

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051

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<http://oversight.house.gov>

July 31, 2019

Mr. Mark Morgan
Chief Operating Officer
Senior Official Performing the Duties of the Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20229

Dear Mr. Morgan:

The Committee is investigating racist, sexist, and xenophobic comments relating to immigrants and Members of Congress made by employees of Customs and Border Protection (CBP) in “secret” Facebook groups. On July 18, 2019, Acting Secretary of Homeland Security Kevin McAleenan testified before the Committee that these posts were “unacceptable.”¹ The Committee is concerned that Border Patrol agents and other CBP employees who wrote posts disparaging immigrants may still be working with immigrants and children.

CBP has stated that it is investigating 62 current CBP employees and 8 former employees in connection with these Facebook groups.² During his testimony before the Committee, Acting Secretary McAleenan stated:

CBP’s Office of Professional Responsibility (OPR) initiated an investigation within hours of those allegations coming to light. As you noted, they’ve already placed a number of individuals under investigation. They put several on administrative duties. They’ve issued cease and desist letters, and they’re moving very quickly to hold people accountable for conduct that doesn’t meet our standards.³

¹ Committee on Oversight and Reform, *Hearing with Acting Secretary of Homeland Security Kevin K. McAleenan*, (July 18, 2019) (online at <https://oversight.house.gov/legislation/hearings/with-the-acting-secretary-of-homeland-security-kevin-k-mcaleenan>).

² *62 Border Agents Belonged to Offensive Facebook Group, Investigation Finds*, New York Times (July 15, 2019) (online at www.nytimes.com/2019/07/15/us/politics/border-patrol-facebook-group.html).

³ Committee on Oversight and Reform, *Hearing with Acting Secretary of Homeland Security Kevin K. McAleenan* (July 18, 2019) (online at <https://oversight.house.gov/legislation/hearings/with-the-acting-secretary-of-homeland-security-kevin-k-mcaleenan>).

When asked by the Committee whether officers responsible for offensive posts were still working with immigrants, Acting Secretary McAleenan responded, “We’ve already put individuals on administrative duties. I don’t know which ones correspond with which posts.”⁴

The Standards of Conduct issued by CBP state: “Certain conduct, on or off-duty, may subject an employee to appropriate disciplinary action.” They also state:

In fulfilling its mission, CBP and its employees must sustain the trust and confidence of the public they serve. ... The conduct of CBP employees must reflect the qualities of ... courtesy and promptness when dealing with and serving the public; and a standard of personal behavior that reflects positively upon, and will be a credit to, both CBP and its employees. ... 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.⁵

For all these reasons, I request that you produce by August 14, 2019, the following documents in the possession of CBP related to the “I’m 10-15” Facebook group, “The Real CBP Nation” Facebook groups, and any similar Facebook groups identified by CBP as containing inappropriate posts by CBP employees. Please produce responsive documents for the time period from January 20, 2017, to the present:

1. All postings and comments, including images, videos, and text, from these Facebook groups;
2. Membership information from these Facebook groups sufficient to identify all current and former employees who are or were members of these Facebook groups and the dates they were members;
3. Copies of all correspondence, documents, and/or letters related to these Facebook groups that have been sent to current and former employees to date including cease and desist letters, letters of administrative leave, or any employment actions;
4. The following information regarding each completed OPR investigation related to these Facebook groups:
 - a. the name and position of every CBP employee that was investigated;
 - b. the current employment and duty status of each CBP employee that was investigated;

⁴ *Id.*

⁵ Customs and Border Protection, *CBP Directive No. 51735-013A* (Mar. 13, 2012) (online at www.cbp.gov/sites/default/files/assets/documents/2018-Nov/cbp-standards-conduct-2012.pdf).

- c. whether the employee has been reassigned, placed on leave, placed on administrative duties, or held accountable in any way;
 - d. a description of the issues that have been investigated, including the posting(s) or comment(s) that the individual made on Facebook; and
 - e. documents sufficient to show the findings of the investigation, including any written findings or report, correspondence, and any personnel or other actions taken as a result;
5. Documents including correspondence sufficient to show any employment action taken so far against any employees related to these Facebook groups; and
 6. All training materials, guidance, and memos related to CBP employees' use of social media platforms, including regarding compliance with CBP's Standards of Conduct.

On July 22, 2019, I requested an immediate briefing on what actions you are currently taking to address this matter. The Committee has still not received that briefing. Please provide that briefing by August 7, 2019.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.

If you have any questions regarding this request, please contact Committee staff at (202) 225-5051.

Sincerely,


Elijah E. Cummings
Chairman

Enclosure

cc: The Honorable Jim Jordan, Ranking Member

Responding to Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committees.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committees' preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committees should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committees should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committees' letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee on Oversight and Reform, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building. When documents are produced to the Committee on Financial Services, production sets shall be delivered to the Majority Staff in Room 2129 of the Rayburn House Office Building and the Minority Staff in Room 4340 of the O'Neill House Office Building. When documents are produced to the Permanent Select Committee on Intelligence, production sets shall be delivered to Majority and Minority Staff in Room HVC-304 of the Capital Visitor Center.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a

part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.