

**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  
MINORITY (202) 225-5074  
<https://oversight.house.gov>

August 4, 2021

The Honorable Alejandro N. Mayorkas  
Secretary  
Department of Homeland Security  
3801 Nebraska Avenue, N.W.  
Washington, D.C. 20016

Dear Secretary Mayorkas:

We write to request a briefing and information on efforts by the Department of Homeland Security (DHS) to respond to serious allegations of discrimination and misuse of taxpayer resources by Border Patrol agents on Michigan’s border with Canada, spanning multiple administrations.

Federal law grants Customs and Border Patrol (CBP) enforcement authority “within a reasonable distance from any external boundary of the United States” in order to prevent illegal border crossings and immigration violations.<sup>1</sup> CBP considers the entire state of Michigan to fall within this “border zone.”

In a March 2021 report, the American Civil Liberties Union (ACLU) of Michigan found that CBP’s statewide activity “produces few tangible results related to its officially mandated mission in Michigan.” It also found that agents “routinely spend their time and resources targeting people of Latin American origin who are long-term Michigan residents.”<sup>2</sup>

The report was based on apprehension records from 2012 to 2019 that a federal judge ordered CBP to disclose. Analysis of more than 13,000 daily apprehension log records from Michigan revealed disturbing patterns of discrimination and waste of taxpayer resources.<sup>3</sup>

According to the data CBP provided to the ACLU, the vast majority of CBP’s encounters were unrelated to illegal crossings from Canada. CBP detained more people for routine traffic stops and other reasons than for border violations. For example, in over 75% of roving patrol

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<sup>1</sup> 8 U.S.C. § 1357(a)(3).

<sup>2</sup> American Civil Liberties Union of Michigan, *The Border’s Long Shadow: How Border Patrol Uses Racial Profiling and Local and State Police to Target and Instill Fear in Michigan’s Immigrant Communities* (Mar. 25, 2021) (online at [www.aclumich.org/sites/default/files/field\\_documents/100\\_mile\\_zone\\_report-updated.pdf](http://www.aclumich.org/sites/default/files/field_documents/100_mile_zone_report-updated.pdf)).

<sup>3</sup> *Id.*

arrests made by CBP, the agency pointed to the driver's reaction to seeing a Border Patrol vehicle or officer as the reason for suspicion. These allegedly suspicious reactions included acknowledging an agent, failing to acknowledge an agent, speeding up, and slowing down.<sup>4</sup>

Most of the people apprehended by CBP were of Latin American origin, and nearly half—over 45%—were either U.S. citizens or had another kind of lawful status in the country. In fact, 85% of noncitizens detained by CBP were of Latin American origin, even though individuals of Latin American descent comprise less than 17% of Michigan's foreign-born population. Only 5.3% of the state's overall population identify as Hispanic. Over 96% of individuals apprehended by CBP across the entire state—even in encounters unrelated to illegal border crossing—were described as non-white.<sup>5</sup>

CBP's apparent focus on activities unrelated to the border and on lawful residents may have distracted the agency from its mission. Seventy percent of illegal crossings on the United States' northern border are committed by individuals of Canadian or European origin, but less than 4% of CBP's overall detentions involved white individuals.<sup>6</sup> Taken together, these findings suggest that CBP's operations in Michigan are focused less on its lawful enforcement priorities than on harassing longtime residents of Michigan in a way that appears to systematically and disproportionately target those of Latin American origin.

CBP's enforcement authority in the "border zone" has existed since 1946 and permits federal agents to conduct stops and searches and detain individuals without a warrant if the agents have mere suspicion of wrongdoing.<sup>7</sup> In 1953, the border zone increased to 100 miles when the Department of Justice redefined what had initially been interpreted as a 25-mile zone to mean an area "not exceeding 100 air miles of any boundary of the United States."<sup>8</sup> This placed roughly two-thirds of the American population within what one scholar called a "zone of diminished constitutional protections," including the Fourth Amendment protection against unreasonable searches and seizures.<sup>9</sup>

Since then, CBP has consistently pushed the boundaries of that interpretation by setting up internal immigration checkpoints far from the U.S. border.<sup>10</sup> The ACLU has concluded that CBP agents operating within the 100-mile zone "routinely ignore or misunderstand the limits of

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

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* (describing apprehensions by CBP's Detroit Sector, which covers Michigan and parts of Ohio).

<sup>7</sup> *The Entire State of Michigan Is a "Border Zone" and Here's What That Means*, Michigan Radio (Apr. 3, 2018) (online at [www.michiganradio.org/post/entire-state-michigan-border-zone-and-heres-what-it-means](http://www.michiganradio.org/post/entire-state-michigan-border-zone-and-heres-what-it-means)).

<sup>8</sup> *Why It's Legal for Border Patrol to Have Checkpoints in the U.S.*, Vox (June 21, 2018) (online at [www.vox.com/2018/6/21/17490904/customs-border-protection-patrol-checkpoints-100-miles-legal](http://www.vox.com/2018/6/21/17490904/customs-border-protection-patrol-checkpoints-100-miles-legal)).

<sup>9</sup> 8 U.S.C. § 1357(a)(3); Karl Jacoby, *Why the CBP's Presence at the D.C. Protests Should Alarm All of Us*, Politico (June 10, 2020) (online at [www.politico.com/news/magazine/2020/06/10/cbp-protests-border-zone-312151](http://www.politico.com/news/magazine/2020/06/10/cbp-protests-border-zone-312151)).

<sup>10</sup> *Why It's Legal for Border Patrol to Have Checkpoints in the U.S.*, Vox (June 21, 2018) (online at [www.vox.com/2018/6/21/17490904/customs-border-protection-patrol-checkpoints-100-miles-legal](http://www.vox.com/2018/6/21/17490904/customs-border-protection-patrol-checkpoints-100-miles-legal)).

their legal authority in the course of individual stops, resulting in violations of the constitutional rights of innocent people.”<sup>11</sup> CBP’s increasingly aggressive application of the law suggests a need for congressional attention.

As is the case in Michigan, CBP enforcement actions in other states within the border zone appear to be largely unrelated to disrupting attempts to illegally enter the country. For example, a study of transportation stops in Rochester, New York, found that less than 1% of stops were made upon entry into the country and that 76% of detainees had been present in the United States for more than one year.<sup>12</sup>

CBP’s cooperation with local law enforcement appears to compound discrimination and the misuse of taxpayer resources. Nearly half of CBP’s total detentions in Michigan between 2012 and 2017 resulted from encounters initiated by local law enforcement. More troublingly, the ACLU has identified at least 14 encounters where local law enforcement detained an individual absent a suspicion of wrongdoing and then handed them off to CBP agents.<sup>13</sup> Such prolonged stops are unconstitutional. In 2012, the Supreme Court warned that there are “constitutional concerns” when state and local law enforcement “delay the release of detainees for no other reason than to verify their immigration status.”<sup>14</sup>

Despite these constitutional concerns, local law enforcement in Michigan continues to summon federal agents because of a detainee’s lack of identification or possession of a foreign or expired driver’s license or for supposed “translation assistance.”<sup>15</sup> The cooperation between state and federal law enforcement threatens to further degrade the constitutional protections of Michigan residents who live within the 100-mile border zone.

We are deeply troubled by what appear to be discriminatory abuses of authority and misuse of taxpayer funds. DHS must provide a full explanation of exactly how it is addressing the problems laid bare by the ACLU.

For the above reasons, we request that you provide the Subcommittee on Civil Rights and Civil Liberties with a Member briefing no later than September 1, 2021, on your Department’s efforts to respond to the findings of the ACLU’s report about CBP misconduct in Michigan and your plans to reform DHS conduct as authorized by 8 U.S.C. § 1357(a)(3).

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<sup>11</sup> American Civil Liberties Union, *The Constitution in the 100-Mile Border Zone* (online at [www.aclu.org/other/constitution-100-mile-border-zone?redirect=constitution-100-mile-border-zone](http://www.aclu.org/other/constitution-100-mile-border-zone?redirect=constitution-100-mile-border-zone)) (accessed June 23, 2021).

<sup>12</sup> New York Civil Liberties Union, *Justice Derailed* (Nov. 2011) (online at [www.nyclu.org/sites/default/files/publications/NYCLU\\_justicederailedweb\\_0.pdf](http://www.nyclu.org/sites/default/files/publications/NYCLU_justicederailedweb_0.pdf)).

<sup>13</sup> *Id.*

<sup>14</sup> *Arizona v. United States*, 567 U.S. 387, 413 (2012).

<sup>15</sup> American Civil Liberties Union of Michigan, *The Border’s Long Shadow: How Border Patrol Uses Racial Profiling and Local and State Police to Target and Instill Fear in Michigan’s Immigrant Communities* (Mar. 25, 2021) (online at [www.aclumich.org/sites/default/files/field\\_documents/100\\_mile\\_zone\\_report-updated.pdf](http://www.aclumich.org/sites/default/files/field_documents/100_mile_zone_report-updated.pdf)).

In addition, please provide the Subcommittee with the following documents and information no later than September 1, 2021:

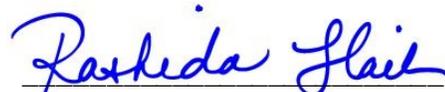
1. All documents and information related to DHS's interpretation of its activities within the "border zone" as defined by 8 C.F.R. § 287.1(a)(2) and authorized under 8 U.S.C. § 1357(a)(3) since January 2017;
2. All internal communications and guidance documents referring or responding to the ACLU's report;
3. All records related to arrests and apprehensions by CBP agents in Michigan from 2019 until the present, including information about whether those stops involved citizens or lawful residents, the racial breakdown of the detainees, and the involvement by state and local law enforcement in initiating the detentions;
4. All records related to arrests and apprehensions by CBP agents nationwide from January 2015 to the present, including information about whether those stops involved citizens or lawful residents, the racial breakdown of the detainees, and the involvement by state and local law enforcement in initiating the detentions; and
5. A plan to prevent racial profiling and unconstitutional prolonged stops by CBP agents and their law enforcement partners within the 100-mile border zone.

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. An attachment to this letter provides additional instructions for responding to the Subcommittee's request. If you have any questions regarding this request, please contact Subcommittee staff at (202) 225-5051.

Sincerely,



Jamie Raskin  
Chairman  
Subcommittee on Civil Rights and Civil Liberties



Rashida Tlaib  
Member of Congress

Enclosure

cc: The Honorable Pete Sessions, Ranking Member  
Subcommittee on Civil Rights and Civil Liberties

## Responding to Oversight 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 Committee.
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 Committee's 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 Committee 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 Committee 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 Committee's 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, 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.
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.