

OFFICE OF INSPECTOR GENERAL

CBP Senior Leaders’ Handling of Social Media Misconduct



Homeland
Security

**May 12, 2021
OIG-21-34**



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Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

May 12, 2021

MEMORANDUM FOR: Troy Miller
Senior Official Performing the Duties of the
Commissioner
U.S. Customs and Border Protection

FROM: Joseph V. Cuffari, Ph.D.
Inspector General

SUBJECT: *CBP Senior Leaders' Handling of Social Media
Misconduct*

JOSEPH V
CUFFARI Digitally signed by
JOSEPH V CUFFARI
Date: 2021.05.12
11:52:20 -04'00'

Attached for your information is our final report, *CBP Senior Leaders' Handling of Social Media Misconduct*. We incorporated the formal comments provided by your office.

The report contains two recommendations aimed at improving policy compliance and enhancing the component's overall effectiveness. Your office concurred with the two recommendations. Based on information provided in your response to the draft report, we consider recommendations 1 and 2 resolved and closed.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Thomas Kait, Deputy Inspector General for Inspections and Evaluations, at 202-981-6000.

Attachment



DHS OIG HIGHLIGHTS

CBP Senior Leaders' Handling of Social Media Misconduct

May 12, 2021

Why We Did This Review

Members of Congress asked us to initiate this review in response to July 2019 media reports that Border Patrol employees posted offensive content on a private Facebook group, *I'm 10-15*, and that CBP and Border Patrol senior leaders were members of the group.

What We Recommend

We made two recommendations that the Commissioner ensure uniform application of policies related to social media, and establish social media training for new recruits and annual refresher training for all CBP employees.

For Further Information:
Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

Our review of U.S. Customs and Border Protection (CBP) data indicated that from January 1, 2016, through June 30, 2019, 83 CBP employees violated CBP policies and guidance by posting or commenting within various social media platforms including *I'm 10-15*. However, we found no evidence that senior CBP leaders were aware of more than a few of the 83 employees' cases. We determined CBP and Border Patrol headquarters officials took no action to prevent further misconduct, except when directed to do so by DHS. In contrast, Office of Field Operations (OFO) headquarters officials issued guidance to remind OFO employees of acceptable use of social media.

With regard to the posts media outlets published in July 2019, we found no evidence that senior CBP headquarters or field leaders were aware of them until they were made public by the media.

We also found some senior leaders questioned the legality or the application of CBP policies, which may undermine CBP's ability to enforce the policies.

CBP Response

CBP concurred with our recommendations.



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Department of Homeland Security

Table of Contents

Background 4

Results of Review 7

 CBP Policies Prohibiting Social Media Misconduct and Providing
 Investigative and Disciplinary Processes 8

 CBP Cases of Social Media Misconduct 11

 CBP Senior Leaders’ and Headquarters’ Officials Awareness of, and
 Responses to, Social Media Misconduct 12

 CBP Senior Field Leaders’ and Officials’ Awareness of, and Responses
 to, Social Media Misconduct 15

 Senior CBP Leaders’ Awareness of Offensive Social Media Posts
 Published in July 2019 News Reports 17

 Differences in CBP Senior Leaders’ Application of Social Media Policies..
 18

Recommendations..... 19

Appendixes

Appendix A: Objective, Scope, and Methodology 21

Appendix B: CBP Comments to the Draft Report..... 23

Appendix C: Major Contributors to This Report..... 27

Appendix D: Report Distribution 28

Abbreviations

| | |
|--------|------------------------------------|
| AC | Assistant Commissioner |
| AMO | Air and Marine Operations |
| CBP | U.S. Customs and Border Protection |
| C.F.R. | Code of Federal Regulations |
| CRCL | Civil Rights and Civil Liberties |
| EAC | Executive Assistant Commissioner |
| EEO | Equal Employment Opportunity |
| ES | Enterprise Services |
| FAD | Final Agency Decision |



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|-------|--|
| GAO | Government Accountability Office |
| HRBE | Human Resources Business Engine |
| JIC | Joint Intake Center |
| JICMS | Joint Integrity Case Management System |
| LER | Office of Labor and Employee Relations |
| OFO | Office of Field Operations |
| OPM | Office of Personnel Management |
| OPR | Office of Professional Responsibility |



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Department of Homeland Security

Background

On July 1, 2019, an online media story¹ reported current and former U.S. Border Patrol (Border Patrol) employees had displayed offensive posts on a private, Border Patrol-centric Facebook group called *I'm 10-15*. The posts included images of dead migrants, sexually explicit images, and threatening language, some of which was directed at Members of Congress. Other media outlets followed with their own stories; one reporting that some senior Border Patrol leaders, including the Border Patrol Chief at the time, were members of *I'm 10-15*, raising concerns that senior leaders might have been aware of the offensive posts but took no action to address them.

We received requests from 10 U.S. Senators and the Chairman of the House Committee on Homeland Security that we assess Customs and Border Protection (CBP) employees' use of the *I'm 10-15* Facebook group. In response to their requests, we initiated this review, in which we examined the extent to which senior leaders in headquarters and in field offices were aware of cases of social media misconduct and any actions they took to address those cases between January 1, 2016, and June 30, 2019. We focused on the senior Border Patrol leaders who were members of *I'm 10-15* and were still employed by CBP when we began our review, including two leaders at headquarters and three sector chiefs. We also assessed actions by the former CBP Commissioner, and then Acting Secretary² (who was also a former CBP Commissioner at the time of our review), although they were not members of *I'm 10-15*. We evaluated the extent to which the Office of Field Operations (OFO) and Air and Marine Operations (AMO) Executive Assistant Commissioners (EAC) were aware of, and took action to address, social media misconduct cases arising from their employees. Throughout this report we will use the phrase "senior leaders" or "senior field leaders" to refer to these individuals, and we will use the term "officials" to refer, generally, to all senior leaders.

¹ ProPublica, *Inside the Secret Border Patrol Facebook Group Where Agents Joke about Migrant Deaths and Post Sexist Memes*, July 1, 2019.

² On August 14, 2020, U.S. Government Accountability Office (GAO) issued a decision that concluded Kevin McAleenan had not been eligible to become Acting Secretary when Secretary Nielsen retired. GAO referred related issues to our office for further review. GAO B-331650, August 14, 2020. After reviewing GAO's report, we declined to take up the matter and instead left it to the courts to resolve this inter-branch disagreement.

https://www.dhs.gov/sites/default/files/publications/ig_cuffari_letter_tothompson_maloney_re_gao_decision.pdf.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

CBP Mission and Organization

CBP's mission is to safeguard America's borders, thereby protecting the public from dangerous people and materials while enabling legitimate travel and trade. CBP is led by a Commissioner who oversees the work of 60,000 employees, many of whom work in one of three major operational divisions:

- Border Patrol is responsible for enforcing immigration laws and detecting, interdicting, and apprehending those who attempt to illegally enter, or smuggle people or contraband across U.S. borders between official ports of entry. The Border Patrol Chief leads a workforce of more than 20,000 agents assigned to 20 Border Patrol sector offices throughout the United States and its territories.
- OFO is CBP's largest component with more than 28,000 employees responsible for facilitating lawful travel and trade, and ensuring border security at the ports of entry.
- With approximately 1,800 employees, AMO operates a fleet of aircraft, vessels, and advanced border security technology to secure U.S. borders in the air, maritime, and land domains.

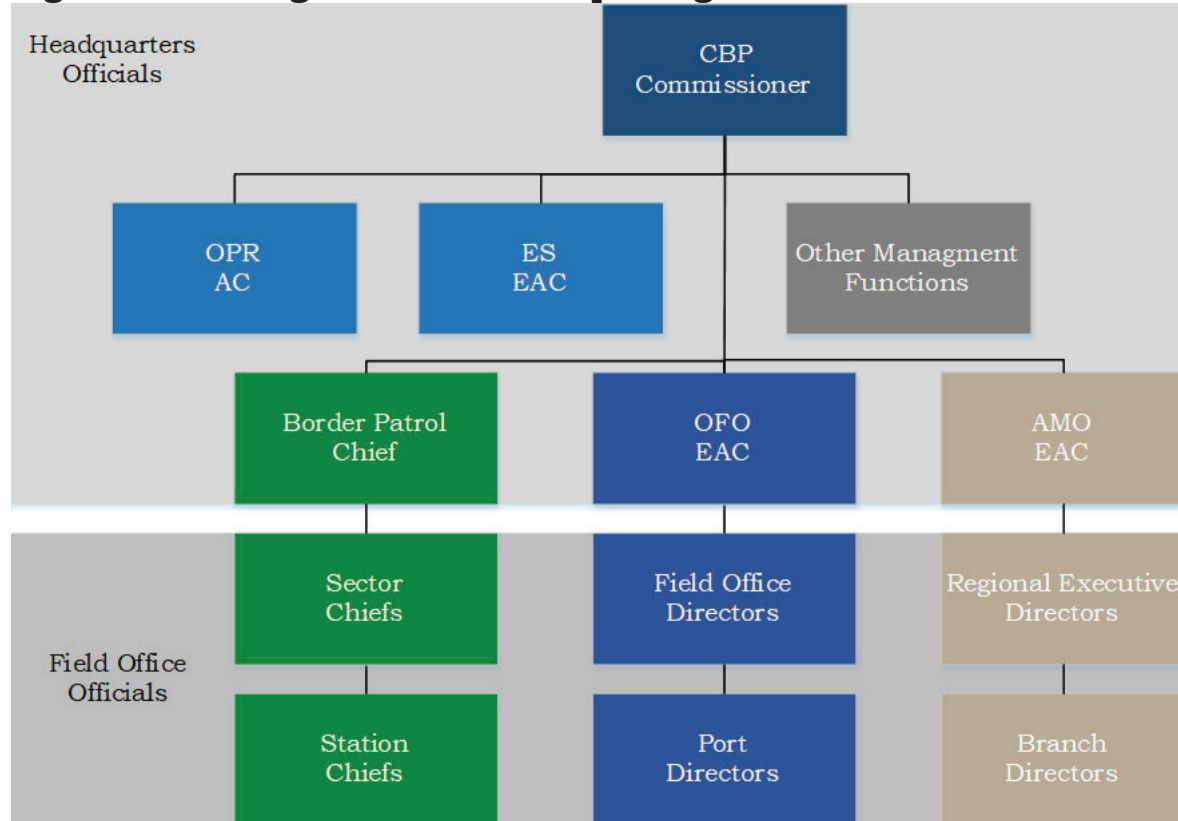
In addition, CBP's Office of Professional Responsibility (OPR) investigates and tracks investigations of employee misconduct, and the Office of Labor and Employee Relations (LER) is responsible for tracking employee discipline. Figure 1 is a high-level CBP organization chart.



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Department of Homeland Security

Figure 1. CBP Organization and Reporting Structure



Source: CBP organizational charts

CBP Procedures for Misconduct Investigations and Discipline

To determine the extent to which senior leaders were aware of and addressed social media misconduct, we identified relevant cases by reviewing CBP OPR’s investigative records. CBP OPR investigates allegations of CBP employees’ criminal and serious, non-criminal misconduct.³ Employees and members of the public may lodge allegations with OPR’s Joint Intake Center (JIC), which receives and tracks complaints of criminal activity or misconduct in its electronic system, the Joint Integrity Case Management System (JICMS).

LER, a division of CBP Enterprise Services (ES), oversees the employee discipline process by utilizing the Employee Relations workflow tool within the Human Resources Business Engine (HRBE). HRBE is an electronic system to track employee discipline and related employee data.

³ DHS Office of Inspector General (OIG) has a “right of first refusal” to investigate allegations of wrongdoing by any DHS employee. When DHS OIG declines to investigate the cases, it refers the cases to OPR. DHS Management Directive 0810.1, *The Office of Inspector General*.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Although the scope of our review did not include the actions CBP took after the offensive *I'm 10-15* Facebook posts were released by media outlets in July 2019, we were still able to gather some information about CBP's response. Immediately after the July 2019 media reports, CBP OPR began identifying and investigating those involved with the published posts and comments. Additionally, senior U.S. Border Patrol leaders and some employees contacted OPR to report themselves and others as members of *I'm 10-15*, and a few filed complaints of other inappropriate posts within *I'm 10-15*. These investigations covered a range of specific allegations, such as disclosing law enforcement sensitive information and making discriminatory statements; all violations of CBP's *Standards of Conduct* (Standards).⁴ By December 31, 2019, OPR completed all investigations that arose from the posts published in July 2019. Our analysis of OPR data showed that OPR sustained allegations against 107 of 136 employees.

The CBP Commissioner established a special Discipline Review Board to process the cases based on a request from the acting Department of Homeland Security Secretary. The Board reviewed the investigative records and Table of Penalties to propose appropriate discipline. CBP also appointed a single deciding official to determine the discipline. The deciding official listened to each employee's defense and considered their record and other factors to determine appropriate discipline. The deciding official separated 4 employees from Federal service, suspended 36 employees, and issued other forms of discipline, such as counseling or reprimands, to 25 others. Three employees retired before final disposition of their case. In addition to investigating individual cases of social media misconduct, the Border Patrol Chief issued social media guidance on July 1, 2019, after learning about the published posts, and the CBP Deputy Commissioner issued guidance on July 3, 2019. CBP also required all employees to take social media training.

Results of Review

Longstanding CBP guidance prohibits any communication that is discriminatory against those in a protected class, such as race, religion, and sex. CBP has additional policies that prohibit other types of communication such as leaking sensitive information, endorsing political candidates, or harassing colleagues. When employees are investigated for crimes or serious misconduct, such as workplace violence or abuse of position for personal gain, headquarters officials are notified immediately. Most social media misconduct cases do not rise to the level of serious misconduct. In contrast, field officials

⁴ CBP Directive 51735 013A, March 13, 2012.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

learn of social media cases if discipline is imposed because they have an active role in their personnel's disciplinary process.

Our review of data from CBP systems that track complaints, investigations, and discipline indicated that from January 1, 2016, through June 30, 2019, CBP handled the cases of 83 CBP employees who had posted or commented on inappropriate content on social media. Fourteen of the 83 cases were related to the *I'm 10-15* group, but did not include the content published by media outlets. We found no evidence that senior CBP leaders were aware of more than a few of the 83 employees' cases. When headquarters officials learned of cases of social media misconduct, some independently took action to help prevent future misconduct, while others did not. For example, headquarters officials in Border Patrol did not provide social media guidance in response to the few cases they knew about, except when required to do so by DHS. OFO headquarters officials acted in response to one of two cases. And finally, senior Border Patrol and OFO officials in field offices were aware of some cases in their command, and some acted to prevent future misconduct by reminding their employees not to post information on social media that would discredit the component or that would disclose sensitive information.

Regarding the posts media outlets published in July 2019, we found no evidence that senior CBP headquarters or field leaders, regardless of whether they were members of *I'm 10-15*, were aware of the posts that violated CBP policy until the article was published. JICMS did not contain records of complaints or discipline connected to the social media posts published in July 2019. We were unable to conduct a forensic analysis of any *I'm 10-15* Facebook usage because the group administrator terminated the group.

Interviews also indicated a few senior leaders do not believe CBP policies related to social media are constitutional, or they questioned how the policies should be applied, despite the fact that a CBP senior official stated the policies are legally sound. This uncertainty may undermine CBP's enforcement of these policies.

CBP Policies Prohibiting Social Media Misconduct and Providing Investigative and Disciplinary Processes

CBP has policies and guidance meant to help maintain a workforce that demonstrates high standards of ethical and professional conduct. According to CBP Standards:

All employees must maintain high standards of honesty, integrity, impartiality, character, and professionalism to



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

ensure the proper performance of government business and the continued trust and confidence of the public.

Under the Standards, employees are accountable for their actions on and off-duty, when there is a nexus between their misconduct and the component. According to the Standards:

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

Similarly, the Standards prohibit employees from engaging in a political activity directed towards the success or failure of a political party or candidate while on-duty, in a government office, or wearing an official uniform. They also prohibit employees from disclosing sensitive CBP information to unauthorized individuals at any time.

Prior to the July 1, 2019 media publication of the offensive *I'm 10-15* posts, CBP issued two sets of social media-specific guidance. In 2015, CBP released guidance that incorporated the U.S. Office of Government Ethics' legal advisory, *The Standards of Conduct as Applied to Personal Social Media Use*.⁵ CBP's guidance notes the increasing popularity of social media and reminds employees that the *Standards of Ethical Conduct for Employees in the Executive Branch*⁶ also apply to social media. Regarding limitations on allowable social media content, the guidance also reminds employees not to disclose sensitive information or violate the *Hatch Act*.⁷ The 2015 guidance did not specifically mention the prohibition on discriminatory conduct. In 2018, CBP issued additional social media guidance⁸ in compliance with direction from Civil Rights and Civil Liberties (CRCL).⁹ The guidance reminds employees that the

⁵ *The Standards of Conduct as Applied to Personal Social Media Use*, LA-15-03, April 9, 2015.

⁶ *Standards of Ethical Conduct for Employees of the Executive Branch*, U.S. Office of Government Ethics, January 1, 2017. 5 C.F.R. Part 2635, as amended at 81 FR 81641.

⁷ The *Hatch Act* limits certain political activities of Federal employees, as well as some state, D.C., and local government employees who work in connection with federally funded programs. The law's purposes are to ensure that Federal programs are administered in a nonpartisan fashion, to protect Federal employees from political coercion in the workplace, and to ensure that Federal employees are advanced based on merit and not based on political affiliation.

⁸ Memorandum for all CBP Employees, *Social Media Posts*, 02/08/2018.

⁹ CRCL's Equal Employment Opportunity and Diversity Division leads the Department's efforts to ensure that all employees and applicants receive equal employment opportunity. The



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

CBP Standards apply to employees' use of social media when the posts have a nexus to the workplace, and it warns that the component may discipline employees who post inappropriate messages when there is that nexus.

CBP also has processes and procedures for reporting and investigating complaints of misconduct, and disciplining employees. CBP Standards require employees to immediately report allegations of criminal activity or serious misconduct that could jeopardize CBP's mission to OPR's JIC, DHS Office of Inspector General (OIG), or their management. Examples of serious misconduct include workplace violence, drunk driving, and abuse of position for personal gain. Allegations not rising to the level of serious misconduct should be reported to supervisors. As a result, headquarters officials are not informed of most social media misconduct cases. By contrast, officials in the field often serve a role in the disciplinary system, and learn about misconduct cases that require discipline.

JIC personnel enter misconduct allegations into JICMS and forward the case to DHS OIG. DHS OIG may accept the case for investigation or return it to the JIC for disposition.¹⁰ The JIC refers the case to one of three entities for resolution, depending on the severity of the allegations:

1. OPR investigators, who handle the most serious allegations that OIG declines to investigate.
2. Fact Finders, who are specially trained CBP employees working with OPR as a collateral duty to investigate allegations of mid-level significance.
3. Supervisors in the field, who handle low-level misconduct allegations.

When an investigation substantiates allegations of misconduct, managers work with CBP LER staff to propose appropriate discipline and record it in HRBE. CBP's Table of Offenses and Penalties¹¹ serves as a guide to supervisors to assess appropriate discipline for common types of misconduct. The Table of Offenses and Penalties provides a list of prohibited misconduct and corresponding range of penalties, whether committed on or off duty. Table 1 shows a few examples of offenses and the potential penalties.

Division directs Equal Employment Opportunity (EEO) complaints management and adjudication, diversity management, and alternative dispute resolution, and processes employment discrimination and harassment claims brought against DHS Headquarters units.

¹⁰ DHS OIG has a "right of first refusal" to investigate allegations of wrongdoing by any DHS employee. DHS Management Directive 0810.1, *The Office of Inspector General*.

¹¹ *CBP Table of Offenses and Penalties*, June 21, 2004.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Table 1. Relevant Entries from CBP’s Table of Offenses and Penalties

| Nature of Offense | Discipline for First Offense | Discipline for Subsequent Offenses |
|---|--|------------------------------------|
| Use of critical, demeaning, or degrading remarks, comments, observations, statements, or actions based on another's race, color, age, sexual orientation, religion, sex, national origin, or disability | Written Reprimand to 3-Day Suspension | 3-Day Suspension to Removal |
| Inappropriate and/or unwelcome verbal or physical behavior of a sexual nature, including teasing, jokes, gestures, display of visual material, or requests for sexual favors | Written Reprimand to 30-Day Suspension | 14-Day Suspension to Removal |
| Criminal, infamous, or notoriously disgraceful conduct, or other conduct prejudicial to the government. ¹² | 14-Day Suspension to Removal | Removal |

Source: CBP Table of Offenses and Penalties

CBP Cases of Social Media Misconduct

Our review of data from multiple sources indicated that from January 1, 2016, through June 30, 2019, CBP handled the cases of 83 CBP employees who had posted or commented on inappropriate content on social media;¹³ 14 of the employees’ cases arose from their activity on *I’m 10-15*. The 69 other cases were related to posts on other private Facebook groups and personal social media platforms that were not related to the *I’m 10-15* group. None of the

¹² Includes misconduct that may be related to the mission of CBP. It also could include misconduct that receives adverse news media attention or adverse political focus.

¹³ The 83 cases include 7 cases related to employee social media misconduct that occurred prior to January 1, 2016. While this misconduct occurred before the scope of the review, senior leaders’ awareness of and response to these cases occurred after January 1, 2016. These cases involved allegations of discriminatory posts, three of which were substantiated by the DHS Office for Civil Rights and Civil Liberties and Border Patrol Proposing Officials.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

complaints in JICMS during this time span, including the 14 *I'm 10-15* cases, were about the particular posts media outlets published in July 2019.

Of the 83 cases, Border Patrol employees were responsible for the majority, 51. OFO employees were responsible for 30, and AMO employees for 2. Thirteen of the 83 cases involved discriminatory posts, and 11 of those cases were Border Patrol employees' posts. The other types of inappropriate posts included unprofessional conduct, unauthorized disclosure of sensitive information, and inappropriate political commentary. Discipline for the 83 inappropriate posts ranged from counseling to 30-day suspension and a removal from supervisory status, and some did not receive any discipline.

It is possible there were more cases of social media misconduct that we have not identified because they were not entered into JICMS. According to CBP policy, minor misconduct should be addressed at the local level and need not be entered into JICMS.

CBP Senior Leaders' and Headquarters Officials' Awareness of, and Responses to, Social Media Misconduct

Headquarters officials, including the senior leaders, are generally not informed of most instances of social media misconduct by employees. The JIC receives thousands of complaints of employee misconduct and criminal activity every year, and CBP, Border Patrol, OFO, and AMO officials in headquarters are only notified of the most egregious cases, such as drunk driving, domestic violence, and violent crimes. As a result, the senior leaders were only informed of one or two social media misconduct cases during the scope of our review.

Headquarters officials in Border Patrol did not respond to the few cases of social media misconduct by providing additional guidance to their agents in the field. By contrast, headquarters officials in OFO learned of two instances of social media misconduct, and in response to one of them, the OFO senior leader issued guidance to all OFO employees.

CBP and Border Patrol Headquarters

Senior headquarters leaders said they are only notified of serious misconduct cases, such as drunk driving, domestic violence, and violent crimes. However, some CBP and Border Patrol headquarters senior leaders knew of a few instances of social media misconduct. They were alerted to *I'm 10-15* as early as August 2016 by a Border Patrol Assistant Chief who received an email alerting him to the creation of the Facebook group. The email contained screenshots of posts and stated they were "obvious policy violations" of CBP Standards. A manager in the field imposed discipline on the employee who



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

established the group. Soon after that, in August 2016, the then Border Patrol Chief (who was Commissioner at the time of our fieldwork) and three other senior leaders,¹⁴ received notification of an offensive post on the *I'm 10-15* Facebook group. The post featured a photograph depicting a Border Patrol agent engaging in a simulated sexual act with a mannequin. These officials ensured the information was uploaded to JICMS. As a result, the employee's chain of command imposed discipline.

In August 2017, the Commissioner; Deputy Director for Diversity and Equal Employment Opportunity; Associate Chief Counsel for Ethics, Labor, and Employment; OPR Assistant Commissioner (AC); and the Border Patrol Chief received a Final Agency Decision (FAD)¹⁵ that seven Border Patrol employees created a hostile work environment through social media.¹⁶ These seven employees' racist posts were on a private, CBP-centric Facebook group, *Laredo Choir Practice*, and on personal social media accounts. The FAD also found that two supervisors' responses to the allegations were "ineffective and inappropriate" and that it appeared "management took very little initiative to address the racial harassment."

The FAD recommended CBP consider taking disciplinary action against seven Border Patrol agents who posted the racist comments and the two supervisors who failed to take appropriate action after being alerted to the comments. Officials in the field served as the proposing officials, and the deciding official was a senior Border Patrol headquarters official, the Acting Chief of Law Enforcement Operations. The deciding official, who was stationed in headquarters, imposed discipline in four cases.

CBP headquarters officials were more widely aware of the results in this case than in other cases of social media misconduct, and their reactions differed. Two of the officials said that a Laredo Office official incorrectly believed the agents' offensive posts were covered by their right to freedom of speech. One official described a pervasive culture in CBP, and in law enforcement generally, where "boys will be boys." He added that management has tried to change that perception, but more needs to be done, especially in remote locations.

¹⁴ The three were: 1) the CBP Chief of the Law Enforcement Operations Division; 2) the then Deputy Assistant Commissioner of OPR (who was the Border Patrol Chief at the time of our fieldwork); and 3) a senior advisor to the OPR Assistant Commissioner.

¹⁵ An EEO complainant may request the component to issue a Final Decision, also known as a Final Agency Decision, rather than pursue a hearing and decision before an Administrative Judge. 29 C.F.R. § 1614.108. The FAD includes the merits of each issue in the complaint and appropriate remedies if discrimination is found. 29 C.F.R. § 1614.110.

¹⁶ This EEO complaint was filed in 2015. We include it because senior headquarters officials learned of it in 2017.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

CBP complied with the FAD's other instructions to issue social media guidance, train employees in the Laredo sector, and pay compensatory and punitive damages. In 2018, OPR issued social media guidance, which acknowledged that CBP employees had posted inappropriate content on a private, CBP-centric Facebook group, and it reminded CBP employees that CBP policies prohibit discrimination and harassment on the basis of a protected class. In addition, the FAD required 16 hours of training for nearly 1,800 Border Patrol employees in the Laredo Sector. The CBP Commissioner at the time unsuccessfully tried to persuade CRCL to decrease the training requirement to only those employees who had been implicated in the case. All Border Patrol agents in the Laredo sector received 16 hours of training, which consisted of 8 hours of online training and 8 hours of classroom training led by members of CBP's Privacy and Diversity Office. Training topics included "Rules of Behavior and Limited Personal Use of Government Office Equipment," "Personal Use of Social Media," "Standards of Conduct and Table of Offenses and Penalties," "EEO Awareness," and "Workplace Harassment Prevention." According to headquarters officials familiar with the training, the trainers were discouraged because Laredo sector agents did not take the training seriously. One headquarters official received reports 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. Another confirmed that agents receiving the training were disruptive.

Senior Border Patrol headquarters leaders said they had not identified a trend in social media misconduct cases. The JIC receives thousands of complaints of employee criminal activity and misconduct every year. During the period of our review, almost 18,000 cases were filed with the JIC, of which there were 83 substantiated cases of social media misconduct. Yet, in comparison with OFO's response to reports of social media misconduct, discussed below, Border Patrol officials could have done more, especially after the FAD indicated that two supervisors did not address a hostile work environment established by seven agents.

Office of Field Operations

The OFO EAC was made aware of three instances of social media misconduct. In March 2018, the OFO EAC learned that an OFO employee had posted on a personal Instagram account a Valentine's Day greeting from Adolf Hitler and anti-immigrant content. In response, CBP issued the employee a "cease and desist" order, and the OFO EAC developed and distributed social media guidance to all OFO employees. Later in 2018, the OFO EAC was informed of another case in which an OFO officer posted anti-immigrant content on



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Twitter, including a cartoon depicting children locked in kennels. The CBP Fact Finder program investigated the misconduct and OFO managers handled the case. The officer was placed in an administrative position and his weapon was removed. The EAC did not take additional action in response to this misconduct. We found no evidence that the OFO EAC was made aware of the other 28 OFO employees' social media misconduct cases.

Air and Marine Operations

Our review found that two AMO employees were accused of social media misconduct, one for disclosing official information on social media, and the other for making derogatory remarks about the President. OPR referred the cases to AMO local management for disposition, and the employee who disclosed information received discipline; the other did not. The AMO EAC told us he was not notified about either of these two social media cases.

CBP Senior Field Leaders' and Officials' Awareness of, and Responses to, Social Media Misconduct

Employee misconduct cases are generally not reported to headquarters officials, but officials in the field are informed of problems in their command. Officials in the field, including the senior field leaders, are more likely to learn about and address social media misconduct because they serve as proposing or deciding officials for imposing discipline.¹⁷ However, they may not know about all cases of social media misconduct in their ranks because supervisors may respond to those allegations themselves without seeking to impose discipline and without informing field officials about it.

Border Patrol

During our interviews, Border Patrol senior field leaders and a field official said they learned about cases of misconduct when serving as proposing or deciding officials, but few remembered the specifics about the cases. A senior field leader said he recalled a few cases in which his agents posted law enforcement information without authority to do so, and he began to view social media as a potential threat. In response he issued a video to be posted on closed circuit video screens throughout the sector that warned agents against posting

¹⁷ After an investigation substantiates an allegation, a proposing official reviews the record provided by the component and decides whether to charge the employee with misconduct and the appropriate penalty. The deciding official reviews the record, including any oral/written reply from the employee, and decides whether to sustain the charge(s) and if so, whether to mitigate the proposed penalty.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

sensitive information online. He also required the video to be broadcast during musters and posted it on the sector's internal website. A field official in another sector remembered posting slides on the sector's video screens about social media misconduct, as well as providing muster presentations and issuing a memo on the subject. Another senior field leader remembered a case of an agent who posted a picture of himself in uniform playing with his children when he was on a lunch break. The senior field leader served as the deciding official imposed discipline but did not recall taking other action. Another senior field leader said he did not recall instances of social media misconduct.

We asked the senior Border Patrol field leaders and the field official if they were aware of the social media misconduct case in which a Border Patrol agent posted a photograph of himself in a sexually provocative pose with a mannequin. One senior field leader said he heard about the case and remembered that the Border Patrol Chief at the time told field officials to "be careful of social media posts." The three others said they were not aware of that incident.

We also asked Border Patrol field leaders who served in Laredo about the FAD that found the Border Patrol Laredo sector agents' racist social media posts created a hostile work environment. The Acting Chief of the Laredo Sector during the time the FAD was issued told us he was aware of the case. He said he was frustrated that all of the nearly 1,800 Laredo sector employees had to receive 16 hours of training, which he believed was punishment for all, due to the actions of a few. Additionally, a former Division Chief¹⁸ in the Laredo Sector said he was not aware of the case and expressed surprise that he was not informed of it. Findings of a hostile work environment, he said, "are rare."

As just described, senior Border Patrol leaders in Laredo were not responsible for the discipline that was imposed in response to the FAD. Instead, three senior Border Patrol field officials outside the Laredo sector served as the proposing officials and a senior headquarters official was the deciding official. Also, as we discussed previously, headquarters officials told us the trainers were discouraged that the Laredo agents did not take the training seriously. Senior officials in the Laredo sector would have been responsible for setting a serious tone.

One other senior Border Patrol field official we interviewed mentioned that leadership had conversations about social media misconduct and that he talked with his agents about the 2015 and later the 2018 social media

¹⁸ Border Patrol Division Chiefs are two levels below Sector Chief.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

guidance. Moreover, he said, agents know the difference between right and wrong.

Office of Field Operations

OFO port directors were also informed of social media cases in their jurisdictions when they would serve as proposing or deciding officials, and took action related to social media cases. Port directors distributed social media guidance that OPR's EAC issued in February 2018 and more guidance that the OFO EAC issued in March 2018. In addition, in April 2016, one OFO Port Director alerted CBP OPR to a social media misconduct incident in which a photograph of two CBP officers engaged in hand-to-hand training had been posted and sexually suggestive comments ridiculing them followed. The Port Director sent a complaint to OPR to be uploaded to the JIC. In his complaint, he also expressed concern that social media in general posed a threat to CBP. CBP OPR referred the case to staff in the field for investigation, but neither headquarters nor field staff examined or notified others of the concern that social media posed a threat to CBP.

Senior CBP Leaders' Awareness of Offensive Social Media Posts Published in July 2019 News Reports

We found no evidence that senior leaders, even those who were members of *I'm 10-15*, knew of the offensive posts that media outlets published in July 2019. Senior leaders told us that the first time they saw the offensive posts was in the articles themselves. Senior leaders who were *I'm 10-15* members said that they only read posts that appeared on their personal Facebook page, and that the offensive posts were not included in their news feeds.¹⁹ We reviewed those leaders' DHS emails and did not find any information indicating they were aware of the offensive posts.

We also could not conclusively determine senior leaders' interaction on *I'm 10-15* because the site's administrators terminated the group after the offensive posts were published. Facebook's privacy policies also would have prevented us from obtaining the senior leaders' posts, comments, and usage history.

¹⁹ Facebook provides a newsfeed service that uses an algorithm to populate each user's account with Facebook posts by others that may be of interest. The algorithm uses three main factors to determine relevant posts for each user's news feed: 1) authors; 2) subject matter; and 3) popularity, especially with others the user interacts with most. See: [Facebook.com/facebookmedia/solutions/news-feed](https://www.facebook.com/facebookmedia/solutions/news-feed).



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

The Border Patrol Chief did, however, allow CBP OPR investigators to access her private Facebook account during their internal investigation. They did not find any evidence that she posted or commented on objectionable posts in the *I'm 10-15* group. The investigators found she joined Facebook in June 2016, and since that time, conducted 28 searches related to *I'm 10-15* or other Border Patrol-centric, private Facebook groups.²⁰ When OPR interviewed her, she said she searched those groups to survey workforce morale, but did not see any objectionable posts. OPR also interviewed other senior leaders who were members of *I'm 10-15*, and ultimately did not find evidence indicating misconduct.

Four of the five senior Border Patrol leaders we interviewed who were members of *I'm 10-15* said that others had added them to the group, and they did not know how that happened. Three said that initially the *I'm 10-15* group was useful because they could learn about employees' concerns and opinions. Yet the three also said they only looked at posts that appeared on their personal Facebook feed, and so did not see a majority of the posts. Some also indicated that within a few years, the *I'm 10-15* group was used primarily for complaining, and it lost its utility. During our interviews, three of the five senior Border Patrol leaders said they left the *I'm 10-15* group before July 1, 2019. Another left when the July 1 media story came out, and one remained a member until the site was terminated by the administrator.

Differences in CBP Senior Leaders' Application of Social Media Policies

CBP, Border Patrol, and OFO for years have maintained policies, and more recently guidance, that define prohibited discriminatory communication and inappropriate use of social media. However, during the course of our review, we gathered information indicating that some senior leaders in Border Patrol may have undermined these policies by questioning their constitutionality or application.

During our interview, a senior Border Patrol leader said that he and others believe current CBP policies on communications and social media conduct violate employees' right to free speech, as guaranteed by the First Amendment. Yet, a CBP senior official said that the current policy was constitutionally sound. A senior Border Patrol leader also disputed whether some of the posts that media outlets published in July 2019 were inappropriate. That leader said

²⁰ The Border Patrol Chief said she was a member of the following private, CBP-centric Facebook groups: *I'm 10-15*, *10-15X2*, *Legacy 484 Patrol*, *Old Patrol*, and *I'm 10-08*.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

it was not incorrect for an employee to repost a photograph of a deceased alien and his child floating in the Rio Grande, nor were comments posted by other employees about that photo improper. However, CBP's special Discipline Review Board recommended the person who reposted the photo be disciplined. These differing opinions and uncertainty about the legality of CBP policies could undermine CBP's efforts to enforce the policies. If senior leaders communicate their personal opinions to employees, efforts to curb social media misconduct could be hindered.

Recommendations

We recommend the CBP Commissioner:

Recommendation 1:

Ensure uniform application of policies relating to social media misconduct.

Recommendation 2:

Establish social media awareness training for new recruits at Border Patrol Academy and Field Operations Academy, and annual refresher training for all employees.

CBP Management Comments and OIG Analysis

We have included a copy of CBP's Management Response in its entirety in Appendix B. We also received technical comments from CBP and incorporated them into the report where appropriate. CBP concurred with both recommendations. We consider both recommendations resolved and closed. A summary of CBP's response and our analysis follows.

In its response to our report, CBP expressed concerns that the report indicates CBP took no action to prevent further social media misconduct, and CBP lists responsive measures its senior leaders and officials implemented after the July 2019 publication of *the I'm 10-15* posts. The response also mentions CBP's Standards of Conduct, which preceded the July 2019 publications and generally prohibit harassment of others on the basis of protected class, such as race and national origin.

The focus of our report is on senior CBP leadership's awareness of and responses to social media misconduct for the three and a half year period preceding July 2019. It highlights CBP's Standards of Conduct and identifies cases during that period in which CBP employees' social media posts violated those Standards. The report notes that although OFO officials took action in



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

response to social media misconduct during that period, CBP and Border Patrol headquarters officials did not, except when required to do so. Although out of the scope of our review, the report also mentions CBP's response to the July 2019 publication of *I'm 10-15* posts and lists the actions CBP highlighted in its response to our report.

We recommended the Acting Commissioner of CBP:

Recommendation 1: Ensure uniform application of policies relating to social media misconduct.

CBP Response: CBP concurred with the recommendation and on December 23, 2020, provided us with examples of the steps it has taken to ensure uniform application of social media policies. For example, CBP revised its *Standards of Conduct* and its *Table of Offenses and Penalties* on December 9, 2020, to specifically include misconduct related to social media misuse. In addition, in July 2019, CBP established annual training on social media misuse for all employees. Finally, CBP modified its internal discipline review process to provide management the ability to elevate serious allegations of social media misuse for Discipline Review Board consideration. CBP asked OIG to consider this recommendation resolved and closed as implemented.

OIG Analysis: We consider these actions responsive to our recommendation, which is resolved and closed.

Recommendation 2: Establish social media awareness training for new recruits at Border Patrol Academy and Field Operations Academy, and annual refresher training for all employees.

CBP Response: CBP concurred with the recommendation, and on December 23, 2020, provided details of a training program it established entitled, "Personal Use of Social Media for CBP Employees." The training instructs on proper and improper use of social media, and all CBP employees are required to take the training annually. Furthermore, CBP new recruits must complete the training as part of pre- or post-academy requirements. CBP asked OIG to consider this recommendation resolved and closed, as implemented.

OIG Analysis: We consider these actions responsive to our recommendation, which is resolved and closed.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Appendix A

Objective, Scope, and Methodology

The Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

We initiated this review in response to three congressional requests, signed by nine U.S. Senators and the Chairman of the House Committee on Homeland Security, sent to our office in July 2019. The requests came after ProPublica, a nonprofit website, reported that racist, misogynistic, and otherwise offensive content was posted on a private Facebook group for current and former CBP employees.

Our objective was to determine whether complaints were made to CBP leadership regarding the *I'm 10-15* or similar private Facebook group(s) prior to recent media reporting; which senior-level officials knew about the *I'm 10-15* or similar private Facebook group(s) prior to the July 2019 media reporting, when they became aware, and what they knew about the content; and what actions, if any, were taken to evaluate and address potential employee misconduct in the group. We did not report on specific senior leader disciplinary decisions, or responses to those penalties by other senior officials, where those decisions or responses might appear to second-guess the deciding official.

The scope of our review covers January 1, 2016, through June 30, 2019, and we requested relevant information for that period. We searched the JICMS database for social media misconduct complaints and obtained corresponding disciplinary data from HRBE. We requested and obtained documents related to social media policy and cases from CBP. We searched senior leader emails to determine their knowledge of, and actions taken, if any, regarding social media misconduct. We interviewed senior CBP leaders, including the heads of operational divisions and members of *I'm 10-15*. We also interviewed others who were able to provide additional context for policies, procedures, and specific cases. In total, we interviewed 22 individuals.

After learning about his possible impending retirement, we asked to interview Acting Secretary McAleenan on October 18, 2019, and we repeated our request on October 29, 2019. Two weeks later, on November 13, 2019, he left DHS without responding to us. On January 2, 2020, we asked CBP to contact him on our behalf again, but he did not respond. During congressional testimony on July 18, 2019, he said the posts published by media sources were unacceptable and did not reflect the character of most CBP employees.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

We conducted this review under the authority of the *Inspector General Act of 1978*, as amended, and according to the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Appendix B
CBP Comments to the Draft Report

1300 Pennsylvania Avenue, NW
Washington, DC 20229



**U.S. Customs and
Border Protection**

May 3, 2021

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.
Inspector General

FROM: Henry A. Moak, Jr.
Senior Component Accountable Official
U.S. Customs and Border Protection

5/3/2021

Signed by: HENRY A. MOAK, JR.

SUBJECT: Management Response to Draft Report: “CBP Senior Leaders’
Handling of Social Media Misconduct”
(Project No. 19-065-SRE-CBP)

Thank you for the opportunity to comment on this draft report. U.S. Customs and Border Protection (CBP) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

CBP’s core values are vigilance, service and integrity. In fulfilling our law enforcement mission, CBP leadership demands the highest standards of honesty, impartiality, and professionalism, and we take pride in our organizational commitment to promote accountability. CBP agrees completely with the OIG recommendations, and the overarching theme concerning the importance of maintaining a culture of ethical behavior at all times. CBP also agrees with the accounts provided by many of the CBP leaders interviewed by the OIG, who asserted they took proactive steps to highlight potential problems with the private “I’m 10-15” Facebook group, including officially reporting when they saw Facebook postings that appeared to be inappropriate, well before the initiation of OIG’s review. Lastly, CBP agrees there is no evidence the CBP leaders OIG interviewed knew of the specific posts that served as the basis for this review and report.

That said, CBP is concerned OIG’s draft report said CBP took no action to prevent further misconduct when, in actuality, CBP leadership at the highest levels took, and will continue to take, corrective action on any substantiated misconduct through CBP’s well-established oversight processes. In the “I’m 10-15” case, in July 2019, senior CBP leadership: (1) directed the immediate development of annual recurring social media training that incorporated other aspects of existing training into a specific social media training; and (2) mandated that every CBP employee complete the training by September 30th of each year.

1



OFFICE OF INSPECTOR GENERAL

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Also, CBP's well-established disciplinary process is itself a strong deterrent to future misconduct. Senior CBP leadership oversaw this process, which, while providing due process required by law to each individual charged with an offense, resulted in discipline commensurate with documented misconduct. Underscoring the climate created by CBP leadership, the OIG recognized the senior leader for the Office of Field Operations (OFO) issued guidance to remind OFO employees of the acceptable use of social media. In addition to those individuals identified by the OIG and investigated by the Office of Professional Responsibility (OPR), many employees (including members of senior CBP leadership) voluntarily contacted OPR to report themselves and others as members of the "I'm 10-15" group. They did not wait for DHS to tell them to do so. Other CBP employees filed complaints regarding what they perceived to be inappropriate social media postings, which were followed-up on, as appropriate.

None of this happened by chance. Rather, it happened because of the culture created by adherence to CBP's core values of vigilance, service and integrity. Today, CBP's OPR periodically cautions employees on how social media posts can adversely affect their federal employment. For example, in coordination with senior CBP leadership, CBP reiterated expectations in CBP's "Standards of Conduct," Directive No 51735-013B, dated December 9, 2020, which states "employees will not make abusive, derisive, profane, or harassing statements or gestures, or engage in any other conduct evidencing hatred or invidious prejudice to or about one person or group on account of race, color, religion, national origin, sex, sexual orientation, age or disability." This is not new. Standards of accountability such as these have been in place since the establishment of CBP, in 2003.

There can be no doubt that CBP takes all allegations of wrongdoing seriously. In the case of the "I'm 10-15" group, the Acting CBP Commissioner immediately established a special Discipline Review Board (DRB) to process the "I'm 10-15" cases based on a request from the Acting DHS Secretary. The special DRB reviewed the investigative reports for the social media cases, along with the CBP Table of Offenses and Penalties, to propose appropriate disciplinary penalties. The then-Chief of Border Patrol also appointed a single deciding official to render final agency decisions based on the merits of each case. In accordance with government-wide statutory due process protections, each employee was afforded access to representation, the opportunity to provide a written and/or an oral reply to the proposed discipline, and a written final decision. After consideration of each employee's response and requisite analysis of the *Douglas* Factors, 12 factors required to be considered by the U.S. Merit Systems Protection Board to determine the reasonableness of a penalty, the deciding official determined whether it was appropriate to take disciplinary action and, as warranted, the final appropriate corrective action in each case.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Following July 2019 media reports that CBP employees posted offensive content in the “I’m 10-15” group, CBP’s OPR opened and completed 136 cases related to the Facebook group. CBP OPR’s investigations are just another example of how seriously the agency takes ethics and integrity.

The draft report contained two recommendations, with which CBP concurs. Attached find our detailed response to each recommendation. CBP previously submitted technical comments addressing several accuracy, sensitivity, and contextual issues under a separate cover for OIG’s consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Attachment



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Attachment: Management Response to Recommendations Contained in 19-065-SRE-CBP

OIG recommended that the Acting Commissioner of CBP:

Recommendation 1: Ensure uniform application of policies relating to social media misconduct.

Response: Concur. CBP's Office of Human Resources Management (HRM) took action to ensure uniform application of policies relating to social media misconduct. Specifically, CBP HRM revised CBP's Standards of Conduct and its Table of Offenses and Penalties on December 9, 2020, by incorporating misconduct related to social media misuse. In addition, in July 2019, CBP implemented an annual social media use training requirement for all CBP employees. Finally, CBP modified its internal discipline review process to provide management the ability to elevate serious allegations of social media misuse for DRB consideration. Together, the actions completed provide CBP management the tools and guidance for uniform application of CBP's policies relating to social media misconduct. On December 23, 2020, CBP provided copies of relevant documentation corroborating the completion of these actions to the OIG.

CBP requests that the OIG consider this recommendation resolved and closed, as implemented.

Recommendation 2: Establish social media awareness training for new recruits at Border Patrol Academy and Field Operations Academy, and annual refresher training for all employees.

Response: Concur. In July 2019, CBP's Office of Training and Development effected "Personal Use of Social Media for CBP Employees" training, which is required for all CBP employees, including all trainees, and requires annual recertification. Furthermore, trainees are required to complete this training course in the Performance and Learning Management System as part of the pre- or post-academy requirements. On December 23, 2020, CBP provided copies of relevant documentation corroborating the completion of this action to the OIG.

CBP requests that the OIG consider this recommendation resolved and closed, as implemented.



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Appendix C
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Appendix D
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