

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND REFORM

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February 18, 2020

Mr. Mark Morgan  
Chief Operating Officer and 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:

As you know, over the past year, the Committee has been investigating racist, sexist, and xenophobic comments made by Customs and Border Protection (CBP) employees in secret Facebook groups. However, CBP has been obstructing the Committee's investigation by making baseless and shifting legal claims in order to avoid producing critical documents and witnesses. As a result, the Committee has been unable to determine whether CBP employees who made inappropriate and threatening comments are still on the job, potentially putting children, immigrants, and fellow CBP employees at risk. The Committee now insists on full compliance with all of its previous requests, or we will be forced to consider compulsory process.

To date, CBP has not produced any information regarding a single employee who was involved in the secret Facebook groups and has not made a single witness available for a transcribed interview. This stonewalling is unacceptable.

On July 31, 2019, my predecessor, Chairman Elijah Cummings, sent a letter to you requesting documents as part of the Committee's investigation. As he explained, "The Committee is concerned that Border Patrol and other CBP employees who wrote posts disparaging immigrants may still be working with immigrants and children."<sup>1</sup> In response, CBP asserted that its Office of Professional Responsibility (OPR) was conducting internal investigations and that "CBP will not be producing any documentation while this case is under investigation."<sup>2</sup>

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<sup>1</sup> Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Mark Morgan, Chief Operating Officer and Senior Official Performing the Duties of the Commissioner, Customs and Border Protection (July 31, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-07-31.EEC%20to%20Morgan-CBP%20re%20Secret%20Facebook%20Group.pdf>).

<sup>2</sup> Email from Staff, Customs and Border Protection, to Staff, Committee on Oversight and Reform (Aug. 15, 2019).

On September 23, 2019, Chairman Cummings wrote to you again, rejecting this argument and stating:

As my staff has repeatedly explained, the existence of internal investigations does not relieve CBP of its responsibility to comply with legitimate document requests from the Committee—especially when Members of this Committee were the targets of these attacks.<sup>3</sup>

Chairman Cummings explained that the Committee is “not seeking internal investigative documents that would interfere in any way with the agency’s disciplinary procedures.” The Committee also requested interviews with ten CBP employees who participated in these Facebook groups.<sup>4</sup>

On September 26, 2019, CBP sent a response letter refusing to produce any documents “related to open OPR investigations.” The letter asserted that CBP would inform the Committee “of the outcome of investigations when they are completed.”<sup>5</sup> However, your staff had informed the Committee more than a month earlier, in August 2019, that several OPR investigations related to these Facebook groups were already complete and that the agency’s Disciplinary Review Board had made decisions regarding the employees under investigation. CBP did not provide any information about those closed cases.

In CBP’s September 26 letter, you also refused to make any CBP employees available for interviews, inaccurately claiming that CBP’s production of a handful of policy, training, and historical documents “obviates the Committee’s stated need for the interviews requested.”<sup>6</sup>

The next day, September 27, 2019, Committee staff sent an email rejecting these arguments and warning that the documents produced by CBP “do not include most of the documents and information requested by Chairman Cummings in his July and September letters.”<sup>7</sup>

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<sup>3</sup> Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Mark Morgan, Chief Operating Officer and Senior Official Performing the Duties of the Commissioner, Customs and Border Protection (Sept. 23, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-09-23.EEC%20to%20Morgan-CBP%20re%20Facebook%20Group%20%281%29.pdf>).

<sup>4</sup> *Id.*

<sup>5</sup> Letter from Acting Assistant Commissioner Bradley B. Hayes, Customs and Border Protection, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Sept. 26, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Cummings%20Response%20-%20Sep26%20-%20Final%20%281%29.pdf>).

<sup>6</sup> *Id.*

<sup>7</sup> Email from Staff, Committee on Oversight and Reform, to Staff, Customs and Border Protection (Sept. 27, 2019).

Over the following weeks and months, the Committee repeatedly sought to obtain the requested documents and schedule the interviews, but your staff refused.<sup>8</sup>

On November 18, 2019, your staff sent an email informing Committee staff that “105 cases have been closed through the disciplinary process.”<sup>9</sup> However, they did not produce documents relating to any of these closed cases or provide an explanation of when they would do so.

On January 14, 2020, a press outlet reported that CBP disregarded recommendations from an internal review board to terminate four employees for their conduct. The review board reportedly also recommended 30-day suspensions without pay for at least 20 other employees, but according to the report, an unnamed senior CBP official stated that “a lot of these proposals” were reduced to letters of reprimand.<sup>10</sup>

On January 22, 2020, during a telephone call with Committee staff, your staff stated that many documents responsive to the Committee’s requests had been compiled, but they refused to say if or when those materials would be produced.<sup>11</sup>

Two days later, on January 24, 2020, you announced that Rodney Scott will replace Carla Provost as Chief of the Border Patrol.<sup>12</sup> According to press reports, both Mr. Scott and Ms. Provost were members of the “I’m 10-15” Facebook group.<sup>13</sup> Yet, CBP refused to provide any documents regarding their actions or make either of them available for interviews requested by the Committee.<sup>14</sup>

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<sup>8</sup> See, e.g., Email from Staff, Committee on Oversight and Reform, to Staff, Customs and Border Protection (Sept. 27, 2019) (stating that “the Committee would like to begin scheduling transcribed interviews”); Email from Staff, Committee on Oversight and Reform, to Staff, Customs and Border Protection (Nov. 6, 2019) (stating that “We would like to follow up on the requests from the July 31 and September 23 letters to Mr. Morgan”); Call with Staff, Committee on Oversight and Reform, and Staff, Customs and Border Protection (Nov. 7, 2019) (CBP staff stated that they did not plan to move forward with interviews).

<sup>9</sup> Email from Staff, Customs and Border Protection, to Staff, Committee on Oversight and Reform (Nov. 18, 2019).

<sup>10</sup> *Only Three Border Patrol Agents Fired for Offensive Facebook Posts Despite Recommendation for More Heads*, Washington Examiner (Jan. 14, 2020) (online at [www.washingtonexaminer.com/news/only-three-border-patrol-agents-fired-for-offensive-fb-posts-despite-recommendation-for-more-heads](http://www.washingtonexaminer.com/news/only-three-border-patrol-agents-fired-for-offensive-fb-posts-despite-recommendation-for-more-heads)).

<sup>11</sup> Call with Staff, Committee on Oversight and Reform, and Staff, Customs and Border Protection (Jan. 22, 2020).

<sup>12</sup> Customs and Border Protection, *Statement of Acting Commissioner Mark A. Morgan on the Selection of Rodney S. Scott as Chief, U.S. Border Patrol* (Jan. 24, 2019) (online at [www.cbp.gov/newsroom/speeches-and-statements/statement-acting-commissioner-mark-morgan-selection-rodney-s-scott](http://www.cbp.gov/newsroom/speeches-and-statements/statement-acting-commissioner-mark-morgan-selection-rodney-s-scott)).

<sup>13</sup> *Rodney Scott Named Border Patrol Chief as Provost Leaves Her Post*, CNN (Jan. 24, 2020) (online at [www.cnn.com/2020/01/24/politics/border-patrol-chief-rodney-scott/index.html](http://www.cnn.com/2020/01/24/politics/border-patrol-chief-rodney-scott/index.html)); *Border Patrol Chief Carla Provost Was A Member of Secret Facebook Group*, The Intercept (July 12, 2019) (online at <https://theintercept.com/2019/07/12/border-patrol-chief-carla-provost-was-a-member-of-secret-facebook-group/>).

<sup>14</sup> Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Mark Morgan, Chief Operating Officer and Senior Official Performing the Duties of the Commissioner, Customs and Border

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You have provided no legitimate reason for withholding these documents and interviews, and your actions are obstructing the Committee's investigation. For these reasons, I request that you produce all outstanding documents by March 3, 2020. I also request that you contact the Committee by February 21, 2020, to schedule the interviews requested by the Committee. If you do not comply voluntarily with these requests, the Committee will be forced to consider compulsory process.

Sincerely,

  
Carolyn B. Maloney  
Chairwoman

cc: The Honorable Jim Jordan, Ranking Member