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DHS Update Regarding the Investigation of Horse Patrol Activity in Del Rio, Texas on September 19, 2021

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WASHINGTON — The Department of Homeland Security (DHS) provides this update regarding the investigation of horse patrol activity in Del Rio, Texas on September 19, 2021. The activity under investigation, which was captured in photographs and video that circulated nationwide, occurred during the large gathering of Haitian and other migrants near the International Bridge.

U.S. Customs and Border Protection (CBP) initially referred the investigation to DHS's Office of Inspector General (OIG). The OIG declined to investigate and referred the matter back to CBP's Office of Professional Responsibility (OPR). OPR then immediately commenced investigative work, including its review of videos and photographs and the interview of witnesses, employees, and CBP leadership. OPR has followed customary process in its investigation of this matter.

Once completed, the results of the investigation will be provided to CBP management to determine whether disciplinary action is appropriate and, if so, the specific discipline to be imposed. At that time, the employees will be afforded due process, including an opportunity to respond, and any corrective actions will comport with applicable laws and regulations. The disciplinary process, which is separate from the fact-finding investigation, is subject to certain timelines established in CBP's labor-management agreement with the employees' union of the United States Border Patrol.

DHS remains committed to conducting a thorough, independent, and objective investigation. DHS will share information, as available, consistent with the need to protect the integrity of the investigation and individuals' privacy.

Set forth below is a more detailed overview of the key steps of the investigative and disciplinary processes that govern this kind of matter:

- CBP's Office of Professional Responsibility (OPR) is the office charged with investigating alleged misconduct of CBP employees.
- In accordance with DHS policy, OPR refers all allegations of serious misconduct against law enforcement officers to the DHS Office of Inspector General (OIG).
- OPR may share its initial findings with the United States Attorney's Office to alert federal prosecutors of the facts of the case and ensure that administrative actions do not inadvertently compromise any potential criminal investigation. Depending on the circumstances, OPR may wait to interview the subject(s) of an investigation until the U.S. Attorney makes a decision on whether or not to pursue the case.
- If the U.S. Attorney accepts the case, OPR coordinates with the Department of Justice on the investigation. In most situations, OPR defers to the prosecuting entity, which generally means that it will wait for the completion of the criminal case before conducting interviews of the subjects involved.
- If the U.S. Attorney declines the case, OPR continues with the final steps remaining in the investigation. The results of the completed investigation are then provided to CBP management to evaluate whether disciplinary action is warranted.
- In determining what disciplinary action to take, deciding officials are typically required to consider a number of factors, referred to in case law as the Douglas Factors (based on criteria set forth in the 1981 case, *Douglas vs. Veterans Administration*), to include an analysis of the nature and seriousness of the action; the employee's role and position, work record, and disciplinary history; the notoriety of the

offense; and the consistency of the proposed penalty with discipline imposed for analogous offenses.

- The employee is issued a decision letter in which the individual is advised of the decision, which charges were sustained or not sustained, the factors considered in deciding on the chosen disciplinary action, and appeal rights, if any. For certain types of disciplinary actions, such as long suspensions and removal actions, the agency is required by law to provide at least 30 days' notice and an opportunity to respond before effectuating the discipline.
- The appeal avenues available to the employee depend on the type of discipline imposed, the employee's employment history, and the employee's bargaining unit status. Depending on the circumstances, employees have the right to the following processes: review by the Merit Systems Protection Board; review by the Equal Employment Opportunity Commission; a negotiated grievance procedure and arbitration; and an internal administrative grievance procedure. Which of those processes would apply depends on the circumstances.

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