



June 6, 2023

The Honorable Glenn Grothman
Chairman
Subcommittee on National Security, the Border, and Foreign Affairs
House Committee on Oversight and Accountability
2157 Rayburn House Office Building
Washington, DC 20515

The Honorable Robert Garcia
Ranking Member
Subcommittee on National Security, the Border, and Foreign Affairs
House Committee on Oversight and Accountability
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Grothman, Ranking Member Garcia, and members of the Committee:

The Project On Government Oversight (POGO) respectfully submits this letter for entry into the record for your June 6, 2023, hearing, “Help Wanted: Law Enforcement Staffing Challenges at the Border,” where Department of Homeland Security Inspector General Joseph Cuffari is scheduled to testify about a recent report issued by his office.

POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

POGO’s investigators have published a series of investigative reports on Cuffari’s tenure as inspector general for the Department of Homeland Security, as well as a six-part podcast that have brought to light profound concerns about his decision-making and actions.¹ We have

¹ Nick Schwellenbach and Adam Zagorin, “Pulling Punches: Trump-Appointed Watchdog Suppressed White House-Related Probes,” Project On Government Oversight, April 20, 2021, <https://www.pogo.org/investigation/2021/04/pulling-punches-trump-appointed-watchdog-suppressed-white-house-related-probes>; Adam Zagorin and Nick Schwellenbach, “Protecting the Predators at DHS,” Project On Government Oversight, April 7, 2022, <https://www.pogo.org/investigation/2022/04/protecting-the-predators-at-dhs>; Nick Schwellenbach and Adam Zagorin, “DHS Watchdog Failed to Sound Alarm For Months on Secret Service’s Purged Jan. 6 Texts,” Project On Government Oversight, July 21, 2022, <https://www.pogo.org/investigation/2022/07/dhs-watchdog-failed-to-sound-alarm-for-months-on-secret-services-purged-jan-6-texts>; Nick Schwellenbach and Adam Zagorin, “Missing: More January 6 Texts Sought By Congress,” Project On Government Oversight, July 28, 2022, <https://www.pogo.org/investigation/2022/07/missing-more-january-6-texts-sought-by-congress>; Nick Schwellenbach and Adam Zagorin, “DHS Watchdog Nixed Alert to Congress About Purged January 6 Texts, New Docs Show,” August 11, 2022, <https://www.pogo.org/investigation/2022/08/dhs-watchdog-nixed-alert-to-congress->

repeatedly called for his firing for cause, a step our organization rarely takes.² This statement will not summarize POGO’s findings about Cuffari in detail, but rather will outline a few crucial issues that, left unresolved, will continue to impact Customs and Border Protection’s efforts to recruit and retain qualified agents, and jeopardize the safety of agents, migrants, and border community residents.

Issue 1: Longstanding workplace sexual misconduct and discrimination and off-duty violence by CBP officials

According to a draft report by the Department of Homeland Security’s Inspector General (DHS IG) obtained by POGO last year, 10,000 out of roughly 28,000 DHS law enforcement officials responding to a survey by the IG said that they had experienced sexual harassment or sexual misconduct at work. Only 22% of those employees formally reported the misconduct, and 41% of those who did report said that doing so “negatively affected their careers.”³ Another draft DHS IG report uncovered by POGO last spring outlined problems with domestic violence within the ranks of DHS law enforcement. The draft documented 30 cases where DHS officials had been allowed to keep their jobs and service weapons despite “substantiated” allegations of domestic violence against them. Cuffari instructed his subordinates to delete those passages, which he criticized as “second guessing DHS disciplinary decisions without full facts and potentially in violation of applicable rules,” and they were removed from the published version of the domestic violence report. His top aides directed removal of language from the sexual misconduct report based on similar concerns about “second guessing.”⁴

Over a year has passed since POGO reported on these findings — and two and a half years since the sexual misconduct survey findings were presented to Cuffari. The sexual misconduct report still has not been released.

However, in October 2022, Tony Barker, one of the most senior officials at the Border Patrol, resigned after allegations that he pressured multiple subordinates to perform sexual acts.⁵ Former CBP Commissioner Chris Magnus, who left the agency in November 2022, told the *New York*

[about-purged-january-6-texts-new-docs-show](#); Nick Schwellenbach, “DHS Watchdog Staff Call on Biden to Fire Inspector General Cuffari,” Project On Government Oversight, September 23, 2022, <https://www.pogo.org/investigation/2022/09/dhs-watchdog-staff-call-on-biden-to-fire-inspector-general-cuffari>; Project On Government Oversight, “Bad Watchdog,” podcast, January and February 2023, <https://www.pogo.org/podcasts/bad-watchdog>.

² Danielle Brian, executive director, Project On Government Oversight, to President Joseph Biden, about removal of Department of Homeland Security Inspector General Joseph Cuffari, April 8, 2022, <https://www.pogo.org/letter/2022/04/pogo-calls-on-president-biden-to-remove-dhs-ig-joseph-cuffari>; Danielle Brian, “A promise Joe Biden should break,” *Washington Post*, August 2, 2022, <https://www.washingtonpost.com/opinions/2022/08/02/fire-dhs-inspector-general-cuffari/>; Danielle Brian and Joanna Derman to President Joseph Biden, about removal of Department of Homeland Security Inspector General Joseph V. Cuffari and Social Security Administration Inspector General Gail Ennis, March 8, 2023, <https://www.pogo.org/letter/2023/03/pogo-calls-on-biden-to-remove-inspectors-general-cuffari-ennis>.

³ Zagorin and Schwellenbach, “Protecting the Predators at DHS,” [see note 1].

⁴ Zagorin and Schwellenbach, “Protecting the Predators at DHS,” [see note 1].

⁵ Julia Ainsley, “A top Border Patrol official resigned after allegedly pressuring female employees for sex, officials say,” NBC News, January 21, 2023, <https://www.nbcnews.com/politics/immigration/border-patrol-official-barker-resigned-allegedly-pressuring-women-sex-rcna66841>.

Times that several women who worked within the agency described reporting sexual misconduct as “pointless” because “[t]oo many of these guys just sort of stick together and protect each other. . . . It’s a culture of a wink and a nod.”⁶

Last month, a report by investigative reporter Erin Siegel McIntyre outlined evidence that Border Patrol leadership’s culture of tolerating assault and harassment dates back to the very first class of women who were allowed to become Border Patrol agents, in 1975, continues to this day, and contributes to the stark gender disparity at the agency.⁷ Only five percent of Border Patrol officers are women, significantly lower than the national average for law enforcement.⁸

The Office of the Inspector General’s website still lists an ongoing project on “CBP, ICE, TSA, and Secret Service Handling of Employee Allegations of Sexual Harassment and Workplace Sexual Misconduct” as well as a separate project on “Gender Equity Among CBP law enforcement.”⁹ But under current leadership, it is difficult to believe those reports will thoroughly examine the disciplinary issues that are central to the problem.

Issue 2: Deaths in custody and uses of force by CBP officers

On May 17, 2023, an 8-year-old girl named Anadith Tanay Reyes Alvarez died in Border Patrol custody. Although CBP’s detention standards say that individuals should not be detained for more than 72 hours, Anadith and her family had been held in Border Patrol detention facilities since May 9. Agents were informed that the child was suffering from congenital heart disease and sickle cell anemia as well as acute influenza.¹⁰ Her mother, Mabel Alvarez Benedicks, told a reporter that CBP had disregarded the family’s repeated pleas to take Anadith to a hospital: “They killed my daughter, because she was nearly a day and a half without being able to breathe. . . . She cried and begged for her life and they ignored her,” she said.¹¹ Authorities later confirmed that Anadith’s fever reached 104.9 degrees the morning of May 16, and that a nurse practitioner denied three or four requests from her mother for an ambulance to be called.¹²

On May 18, 2023, Border Patrol agents shot and killed U.S. citizen Raymond Mattia, a member of the Tohono O’odham Nation. Family members told local news reporters that Mattia was standing outside his own front door and had called Border Patrol himself to request assistance in

⁶ Eileen Sullivan, “Top Border Patrol Official Resigned Amid Allegations of Improper Conduct,” *New York Times*, January 21, 2023, <https://www.nytimes.com/2023/01/21/us/politics/top-border-patrol-official-resigned.html>.

⁷ Erin Siegel McIntyre, “The Border Patrol’s Fearless 5%,” *Reveal*, podcast, May 13, 2023, <https://revealnews.org/podcast/border-patrol-sexual-misconduct/>.

⁸ Erin Siegel McIntyre, “The Border Patrol’s Fearless 5%,” [see note 7].

⁹ “Ongoing Projects,” U.S. Department of Homeland Security Office of Inspector General, accessed June 2, 2023, <https://www.oig.dhs.gov/reports/ongoing-projects>.

¹⁰ U.S. Customs and Border Protection: “Update: Death in Custody of 8-Year-Old in Harlingen, Texas,” Press Statement, May 21, 2023, <https://www.cbp.gov/newsroom/speeches-and-statements/update-death-custody-8-year-old-harlingen-texas>.

¹¹ Valerie Gonzalez, “Mother of 8-year-old girl who died in Border Patrol custody says pleas for hospital care were denied,” Associated Press, May 20, 2023, <https://apnews.com/article/border-patrol-custody-death-harlingen-8da5429f39cb7ac0ff4c9184a42d8ba2>.

¹² U.S. Customs and Border Protection: “Update: Death in Custody of 8-Year-Old in Harlingen, Texas,” Press Statement, June 1, 2023, <https://www.cbp.gov/newsroom/speeches-and-statements/update-death-custody-8-year-old-harlingen-texas-0>.

removing migrants who had trespassed on his property.¹³ (A CBP statement on the same incident does not mention Mattia’s name and has some inconsistencies with the family’s account.)¹⁴

Both deaths are under investigation by the Office of Professional Responsibility, and the fatal shooting is also being investigated by tribal police and the FBI. It is unclear whether the inspector general’s office will investigate either incident.

Given the office’s recent track record, it is also unclear whether an IG investigation under Cuffari’s leadership would be helpful or harmful. The office has repeatedly limited the scope of its investigations into deaths in CBP custody and sought to downplay problems instead of exposing them and developing solutions.

During a six-month period beginning in December 2018, three children died in Border Patrol custody: seven-year-old Jakelin Caal Maquin, eight-year-old Felipe Gómez Alonzo, and 16-year-old Carlos Hernández Vásquez.¹⁵ (A fourth child, two-year-old Wilmer Josué Ramírez Vásquez, was hospitalized immediately after three days in Border Patrol custody but had been officially released from custody before his death.)¹⁶ The inspector general’s office initially released flawed, one-page press releases summarizing its investigations of the deaths of three of the children.¹⁷

The summaries of the inquiry into the seven- and eight-year-olds’ deaths were released without consultation with medical professionals, and stated without much elaboration that the IG “found no misconduct or malfeasance by DHS personnel,” something that had not been alleged. They provided no information about the general state of medical care in Border Patrol custody, or what actions could be taken to prevent future deaths.¹⁸

¹³ Lupita Murillo, “Tohono O’odham man shot and killed by border patrol,” KVOA.com, May 19, 2023, updated May 26, 2023, https://www.kvoa.com/news/local/tohono-oodham-man-shot-and-killed-by-border-patrol/article_a09cb84e-f6a8-11ed-a078-63d5074703ec.html.

¹⁴ U.S. Customs and Border Protection, “Tucson agents involved in fatal shooting of man, while responding to shots fired call,” Press Statement, May 22, 2023, <https://www.cbp.gov/newsroom/speeches-and-statements/tucson-agents-involved-fatal-shooting-man-while-responding-shots>

¹⁵ Nicole Acevedo, “Why are migrant children dying in U.S. custody?” NBC News, May 29, 2019, <https://www.nbcnews.com/news/latino/why-are-migrant-children-dying-u-s-custody-n1010316>.

¹⁶ Adolfo Flores, “A 2-Year-Old Boy Detained at the Border Has Died After Weeks In The Hospital,” BuzzFeed News, May 15, 2019, <https://www.buzzfeednews.com/article/adolfoflores/toddler-dies-immigrant-border-us-texas-guatemala>.

¹⁷ Department of Homeland Security Office of Inspector General, “DHS OIG Completes Investigation of the Death of Seven-Year-Old Guatemalan Child,” Press Release, December 20, 2019, <https://www.oig.dhs.gov/news/press-releases/2019/12202019/dhs-oig-completes-investigation-death-seven-year-old-guatemalan-child>; Department of Homeland Security Office of Inspector General, “DHS OIG Completes Investigation of the Death of Eight-Year-Old Guatemalan Child,” Press Release, December 20, 2019, <https://www.oig.dhs.gov/news/press-releases/2019/12202019/dhs-oig-completes-investigation-death-eight-year-old-guatemalan-child>; Department of Homeland Security Office of Inspector General, “DHS OIG Completes Investigation of Guatemalan Juvenile Who Died in U.S. Border Patrol Custody in Weslaco, TX,” Press Release, September 15, 2021, <https://www.oig.dhs.gov/news/press-releases/2021/09152021/office-inspector-general-completes-investigation-guatemalan-juvenile-who-died-us-border-patrol-custody-weslaco-tx>.

¹⁸ Nomaan Merchant, “Doctors not part of DHS review of migrant children’s deaths,” Associated Press, July 15, 2020, <https://apnews.com/article/95d0c9095f14b5eb54e12a61cdc52046>.

The summary of the inquiry into the 16-year-old's death noted that Border Patrol officers did not complete required welfare checks on the teenager and falsely certified that they had.¹⁹ It went on to state, however, that a contract medical examiner found that the teen's condition "would have resulted in a rapidly fatal outcome, even with immediate and appropriate treatment"—a conclusion that several independent experts disputed when the full report was eventually released through the Freedom of Information Act.²⁰

Following the children's tragic deaths, Congress instructed both Customs and Border Protection and the DHS IG to more thoroughly report and investigate all deaths in custody. A House committee report specifically directed that the IG was to "invest additional resources in assessing whether systemic factors, policies, or processes have played a role in such deaths and make recommendations for reducing the risk of future deaths," and CBP was to separately provide an annual report and briefing on deaths in custody.²¹

Both the office of the IG and the Office of Professional Responsibility submitted their reports for fiscal year 2021 in February 2023. The publicly available version of the Office of Professional Responsibility report states that the office reviewed 55 deaths in CBP custody.²²

The IG report, in contrast, reviewed only five deaths in CBP custody. The IG report examined far fewer deaths in custody because the IG chose to use a different, far narrower definition of what counted as "custody." That definition excluded a significant number of deaths, including those that occurred during apprehension or resulting from a CBP vehicle pursuit or other use of force. With this deliberately narrowed lens — and an additional case omitted due to an ongoing criminal investigation — the IG concluded that "we did not identify any underlying systemic issues related to the deaths," and "[b]ecause there were no systemic issues, we make no recommendations in this report."²³

In contrast, CBP itself has recognized an alarming increase in pursuit-related deaths and has implemented important reforms to its vehicle pursuit policy to address it.²⁴

¹⁹ "DHS OIG Completes Investigation of Guatemalan Juvenile Who Died in U.S. Border Patrol Custody in Weslaco, TX [see note 17]."

²⁰ "DHS OIG Completes Investigation of Guatemalan Juvenile Who Died in U.S. Border Patrol Custody in Weslaco, TX," [see note 17]; Robert Moore, "Internal Investigation Confirms Border Patrol Failures Leading Up to a 16-Year-Old's Death on the Floor of His Cell," *Pro Publica* and *El Paso Matters*, February 8, 2022, <https://www.propublica.org/article/internal-investigation-confirms-border-patrol-failures-leading-up-to-a-16-year-olds-death-on-the-floor-of-his-cell>.

²¹ U.S. House Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2021*, H.R. Rep. No. 116-458 (2020), <https://www.congress.gov/congressional-report/116th-congress/house-report/458/1>.

²² Department of Homeland Security Office of Professional Responsibility, *CBP-Related Deaths, Fiscal Year 2021* (February 6, 2023), <https://www.cbp.gov/sites/default/files/assets/documents/2023-Feb/2021-opr-cbp-related-deaths-report.pdf>.

²³ Department of Homeland Security Office of Inspector General, *ICE and CBP Deaths in Custody During FY 2021*, OIG-23-12 (February 1, 2023), <https://www.oig.dhs.gov/sites/default/files/assets/2023-02/OIG-23-12-Feb23.pdf>.

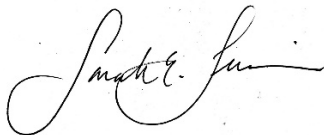
²⁴ Eileen Sullivan, "A Rise in Deadly Border Patrol Chases Renews Concerns About Accountability," *New York Times*, January 29, 2022, <https://www.nytimes.com/2022/01/09/us/politics/border-patrol-migrant-deaths.html>; Susan Montoya Bryan, "US border authorities roll out updated pursuit policy," Associated Press, January 11, 2023, <https://apnews.com/article/politics-united-states-government-crime-albuquerque-law-enforcement-1052bd81c65e498e26d4e3e143917903>.

Tragically, a separate Office of Inspector General report did identify a systemic issue that could well have contributed to some recent deaths, but it was published too late to make a difference. In late May 2022, the office conducted unannounced inspections of CBP detention facilities in the Rio Grande Valley. It found that Border Patrol agents had no clear procedures for treatment, quarantine, and release of detainees with contagious illnesses. Unfortunately, the IG did not publish its report until May 24, 2023 — a year and a day after their first inspection, and a week to the day after Anadith Tanay Reyes Alvarez died in CBP custody.²⁵

Failed oversight at DHS has critical consequences — for migrants, residents of border communities, CBP employees, and many others affected by the agency’s work. Members of Congress from both parties should call on the Biden administration to remove Cuffari and appoint a new inspector general. In the meantime, Congress should conduct its own oversight of the issues discussed above, and push for greater transparency from CBP’s Office of Professional Responsibility as to the results of its investigations.

Thank you for the opportunity to submit this information.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Turberville". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sarah Turberville
Director, The Constitution Project at POGO

²⁵ Department of Homeland Security Office of Inspector General, *Results of Unannounced Inspections of CBP Holding Facilities in the Rio Grande Valley Area*, OIG 23-28 (May 24, 2023), <https://www.oig.dhs.gov/sites/default/files/assets/2023-05/OIG-23-28-May23.pdf>.