



Investigations into Deaths in Custody and Use-of-Force Incidents

July 27, 2015

Fiscal Year 2015 Report to Congress



Homeland
Security

U.S. Customs and Border Protection

Message from the Deputy Commissioner of CBP

July 27, 2015

I am pleased to submit the following Report, "Investigations into Deaths in Custody and Use-of-Force Incidents," prepared by U.S. Customs and Border Protection (CBP).



This document has been compiled pursuant to a requirement in House Report 113-481 accompanying the *Fiscal Year (FY) 2015 Department of Homeland Security (DHS) Appropriations Act* (P.L. 114-4). This report discusses the status or results of ongoing investigations into the death of individuals in CBP custody or the death of any individual subsequent to the use of force by CBP personnel.

Pursuant to congressional requirements, this report is being provided to the following Members of Congress:

The Honorable John R. Carter
Chairman, House Appropriations Subcommittee on Homeland Security

The Honorable Lucille Roybal-Allard
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable John Hoeven
Chairman, Senate Appropriations Subcommittee on Homeland Security

The Honorable Jeanne Shaheen
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

I would be pleased to respond to any questions you may have. Please do not hesitate to contact my office at (202) 344-2001 or the Department's Deputy Under Secretary for Management and Chief Financial Officer, Chip Fulghum, at (202) 447-5751.

Sincerely,

A handwritten signature in black ink, appearing to read "K. McAleenan". The signature is written in a cursive style with a long horizontal line extending to the right.

Kevin K. McAleenan
Deputy Commissioner
U.S. Customs and Border Protection

Executive Summary

Prior to FY 2015, CBP lacked the investigative authority and resources to investigate and review use-of-force incidents that resulted in the death or serious bodily injury of an individual. In August 2014, Secretary Jeh Johnson approved enhanced authorities for the CBP Office of Internal Affairs (IA), in part to improve the accountability and transparency of the investigation and review process of CBP use-of-force incidents.

Since that time, CBP has developed a robust process to investigate and review deaths and serious injuries to individuals occurring as a result of the use of force by a CBP law enforcement officer. As of February 2015, a specially trained Use of Force Incident Team (UFIT) responds to a use-of-force incident to conduct a thorough investigation. After a criminal declination, the investigation results are presented to the national Use of Force Review Board (UFRB) to determine if the actions of the involved CBP employee(s) conform to existing policies and procedures. If any issues are identified by the national UFRB, recommendations are forwarded to the affected CBP component and the Use of Force Center of Excellence. Either the CBP component or the Center of Excellence may effect policy enhancements and training updates, and identify best practices based on the recommendations.

Membership on the national UFRB includes not only CBP law enforcement officers, but also representatives from the Department of Justice Civil Rights Division, DHS Office for Civil Rights and Civil Liberties, DHS Office of Inspector General, and other DHS law enforcement components. Through this review process, CBP hopes to improve accountability and transparency of use-of-force incidents.

Absent the use of force, deaths of individuals in CBP custody, such as at holding facilities, will continue to be investigated by state and local authorities and the DHS Office of Inspector General. These types of investigations usually involve a pre-existing medical condition or suicide. Local authorities typically have more appropriate resources, such as coroners or medical examiners, to determine the cause of death and conduct the appropriate level of investigation.

As of May 31, CBP has reported eight deaths during FY 2015. Six deaths were as the result of use of force by CBP law enforcement officers. Four of these cases pre-dated the deployment of the UFIT process, and two incidents are currently under investigation by CBP using the UFIT model. Two deaths were reported in CBP holding facilities, one as a result of a medical condition and one suicide. Six of these incidents were investigated by outside federal/state/local agencies that had primary jurisdiction. The UFIT responded to one use-of-force incident that resulted in a death, and worked jointly with local

authorities. The national UFRB reviewed five use-of-force incidents and determined that the use of force was within policy for all five cases.



Investigations into Deaths in Custody and Use-of-Force Incidents

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I. Legislative Language

This document was compiled pursuant to the legislative language set forth in House Report 113-481 accompanying the *Fiscal Year (FY) 2015 Department of Homeland Security (DHS) Appropriations Act* (P.L. 114-4).

House Report 113-481 states:

The Committee directs CBP to report to the Committee within 14 days of the death of any individual in CBP custody or the death of any individual subsequent to the use of force by CBP personnel, including relevant details regarding the circumstances of the fatality.

In addition, CBP shall report annually on the status or results of ongoing investigations related to such deaths, with the first report due not later than 30 days after the date of enactment of this Act.

II. Background

U.S. Customs and Border Protection (CBP) enforces U.S. laws and regulations enacted to secure our borders and facilitate lawful trade and travel. In an effort to secure our borders, Border Patrol agents, CBP officers, and Air and Marine Interdiction agents often engage in enforcement and regulatory actions targeting potential terrorists, illegal drug and human traffickers, and others intent on committing criminal acts. CBP is the largest law enforcement agency in the United States, with a combined force of over 43,000 sworn law enforcement personnel, deployed along the borders and at air, land, and sea ports of entry. On a typical day, CBP will process over one million passengers and pedestrians for entry into the United States; apprehend over 1,300 individuals attempting to enter the United States illegally; refuse entry to over 240 inadmissible persons; seize over 10,000 pounds of drugs; identify over 500 individuals with suspected national security concerns; and arrest 21 wanted criminals at U.S. ports of entry.¹ CBP also maintains an international law enforcement presence with officers deployed to 15 airports in six foreign countries to conduct pre-clearance activities for passengers and goods bound for the United States.

With such a diverse mission and thousands of law enforcement officers geographically dispersed throughout the world, enforcement actions can sometimes end with the death of a suspect. Through training, accountability, and transparency, CBP strives to minimize the use of deadly force by our law enforcement officers, and then only as a last resort.

From October 1, 2014, through May 31, 2015, six individuals died as a result of use of force by CBP law enforcement officers. Additionally, one in-custody death occurred as a result of a medical condition, and one individual committed suicide in a CBP holding facility.

¹ SNAPSHOT, A summary of CBP facts and figures, dated February 2015.

III. Ongoing Investigations

Prior to FY 2015, CBP lacked the authority and resources to investigate any CBP law enforcement officer involved in the use of deadly force. Up until that time, officer-involved shootings that resulted in a death, and most other deaths that occurred while an individual was in the custody of CBP, were investigated by other federal, state, and local agencies. This approach to investigating the use-of-force deaths often resulted in delayed investigations and reporting, depriving CBP of the opportunity to conduct a timely review of the incident.

On August 29, 2014, DHS Secretary Johnson signed a memorandum granting the CBP Office of Internal Affairs (IA) enhanced criminal investigation authorities. A working group headed by IA, and including representatives from the Office of Border Patrol, Office of Air and Marine, Office of Field Operations, and Office of Chief Counsel, quickly developed a robust investigative capability modeled after the Federal Bureau of Investigation inspections program. IA now deploys a Use of Force Incident Team (UFIT), a cross-component group of specially trained investigators from the U.S. Border Patrol, Office of Field Operations, Office of Air and Marine, Office of Training and Development, and IA to investigate use-of-force incidents. Once the investigation is complete, the national Use of Force Review Board (UFRB) meets to review the investigative findings. This new model allows CBP to complete investigative work in a timely manner, and to conduct a review of the use-of-force incident to ensure that the actions taken by CBP law enforcement officers conformed to CBP policies and procedures. Lessons learned from the review boards are incorporated into law enforcement policies and training modules, and are used to further develop best practices for field personnel.

The national UFRB includes not only CBP law enforcement personnel, but also representatives from the Department of Justice Civil Rights Division, DHS Office for Civil Rights and Civil Liberties, DHS Office of Inspector General, and other DHS law enforcement components. Through this review process, CBP hopes to improve accountability and transparency of use-of-force incidents.

Using this new investigative model, once a use-of-force incident resulting in death or serious injury is reported to the Commissioner's Situation Room, IA will evaluate the incident to determine the appropriateness of a UFIT response. If UFIT is dispatched to conduct an investigation, the team will employ standard investigative techniques. The UFIT team will collect evidence, request forensic analysis of physical evidence, interview witnesses, interview CBP employees and supervisors, retrieve and preserve electronic media that may have evidentiary value (surveillance camera recordings, radio

dispatch recordings, etc.), consult with forensic experts, and employ additional investigative techniques, as necessary. If appropriate, UFIT may present the facts of the case to a federal or local prosecutor for review. While new to this process, IA anticipates following Federal Bureau of Investigation best practices. A UFIT investigation of a fatal use-of-force incident will require a minimum of five agents dedicating 10 days to investigative and reporting activities.

Once the UFIT investigation is completed, the results of the investigative findings are presented to a national UFRB. This panel reviews the UFIT investigation report to ensure that the actions taken by CBP law enforcement officers followed CBP policies and procedures. Any recommendations developed by the UFRB are forwarded to the affected CBP component for review, as well as to the Use of Force Center of Excellence for potential policy revisions, training enhancements, or to establish best practices for CBP.

Absent the use of force, deaths of individuals in CBP custody, such as holding facilities, will generally continue to be investigated by state and local authorities and the DHS Office of Inspector General. These types of investigations historically have involved a pre-existing medical condition or suicide. Local authorities typically have more appropriate resources, such as coroners or medical examiners, to determine the cause of death and to conduct the appropriate level of investigation.

Of the eight deaths of individuals that have occurred between October 1, 2014, and May 31, 2015, six resulted from use of force by CBP law enforcement officers. Two fatal shooting incidents are currently under investigation by CBP using the UFIT model. Three shooting deaths and a death due to an Electronic Control Weapon have been investigated by other federal/state/local authorities. These four cases pre-dated the deployment of the UFIT process. The deaths of the two subjects who died while in a CBP holding facility—one from a medical issue and the other who committed suicide—were investigated by state/local authorities.

Through May 31, 2015, CBP has convened two national UFRB reviews this fiscal year. A total of five use-of-force incidents, which were investigated before the UFIT model was implemented, were reviewed. In all five cases, the national UFRB determined that the use of force was within policy. The national UFRB reviews also provided an evaluative analysis, observations, and recommendations for corrective actions from an operational standpoint for the five cases. The national UFRB developed a total of 31 recommendations that were forwarded to the affected CBP component for review, as well as to the Use-of-Force Center of Excellence for action. All of these 31 recommendations concerned policy, tactics, equipment, and training issues.

In the near future, local UFRBs will be convened to review use-of-force incidents that did not result in the death or serious injury of an individual. The local reviews will include

use-of-force incidents where less-than-lethal force, such as an Electronic Control Weapon or chemical sprays, was used to subdue a subject.

IV. Conclusion

CBP has implemented the UFIT and UFRB to improve the investigative and review process for use-of-force incidents. The UFIT ensures that a standardized investigative product is produced and reviewed in a timely manner. As a result of UFRB recommendations, CBP will benefit from enhanced accountability and transparency leading to a more professional approach to policing in the 21st century. The inclusive philosophy of the UFRB, by inviting representatives from outside agencies to participate, makes the review process more transparent. This openness and standardization will improve the relationship amongst CBP, stakeholders, and the public.

As an agency, CBP realizes that the UFIT/UFRB process will be revised as the investigation and review of use-of-force incidents becomes an established and accepted practice at CBP. There is much work left to be done to complete the development of this process. CBP is committed to conducting use-of-force investigations and utilizing a review process that accounts for its employees' actions while being transparent.

V. Appendix – List of Acronyms

Acronym	Definition
CBP	U.S. Customs and Border Protection
DHS	Department of Homeland Security
FY	Fiscal Year
IA	Office of Internal Affairs
UFIT	Use of Force Incident Team
UFRB	Use of Force Review Board