's primary processing, detention, and biometrics application. The agent took a picture with a personal cell phone of an agency record that contained personally identifiable information and posted it to "I'm 10-15."

"I'm 10-15" Facebook Group

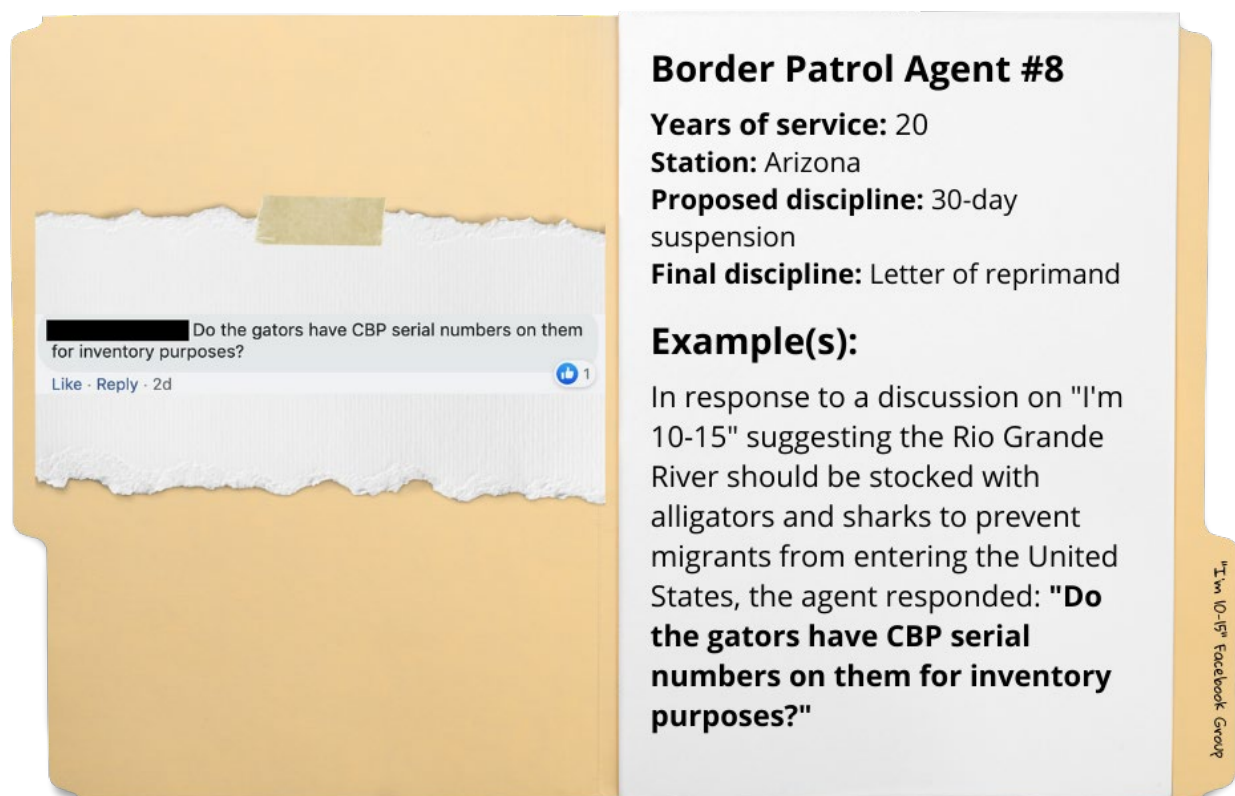
- Intelligence Border Patrol Agent #7 was suspended for one day for posting offensive and homophobic comments including a statement that “these children arent [sic] going to separate themselves.” The Discipline Review Board recommended a three-day suspension, but the deciding official reduced the suspension to a single day.



D. CBP Sent 12 Letters of Reprimand for Facebook Misconduct

Documents reviewed by the Committee show that of the 12 letters of reprimand, ten were the result of reductions in discipline, including one proposed removal and nine proposed suspensions.

In one example, Border Patrol Agent #8 received a letter of reprimand for posting comments disregarding migrants' lives. In a discussion among Border Patrol agents about stocking the Rio Grande River with alligators and sharks to prevent migrants from entering the United States, Border Patrol Agent #8 posted, "Do the gators have CBP serial numbers on them for inventory purposes?" The Discipline Review Board recommended a 30-day suspension. The deciding official reduced the discipline to a letter of reprimand.



E. Ten Employees Avoided Discipline by Retiring Before CBP Took Corrective Action

Documents show that ten employees announced their retirement during the investigative process, including two Border Patrol agents whom the Discipline Review Board proposed removing. For example, Border Patrol Agent #9 posted among the most explicit and offensive graphics and comments on "I'm 10-15," including posting a widely circulated picture of a migrant father and son who drowned and referring to them as "floaters." The Discipline Review Board proposed removing the agent. However, CBP closed its investigation into Border Patrol Agent #9 when the agent filed for retirement, and the Office of Personnel Management approved a disability retirement for the agent. Disability retirement entitles Border Patrol Agent #9 to a disability annuity, Social Security benefits, and other payments from qualified federal retirement plans.²⁴

²⁴ Congressional Research Service, *Disability Retirement for Federal Employees* (Mar. 25, 2014) (RS22838) (online at <https://crsreports.congress.gov/product/pdf/RS/RS22838>).

Border Patrol Agent #9 had previously been disciplined multiple times for other misconduct, including two separate three-day suspensions in 2009 and a letter of reprimand in 2018 for making sexually inappropriate gestures to a fellow Border Patrol agent. Border Patrol Agent #9 faced no discipline for misconduct on “I’m 10-15.”

Border Patrol Agent #9

Years of service: 18

Station: Texas

Proposed discipline: Removal

Final discipline: None—Disability retirement

► **Prior offense:**

2009: Two separate three-day suspensions for posting inappropriately on Myspace and lost property.

2018: Letter of reprimand for making sexually inappropriate gestures to a fellow Border Patrol agent.

Example(s):

The agent posted an offensive image of deceased migrants in the Rio Grande River and commented:

"Ok, I'm gonna go ahead and ask...have ya'll ever seen floaters this clean. I'm not trying to be an a\$\$ but I HAVE NEVER SEEN FLOATERS LIKE THIS, could this be another edited photo. We've all seen the dems and liberal parties do some pretty sick things..."



"I'm 10-15" Facebook Group

F. CBP Knew About Agents' Racist and Sexist Postings on the "I'm 10-15" Facebook Group Beginning in August 2016

The Committee obtained a list of thirteen “I’m 10-15” cases that CBP investigated between August 2016 and November 2018.²⁵ Despite the agency’s longstanding knowledge of employee misconduct on the “I’m 10-15” group and other Facebook groups, CBP did not take

²⁵ Customs and Border Protection, *Historical (Closed) "I'm 10-15" Cases* (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/23%2C%2025_Final_Table%20of%20Closed%2010-15%20Cases%20-%20FOUO.pdf).

sufficient disciplinary measures or other action to enforce its social media policies until it faced scrutiny during the summer of 2019.²⁶

The first of these cases occurred in August 2016, soon after the creation of “I’m 10-15,” when CBP received a referral of an image of a Border Patrol agent posing “behind a mannequin positioned in a prone, sexually suggestive manner.” CBP found that agent committed misconduct and suspended him for three days. CBP subsequently investigated 12 other cases involving racist, sexist, and political attacks as well as the release of unauthorized sensitive information. CBP substantiated the conduct of eight of the agents and gave them written reprimands or counseling. The remaining four cases were closed with no action or found to be unsubstantiated.²⁷

An arbitrator who overturned one of CBP’s proposed removals following the 2019 revelations wrote that the agency’s “history of tolerating racist and bigoted social media posts” affected its ability to hold agents fully accountable after their misconduct was made public.²⁸ When overturning CBP’s proposed removal for another CBP agent, an arbitrator observed that the “I’m 10-15” page “was a secret to a lot of people, but it was not secret to the Agency.”²⁹

The Wall Street Journal recently reported that Facebook was aware of misconduct related to drug cartels and human trafficking but failed to remove inappropriate posts.³⁰ Facebook similarly failed to take appropriate action in response to “I’m 10-15.” In particular, Facebook failed to enforce its Community Standards and remove content in “I’m 10-15” that violated its rules. An arbitrator in a CBP agent’s case pointed to Facebook’s longstanding knowledge, finding that the “I’m 10-15” page “was not secret to Facebook, which enabled obscene, harassing, and disruptive behavior.”³¹ Facebook’s Community Standards prohibit this activity,

²⁶ Office of Inspector General, Department of Homeland Security, *CBP Senior Leaders’ Handling of Social Media Misconduct* (May 12, 2021) (OIG-21-34) (online at www.oig.dhs.gov/sites/default/files/assets/2021-05/OIG-21-34-May21.pdf). CBP officials also knew about racist posts on a private, CBP-centric Facebook group called the “Laredo Choir Practice” beginning in 2017. CBP Office of Inspector General found that “management took very little initiative to address the racial harassment.” *Id.*; see also *Border Agency Knew About Secret Facebook Group for Years*, Politico (July 3, 2019) (online at www.politico.com/story/2019/07/03/border-agency-secret-facebook-group-1569572).

²⁷ Customs and Border Protection, *Historical (Closed) “I’m 10-15” Cases* (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/23%2C%2025_Final_Table%20of%20Closed%2010-15%20Cases%20-%20FOUO.pdf).

²⁸ *National Border Patrol Council v. Department of Homeland Security*, FMCS No. 200113-02986 (Jan. 5, 2021).

²⁹ *American Federation of Government Employees v. Department of Homeland Security*, FMCS No. 201210-02112 (Mar. 30, 2021).

³⁰ *Facebook Employees Flag Drug Cartels and Human Traffickers. The Company’s Response Is Weak, Documents Show*, Wall Street Journal (Sept. 16, 2021) (online at www.wsj.com/articles/facebook-drug-cartels-human-traffickers-response-is-weak-documents-11631812953).

³¹ *American Federation of Government Employees v. Department of Homeland Security*, FMCS No. 201210-02112 (Mar. 30, 2021).

stating, “[W]e don’t allow hate speech on Facebook.”³² The company’s policy also states, “We also protect refugees, migrants, immigrants and asylum seekers from the most severe attacks.”³³ *The Wall Street Journal* recently reported that, based on a review of internal company documents, “Facebook Inc. knows, in acute detail, that its platforms are riddled with flaws that cause harm, often in ways only the company fully understands.”³⁴

G. Two Border Patrol Chiefs Were Members of Offensive Facebook Group but Failed to Report Misconduct

Documents obtained by the Committee reveal that two high-ranking CBP officials were members of “I’m 10-15” and took no action to address offensive content posted to the group by CBP agents. Carla Provost served as Border Patrol chief from August 2018 until January 2020, after serving for over a year as the acting chief.³⁵ Chief Provost became a member of “I’m 10-15” in 2017.³⁶ Rodney Scott served as chief patrol agent for the San Diego Sector from 2016 until becoming acting deputy chief in 2019. Under the Trump Administration, Scott was named as Chief Provost’s successor, and he served as Border Patrol chief from February 2020 to August 2021.³⁷ Chief Scott joined the Facebook group “a few years” prior to the investigation into his involvement in the group, which was initiated in 2019.³⁸

President Trump described Chief Provost as “a friend,” and both Chief Provost and Chief Scott appeared on numerous occasions alongside President Trump, including at events in support of President Trump’s border wall.³⁹ Chiefs Provost and Scott did not report their participation or

³² Facebook, *Hate Speech* (online at <https://transparency.fb.com/policies/community-standards/hate-speech/>) (accessed Sept. 26, 2021).

³³ *Id.*

³⁴ *The Facebook Files*, Wall Street Journal (online at www.wsj.com/articles/the-facebook-files-11631713039) (accessed Sept. 26, 2021).

³⁵ *Border Patrol Chief Carla Provost, First Woman to Lead Agency, to Step Down*, NBC News (Jan. 14, 2020) (online at www.nbcnews.com/news/us-news/border-patrol-chief-carla-provost-first-woman-lead-agency-step-n1115656).

³⁶ Customs and Border Protection, *Report of Investigation* (Oct. 9, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/34%2C%2039_Provost_Report%20of%20Investigation_Redacted_FINAL.pdf).

³⁷ *Biden Administration Removes Rodney Scott as Head of U.S. Border Patrol*, Washington Post (June 23, 2021) (online at www.washingtonpost.com/national/biden-administration-removes-rodney-scott-as-head-of-us-border-patrol/2021/06/23/c93411f6-d451-11eb-baed-4abcf380a17_story.html); *Border Patrol Chief Rodney Scott Retiring*, Arizona Public Media (Aug. 16, 2021) (online at <https://news.azpm.org/s/88683-border-patrol-chief-rodney-scott-retiring/>).

³⁸ Customs and Border Protection, *Report of Investigation* (Oct. 9, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/36%2C%2042%2C%2070_Scott_Report%20of%20Investigation.pdf).

³⁹ See, e.g., *Customs and Border Protection Roundtable*, C-SPAN (Feb. 2, 2018) (online at www.c-span.org/video/?440627-1/president-trump-participates-customs-border-protection-roundtable); *President Trump at Otay Mesa Port of Entry*, C-SPAN (Mar. 13, 2018) (online at www.c-span.org/video/?442527-3/president-trump-otay-mesa-port-entry); Trump White House Archive (@Trump White House Archived), *YouTube: President Trump Receives a Briefing on Drug Trafficking on the Southern Border* (Mar. 13, 2019) (online at www.youtube.com/watch?v=ONMqeWsVWP); *Trump Visits Border Barrier in Push of Immigration Message*

the content of “I’m 10-15” to OPR, CBP, or Border Patrol leadership prior to media reports in July 2019.



From left: Border Patrol Chiefs Carla Provost and Rodney Scott.⁴⁰

Chief Provost reported that she used Facebook to “get an unfiltered gauge on how the rank and file employees of the USBP reacted to her statements,” including interviews and congressional testimony.⁴¹ CBP’s internal investigation revealed that although Chief Provost did not post inappropriate content, she was active on Facebook and conducted searches on Facebook for “I’m 10-15” around the time Border Patrol agents posted explicit content. For example, the investigation revealed that Chief Provost accessed Facebook one day after Supervisory Border Patrol Agent #2 posted a photo depicting then-President Trump raping a Member of Congress.⁴² According to the CBP investigative file, Chief Provost did not raise any concerns about activity

amid Pandemic and Civil Unrest, Washington Post (June 23, 2020) (online at www.washingtonpost.com/politics/trump-border-wall-arizona/2020/06/23/45695db6-b555-11ea-a510-55bf26485c93_story.html).

⁴⁰ Customs and Border Protection, *Carla Provost: From Agent to Chief* (accessed Sept. 27, 2021) (online at www.cbp.gov/frontline/carla-provost-agent-chief).

⁴¹ Customs and Border Protection, *Report of Investigation* (Oct. 9, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/34%2C%2039_Provost_Report%20of%20Investigation_Redacted_FINAL.pdf).

⁴² *Id.*, at Exhibit 2.

on the “I’m 10-15” page. OPR found insufficient evidence to support administrative action against Chief Provost and closed her case.⁴³

Chief Scott reported that the “I’m 10-15” Facebook group enabled him to communicate with the workforce, share public information, and “know what the workforce is talking about.” During the CBP investigation, Chief Scott stated that on two occasions, he remembered seeing questionable content related to migrant arrest records but was unsure to which website the content was posted. He reported that he “did not think those instances rose to the level of reportable misconduct.”⁴⁴ OPR found insufficient evidence to support administrative action against then-Acting Deputy Chief Scott.⁴⁵ Approximately three months after the case was closed, Scott was promoted to chief of Border Patrol.⁴⁶

Multiple CBP employees investigated for their actions on “I’m 10-15” stated that the participation of Chief Provost, Acting Deputy Chief Scott, and other senior managers in the group gave them the impression that CBP leadership was aware of the group and the nature of its posts. For example, according to the CBP investigative report, Border Patrol Agent #1 told investigators that “if the BPA Chief was in the ‘I’m 10-15’ Facebook group account then it must have been okay for him [Agent #1] to be in it.”⁴⁷

Chiefs Provost and Scott are members of the Senior Executive Service (SES). SES employees are key agency personnel and are responsible for their agencies’ executive, managerial, supervisory, and policy functions. SES officials are required to model high standards of ethics for their workforce and demonstrate integrity.⁴⁸

Other members of “I’m 10-15” included chief patrol agents, an executive assistant commissioner, and at least nine OPR investigators. None of those members faced disciplinary action for their involvement in the group.

⁴³ Letter from Deputy Commissioner Robert Perez, Customs and Border Protection, to Chief Carla L. Provost, Border Patrol (Nov. 14, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/41_Provost%20Letter.pdf).

⁴⁴ Customs and Border Protection, *Report of Investigation* (Oct. 9, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/36%2C%2042%2C%2070_Scott_Report%20of%20Investigation.pdf).

⁴⁵ Letter from Deputy Commissioner Robert Perez, Customs and Border Protection, to Acting Deputy Chief Rodney Scott, Border Patrol (Nov. 14, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/43_Scott%20Letter.pdf).

⁴⁶ Customs and Border Protection, *Press Release: Statement of Acting Commissioner Mark A. Morgan on the Selection of Rodney S. Scott as Chief, U.S. Border Patrol* (Jan. 24, 2020) (online at www.cbp.gov/newsroom/speeches-and-statements/statement-acting-commissioner-mark-morgan-selection-rodney-s-scott).

⁴⁷ Customs and Border Protection, *Report of Investigation* (Aug. 5, 2019).

⁴⁸ Office of Personnel Management, *OPM Senior Executive Service Desk Guide* (Dec. 2020) (online at www.opm.gov/policy-data-oversight/senior-executive-service/reference-materials/ses-desk-guide.pdf); *Senior Executive Service Fundamental Competencies* (online at www.opm.gov/policy-data-oversight/senior-executive-service/executive-core-qualifications/#url=Overview) (accessed Sept. 27, 2021).

H. CBP Provided Insufficient Social Media Guidance and Training to Agents

Prior to media reports regarding misconduct on “I’m 10-15,” CBP provided limited guidance and no training to employees on the use of social media. On April 9, 2015, CBP released guidance that incorporated the Office of Government Ethics’ legal advisory, *The Standards of Conduct as Applied to Personal Social Media Use*. CBP’s guidance noted the increasing popularity of social media and reminded employees that the governmentwide *Standards of Ethical Conduct for Employees in the Executive Branch* also applied to social media.⁴⁹

On February 8, 2018, CBP published a memo that stated, “[T]he Agency was made aware of a private Facebook group page that only a specific group of CBP employees could access, on which inappropriate and offensive posts were made.”⁵⁰ The memo reminded employees that CBP’s Standards of Conduct apply to social media posts.

“Employees will not make abusive, derisive, profane, or harassing statements or gestures, or engage in any other conduct evidencing hatred of invidious prejudice to or about one person or group on account of race, color, religion, national origin, sex, sexual orientation, age, or disability.”

Memorandum from Assistant Commissioner Matthew Klein, Office of Professional Responsibility, Customs and Border Protection, to Employees, Customs and Border Protection (Feb. 8, 2018).

The February 8, 2018, memo explained that employees are required to follow social media policies on private social media pages and while off duty.

“Messages posted on a private social media page to which only Agency employees have access can reasonably disrupt the work place when the messages are harassing, discriminatory, or in some way objectively offensive. Such speech is not protected and violates the Standards of Conduct. Nexus to the work place does not disappear simply because personal matters are discussed on a social media page to which only Agency employees have access.”

“If an employee’s off-duty conduct, including speech, has a nexus to the workplace and is in violation of law or Agency policies, that speech is actionable misconduct.”

Memorandum from Assistant Commissioner Matthew Klein, Office of Professional Responsibility, Customs and Border Protection, to Employees, Customs and Border Protection (Feb. 8, 2018).

During internal investigations, several Border Patrol agents said they did not know about or did not receive CBP social media policies.⁵¹ Another agent said that “he could not get in

⁴⁹ Office of Inspector General, Department of Homeland Security, *CBP Senior Leaders’ Handling of Social Media Misconduct* (May 12, 2021) (OIG-21-34) (online at www.oig.dhs.gov/sites/default/files/assets/2021-05/OIG-21-34-May21.pdf).

⁵⁰ Memorandum from Assistant Commissioner Matthew Klein, Office of Professional Responsibility, Customs and Border Protection, to Employees, Customs and Border Protection (Feb. 8, 2018).

⁵¹ See, e.g., Customs and Border Protection, *Report of Investigation* (Apr. 1, 2020); Customs and Border Protection, *Report of Investigation* (Aug. 19, 2019).

trouble, since it was off-duty.”⁵² The CBP deciding official acknowledged that there was no tracking to ensure employees read CBP’s social media policy.⁵³

Other Border Patrol agents told CBP investigators that they believed the “I’m 10-15” Facebook group was a private space where co-workers could make jokes, have fun, and complain about work. Supervisory Border Patrol Agent #2 described his and other posts as being “done as banter, locker room talk, guys being guys.”⁵⁴ The deciding official said that comments made in jest are not excusable, explaining that these “actions seriously damage the professional image that the Agency strives to project.”⁵⁵

On July 3, 2019—two days after the first public reporting about the offensive Facebook group—CBP denounced the posts on its intranet and reminded employees of CBP’s rules governing social media usage.⁵⁶ Senior leadership directed the immediate development of mandatory annual social media training for every CBP employee.⁵⁷ On December 20, 2019, CBP updated its social media policy to include interim guidance on employees’ personal use of social media.⁵⁸

In May 2021, the Department of Homeland Security (DHS) Office of Inspector General (OIG) released findings of an investigation into CBP leadership’s handling of this Facebook group. OIG found that prior CBP training on social media was not well received, even by agency management. The acting chief of one sector station said the training “was punishment for all, due to the actions of a few.” DHS officials also told OIG that agents did not take the training seriously and were disruptive during class. One official said that “agents considered the training ‘window dressing,’ and treated it as a joke, because they believed the sector would not make changes to incorporate the policies being taught.”⁵⁹

⁵² Customs and Border Protection, *Report of Investigation* (Aug. 22, 2019).

⁵³ *American Federation of Government Employees v. Department of Homeland Security*, FMCS No. 201210-02112 (Mar. 30, 2021).

⁵⁴ Customs and Border Protection, *Report of Investigation* (July 11, 2019).

⁵⁵ *American Federation of Government Employees v. Department of Homeland Security*, FMCS No. 201210-02112 (Mar. 30, 2021).

⁵⁶ Customs and Border Protection, *CBP’s Core Values and Maintaining Public Trust* (July 3, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/56_CBP%20Core%20Values%20Memo%202019-07-03_19.pdf).

⁵⁷ Customs and Border Protection, *New Mandatory Training: Personal Use of Social Media* (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/55_New%20Mandatory%20Training%20Personal%20Use%20of%20Social%20Media_07_31_19.pdf); Office of Inspector General, Department of Homeland Security, *CBP Senior Leaders’ Handling of Social Media Misconduct* (May 12, 2021) (OIG-21-34) (online at www.oig.dhs.gov/sites/default/files/assets/2021-05/OIG-21-34-May21.pdf).

⁵⁸ Customs and Border Protection, *CBP Public Affairs Official Use of Social Media*, Interim Policy 5410-005 (Dec. 20, 2019).

⁵⁹ Office of Inspector General, Department of Homeland Security, *CBP Senior Leaders’ Handling of Social Media Misconduct* (May 12, 2021) (OIG-21-34) (online at www.oig.dhs.gov/sites/default/files/assets/2021-05/OIG-21-34-May21.pdf).

OIG also found that senior CBP leaders had questioned the legality of CBP's social media policies and disputed whether the posts on the "I'm 10-15" group were inappropriate. OIG concluded, "These differing opinions and uncertainty about the legality of CBP policies could undermine CBP's efforts to enforce the policies."⁶⁰ CBP's slides accompanying its mandatory social media training quoted the Supreme Court's ruling in *Garcetti v. Ceballos*:

When public employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.⁶¹

I. Weaknesses in the Disciplinary Process Affected CBP's Ability to Hold Agents Accountable

CBP's failure to act sooner to impose discipline on employees after senior leaders became aware of the "I'm 10-15" Facebook group, the lack of agency-specific disciplinary guidelines, and the inconsistent punishments it applied all weakened CBP's ability to hold agents accountable for their misconduct.

In overturning CBP's decision to remove two Border Patrol agents, arbitrators noted that CBP did not impose consistent penalties on other employees for the same or similar offenses.⁶² For example, in comparing statements made by agents who received different discipline, one arbitrator wrote, "[I]t is hard to see much daylight between 'Fuck the whole country of Honduras' and '#fuckmuslims' or '"#fuckislam.'"⁶³ The agent who posted the first statement received only an eight-day suspension, four days of which were held in abeyance, but CBP planned to remove a second agent who posted the latter statement. The arbitrator reduced the latter agent's punishment from removal to suspension with time served.

CBP did not have specific disciplinary guidelines for social media misconduct, which contributed to inconsistent penalties. The Table of Offenses and Penalties used by CBP did not include specific recommended penalties for the types of misconduct displayed on the Facebook page.⁶⁴ Without those guidelines, officials selected penalties they saw to be logical and relevant. One arbitrator found that the deciding official:

did not explain why he deviated from the most plausible Sections in the Table of Penalties that would apply to the grievant's conduct. Instead, it states that he simply

⁶⁰ *Id.*

⁶¹ Customs and Border Protection, *Personal Use of Social Media for CBP Employees*.

⁶² *American Federation of Government Employees v. Department of Homeland Security*, FMCS No. 201210-02112 (Mar. 30, 2021); *National Border Patrol Council v. Department of Homeland Security*, FMCS No. 200113-02986 (Jan. 5, 2021).

⁶³ *National Border Patrol Council v. Department of Homeland Security*, FMCS No. 200113-02986 (Jan. 5, 2021).

⁶⁴ Customs and Border Protection, *Table of Offenses and Penalties* (June 21, 2004).

chose to turn to another Section so as to justify his penalty determination, and that that is an abuse of discretion.⁶⁵

On December 9, 2020, following the Committee's release of documents demonstrating the need for disciplinary reform as well as the OIG's recommendation,⁶⁶ CBP updated its Table of Offenses and Penalties to include recommended penalties for social media misconduct in three offense categories: discriminatory behavior, disruptive behavior, and ethical and integrity-related offenses.⁶⁷ This revision will make it easier for the Discipline Review Board and deciding officials to determine and justify their penalties for future social media misconduct.

J. CBP's Failure to Address Misconduct Erodes Employee Morale

The Committee's investigation confirms reports of longstanding and widespread poor morale at CBP, contributing to a culture that allowed "I'm 10-15" and other Facebook groups to flourish. Case files show that agents repeatedly expressed their frustrations to OPR about a range of issues that contributed to the lack of morale in the agency. For example, Intelligence Border Patrol Agent #7 said that work conditions were "frustrating" and blamed Border Patrol leadership "at the highest levels."⁶⁸

Poor morale at CBP has been documented in congressional testimony and nonpartisan reports. In January 2020, Anthony Reardon, the president of a major employee union that represents CBP employees, stated in written testimony to the Committee on Homeland Security:

For six consecutive years the Partnership for Public Service (PPS) *Best Places to Work in the Federal Government* ranked DHS last among large agencies surveyed. In 2019, PPS ranked CBP as 380th out of 420 component agencies surveyed with a drop of 2.1% from 51.6% in 2018 to 49.5% in 2019.

The Best Places to Work results raise serious questions about the department's ability to recruit and retain the topnotch personnel necessary to accomplish the critical missions that keep our country safe.⁶⁹

⁶⁵ *American Federation of Government Employees v. Department of Homeland Security*, FMCS No. 201210-02112 (Mar. 30, 2021).

⁶⁶ Committee on Oversight and Reform, *Press Release: New Document Shows CBP Cut Deals with Border Patrol Agents Who Engaged in Misconduct* (July 20, 2020) (online at <https://oversight.house.gov/news/press-releases/new-document-shows-cbp-cut-deals-with-border-patrol-agents-who-engaged-in>); Memorandum from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Members of the Committee on Oversight and Reform, *Notice of Intent to Issue Subpoena to Customs and Border Protection* (Oct. 30, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-10-30.COR%20Subpoena%20Memo%20re%20Customs%20and%20Border%20Protection.pdf>); Office of Inspector General, Department of Homeland Security, *CBP Senior Leaders' Handling of Social Media Misconduct* (May 12, 2021) (OIG-21-34) (online at www.oig.dhs.gov/sites/default/files/assets/2021-05/OIG-21-34-May21.pdf).

⁶⁷ Customs and Border Protection, *Table of Offenses and Penalties* (Dec. 9, 2020).

⁶⁸ Customs and Border Protection, *Report of Investigation* (Aug. 19, 2019).

⁶⁹ Subcommittee on Oversight, Management, and Accountability, Committee on Homeland Security, Written Testimony of Anthony M. Reardon, National President, National Treasury Employees Union, *Hearing on*

In a June 2019 report, DHS OIG found widespread dissatisfaction with how leadership enforces discipline and upholds standards of accountability. The DHS OIG report states that 47% of CBP respondents disagreed that employees were held accountable at all levels. It also found that 31% of CBP respondents did not agree that senior leaders model behavior that is in line with CBP's standards of conduct and 52% agreed that CBP's senior leaders are less likely than other employees to be disciplined for violations of CBP's standards of conduct and other workplace rules and regulations.⁷⁰

According to the Office of Personnel Management's annual Federal Employee Viewpoint Survey (FEVS), CBP scored the second lowest of DHS components in the Employee Engagement index and the New IQ index. These indices measure organizational climate and inclusiveness of work environments. CBP also scored significantly below the governmentwide average in both measures.⁷¹ In one internal investigation related to the secret Facebook group, then-Chief Agent Scott cited the fact that CBP was getting "hammered" with low FEVS scores as a reason for joining "I'm 10-15," since membership in the group allowed him to communicate with agents and see what they were discussing.⁷²

The "I'm 10-15" Facebook group was also viewed by agents as an outlet for rising tensions and low morale in the agency, according to agent interviews with OPR. One Border Patrol agent explained that the group "was a place for BPAs [Border Patrol agents] to vent."⁷³ A second agent said that the rise in offensive content "was attributed to low morale of BPAs and BPAs 'injecting humor' in response to the Migrant crisis and lack of enforcement."⁷⁴

Ultimately, as CBP has acknowledged, the offensive images and comments in "I'm 10-15" undermined the public's confidence in the agency. Shortly after initial public reporting about the Facebook group, then-Chief Provost wrote to CBP staff that the posts "directly undermine public trust in the Border Patrol and the dedication and compassion with which the rest of you undertake your duties each and every day."⁷⁵ In a public statement in 2020 regarding the initial results of CBP's internal investigation, the agency acknowledged that "I'm 10-15"

Seventeen Years Later: Why Is Morale at DHS Still Low, 116th Cong. (Jan. 14, 2020) (online at www.nteu.org/~media/Files/nteu/docs/public/letters/2019/amrtestimonlyhsc11419.pdf?la=en).

⁷⁰ Office of Inspector General, Department of Homeland Security, *DHS Needs to Improve Its Oversight of Misconduct and Discipline* (June 17, 2019) (OIG-19-48) (online at www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-48-Jun19.pdf).

⁷¹ Office of Personnel Management, *Federal Employee Viewpoint Survey, Agency Management Report: Department of Homeland Security* (2019) (online at www.dhs.gov/sites/default/files/publications/dhs-2019-fevs-agency-management-report.pdf).

⁷² Customs and Border Protection, *Report of Investigation* (Oct. 9, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/36%2C%2042%2C%2070_Scott_Report%20of%20Investigation.pdf).

⁷³ Customs and Border Protection, *Report of Investigation* (Aug. 16, 2019).

⁷⁴ Customs and Border Protection, *Report of Investigation* (Oct. 4, 2019).

⁷⁵ *Acting Homeland Security Boss Decries "Vile" Facebook Posts*, Associated Press (July 3, 2019) (online at <https://apnews.com/article/media-us-news-ap-top-news-border-patrols-az-state-wire-0b6070b1cc6a40cd810bff2f097ecf76>).

posts reflected “misconduct that violates our standards of conduct and is contrary to our core values of vigilance, service to country, and integrity.”⁷⁶

In one arbitration proceeding, a CBP attorney explained the agency’s concerns with an agent’s offensive post related to “the image his post conveys of all border patrol agents and of the Agency, in general.” The attorney further explained, “the post could cause the public to question whether agents do their jobs professionally and without bias, and that it goes directly against the professional image that the Agency strives to maintain.”⁷⁷ Similarly, the deciding official explained that the actions of a CBP agent “publicly dishonored the Agency, tarnished its public image and negatively impacted its ability to fulfill its mission.”⁷⁸

III. RECOMMENDATIONS

The Committee’s investigation has revealed significant shortcomings in CBP’s approach to disciplining and training employees on social media misconduct. This staff report makes the following recommendations to address these weaknesses:

- **Top CBP Leadership Should Demonstrate a Commitment to Accountability for Social Media Misconduct:** CBP leaders must make clear that social media misconduct will not be tolerated and that violators will be held accountable. Agency leadership should, consistent with constitutional and legal protections, establish strong procedures to encourage reporting of misconduct, effective investigations into misconduct, consistent application of disciplinary actions, ongoing monitoring, and effective training on the proper use of personal social media accounts. This program should align with DHS’s efforts to monitor social media for threats.⁷⁹ CBP needs leaders who not only are aware of policies on the personal use of social media but also apply and adhere to them and hold others accountable to doing the same.
- **CBP Should Strengthen Social Media Training:** CBP’s roll-out of additional social media training is a good first step towards addressing misconduct. However, CBP managers must create top-level commitment to enforcing policies and require ongoing, effective trainings tailored to the work of CBP agents. For example, CBP should explain the need for training and require interactive or in-person trainings so that employees can better participate and ask questions. Trainings should include assessments to verify that employees understand key concepts, including the types of unacceptable social media behavior on and off

⁷⁶ *Border Agency Fires 4 for Secret Facebook Groups with Violent, Bigoted Posts*, Los Angeles Times (July 16, 2020) (online at www.latimes.com/politics/story/2020-07-16/border-patrol-fired-for-secret-facebook-group-with-violent-sexist-posts).

⁷⁷ *American Federation of Government Employees v. Department of Homeland Security*, FMCS No. 201210-02112 (Mar. 30, 2021).

⁷⁸ Letter from Chief Patrol Agent, Border Patrol, to Border Patrol Agent (Dec. 20, 2019).

⁷⁹ Department of Homeland Security, *National Terrorism Advisory System Bulletin* (May 14, 2021) (online at www.dhs.gov/ntas/advisory/national-terrorism-advisory-system-bulletin-may-14-2021).

duty. CBP should also track and monitor the completion of required social media training by all employees. On an annual basis, CBP should publicly post training completion rates, updates to the social media training curriculum, and actions taken by CBP leadership to assess the effectiveness of the social media training curriculum.

- **CBP Should Reform Hiring Processes to Screen for Applicants with Records of Discrimination or Similar Misconduct:** Reforms to how CBP reviews applicants will ensure that candidates who previously engaged in social media misconduct or related conduct exhibiting prejudice would not be placed in a position of power over vulnerable populations. For example, CBP should consult available public databases of police misconduct before making hiring decisions, such as the National Decertification Index;⁸⁰ Law Enforcement Work Inquiry System, known as the LEWIS Registry;⁸¹ and the National Police Misconduct Registry that would be established under the George Floyd Justice in Policing Act of 2021.⁸²
- **CBP Should Make Disciplinary Records Available for Future Employment Decisions:** CBP should require the consideration of social media misconduct and similar misconduct during the promotion process. CBP should assess whether it is suitable for employees with a history of discrimination and bias to take on additional responsibilities or serve in a leadership position. CBP should also consider reforms to the agency's current policy of removing discipline related to misconduct from permanent employee records.
- **CBP Should Reform the Disciplinary Process to Prevent Employees That Display Prejudice, Discrimination, or Bias from Working with Vulnerable Populations:** CBP should reform the disciplinary process to consider whether an employee's misconduct displayed prejudice, discrimination, or bias when determining an agent's penalty. Penalty guidelines for social media misconduct should enable CBP to remove employees who engaged in such conduct from posts working with migrants and children.
- **CBP Should Address Issues of Poor Morale:** CBP should implement programs to improve employee morale. It can build on recent DHS and CBP employee engagement initiatives, including surveying staff to assess the climate of work units and to provide upward feedback. CBP should also consider developing an ombuds office within the agency to provide an independent resource for employees to confidentially discuss their work environments, seek impartial advice, and report on misconduct.

⁸⁰ International Association of Directors of Law Enforcement Standards and Training, *National Decertification Index* (online at www.ia-dlest.org/our-services/ndi/about-ndi) (accessed Sept. 27, 2021).

⁸¹ University of Southern California, *The LEWIS Registry* (online at sci.usc.edu/lewis-registry/) (accessed Sept. 27, 2021).

⁸² H.R. 1280.