

United States Senate
WASHINGTON, DC 20510

April 20, 2022

The Honorable Chris Magnus
Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Avenue, NW
Washington, DC 20229

Dear Commissioner Magnus:

We write to inquire about the steps you have taken to advance the investigation of Border Patrol agents' treatment of Haitian migrants in Del Rio, Texas.

As you are aware, in September 2021, Border Patrol personnel forcibly removed many of the almost 15,000 migrants that had formed an encampment under the International Bridge in Del Rio, Texas, waiting to enter the United States and seek asylum.¹ Individuals in the encampment faced "squalid conditions" and had "little access to clean water and food and just a few portable toilets."² Border Patrol agents were sent to the area to assess the rapid growth of the encampment in just a few days and "to immediately address the current level of migrant encounters and to facilitate a safe, humane and orderly process."³ Photos and videos taken on September 19, 2021 documented Border Patrol agents engaged in cruel and disturbing behavior against Haitian migrants.⁴ These deeply disquieting images showed Border Patrol agents on horseback aggressively confronting asylum seekers and forcing individuals back across the Rio Grande into Mexico.

The Border Patrol agents that engaged in these actions were placed on administrative leave on September 21.⁵ U.S. Customs and Border Protection's (CBP) Office of Professional Responsibility (OPR) immediately launched an investigation into the actions of the Border Patrol

¹ U.S. Customs and Border Protection, "CBP Releases September 2021 Monthly Operational Update," press release, October 22, 2021, <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-september-2021-monthly-operational-update>.

² New York Times, "Thousands of Migrants Huddle in Squalid Conditions Under Texas Bridge," James Dobbins, Eileen Sullivan, and Edgar Sandoval, October 19, 2021, <https://www.nytimes.com/2021/09/16/us/texas-migrants-del-rio.html>.

³ *Id.*

⁴ Reuters, "'Trapped': Migrants collecting food try to evade law enforcement at the U.S.-Mexico border," Daina Beth Solomon and Alberto Fajardo, September 20, 2021, <https://www.reuters.com/world/us/trapped-migrants-collecting-food-try-evade-law-enforcement-us-mexico-border-2021-09-20/>.

⁵ Forbes, "Horse-Mounted Border Patrol Officers Who Confronted Haitian Migrants Assigned To 'Administrative Duties,' DHS Says," Joe Walsh, September 21, 2021, <https://www.forbes.com/sites/joewalsh/2021/09/21/horse-mounted-border-patrol-officers-who-confronted-haitian-migrants-assigned-to-administrative-duties-dhs-says/>.

agents.⁶ Additionally, CBP referred the matter to the Department of Homeland Security's Office of the Inspector General (DHS OIG).⁷ President Biden condemned the actions of these Border Patrol agents, calling their actions "outrageous" and stating: "I promise you, those people will pay. There is an investigation underway right now and there will be consequences."⁸ Vice President Harris also expressed her support for a DHS investigation, adding: "There needs to be consequences and accountability. Human beings should not be treated that way."⁹ Secretary Mayorkas said he anticipated that the investigations would be completed in a timely matter, and he committed to making its findings public.¹⁰ In November, DHS announced that the OIG had declined to pursue an investigation and instead referred the matter back to CBP's OPR.¹¹ The DHS OIG gave no public explanation for declining the investigation.

It has been over six months since the incident at Del Rio. Since then, there have been no updates from DHS or CBP on the progress of the investigation. Following news reports containing speculation about the investigation, DHS provided a comment on background noting their "commitment to transparency" and confirming that the investigation was ongoing.¹²

During your confirmation hearing on October 19, 2021, you received multiple questions regarding the events at Del Rio. Senator Warren asked you whether you would "push for transparency in that investigation, and for public release of all your findings."¹³ In your response, you noted your long history of transparency in your previous roles and stated, "Senator, I certainly commit that I will push for that." Senator Warren also asked whether you would ensure migrants would be treated with "dignity as human beings that they deserve, and with proper respect for all of their legal rights, including the legal right to seek asylum." You responded that you "believe that we have asylum obligations as a nation, and therefore even as we seek efficiency and to be as effective as possible in working with individuals who seek asylum, we

⁶ Politico, "'Extremely troubling': Investigation launched into border agents on horseback seen chasing migrants," Natasha Korecki, September 20, 2021, <https://www.politico.com/news/2021/09/20/investigation-border-agents-horseback-migrants-513237>.

⁷ U.S. Department of Homeland Security, "DHS Update Regarding the Investigation of Horse Patrol Activity in Del Rio, Texas on September 19, 2021," press release, November 16, 2021, <https://www.dhs.gov/news/2021/11/16/dhs-update-regarding-investigation-horse-patrol-activity-del-rio-texas-september-19>.

⁸ CNBC, "Biden condemns Border Patrol agents' treatment of Haitian migrants, vows they will face consequences," Annika Kim Constantino, September 24, 2021, <https://www.cnbc.com/2021/09/24/biden-condemns-border-patrol-treatment-of-haitian-migrants-in-del-rio.html>.

⁹ *Id.*

¹⁰ Tweet by Secretary Alejandro Mayorkas, September 21, 2021, <https://twitter.com/SecMayorkas/status/1440477089589723136>.

¹¹ U.S. Department of Homeland Security, "DHS Update Regarding the Investigation of Horse Patrol Activity in Del Rio, Texas on September 19, 2021," press release, November 16, 2021, <https://www.dhs.gov/news/2021/11/16/dhs-update-regarding-investigation-horse-patrol-activity-del-rio-texas-september-19>.

¹² New York Post, "Border Patrol agents accused of 'whipping' migrants in legal clear, could still lose jobs," Callie Patterson and Mary Ann Martinez, March 29, 2022, <https://nypost.com/2022/03/29/border-agents-whipping-investigation-still-open-months-after-quick-probe-promised/>; Tweet by Anna Giaritelli, April 1, 2022, https://twitter.com/Anna_Giaritelli/status/1509897605974790149.

¹³ Office of Senator Elizabeth Warren, "At Hearing, Warren Pushes for Full, Public Transparency in the Investigation into Disturbing Treatment of Haitian Migrants at the Border," press release, October 20, 2021, <https://www.warren.senate.gov/newsroom/press-releases/at-hearing-warren-pushes-for-full-public-transparency-in-the-investigation-into-disturbing-treatment-of-haitian-migrants-at-the-border>.

can never bypass the criticality of treating people humanely. These are fellow human beings, and they have to be treated humanely.”

At your confirmation hearing, Senator Menendez also called for transparency into the investigation of the events at Del Rio and you agreed that “a full and thorough investigation is necessary before any final conclusions are drawn” and committed to “keeping this committee, any member of the Senate abreast of the progress associated with the investigation.”¹⁴ Additionally, Senator Cardin raised concerns over ensuring migrants are treated humanely by CBP staff and Border Patrol agents. He asked you to share “your own personal philosophy on how you’re going to balance the enforcement of our laws with the enforcement of our values.” You replied: “We can do a better job with how individuals are processed, but key to this is that it is done humanely. I don’t believe that we have to sacrifice efficiency for humanity.” There is widespread sentiment that the individuals in Del Rio were not treated humanely and those who engaged in those actions must be held accountable.¹⁵ Senator Wyden expressed his concerns about the treatment of Haitian migrants at the southern border with you, during a meeting held prior to your confirmation hearing. During this meeting, you agreed with Senator Wyden that strongly enforcing our immigration laws and treating immigrants and asylum seekers humanely are not mutually exclusive.


Congress and the public are still awaiting the results of this investigation. Given CBP’s role in initiating and carrying out this investigation, as well as your previous commitments regarding the investigation and your obvious interest in its outcome, we write to ask you to provide, in writing, the steps you have taken to advance the investigation and to ensure that its findings are publicly shared. We also request a briefing for our staff on the investigation and efforts to prevent this misconduct in the future.


We supported your confirmation with the belief that you would work to uphold the values of the United States and work to reform CBP and ensure it engages with asylum seekers and migrants with respect and dignity. We urge you to direct CBP OPR to swiftly and comprehensively complete their investigation of the actions of Border Patrol agents in Del Rio and to make their findings available to the public without delay.

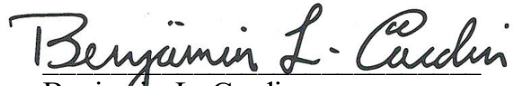
¹⁴ Senate Committee on Finance, “Hearing to Consider the Nomination of Chris Magnus, of Arizona, to be Commissioner of U.S. Customs and Border Protection, Department of Homeland Security, vice Kevin K. McAleenan, resigned,” October 19, 2021, <https://www.finance.senate.gov/hearings/hearing-to-consider-the-nomination-of-chris-magnus-of-arizona-to-be-commissioner-of-us-customs-and-border-protection-department-of-homeland-security-vice-kevin-k-mcaleenan-resigned->


¹⁵ Los Angeles Times, “Civil and human rights leaders decry treatment of Haitian migrants at southern border,” Erin B. Logan, September 22, 2021, <https://www.latimes.com/politics/story/2021-09-22/civil-rights-leaders-decry-treatment-of-haitian-migrants-at-u-s-border>; New York Times, “After Del Rio, Calls for Fairer Treatment of Black Migrants,” Eileen Sullivan, October 19, 2021, <https://www.nytimes.com/2021/10/19/us/politics/black-migrants-biden-border.html>.

Sincerely,


Elizabeth Warren
United States Senator


Robert Menendez
United States Senator


Benjamin L. Cardin
United States Senator


Ron Wyden
United States Senator