



September 21, 2021

Acting Commissioner Troy Miller
U.S. Department of Homeland Security
U.S. Customs and Border Protection
1300 Pennsylvania Ave. NW
Washington, D.C. 20229

(b) (6)

U.S. Department of Homeland Security
Office of Inspector General / MAIL STOP (b) (6)
254 Murray Lane SW
Washington DC 20528

VIA ELECTRONIC MAIL

Re: U.S. Border Patrol's use of horses and verbal abuse against migrants in Del Rio, TX

The American Civil Liberties Union of Texas (“ACLU-TX”) submits this demand for immediate policy change and investigation of the U.S. Border Patrol’s use of horse-mounted agents maneuvering their horses in a menacing way toward migrants, wielding lariats (also referred to as “whips” in public reporting), and using derogatory and xenophobic language against migrants—primarily Haitian and including families with small children—in Del Rio, Texas.¹ First, in response to the horrifying video and photographic evidence from today in Del Rio, Acting Commissioner Miller must immediately instruct Border Patrol agents to cease the use of horses and lariats in response to Haitian migrants crossing the Rio Grande to seek protection and should pursue immediate disciplinary action against agents involved. Second, DHS OIG should expeditiously undertake an investigation into the agency’s actions and examine the agency’s compliance with legal restrictions on the use of force, the existing Customs and Border Protection (“CBP”) Use of Force Policy, and the adequacy of that policy to appropriately limit the use of horse-mounted agents, lariats, and abusive language. DHS OIG should expeditiously make public its findings.

I. Background

In the past few days, a large number of migrants—primarily Haitian and seeking asylum and other protection in the United States—have crossed into Del Rio, Texas, to await processing by DHS at a processing center located under an international bridge. On September 18, DHS announced a plan to address the increased number of migrants awaiting immigration processing in the area and began

¹ Daina Beth Solomon and Alberto Fajardo, “Trapped”: Migrants collecting food try to evade law enforcement at the U.S.-Mexico border, REUTERS, Sept. 20, 2021, <https://www.reuters.com/world/us/trapped-migrants-collecting-food-try-evade-law-enforcement-us-mexico-border-2021-09-20/>; Al Jazeera English, Haitian migrants undeterred as US begins removal flights, YouTube, Sept. 21, 2021, <https://www.youtube.com/watch?v=UTFnKJqcPks>.

removing some Haitians to their home country the following day.² The same day, Border Patrol agents mounted on horseback sought to stop Haitian migrants on the U.S. side of the Rio Grande from entering the encampment, charging families and individuals on the river bank and using abusive language against at least one family.³ Extensive video and photo documentation shows appalling use of force by agents against migrants. For example, one image shows a mounted Border Patrol agent grabbing a man by the shirt as he stands bare foot with his hands full of food.⁴ Video footage showed horse mounted agents again engaging migrants on the banks of the river and in one instance nearly trampling a young child.⁵ Another video shows a Border Patrol agent on horseback hitting the water near one man with his lariat before knocking the man back into the water with his horse.⁶ The man is carrying what appear to be containers of food.

On September 20, during a press conference U.S. Border Patrol Chief Raul L. Ortiz confirmed that Border Patrol Horse Patrol units remain a part of the agency's "security response." While Chief Ortiz claimed agents on horseback do not know who coming across the river "are the smugglers and who are the migrants," videos show mounted agents riding up to families with small children and individuals carrying bags of food. Secretary Alejandro Mayorkas went on to claim that long reins seen in footage are used to "ensure control of the horses."⁷

Not only did such actions by mounted Border Patrol agents occur while Border Patrol Chief Ortiz was in Del Rio, but the agency's reaction to the incident also failed to immediately reign in blatant misconduct. Moreover, the agents' conduct – and the agency's immediate response to the situation—are in line with decades of systemic racism against Black immigrants. On a systemic level, the United States' first law on citizenship excluded Black people, and immigration policy has since excluded and restricted Black immigration through quotas, criminalization, and deportations while privileging white immigrants.⁸ Further, in the early 1990s, fleeing political violence following a coup d'état, Haitian migrants were intercepted by the U.S. Coast Guard, held in Guantanamo Bay, Cuba, and returned to Haiti without having their claims lawfully adjudicated by the United States.⁹ Yet, the

² *DHS Outlines Strategy to Address Increase in Migrants in Del Rio*, U.S. Department of Homeland Security, Sept. 18, 2021, <https://www.dhs.gov/news/2021/09/18/dhs-outlines-strategy-address-increase-migrants-del-rio>; Molly Hennessy-Fiske, *U.S. begins removing Haitian migrants, but they continue to flock to Texas border*, LOS ANGELES TIMES, Sept. 19, 2021, <https://www.latimes.com/world-nation/story/2021-09-19/haitian-migrants-continue-to-flock-to-texas-border-some-flow-back-to-homeland-by-u-s>.

³ AFP News Agency, @AFP on Twitter, Sept. 19, 2021, 7:30 PM, <https://twitter.com/afp/status/1439763779688882180>.

⁴ *Id.*

⁵ See Daina Beth Solomon, *supra* note 1; Al Jazeera English, *supra* note 1.

⁶ Sawyer Hackett, @SawyerHackett on Twitter, Sept. 20, 2021, 10:25 AM, <https://twitter.com/SawyerHackett/status/1439989195871825921?s=20>.

⁷ NowThis News, *DHS Secretary Alejandro Mayorkas Holds a Press Briefing at U.S.-Mexico Border*, YouTube, Sept. 20, 2021, <https://www.youtube.com/watch?v=N7kF0PUDdM>.

⁸ Kica Matos and Nana Gyamfi, *Centering Black Voices in the Struggles for Immigrant Rights*, VERA INSTITUTE FOR JUSTICE, Sept. 9, 2020, <https://www.vera.org/blog/centering-black-voices-in-the-struggle-for-immigrant-rights>.

⁹ Liz Sevchenko with Julia Thomas, *Gitmo's Original Sin*, POLITICO, June 19, 2014, <https://www.politico.com/magazine/gallery/2014/06/gitmos-original-sin-000048/?slide=0>.

Biden administration has now begun expelling Haitians that crossed into Del Rio under its claimed Title 42 authority, without any process to consider their asylum claims.¹⁰

II. Border Patrol's Violation of Law and Policy and the Inadequacy of Existing Policy

Border Patrol's actions raise severe concerns regarding constitutional violations and violations of CBP's own Use of Force policy.¹¹

The Constitution prohibits the use of excessive force¹² and requires that use of force by law enforcement be proportional to a threat and escalated only in response to that threat.¹³ CBP's own Use of Force policy also only permits the use of "a reasonable amount of force" when an individual's entry presents an "imminent threat" to officers, agents, or others.¹⁴

Video footage of Border Patrol's actions in this incident clearly demonstrate that the migrants being encountered by mounted agents did not present an imminent threat. In one video an agent stops a family with small children, makes derogatory and xenophobic comments to the family, and then maneuvers his horse in a way that comes dangerously close to trampling a child.¹⁵ Other footage shows agents wielding lariats and maneuvering their horses in a menacing fashion against individuals carrying food back to the encampment in the United States, traffic across the river the agency was undoubtedly aware of prior to deploying mounted units to the U.S. riverbank.

In one video, a mounted Border Patrol agent is heard stating "This is why your country's shit, because you use your women for this!"¹⁶ CBP's National Standards on Transport, Escort, Detention, and Search ("TEDS") requires agents to "speak and act with the utmost integrity and professionalism," "treat all individuals with dignity and respect," and "perform their duties in a nondiscriminatory manner."¹⁷ Agents simply did not uphold those standards in this instance.

Further, DHS policy requires that all agency components--including CBP--"shall have appropriate written policies and procedures regarding the use of authorized control tactics or techniques;

¹⁰ Daina Beth Solomon and Alexandra Ulmer, *U.S. removes migrants from Texas border camp, begins flights to Haiti*, REUTERS, Sept. 20, 2021, <https://www.reuters.com/world/us/migrants-flown-out-texas-border-city-after-thousands-cross-rio-grande-2021-09-19/>.

¹¹ U.S. CUSTOMS AND BORDER PROTECTION (herein after "CBP"), 4500-002A, CBP Use of Force Policy, Jan. 2021, https://www.cbp.gov/sites/default/files/assets/documents/2021-Jul/cbp-use-of-force-policy_4500-002A.pdf.

¹² See generally, U.S. Const. Amend. IV and VIII.

¹³ *Graham v. Connor*, 490 U.S. 386, 388, 109 S. Ct. 1865, 1867, 104 L. Ed. 2d 443 (1989); see also *Tennessee v. Garner*, 471 U.S. 1, 3, 105 S. Ct. 1694, 1697, 85 L. Ed. 2d 1 (1985).

¹⁴ See CBP, *supra* note 11 at Chap. 3(A)(6), page 13.

¹⁵ See Al Jazeera English, *supra* note 1

¹⁶ John Holman, @johnholman100 on Twitter, Sept. 20, 2021, 7:43 AM, <https://twitter.com/johnholman100/status/1439948289680363527?s=20>.

¹⁷ U.S. CUSTOMS AND BORDER PROTECTION, NAT'L STANDARDS ON TRANSPORT, ESCORT, DETENTION, AND SEARCH, at §§ 1.2 (Integrity and Professionalism) & 1.4 (Non-Discrimination Policy) (Oct. 2015), <https://www.cbp.gov/document/directives/cbp-national-standards-transport-escort-detention-and-search>.

authorized less-lethal devices; and necessary training and certifications—both initial and recurring.”¹⁸ Nevertheless, CBP’s Use of Force policy does not include guidelines for the use of mounted horse patrol, despite their potential for causing lethal or non-lethal harm. In fact, Border Patrol’s Horse Patrol Program is consistently described by the agency as necessary for accessing terrain in accessible by vehicles, not as a tool of deterrence or use of force against migrants.¹⁹ CBP’s publicly available policy materials also do not indicate that mounted agents receive crowd control training for a use in the manner seen here.

CBP’s Use of Force policy includes a specific list of non-lethal tools the agency may use if trained and certified by the Law Enforcement Safety and Compliance Directorate.²⁰ Lariats (or any other similar term such as “whips”) are not included on this list or, in fact, anywhere in the agency’s policy. Thus, Border Patrol agents’ use of lariats as depicted in photographs and footage raise concerns that agents are using such tools as weapons for non-lethal deterrence and menacing tactics without requisite training, written policies defining their use, or indeed any sort of agency approval or oversight whatsoever. Given their racist history and potential for abuse, as seen in the photographs and video from Del Rio, lariats, whips, or any other rope should not be used as weapons by agents under any circumstances. CBP policy should make this explicit.

The use of horse mounted agents, lariats, and abusive language to menace and seek to deter migrants on the U.S. side of the Rio Grande is not only a disturbing in its lack of humanity but demonstrates both a failure to follow existing policy and highlights the inadequacies of current use of force policy. Given these potential violations and the potential for serious harm on recurrence of similar violations, CBP should immediately remove horse-mounted units from the area, agents should be disciplined, and DHS OIG should investigate their actions. Border Patrol’s actions warrant an immediate response, both on the ground and in investigation by the Inspector General.

Thank you for your time and attention to this submission. We look forward to your timely response.

Sincerely,

/s/ (b) (6)

(b) (6) Staff Attorney and Policy Counsel

(b) (6) Staff Attorney

American Civil Liberties Union of Texas

P.O. Box 8306

Houston, TX 77288-8306

(b) (6)

¹⁸ U.S. DEPARTMENT OF HOMELAND SECURITY, Department Policy on Use of Force, Policy Statement 044-05, Sept. 7, 2018, https://www.dhs.gov/sites/default/files/publications/mgmt/law-enforcement/mgmt-dir_044-05-department-policy-on-the-use-of-force.pdf.

¹⁹ See e.g., U.S. CUSTOMS AND BORDER PROTECTION, What We Do, Last modified: June 21, 2021, <https://www.cbp.gov/careers/usbp-what-we-do>.

²⁰ See CBP, *supra* note 11 at Chap. 3(A)(7), page 13-14.

CC: CBP Office of Professional Responsibility
DHS Office for Civil Rights and Civil Liberties
House Homeland Security Committee
Senate Homeland Security and Governmental Affairs Committee